



The Future of Kirkuk

A Roadmap for Resolving the Status of the Governorate



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MERI Policy Report

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Glossary of Terms

AAH – Asa’ib Ahl Al-Haq

CPA – Coalition Provisional Authority

CRRPD – Commission for the Resolution of Real Property Disputes

EAT – Election Assistance Team

GOI – Government of Iraq

IDP – Internally Displaced Person

IHEC – Iraq’s Higher Election Committee

IPCC – Iraq Property Claims Commission

IS – Islamic State

ISF – Iraqi Security Services

ITF – Iraqi Turkmen Front

KDP – Kurdistan Democratic Party

KRG – Kurdistan Regional Government

KRI – Kurdistan Region of Iraq

KSF – Kurdish Security Services

MERI - Middle East Research Institute

PMU – Popular Mobilisation Units

PUK – Patriotic Union of Kurdistan

UNAMI – United Nations Assistance Mission to Iraq

TAL – Transitional Administrative Law (Law of Administration for the State of Iraq for the Transitional Period.)

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Foreword

This report is the product of twelve months of research that has been undertaken on the ground with local actors in Kirkuk. The report is an attempt to bring key stakeholders together to debate contemporary solutions that will assist in the resolution of the Kirkuk issue, a process that has reached a stalemate. As reiterated by all local actors in Kirkuk, maintaining the current situation in the governorate is not a solution and a political process needs to be undertaken.

We hope that this report will be treated as a working document from which debate about Kirkuk's future can be generated. Key political representatives from Kirkuk need to adopt a new political project for the governorate as it is they who will ultimately shape Kirkuk's future. A unified approach would go a long way to assisting the turbulent political and security situation on the ground. This would also allay any possibility of future conflict and provide momentum for the political resolution of issues across Iraq.

With the onus on Kirkuk's leaders, they need to bring the issue of Kirkuk to the fore. This can only be achieved through greater levels of communication, lobbying of relevant parties and the adoption of confidence building measures. All of this must be undertaken with the aim of bringing a peaceful resolution to the issue of Kirkuk. If a solution for Kirkuk originates from the governorate it increases the possibility that a political resolution will gain traction, while also increasing the levels of political will to deal with the situation. This will ultimately lead to a mutually beneficial situation for all.

This research project was funded by MERI's own core budget. The Institute wishes to thank the interviewees, who dedicated their precious time to offer information, analysis and advice, the Kirkuk Provincial Council for their cooperation and hosting the launching event, and MERI's research staff for their dedication during the conduct and delivery of this report.

1. Introduction

Iraq is a country of many complex and dynamic problems. One of the most complicated matters is the dispute over the resource-rich city of Kirkuk. Despite the adoption of the permanent Constitution in 2005 and further political agreements, the dispute over Kirkuk remains unresolved.

Events since 2014, specifically after the emergence of the Islamic State (IS) and the shift in the control of much of the disputed territories, have led to a new state of affairs which in turn has changed the political, security and administrative dynamics in the Kirkuk Governorate. The resolution of the political status of Kirkuk and the disputed territories is one of Iraq's most complex and protracted territorial disputes despite numerous solutions that have been put forward. However, with the drastic change in Iraq's political and security landscape since 2014 it is important to identify whether there is an opportunity to broach the issue of Kirkuk in ways that are conciliatory to the ethnic mix that characterises its social demography. It is profoundly important to understand the views and perspectives of those on the ground as indigenous-based solutions will be the most effective in guaranteeing long term peace and stability to Kirkuk's complex social and ethnic composition. An estimation of these dynamics will allow for the critical assessment as to whether a political solution is possible and what shape this should take.

While it is not the purpose of this report to analyse the historical context of the situation, reference must still be made to some key factors. History plays a dominant role in creating the different narratives by which political actors define themselves, as do events after the fall of Mosul. The unprecedented events of the last year may well have changed the future course of events for Kirkuk and created new realities that have to be dealt with. These seismic events have also placed Kirkuk back under the spotlight and with the relationship between the Kurdistan Regional Government (KRG) and the Government of Iraq (GOI) tense, Kirkuk looks to be used as leverage in negotiations.

Article 140 of the 2005 Iraqi Constitution outlines a mechanism for resolving Kirkuk. However, the Article is ambiguous and can be easily interpreted as contradictory. While there is widespread agreement on the broad mechanisms put forward by the Article, political disagreement on specific aspects have curtailed progress. There has been little political will to push forward a solution on Kirkuk, and ten years after the writing of the Constitution, Kirkuk's status remains unchanged. The December 2007 deadline proposed by the Article for referendum has passed; however, the contents of the Article are still relevant as a basis for formulating a new framework.

It is clear that for any political solution to be successful political will is needed and compromises and concessions will have to be made by all parties. While all parties recognise that a resolution is needed, there has been little political will to do so. As it has often been identified, the focus to date has been on management rather than resolution of the issue.¹

1- Peter Bartu, "Wrestling with the integrity of a nation: the disputed internal boundaries of Iraq," *International Affairs* 86, no.6 (2010), p. 1343.

The perpetuation of the status quo in Kirkuk is a consequence of the failure of local actors to propose alternative solutions based on a pragmatic revision of their socio-political interests. Once such interests are reconciled in a conciliatory manner, only then can new, realistic and contemporary solutions be brought forward to address the future of Kirkuk. The stability of Kirkuk will not be maintained until a political agreement is put in place and any future steps would require a political consensus to legitimise the process. Until now political actors have not focused on identifying solutions, rather they left the situation to stagnate.

Delaying and deferring a political resolution will compound the situation even further, making it more difficult to resolve in the future. There has been recognition in a number of ethno-territorial conflicts that it was best not to delay or defer the resolution of any controversial or contentious issues, at least without a mechanism for their solution in place.² This suggests that multiple issues regarding the final status of Kirkuk need to be addressed if there is any movement on the process of reaching a referendum and implementing its results. This entails, most importantly, that Kirkuk's local actors take the lead in engaging with each other through pragmatic overtures based on compromise and reconciliation that can lay the basis for a long-term negotiated settlement. In the end, the fate of Kirkuk is for the Kirkukis to decide.

2- Larry Hanauer and Laurel Miller, "Resolving Kirkuk: Lessons Learned from Settlements of Earlier Ethno-Territorial Conflicts," RAND (2012) p. 54.

2. Kirkuk: A Troubled History

Kirkuk's recent history has been marked by violence. Existing tensions amongst the diverse ethnic and religious communities in Kirkuk have been utilised by insurgent groups as they consider Kirkuk's fragile climate suitable to exacerbate discord.³ Now with violence reaching levels that were experienced during Iraq's civil war,⁴ from 2006 - 2007, Kirkuk's future is once again in the spotlight. The governorate has long been home to a myriad of ethnicities, including Kurds, Arabs, Turkmen, Chaldeans and Assyrians a number of other minority groups. This variegated demography means that there are competing narratives of Kirkuk's history, obstructing any processes that are able to advance towards a shared political solution for the governorate.

The current political dispute over Kirkuk focuses on the geographic and administrative control of the governorate. While the 2005 Iraqi Constitution contains provisions for the resolution of the status of not only Kirkuk but the whole of the disputed territories, the situation remains unresolved. The Article, which was intended to be implemented by December 2007, has remained a source of contention between both Baghdad and Erbil. While Article 140 establishes a three stage process of normalisation, census and referendum, it fails to address a number of key issues. These include voter eligibility, the governorate's boundaries and the referendum question. Lack of political will and an ambiguous constitutional article has meant the political resolution of the status of Kirkuk has remained unanswered, with many viewing that any solution that favours the Kurds as a stepping stone towards Kurdish independence.

Changing Boundaries

Kirkuk's establishment in the early twentieth century as a major oil producing area made it a hub for economic migration. Large numbers of families, majority Arab, were sent to Kirkuk after the discovery of oil.⁵ This led to a significant shift in the demographics of the city. This demographic change gradually coincided with the changing or gerrymandering of the governorate's boundaries. In 1972 the governorate of Kirkuk was renamed 'Ta'mim',⁶ while undergoing a number of changes to its administrative boundaries by the then Ba'athist government. 1975 saw the formal detachment of Kirkuk from the Kurdish areas of Chamchamal, Kalar and Kifri which was followed by Turkmen dominated areas such as Tuz being reallocated to Salahaldin governorate. Thus, Kirkuk was drastically reduced from a governorate the size of 20,000 km² in 1950 to just 9,679 km² by the turn of the 21st century.⁷ This gerrymandering of governorate boundaries aimed at lessening the Kurdish majority in the governorate and this played a significant role in the current geography of the governorate.

