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Finding Common Ground: Kirkuk as a Special Governorate

Summary

- Iraq's March 2010 elections delivered a surprising virtual tie in the ethnically mixed and strategically important province of Kirkuk, making it an opportune time for fresh thinking on how to address persistent disputes over its status.
- The focus thus far has been on a winner-take-all permanent resolution to the status of Kirkuk. It may be more productive to consider models which give local authorities a direct role in designing potential compromises on the province, clarify serious governance and security ambiguities that have developed on the ground; do not require any party to definitively forgo their ultimate aspirations for Kirkuk, and are compatible with the Iraqi Constitution.
- Article 123 of the Iraqi Constitution, which allows the federal government and provincial councils to delegate powers back and forth by mutual consent, offers a framework that Iraqis may wish to employ to negotiate a deliberately open-ended special governorate status for Kirkuk that meets these criteria.

Introduction

Iraq's March 2010 elections delivered an unexpected result on the national level, but their biggest surprise came in the ethnically mixed governorate, or province, of Kirkuk. In contrast to the previous national elections, in which the Kurdistan Alliance won over 50 percent of the vote in Kirkuk and no other list received more than 14 percent, the 2010 polls returned a virtual tie between the secular Iraqiya List and the Kurdistan Alliance.¹

Home to a mix of Kurds, Arab and Turkomen, Kirkuk sits at the center of an Arab-Kurdish territorial dispute that stretches through northern Iraq. Elections in Kirkuk have been closely watched because they serve as an indicator of how Iraq's second largest oil producing province might vote in a constitutionally required referendum to determine whether it joins the Kurdistan region, remains under the administration of Baghdad or becomes an autonomous region.

None of these options has obtained consensus, and the closeness of the 2010 electoral results raises the prospect of a divisive 51 to 49 result if a referendum were to be held today—making it an opportune time to consider compromise alternatives on Kirkuk's status.²

Existing Options

Each of the basic options for Kirkuk's status are associated with either Kurds (joining the Kurdistan region), Arabs (maintaining ties to Baghdad), or Turkoman (autonomous region).

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Kurds present their claim to Kirkuk in terms of reversing the deep historical injustice of Ba'athist ethnic cleansing in the province. They emphasize the need to implement Article 140 of the constitution, which sets out a three-step process of "normalizing" Kirkuk's population, conducting a census to determine its inhabitants and holding a referendum on its joining the Kurdistan region. In contrast, Arabs view Kirkuk as a mini-Iraq and any changes to its status as heralding the partition of the country. When framed in these competing zero-sum narratives, it is difficult for Arabs and Kurds to make concessions on their preferred resolution to Kirkuk's status.

Meanwhile, Iraqi Turkomen advocate for making Kirkuk an autonomous region to protect their culture against encroachment from larger groups. The Turkoman-backed model, where Kirkuk would manage its own affairs, is sometimes viewed as a possible compromise. However, it too has failed to attract consensus at least in part because