3- Elizabeth Ferris and Kimberly Stoltz, "The Future of Kirkuk: The Referendum and its Potential Impact on Displacement." The Brookings Institution - University of Bern (2008) p. 8.

4- See: Rudaw, "Kirkuk announces 2014 casualty figures" accessed 15 January 2015, <http://rudaw.net/english/middleeast/iraq/02012015>,

5- Denise Natali, "The Kirkuk Conundrum." *Ethnopolitics* 7 No 4, (2008) .p.434

6- Meaning 'Nationalisation' in Arabic.

7- Liam Anderson and Gareth Stansfield, *Crisis in Kirkuk: The Ethnopolitics of Conflict and Compromise* (Philadelphia: PENN, 2009) p. 30.

Shifting Demography

Besides the change in boundary, the Iraqi state also sanctioned the expulsion, removal and replacement/displacement of people. This population change can be dated back to the times when oil production commenced in Kirkuk at the beginning of 1920's, however, when the Ba'ath Party came to power via a coup in 1968, the process intensified and reached its peak in the 1980s and 1990s. The policy of 'Arabization' undertaken by Saddam Hussein led to further societal shifts as Kurdish and Turkmen communities in Kirkuk suffered forced expulsion and resettlement. Arab families were given financial incentives of up to 10,000 Iraqi Dinars⁸ to relocate to the governorate and settle in newly vacated land.⁹ These Arab families are often referred to as the 'wafideen'.¹⁰

The Anfal campaigns conducted by the Ba'athist regime highlight a dark period of Iraq's history. During these genocide campaigns 100,000 to 200,000 Kurds were killed across Iraq. After the establishment of a safe haven in late 1991, expulsions from Kirkuk, outside the safe haven, continued. Approximately 1000 expulsions per month occurred in areas outside of the Kurdish safe haven until 2003.¹¹

Such colossal demographic shifts have highly politicised the collection of any population data in Kirkuk. The 1957 Iraqi Census data is often referenced to and is still seen as the most accurate indicator of Kirkuk's demography, at that time. Further censuses were held in 1977 and 1997, however, they are viewed as unreliable as they were conducted under the supervision of the Ba'ath regime.¹² The conscious manipulation, both of Kirkuk's demography and boundaries, has made the holding of a census a controversial issue as it would lay bare demographic strengths and weaknesses of Kirkuk's different communities. The failure to hold a census since 2005 boils down to whether to include ethnic background as a question. As of now there is no up-to-date information on the composition of Kirkuk's population.

Tensions Rise

After the fall of Saddam Hussein's regime the issue of the disputed territories, and more specifically Kirkuk, became a core issue of contention between Erbil and Baghdad. Even as early as 2003 there were significant changes to Kirkuk's population, with some Arab residents leaving as Kurdish forces resumed control of the city due to concerns over growing levels of violence.¹³ Many previous Kurdish residents of Kirkuk returned to find their houses either destroyed or occupied by Arab families that had migrated to Kirkuk.¹⁴ This caused the number of disputes over property to surge as Kurdish and Turkmen families made claims to homes and land that they had previously lost.

8- which is equivalent to \$30,000 today

9- David Romano, "The Future of Kirkuk", *Ethnopolitics*, 6 No. 2 (2007) p. 266.

10- Meaning 'newcomer' in Arabic

11- David Romano, "The Future of Kirkuk", *Ethnopolitics*, 6 No. 2 (2007) p. 266.

12- Liam Anderson and Gareth Stansfield, *Crisis in Kirkuk: The Ethnopolitics of Conflict and Compromise* (Philadelphia: PENN, 2009) p 43

13- See: Human Rights Watch, "Iraq: Killings, Expulsions on the Rise in Kirkuk", accessed 04 January 2015, <http://www.hrw.org/news/2003/04/14/iraq-killings-expulsions-rise-kirkuk>,

14- Meaning 'newcomers' in Arabic.

In many cases, returning families were not able to access to their original homes while some Arab families were forcibly removed to make space for the returnees.¹⁵

In order to regulate such issues, the Coalition Provisional Authority (CPA) established the Commission for the Resolution of Real Property Disputes (CRRPD) in 2004 with the aim of overseeing restitution claims and to reverse the process of ‘Arabisation’. However, the CRRPD found the process slow, and was only able to complete a small percentage of its heavy caseload.

The unorganised process of repatriation later faced severe opposition and became a source of concern for both the Turkmen and Arab communities, who blamed Kurdish authorities for unsystematic and disorganised relocations. Kurdish political parties were accused of facilitating demographic change in favour of the Kurds as this would play to their advantage in any upcoming popular vote through an increased presence. This was expressed by a senior Turkmen official who stated: *“the population in Kirkuk increased dramatically because of the resettlement of the Kurds”*.¹⁶

The inflow of previously-expelled residents to Kirkuk would have been a difficult task to contain. After 2003, huge numbers began to resettle in their homes. Notwithstanding the political and social motives behind the overwhelming number of families returning, the process lacked de-jure recognition due to the absence of a strong governmental body.

As the December 2007 deadline for the Article 140 referendum came and went the situation in Kirkuk got steadily worse. As an ethnically and religiously diverse area, insurgents found the governorate a perfect staging ground for increasing sectarian violence. By 2007 Kirkuk had become a hotbed of conflict and saw the most civilian fatalities in any year since the outbreak of the Second Gulf War.¹⁷ Kirkuk is more than just an oil rich city. It has become a symbol for the three main conflicting parties in the province. It is not a symbol which is abstract in nature, but is rooted in concrete social, political and economic arrangements which privilege one community over the others. When symbols such as Kirkuk become related to the level of worth a group feels about themselves, they become very problematic to negotiate over.¹⁸

Since June 2014, and the huge changes that have followed across Iraq, the different communities in Kirkuk have seen their relationships increasingly strained. The Kirkuk problem mirrors that of Iraq as a whole, in microcosm. Kirkuk remains a symbolic problem for Iraq and any hope for a final status agreement is reliant on maintaining a high-level of cooperation and trust between the different communities of Kirkuk itself, however, 2014 may have drastically changed Kirkuk’s future.

15- Elizabeth Ferris and Kimberly Stoltz, “The Future of Kirkuk: The Referendum and its Potential Impact on Displacement.” The Brookings Institution – University of Bern (2008) p. 9

16- MERI Interview, Kirkuk, 19 December 2014

17- 863 Civilian Casualties according to Iraq Body Count, accessed on 10 January 2015, www.iraqbodycount.org

18- David Romano, “The Future of Kirkuk”, *Ethnopolitics*, 6 No. 2 (2007) p. 271.

3. Kirkuk after the fall of Mosul

The expansion of Islamic State (IS) fighters, at that time called the Islamic State in Iraq and Al- Sham (ISIS), into Iraq in June 2014 and the fall of Mosul on the 10th of June caused an upheaval in the internal dynamics of Iraq like never before. The organisation managed to gain control of Iraq's second city amid huge desertions by the Iraqi army. Following their staggering success in Mosul, Islamic State led fighters stormed across the country taking other strategic cities and forging deep into central Iraq. The Islamic State then controlled vast areas of territory stretching from Diyala, in Eastern Iraq, to parts of Aleppo, in Western Syria. In the space of a fortnight large swaths of Iraq had been taken, Iraqi Security Forces (ISF) had been routed, and Baghdad was on the brink of collapse. IS presence was apparent in Anbar, Nineveh, Saladin, Diyala, Kirkuk, Babel and Baghdad.

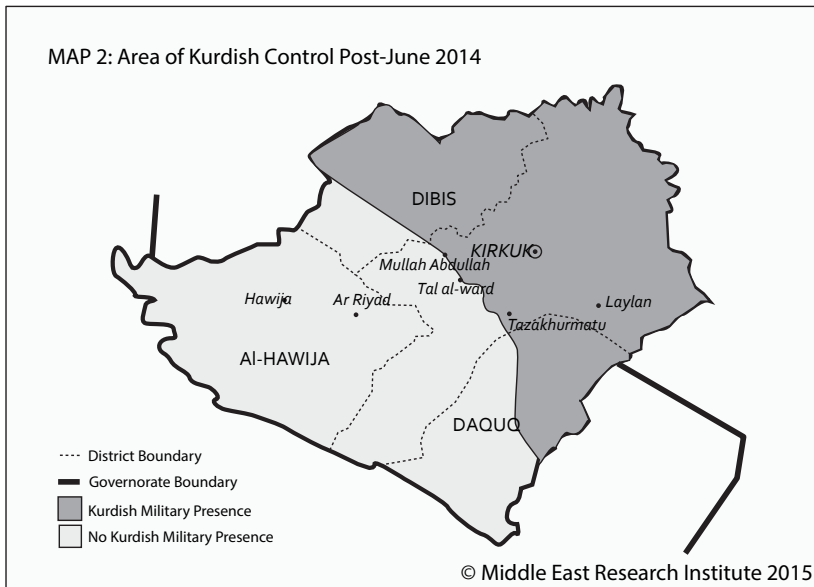
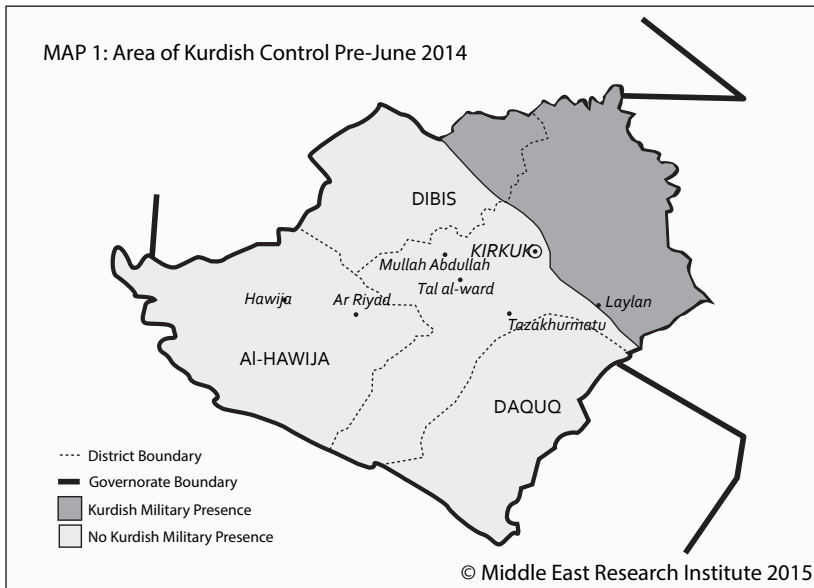
For the Kurdistan Region of Iraq (KRI) the experience was somewhat different. As the insurgents stormed south and the ISF crumbled, Kurdish Security Forces (KSF) moved into the Article 140 areas that had been disputed between Baghdad and Erbil. The Peshmerga control of the disputed territories was not only an opportunity for the Kurds, it was a necessity. The ISF had left large swaths of the disputed territories undefended with IS forces flowing across Iraq, taking towns and cities with little resistance. This meant that the responsibility to protect the disputed areas fell to the Kurds. KSF effectively filled the vacuum of control that was left by the retreating ISF, with tacit agreement from Baghdad.

New borders

The situation in June 2014 opened a new 1,050km border, 1,000km of which the KSF shared with their new jihadist neighbours and only 50km with the ISF. According to General Secretary of the Ministry of Peshmerga, a new strategic line had been drawn. He stated that this line included the areas of: *“Naftkhana, Khanaqin, Jalawla, Saadiya, Qaratapa, south and west of Tuz Khurmatu, and south and west of Kirkuk. This is in addition to the areas of Dibagah, Makhmour and as far as Fishkhabour. This line, which is 1050 kilometres in length, has been protected by the Kurdistan Region's 70th and 80th forces, rapid-response units, Asayish, and Zeravani. Over the past several days, as the Iraqi Army has abandoned its posts, including joint-force positions, Peshmerga reinforcements have been dispatched to fill their places.”*¹⁹

Kirkuk was no exception to the fighting that stormed across Iraq. The ISF abandoned their positions in the governorate, leaving the strategic city and its oil assets unguarded. The Dijila Operation Command, which had been under the direct command of the then Prime Minister, Nouri Al-Maliki, retreated from Kirkuk.

The Dijla forces had been established on 3rd of July 2012 and deployed throughout parts of the disputed territories, under the command of Lieutenant General Abdul Amir al-Zaidi, formerly the General Commander in Diyala. The Dijla forces had maintained a presence in Kirkuk, Diyala and Salahadin, however, the Kirkuk city council had refused their presence in Kirkuk city.



(*approximate as of January 2015)

As Iraqi forces retreated, the vacuum was filled by the KSF. However, this did not mean that they controlled the whole of Kirkuk governorate, far from it. By the 10th of June Hawija, al-Zab, Riyadh and Abbasi had been lost to IS. Areas like Mullah Abdullah and Tal al-Ward later became the scenes of intense fighting. Large swathes of the governorate are still under the control of IS forces, with Kirkuk being effectively bisected. Hawija and the Western areas of the governorate are under the control of IS and Kirkuk city and the East under the control of the Peshmerga; a situation where as much as 45% of the governorate is still not in the hands of either the Peshmerga or the ISF. (See map 2) Pre-2014 there had been de-facto military borders within Kirkuk governorate with the Qani Domlan ridge acting as a natural borderline (See map 1). No federal security forces ventured North-East of this line and Peshmerga controlled this area with the Qani Domlan ridge becoming the boundary of an unofficial no-man's land.²⁰

The Kurdish control of Kirkuk after June 2014 did not go unnoticed in the south of Iraq. Hadi Al-Ameri, head of the Shia paramilitary group, the Badr Brigades, stated at a press conference in Kirkuk that: *"Peshmerga will only stay in Kirkuk with the express permission of the government in Baghdad."*²¹

The security situation, and its handling, is vital for the future stability of Kirkuk. The continued presence of the Peshmerga forces should be formalised through an official agreement between Baghdad and Erbil. This would lower tension and provide Kirkuk with a stable security nexus. As noted by a former minister in the GOI: *"On the security aspect, there is now Kurdish control but there is no legal basis for this."*²²

Although it would be politically difficult for Baghdad to manage the current situation, a formal agreement on the presence of the Peshmerga and other KSF in Kirkuk governorate would demonstrate willingness to neutralise any possible future stand-off between Baghdad and Erbil in Kirkuk. Such an agreement should also include the commitment to maintain Kirkuk city as a de-militarised zone.

Baghdad's apprehension relative to Kirkuk sees any Kurdish gains in the governorate as a stepping stone towards independence. In June 2014 KRG President Barzani even stated that the Kurds could hold a referendum on independence within a few months. Indeed President Barzani made a hugely symbolic trip to Kirkuk shortly after the fall of Mosul, highlighting the city's importance to the Kurds. However, the calls for independence abated as the economic and security implications that this new territory brought, finally settled in. In August, with the crisis in Sinjar, the responsibility of controlling larger areas of territory put an end to the short-term calls for independence. From June to July 2014 Peshmerga forces felt the cost of controlling this new territory as 33 were killed and 98 injured in Kirkuk governorate alone.²³

20- Michael Knights and Ahmed Ali, "Kirkuk in Transition: Confidence Building in Northern Iraq" Washington Institute Policy Focus No 102, (2010), p. 9

21- Hadi Al Ameri, Press Conference, Kirkuk, 02 September 2014

22- MERI Interview, Erbil, 27 August 2014

23- Joel Wing, "Costs Of Iraq's Kurds Moving Into The Disputed Territories", accessed 05 November 2014, <http://musingsoniraq.blogspot.com/2014/07/costs-of-iraqs-kurds-moving-into.html>

Internally Displaced People

One of the biggest new burdens that had to be shouldered was the massive influx of internally displaced people (IDP's). From June the 10th onward the KRI experienced multiple waves of IDP's, seeking shelter in Kurdish controlled areas.

This was no different in Kirkuk. Even before June 2014, the Kirkuk governorate was already dealing with a large number of IDP's due to the Anbar crisis. Up to 12,780 IDP's were reported by April 2014.²⁴ This has drastically increased, with the International Organisation for Migration recording that there were a total of 238,776 IDP's in the governorate by January 2015, out of which 94,782 came from the neighbouring governorate of Salahaddin, the site of heavy fighting in areas such as Tikrit and Baiji. Kirkuk city received the bulk of the displaced with a total of 157,476 IDP's, of which 40,080 are living in unfinished buildings and informal shelters.²⁵

The growth in IDP's in Kirkuk throughout 2014 has led to increasing security concerns. Originating from areas controlled by IS has led to an inevitable suspicion that insurgent elements may be among the ranks of those seeking shelter. In Kirkuk, especially Kirkuk city, there is a growing fear, not of external conflict, but from sleeper cells within the city. As the fighting with the IS rages, it is easy to fracture further the already strained relationship between Kirkuk's mixed communities. IS, with its predominantly Sunni Arab composition, has entrenched pejorative views of Sunni Arab communities in Kirkuk as a whole.²⁶ Kirkuk's mixed demographics make it of strategic importance to IS. As IS has been pushed north, out of areas of Diyala, Kirkuk has become a focal point for violence. The organisation's success has been built upon its ability to exploit the social tensions in Iraq for its own gain and it is clearly looking to do the same in Kirkuk.

Erbil and Baghdad

The situation between Erbil and Baghdad remains tense. With Baghdad initially consenting to the expanded presence of Peshmerga in the province, this de-facto Kurdish control will strain the two administrations relationship. The Kurdish leadership identified that Kirkuk and the disputed territories should be on the agenda in the negotiations between the KRG and the GOI. However, with the focus on economic issues, it is possible that challenging problems like that of the political resolution of Kirkuk will be pushed aside. This ignores the fact that without resolving the issue of the disputed territories, it will be increasingly difficult for Erbil and Baghdad to have a stable relationship.

24- International Organisation for Migration, "Kirkuk governorate profile 2014", accessed 03 January 2015 www.iomiraq.net/file/894/download?token=rKi7r0xA.

25- International Organization for Migration, "IOM Displacement Tracking Matrix", accessed 01 February 2015, <http://iomiraq.net/dtm-page>.

26- It is important to note that there are also a significant number of 'non-arab' combatants that are actively fighting in the Islamic State ranks.

The role of Shia militias and the Hashd Al Sha'bi, or Popular Mobilisation Units (PMU's), in Kirkuk has remained a divisive issue. With Qais al Khazali, head of Asa'ib Ahl al-Haq (AAH), having made statements claiming that Kirkuk is an Iraqi city and that it would not allow for it to become part of the KRI, it is clear that the issue is not over for them. Shia militias have gradually spread north after a series of successes against IS in areas of Diyala and Salahadin. As they pushed towards Kirkuk governorate they reached the town of Tuz Khurmatu, just south of Kirkuk governorate. Subsequently they have spread into areas of southern Kirkuk, mostly in the Taza Khurmatu area just south of Kirkuk city. In Kirkuk the PMUs consist of mostly local Shia Turkmen. They will undoubtedly attempt to maintain and expand their presence in the governorate of Kirkuk, however, being active in Kirkuk city would be unacceptable to the Kurds. This highlights the possibility for Kirkuk to become a point of conflict between Baghdad and Erbil. While Kirkuk is left without a political process and an agreed framework, tensions look set to grow.

The situation in Kirkuk remains highly unstable and fighting has been on-going in areas such as Mallah Abdullah, Tal Al-Ward and Maktab Khaled. Kirkuk looks to remain a source of tension; due not only to the security threat from IS but also due to the strained relationship between Erbil and Baghdad. With the dire financial situation, compounded by a drop in oil prices, the KRG – GOI relationship is under pressure. Add to the mix Shia armed groups, some acting largely autonomously from the government, and the space for Kirkuk to become the future staging ground for political divergences is clear.

4. Article 140: Problems with Implementation

In 2005, Article 58 of the Transitional Administrative Law (TAL) was incorporated in Article 140 of the permanent Constitution. The constitutional Article is brief but it mandates the implementation of the details mentioned in TAL Article 58. The steps postulated in the permanent Constitution of 2005 are: Normalisation, Census and Referendum. In the following, each of these points will be analysed taking into consideration the perspective of the communities of Kirkuk.

Normalisation

With regard to the process of Normalisation, Article 140 of the Constitution refers back to Article 58 of the TAL, issued by the Iraqi Transitional Government. The law puts forward the ‘expeditious’ implementation of reversing: “... [t]he injustice caused by the previous regimes’ practices in altering the demographic character of certain regions, including Kirkuki,...”²⁷

Article 58 TAL outlines the process of Normalisation in a fairly detailed manner. It entails the accomplishment of four actions:

1. financial compensation,
2. nationality correction,
3. resolution of land disputes,
4. Pre-Ba’ath administrative boundary restoration.

Neither TAL 58 nor Article 140 provides the detailed guidelines to undertake such steps with the result that ambiguous language has caused disagreement and contention among the constituents of Kirkuk. Furthermore, processes relative to the implementation of the Article require close scrutiny. For example, financial compensation was provided to those wanting to leave Kirkuk after 2003 on the condition that families would leave the governorate within 40 days of receiving compensation.²⁸ However, there are claims that many received financial compensation yet failed to leave their residences, although, the total number remains unknown. It has even been claimed that some of those that received compensation used the money to renovate their houses in Kirkuk.²⁹

As for those returning to Kirkuk, the authorities claim that there is not sufficient land to be distributed to the beneficiaries in Kirkuk. One of the arguments for the insufficiency is due to the fact that large swathes of land have been illegally occupied after the fall of the previous regime in 2003. Currently there is no objection to the issue of financial compensation from any of Kirkuk’s communities. Rather, Arab, Turkmen and Kurdish community representatives have fully supported the process because it addresses the rights and entitlements of individuals.³⁰

27- Full English translation of the Transitional Administrative Law available at: <http://web.archive.org/web/20090423064920/http://www.cpa-iraq.org/government/TAL.html>, accessed 15 March 2015

28- A sum of 20,0000,000 Iraqi Dinars

29- MERI Focus Group, Kirkuk, 3rd December 2014

30- ibid

However, doubts were raised about the will of the government in Baghdad to complete this initial step. In fact a considerable number of community representatives considered financial compensation to be a major barrier for progress in implementing Article 140.³¹

A senior Kurdish official in Kirkuk, declared that: *“with the current mechanism in place, monetary compensation alone will take more than 20 years to be completed.”*

He went on to say: *“The office in Kirkuk now receives 17 billion Iraqi Dinars per year from the sovereign expenses which are to be decreased in 2015 budget.....around 600 billion IQD is the amount needed to complete the procedure.”*³²

From 2007 to 2014, out of 120,320 applications filed by forcibly-expelled families, 61,466 cases were yet left uncompensated, while a total of 28,384 applications were lodged by the wafideen, out of which only 5,774 files are awaiting compensation.³³

Land Disputes

This aspect of Normalisation encapsulates two issues: domestic and agricultural land disputes. With regard to the latter, 1,200,000 Dunams³⁴ of land were confiscated by the Baath regime and later distributed. Following the overthrow of the regime in 2003, returnees demanded their lands and as a result resolving the issue became a key issue for the successor government.

According to a Turkmen MP in Baghdad, the grievance of the Turkmen in this regard is that, *“no single metre of the agricultural land has been officially yet restituted to any Turkmen.”*³⁵ A key contributing factor in the non-resolution of such disputes is weak rule of law, however, there are other intricacies that complicate the issue. The Iraq Property Claims Commission (IPCC) has an office in Kirkuk governorate and the Commission has dealt with around 8800 dispute cases, but there is a lack of data to identify the success rate of these cases. Currently there are roughly 50 cases to be addressed at the Kirkuk Office, which deals with land dispute cases predating the liberation of Iraq in 2003. The process is often time consuming because decisions are appealed at the Court of Cessation. Law 29, passed by the Council of Ministers in 2012, theoretically should annul all previous agreements by the North Affairs Committee made to lands that were confiscated by the Baath regime. This would greatly speed up the claims process, however, the law has yet to be implemented. It is also necessary for authorities to develop guidelines for monetary compensation since there are areas upon which governmental facilities are now built.

31- ibid

32- MERI Interview, Kirkuk, 14 December 2014

33- Statistics of applications submitted available from the Kirkuk Office of the Committee to implement Article 140

34- 1 Dunam is equivalent to 2,500m²

35- MERI Interview, Erbil, 03 November 2014

Administrative Boundaries

In December 2007 the Article 140 Committee recommended to the Presidency Council that all districts that had been detached from Kirkuk should be restored to the governorate, including those controlled by both the KRG and the GOI. These include the districts of Chamchamal, Kifri, Kalar and Tuz. This would restore Kirkuk to its 1975 boundaries.³⁶

Changing Kirkuk's current administrative boundaries is perceived by the Arabs and the Turkmens as a serious impediment in implementing Article 140. The Arab and the Turkmen constituencies object to the restoration of the boundaries on the account that the issue is not limited to Kirkuk only but also affects the whole of Iraq. For Kirkuk to be separately dealt with and its previous boundaries reattached, Arabs and Turkmens believe that a political agreement between all political parties is required, an unlikely scenario.

On the other hand, the majority of Kurds are clearly in favour of border restoration. Kirkuk, as defined by 1975 boundaries, would provide the Kurds with a significant majority in the governorate. In accordance with the Constitution, the Presidency Council is required to present suggestions about the changes of the administrative boundaries of Iraq to the Parliament. In 2011, the President of Iraq, Jalal Talabani, proposed to the Council of Representatives a bill which would annul any law issued by the previous regime in regard to boundary changes. However, this bill remains unaddressed in Iraq's Council of Representatives. In the case of Kirkuk, to restore its boundaries, Salahaldin, Diyala, and Sulimaniyah would all have to restitute areas back to Kirkuk. Boundary change would therefore be a long and complex process that may never be successful. For any progress to be made in regard to finding a political solution in Kirkuk, its boundaries must remain as they are. TAL Article 58 clearly states that the process of normalisation should be carried out "expediently". With over ten years having passed since the signing of TAL and their subsequent inclusion into the Constitution, it can be concluded that the process of normalisation has ended, as issues that remained unresolved have not been handled "expediently".

As stated by a leading Kurdish academic covering Kirkuk: *"To date there is no better recipe to solve the issue than Article 140. But we need to ask, what part of it? I think normalisation is finished."*³⁷

36- Peter Bartu "Wrestling with the Integrity of a Nation: The Disputed Internal Boundaries of Iraq" International Affairs 86 No. 6, (2010) p. 1335.
37- MERI Interview, Erbil, 27th November 2014

Census and Voter Participation

The Iraqi Constitution only explicitly mentions the word census twice. Article 140 clearly mentions the holding of a census as part of the process to a referendum. A deadline was created for a census to be held in July 2007. This was missed, as was the Iraqi National Census scheduled for 17 October 2007.³⁸ A significant reason for the failure to hold a census was over whether to include a question to identify ethnicity. Such historical or ethnic questions can easily provide triggers for conflict. A census in Kirkuk, would help to identify the Kirkuki electorate, however, a number of steps must be taken to ensure that voter registration is fair. In Kirkuk this is complex as it often relates to the personal history of each possible voter.

Defining who participates in a referendum is a highly contentious issue amongst Kirkuk communities'. Turkmen consider the majority of the post-2003 returnees as illegible to vote. The majority of the Turkmen representatives consented to the usage of the 1957 census as the means to determine eligible voters, however, their views are to use it within the current boundaries, a point which the Kurds disagree with.

Arab communities, on the other hand, deem any person with official documentation issued in Kirkuk to be a citizen of the governorate and thus are eligible to partake in any process determining the future of the city. It is important to note that no official documentation has been issued in Kirkuk since 2003.

There is no unified Kurdish perspective in regard to voter eligibility. For example, views include considering those who have been living in Kirkuk for more than 25 years and/or own property,³⁹ as those who are able to take part in the referendum. However, a dominant Kurdish view is that the 1957 census with the inclusion of districts of Chamchamal, Kalar, Kifri and Tuz Khurmatu should be used to identify individuals who are eligible to vote.

The 1957 census enjoys approval of both the Kurds and the Turkmen because it is believed to be the most accurate and thus reliable census conducted in Iraq. Demography change commenced in the following years and thus the censuses held later have very little credibility. The 1957 census is vehemently refused by Arab communities as a method of identifying voter eligibility. If the 1957 census was employed, only a small percentage of the Arabs currently residing in Kirkuk governorate would be able to vote.⁴⁰

Despite the conflicting narratives about who participates in a referendum, Turkmens, Arabs and some of the Kurds believe that holding census necessitates prior political agreement among the components. The reservations expressed by the different communities can also be perceived as red lines. What the Arab community proposes, to consider anyone carrying a documentation issued in Kirkuk as the electorate, is readily rejected by the Kurds and the Turkmens because this would encapsulate all of the ‘wafideen’. The proposition of the Kurds is also likely to be strongly opposed by the Arab community.

As convergence of opinions seems to be improbable it could then be argued that any process about holding census would reach a stalemate. Previous international referenda on contentious geographical disputes highlight the problem of voter eligibility. This issue can be a reason for the indefinite delay of such referenda. As with the Cypriot Annan Plan referenda in 2004, voter eligibility was identified as a key issue. Despite strong disagreement the decision was made that all citizens should be eligible to vote. There are clear reasons for disagreement with allowing all to vote in Kirkuk. Many view that all who have settled in the governorate and are not ‘original’ Kirkukis should not be able to vote. Notable influxes highlighted are those during the process of ‘Arabisation’ pre-2003 and the influx of Kurdish residents post-2003. Against this, however, it has to be remembered that the fate of all Kirkukis is being determined. Most of those who have settled in Kirkuk also consider themselves to be Kirkukis, their interests cannot be ignored or dismissed.

Referendum

Differing views about holding a referendum arise on the account of the imprecise language used in the constitutional Article. While it lays out general formulations, it fails to mention who is eligible to vote, the exact administrative boundaries or units upon which the process could be based and the question to be posed and the entity which administers the process. With regard to the question to be asked, many politicians are in favour of a two-option referendum asking whether or not to join KRG.⁴¹ This option is bound to be objected by some Turkmens as well as some Arabs as ‘no’ in this case means remaining part of centralised Iraq. The non-Kurdish communities want their visions for the future of Kirkuk to be incorporated in the vote. There have been Kurdish calls for studies to be conducted by the KRG before a referendum identifying Kurdish presence, geographical congruity and resource availability.⁴²

41- MERI Focus Group, Kirkuk, 3rd December 2014

42- MERI Interview, Sulimaniyah, 27th November 2014

Boundaries

In terms of voting boundaries, a range of perceptions have been outlined. This includes suggestions such as governorate-wide referendum after retrieving the original administrative boundaries.⁴³ Also, a district-by-district referendum is often put forward because some believe that it will mean that the outcome of a referendum would better represent the rights and the will of the people.⁴⁴ A district by district, or even sub-district by sub-district, referendum could have the potential of generating further intricacies and fragmentations. If districts were to vote differently, a new boundary would need to be delineated. Therefore, a governorate-wide process within the current boundaries can be perceived as the most viable option. Nonetheless, to adopt this option, a consensus is required politically.

The presence of the international community has also been perceived as crucial in any agreement or consensus to be reached.⁴⁵ Aside from catalysing the attempts of reconciling the competing interests, involvement of the international community, more significantly the UN and/or the US garners further recognition of any future agreements. Iraq's Higher Electoral Committee (IHEC) is able to administer a future referendum in Kirkuk and electoral assistance can be provided by the United Nations Assistance Mission to Iraq (UNAMI) through their Electoral Assistance Team (EAT).⁴⁶

There are certain points about which the three constituencies agree as far as referendum is concerned: budget allocation for administrative purposes, the need to reach a consensus and the passing of legislation concerning the details of the process by parliament. Arriving at a political consensus would be a remarkable feat, although it would be likely to focus on post-referendum final status solutions.

43- MERI Interview, Kirkuk, 19th April 2015

44- MERI Interview, Kirkuk, 2nd February 2015

45- MERI Interview, Erbil, 27th August 2014

46- 'Kirkuk Status Referendum Operational Concept', The Center for Democracy and Civil Society at Georgetown University, (2013), <http://ckro.georgetown.edu/resources/framework>

5. Perspectives: Final Status Solutions

When talking about a political solution to the situation in Kirkuk it is necessary to identify the different final status solutions that have been put forward. These are territorial and administrative solutions that designate whether Kirkuk will reside within the Kurdistan Region or not, and whether Kirkuk receives any form of special administrative status after a referendum.

These are longstanding scenarios and it is important to understand the different views of each of the major ethnic groups towards them. Due to the significant upheaval that has occurred since June 2014, it is of critical importance to understand each group's perspective to be able to pave a way for any political resolution. Changes in perspectives may be caused by competing security, economic and political fears.

1. Kirkuk outside the KRI

Kirkuk would maintain its status as a governorate of Iraq, administratively controlled by the central government in Baghdad.

2. Kirkuk as a region

Kirkuk's status would be that of a region with the same powers and rights as any other federal region in Iraq.

3. Kirkuk with special administrative status inside the KRI

This scenario would place Kirkuk geographically within the KRI, while also providing the governorate with administrative powers, different from other governorates.

4. Kirkuk with special administrative status outside the KRI

This option broadly puts Kirkuk outside of the KRI geographically but with special administrative power. Kirkuk could be given devolved powers from central government and be geographically a governorate, but with less direct influence from Baghdad and Erbil.⁴⁷

5. Kirkuk as part of the KRI

This would place Kirkuk as a governorate within the KRI. Kirkuk would be granted the same rights as the other governorates that comprise the KRI. The KRG would then have both the administrative and geographical control of Kirkuk.

6. Interim special status

The staggered approach to special status would mean that Kirkuk become a specially administered region outside of KRG control for 5-10 years. This period can be categorised as an "interim special status". After this period, and further confidence building measures between Kirkuk's communities and Erbil and Baghdad, there would be a final referendum to decide the geographical status of Kirkuk, within the KRG or not, keeping its special administrative status either way. Interim status has been used as a mechanism to settle protracted territorial conflicts.⁴⁸

Identifying and understanding the preferences of Kirkuk's major communities to these options is of crucial importance. While it is difficult to generalise the views of each of Kirkuk's diverse communities to such complex issues, there are broad themes that can be identified.

The Arab Perspective

Identifying the views of the Arab population is important given the change in the security situation in Kirkuk. Since June 2014 large parts of Kirkuk governorate including Kirkuk city have come under the control of Kurdish Peshmerga forces. This dynamic shift in security presence was of immediate concern for local the Arab population in Kirkuk. While originally the movement of Peshmerga forces was seen as a stabilising security factor and necessary to stop IS advances in Kirkuk, the Arab community remain concerned by the growing Kurdish control of the territory.

A leading representative of Kirkuk's Arab community stated: *"we agree to the fact that there is a Peshmerga presence, but we disagree that the Kurds are exploiting the de-facto control of Kirkuk for political means."*⁴⁹

The growing presence of KSF in Kirkuk has led to increased levels of fear in Arab communities, particularly towards the Kurdish Asaysh.⁵⁰ Arabs believe that the Kurdish political parties in the KRG want full control of Kirkuk, they also view themselves as outside of the decision making process and are fearful of being a minority in Kirkuk.⁵¹ This is why the Arab perspective is vehemently against issues such as the changing of Kirkuk's boundaries or the use of the 1957 census as a means of identifying voter eligibility. Both of these measures would significantly reduce the percentage of Arabs able to vote in a referendum. With the process of transferring documents to Kirkuk having stopped since 2003, some Arabs view that only those who carry identification cards issued in Kirkuk should be eligible to vote in a referendum. This would rule out the large numbers of Kurds who returned to Kirkuk after 2003. The Arabs would make concessions as to those who have returned and can prove they are legitimate historic Kirkuk residents being able to vote.⁵²

The Arab perspective is at odds with Kirkuk becoming part of the KRI. They perceive that this will lead to marginalisation as they will receive a minority status. The Sunni Arab's boycott of the 2005 Constitution is often referenced, outlining the fact that they do not recognise in Article 140 or the process that it entails.

49- MERI Interview, Kirkuk, 23rd August 2014

50- MERI Interview, Kirkuk, 26th October 2014

51- MERI Interview, Kirkuk, 23rd August 2014

52- MERI Interview, Kirkuk, 26th October 2014

A Senior Arab political figure in Kirkuk stated: *“The Arab community in Kirkuk refuses this [Kirkuk becoming part of the Kurdistan Region] and there are reasons for this refusal. Firstly, the basis of the region is nationalistic and not geographical, since the majority are Kurds. The laws and legislations in the region spring from Kurdish culture. Therefore, Arabs think that joining the Kurdistan Region would mean abolishment of their rights.”*⁵³

Kurdish control of Kirkuk may have crystallised Arab views towards solutions for Kirkuk. Historically many Arabs in the governorate wanted Kirkuk to remain a government of Iraq administered by the central governorate in Baghdad, other Arabs viewed that Kirkuk should be a specially administered governorate. Both of these perspectives put Kirkuk outside of the KRI geographically. As these were the views held by Kirkuk’s Arab population pre-June 2014, it is important to note that these perspectives may have been transformed due to growing concerns about their security in a Kurdish controlled Kirkuk and increase in levels of distrust between Kirkuk’s communities.

What is clear now is that the perspective of the Arab community has shifted. The distrust that has grown between Sunni Arabs and the Shia dominated government in Baghdad is also present in Kirkuk. Arabs in Kirkuk are now broadly against the idea of being geographically part of, and administered by the central government in Baghdad. This however, does not mean they are in favour of joining the KRI. Arabs in Kirkuk would prefer the territory to be geographically either a governorate or a region, but with less influence from both the KRG and the GOI. This is a position many in Kirkuk’s Arab community were fiercely against pre-2014. Many view that Article 140 of the Constitution⁵⁴ and the concept of a referendum in Kirkuk as invalid.⁵⁵ Some Arabs therefore view that region formation is a legitimate path towards this end. This would require one third of the city council members being in favour or 10% of Kirkuk’s population to push through a referendum on Kirkuk as a possible separate region.⁵⁶ However, if guarantees can be made by the KRG or the GOI, there may be the possibility to shift the perspective of Kirkuk’s Arabs away from a rejectionist stance.

Turkmen Perspective

The Turkmen position is fragmented due to the fact that they are divided along party political and sectarian lines. Their perspective can be broken into three parts:

1. Turkmen members of the Kirkuk Brotherhood List.
2. Shi’a Turkmen, many aligned with different political parties.
3. Turkmen front, a coalition of six mostly Sunni parties, politically aligned with Ankara.

53- MERI Interview, Kirkuk, 26th October 2014

54- Here it is important to remember that large parts of Iraq’s Sunni Arab communities boycotted the referendum on the 2005 permanent Constitution.

55- MERI Interview, Kirkuk, 16th May 2015

56- MERI Interview, , 26th October 2014

Each of these groups has differing opinions and positions. Members of the Kirkuk Brotherhood List are more likely to back a political solution that results in the Kirkuk governorate becoming part of the Kurdistan Region albeit with special administrative status. The other two groups have put forward the idea of Kirkuk retaining some form of special status outside of the Kurdistan region.

The Iraqi Turkmen Front (ITF) have historically been in favour of making Kirkuk a federal region in Iraq. They now put forward the resolution of Kirkuk through the Constitution, but through Article 119 instead of Article 140. Article 119, the subsequent legislation,⁵⁷ allows for the formation of governorates into separate regions through either one third of the council members intending to form a region or a request by one tenth of the voters in the governorate.⁵⁸

A leading Turkmen representative in Kirkuk stated that: *“We would love to become real partners with the Kurds...the border of Kurdistan is defined in the Constitution. We recognise this but we do not consider Kirkuk as part of the Kurdistan Region. We want Kirkuk to become a separate federal region.”*⁵⁹

However, many Turkmen view this as a possible temporary solution. The Turkmen representative went on to say: *“[W]e want this for a period of eight years after which we can hold a referendum. We will accept any result at that time.”*⁶⁰

This is a solution that could be categorised as ‘temporary special status’ and is seen as a trust building mechanism by the Turkmen community. There is clear concern from Turkmen representatives about their representation and legal rights should Kirkuk become part of the KRI. Certain Turkmen representatives often look for guarantees should this happen: *“We would ask for Kirkuk to be granted special status. We want Kirkuk to have special status whether in Iraq or the KRI. If Kirkuk was to join the KRI, the number of Turkmens would increase. Increase in number means more representation. ... special status would help build confidence between the Kurds, the Turkmen and the Arabs.”*⁶¹

Turkmen perspectives as to the possibility of Kirkuk joining the KRI focus on political and cultural guarantees. These guarantees include offering opportunities to the non-Kurdish communities to compete over all positions in the KRG, and granting the position of Vice President or Deputy Prime Minister to those communities. The Turkmen position also seeks the inclusion of non-Kurdish symbols on the flag and other national symbols. These principles could be enshrined in the future constitution of the KRI as confidence building measures. The GOI could also provide other guarantees, such as Kirkuk being given permission to attempt becoming a separate federal region in a post referendum scenario.

57- Law 13, passed by parliament in 2008

58- MERI Focus Group, Kirkuk, 3rd December 2014

59- MERI Interview, Kirkuk, 26th August 2014

60- *ibid*

61- *ibid*

Kurdish Perspective

It is important to note that there are significant differences in opinion between the KRG and the local Kurdish representation in Kirkuk. The Kurdish parties are in broad agreement that Kirkuk should become part of the KRI but disagree on the process and administration of the governorate. Hence, a clear unified Kurdish position on the final status of Kirkuk has not been articulated. A senior Kurdish politician stated in response to whether there was a unified Kurdish perspective towards Kirkuk that: *“I think the conflict in agreement would be between the people of Kirkuk and not the Kurdish political parties....we are suffering from Erbil and Sulimaniyah’s two separate authorities and we don’t want to add another point of conflict.”*⁶²

However, the prevailing view on the ground in Kirkuk is more nuanced. What is clear is that most Kurds in the governorate want Kirkuk to receive some form of special administrative status. The majority view is that Kirkuk should be geographically part of the KRI but with special administrative powers compared to the governorates of Erbil, Dohuk, Halabja and Sulimaniyah. A PUK representative in Kirkuk stated that: *“Kirkuk should have special status form of administration. The Turkmens should also be given enough rights in order for them to feel protected by law.”*⁶³

Local Kirkukis are frustrated at the perceived lack of action from the KRG in regard to the governorate. This also explains why the idea of Kirkuk becoming a separate region on the same level as the KRI has gained traction in some sections of Kurdish Kirkuki society. There is a realisation that the Kurds will have to be flexible if a political solution is to be reached.⁶⁴ This would mean negotiating with Turkmen and Arab communities to ensure their rights, security and political involvement are guaranteed.

The Kurdish position also encapsulates Article 140 as the basis for the resolution of Kirkuk and the Disputed Territories, even if poorly defined. A senior Kurdish figure stated: *“If we want to discuss the issue with Baghdad, we must do it through Article 140. We have no other choice”*⁶⁵ However, there is the view that Article 140 must be defined for movement to be made. In regard to certain aspects of the Article, there are disagreements with respect to how normalisation is to be achieved, how a census is to be held and if a referendum is possible.

What is clearly identified by all communities in Kirkuk is the fact that maintaining the status quo is not an adequate solution for the governorate. A fact that also received universal agreement was that Kirkuk should enjoy a level of special administration. Attitudes diverge on what form this special administration should take and whether this should be within the KRI or not. Nevertheless, they all agree that the matter should be resolved via consensus.

62- MERI Interview, Kirkuk, 27th November 2014

63- MERI Interview, Kirkuk, 26th November 2014

64- MERI Interview, Erbil, 27th November 2014

65- MERI Interview, Kirkuk, 27th November 2014

6. Conclusion

While it is clear that the security situation has changed in Kirkuk, it can also be seen that there is a shift in the perspectives of local actors. This is of significant importance because any solution for the resolution of the status of the governorate should originate from grass roots actors. These actors need to display political will, leading to a political consensus, so that a peacefully negotiated settlement to the Kirkuk issue arises.

Thorough research into the dynamics of Kirkuk makes clear that the status quo is not seen as a solution by political actors on the ground in Kirkuk. There is a realisation that the current security situation in Kirkuk must be addressed and that a political solution is still required. While there may be divergence as to what form this political situation should take there is a clear willingness to negotiate possibilities for Kirkuk's future. While the difficult security situation has caused havoc across Iraq, it has created an opportunity for people to reassess the future of Kirkuk. The new reality necessitates the identification of realistic and pragmatic solutions that are grounded in Kirkuk's local socio-political milieu and whole encompassing, that is, open to compromise while engaging all components of Kirkuki society.

In order to move forward an indigenous framework is needed that navigates the multiple ambiguous aspects ignored by Article 140 of the Iraqi Constitution, including issues related to boundaries, the referendum question, voter registration and census. If this framework originates from Kirkuk it legitimises the process while pressuring the GOI and KRG into revitalising what has become a stagnated process. Although Article 140 is often contested, it is clear that the three stage process is widely agreed upon.

In order to reach the point where a referendum on the future status of Kirkuk is possible, many steps have to be taken. Pre- and post-referendum agreements have to be made by the political leadership in Iraq. Any agreement should lay out a specific timeframe leading towards a referendum with attainable milestones built into the process. Only by undertaking such measures will there ever be a successful political resolution to the situation in Kirkuk. With the international focus back on Iraq, difficult and protracted issues should be addressed while there may be the political will to do so.

7. Recommendations: A Framework for Kirkuk

1. Timeframe for Holding Referendum

Set a target for a final status referendum, within a period of the next 3 years. The referendum should precede the 2018 Iraqi Parliamentary Elections and take place before March 31st 2018.

1a. There should be a political agreement between the GOI and the KRG in the middle of 2016, in consultation with local actors in Kirkuk. This agreement should pave the way towards a future political solution and referendum.

1b. Over the next three years there are two options for the administration of Kirkuk:

i) Maintain the status quo.

ii) Transitional Administrative Special Status in which the local government enjoys administrative powers.

MERI believes that option (ii) is more appropriate and suitable for the current situation in Kirkuk and Iraq. MERI urges Kirkuk representatives in the Iraq's Council of Representatives to expedite the enactment of a law specific to Kirkuk Provincial Council election that is effective only for one election round.

1c. During this period further confidence building measures should be implemented, the security situation within Kirkuk to be normalised (or at least stabilised), and ambiguous areas of Article 140 of the 2005 Constitution should be clarified. (specifically voter eligibility, census and referendum question).

MERI argues that if a referendum is not held within the suggested time-frame, there is a high likelihood that the status quo situation will remain. The argument that de-facto control leads to ownership will only act to destabilise the governorate and the relationship between Erbil – Baghdad. The Kirkuk issue must be resolved amicably, through a political process. If there is no progress before the 2018 Iraqi elections, the likelihood of a successful political solution is slim.

2. Border Restitution, Voter Eligibility and Census

Clarify the three major issues of voter eligibility, border demarcation and census. This should lead to the resolution of previously unresolvable issues.

2a. A political agreement should be made within the framework of the constitutional Article as to whether the districts of Chamchamal, Kalar, Kifri, and Tooz should be returned to the governorate of Kirkuk.

MERI's view is that the restitution of borders is not feasible. Redrawing the borders of multiple governorates is not realistic for a number of reasons. The historical gerrymandering of boundaries affected multiple governorates, not solely Kirkuk.

2b. The issue of voter eligibility should be addressed before the proposed referendum. This has to be completed through further political agreement.

MERI believes that all residents of Kirkuk should be eligible to vote in the referendum except those who received financial compensation and the internally displaced from other governorates. Allowing all citizens to vote was identified as being preferable by a number of politicians in Kirkuk.

2c. A full list of voters should be finalised during the 2016 calendar year.

2d. An agreement should be made on the Census issue. As part of Article 140 of the Constitution, it is required in order to hold a referendum. Should there be no agreement on holding a census, a political and legal agreement should be reached as to circumvent the issue.

3. The process and the question of referendum

3a. A simple yes/no referendum should be applied, and the absolute majority decision then implemented. This referendum should provide a final binding resolution to the status of Kirkuk.

MERI suggests that the following question should be used as a basis for any future referendum: “Should the governorate of Kirkuk join the Kurdistan Region of Iraq”

3b. A referendum should be held under the supervision of a relevant international body. Implementation of the outcome becomes binding when the overseeing body recognises the process. An agreement should be reached about the body(s) that will oversee the referendum.

3c. An agreement should be made about the official body that administers the processes of census and referendum. It is worth noting that the Iraqi Constitution has not specified the body that is responsible for conducting the processes of census and referendum. This should be undertaken by IHEC with technical assistance provided by UNAMI (EAT).

3d. The referendum in Kirkuk should be held within its current governorate boundary. Although a number of politicians suggested to hold referendum on small administrative units, that is districts and sub-districts, across the disputed territories.

MERI believes Kirkuk should be treated as a special case and other forms of referenda can be administered differently in those areas.

4. Before and after a referendum

In the build-up to the referendum, there should be an on-going process to stabilise the security situation in Kirkuk, and it is of importance for Baghdad to extend to the local government the administrative powers that it rightly deserves.

4a. Kirkuk has its own dynamics and this should be respected. Irrespective of the outcome of a final status referendum, both Baghdad and Erbil should recognise this and help with the implementation of any outcome. The GOI should enable the local government of Kirkuk to be able to implement the powers that the governorate requires.

4b. It is the responsibility of both the GOI and the KRG to ensure clarity over the post-referendum status of Kirkuk.

Both administrations should provide guarantees over the post-referendum status of Kirkuk. For instance, the GOI could make guarantees that include the possibility of Kirkuk forming its own region, should the governorate choose to remain outside of the KRI. Likewise, the KRG could guarantee that Kirkuk as a governorate would gain special administrative status should it join the KRI. Such guarantees should be made clear during the build-up to a referendum. The international community should apply pressure to ensure that these guarantees are met.

5. Recommendations for the Kurdistan Regional Government

5a. Adoption of a unified project towards the resolution of the Kirkuk issue.

The KRG should play a constructive role in reaching a solution in Kirkuk. All major Kurdish political parties should provide a shared vision for Kirkuk. There should be cooperation over economic (including strategic and investment projects), political and social programs.

5b. The Kurdistan Regional Government needs to help build confidence between Kirkuk's communities.

A lack of trust towards the KRG remains a major hurdle to normalising the political and security situation in Kirkuk. To address this, guarantees should be provided for all of Kirkuk communities, including fixed parliamentary seats and the protection of cultural and educational rights. For example, the KRG should offer opportunities to the non-Kurdish communities to compete over all the positions in the KRI. The KRG should also guarantee granting the position of Vice President or deputy Prime Minister to those communities. Other Deputy positions could also be increased to ensure positions for all communities. This would have to be enshrined in the constitution of the KRG. In addition to that, indication to the other communities needs to be made on the flag and in the rest of the national symbols.

6. Recommendations for the Federal Government of Iraq

6a. Formalise the security relationship in Kirkuk.

The current security situation in Kirkuk is based on the de-facto control of territory after June 10th 2014. To stabilise the relationship between Baghdad and Erbil the security situation should be institutionalised based on the new realities on-the-ground regarding security control. This would rely on a formal security agreement over the presence of Peshmerga fighters in the Kirkuk governorate between Baghdad and Erbil.

6b. Allocate funds to expedite land dispute resolution and financial compensation schemes.

Kirkuk's petrodollar allocation should be increased (as proposed in the recently proposed draft amendment of Law 21 of 2008 after it was amended by Law 19 of 2013), in order to find additional funds for speeding the process of resolving land disputes. Disputes over land ownership remain unresolved because the current occupants demand indemnification of the years-long efforts and investments expended, while the original owners demand land restitution.

7. Recommendations for Local Actors

7a. Unify and streamline the security apparatus in Kirkuk

Local Assayish forces must be unified. Both Kurdistan Democratic Party (KDP) and Patriotic Union of Kurdistan (PUK) forces are present on-the-ground in Kirkuk, functioning separately from each other and lacking the required coordination. This increases security vacuums in the city. Although these two security forces are not unified in the KRI, merging the two bodies in Kirkuk could be set as an example for the rest of the region. Further, the local Assayish forces should not be restricted to only one ethnicity. In addition to the Assayish forces there are a number of other security apparatuses functioning in Kirkuk. The inflated security apparatus should be reduced and made more effective with better coordination and collaboration. The focus should also be on efficiency rather than quantity. Multiple security bodies that lack intercommunication will only increase security gaps.

7b. Limit access to weapons within Kirkuk city

Kirkuk is awash with arms. There should be increased regulation on the trade and possession of small arms. Easy access to weapons is a destabilising factor in Kirkuk. Restrictions on the public sales of weapons will make the security situation easier to maintain and monitor.

7c. Ensure fair access to administrative positions

Employment at levels of civil servant and key sensitive positions has been based on both ethnicity and political allegiance. This practice needs to be ended. Qualification, experience, efficiency as well as defining responsibilities and tasks based on job description should also be taken into account. Local government should ensure fair access to political positions.

7d. Utilise and engage the civil society in decision and policy making processes

MERI urges the civil society within and outside Kirkuk to initiate and engage in providing support and consultation to decision makers as well as in monitoring the implementation of agreements. In addition to that Civil Society can have a constructive role in removing obstacles and marketing solutions.

7e. Ensure the federal police is ethnically diverse at senior level.

Kirkuk should be protected by a diverse security and police force that reflects the ethnic diversity in Kirkuk. Senior positions in the federal police should be accessible to all on the condition that professional qualification requirements are met. Currently the positions are not fairly representative of Kirkuk's diverse population. Undertaking such measures would increase levels of confidence in the police and it would also assist in alleviating fear and tensions on the community level.

8. Recommendations for International Actors

8a. Ensure engagement with local partners

The international community should place pressure on both the GOI and KRG to engage local Kirkuki political representatives (including those parties which are not represented in the local government) to promote possibilities for a political solution. A bottom-up approach is needed to ensure that there is a smooth transition towards any future referendum. While top-down political processes are needed to resolve the situation politically, bottom up consultation of local political actors is vital to ensure that a cohesive strategy is created that takes into account their concerns while ensuring that they feel part of the process.

8b. Facilitate a process of dialogue and reconciliation on-the-ground in Kirkuk

Processes of inter-communal dialogue need to be established on a local level in Kirkuk. This will engage communities and improve their relationships. In order to successfully achieve this, it is important to invest in education. Investment in education is a core factor in social integration. Grass roots dialogue and reconciliation processes are needed to lay the ground for such political solutions to be successful and to reduce tension and revive the traditional relationship among the communities.

8c. Support the establishment of a political process

The international community will play a significant role in the resolution of the Kirkuk issue. Support for the GOI and the KRG should be conditional on the peaceful resolution of this issue through political means. With the international focus back on Iraq, now is the time for pressure to be put on the KRG and GOI to solve protracted disputes. This will help create the political will to push through any agreement on Kirkuk.

Appendices

Appendix A: Article 140, Iraq Constitution, 2005

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 (normalisation 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.

Appendix B: Article 58, Transitional Administrative Law

(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.

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Appendix C: List of Interviewees

Abdulahman Munshid Al'as (Member of the Arab Political Council)
Abdulahman Sdeeq (Ex-Iraqi Minister of Environment)
Adnan Qadir Zanagan (Head of Political Sciences Department/ University of Kirkuk)
Ahmed Aziz (Gorran Movement/ Kirkuk)
Ali Mahdi Sadiq (Member of Kirkuk Provincial Council)
Ameen Shwan (Local Expert and Historian)
Ammar al Hakeem (Leader of Islamic Supreme Council)
Arif Qurbani (Journalist and Broadcaster)
Awat Mohammed Ameen (Member of Kirkuk Provincial Council)
Ayhan Kamal Mohammed (Leading Member of Turkmeneli Party)
Azad Jabari (Member of Kirkuk Provincial Council)
Edwar Orhan (Assistant of Kirkuk Governor for Administrative Affairs)
Emad Ahmad (Political Bureau Member of Patriotic Union of Kurdistan)
Fazil Meerani (Political Bureau Member of Kurdistan Democratic Party)
Hassan Turan (Member of Iraqi Parliament/ Deputy of the Head of Turkmen Front Party)
Ibraheem Khaleel (Member of Kirkuk Provincial Council)
Jalal Jawhar (Coordinator of Governemnt Affairs and Parliament of Goran Movement)
Khalid Shwani (Spokesperson of President of Iraq/ Ex-member of Iraqi Parliament)
Lateef Fateh Faraj (Head of Kirkuk Office of KRG Parliament)
Mohammed Ihsan (Ex- Chairman of the General Board for Kurdistani Areas. KRG)
Mohammed Kamal (Member of Kirkuk Provincial Council)
Mohammed Khalil Aljibouri (Member of Kirkuk Provincial Council)
Najat Hussein (Member of Kirkuk Provincial Council)
Najmadeen Kareem (Kirkuk Governor)
Narmin Othman (Ex-deputy Chairman of the Committee to Implement Article 140)
Nawshirwan Mustafa (General Coordinator of Goran Movement)
Rakan Saeed Aljibouri (Deputy Governor of Kirkuk)
Ryadh Sari Kahya (Head of Turkmeneli Party)
Saady Pira (Political Bureau Member of Patriotic Union of Kurdistan)
Sami Rif'at Bakkhti (Daquq Council Member)
Sdeeq Kaka Rash (Member of Kirkuk Provincial Council)
Shakhawan Abdullah (Member of Iraqi Parliament)
Sheikh Jaafar (Political Bureau Member of Patriotic Union of Kurdistan)
Silvana Boya (Member of Kirkuk Provincial Council)
Tahseen Kahya (Member of Kirkuk Provincial Council)
Torhan Al-Mufti (Advisor to the President of Iraq)

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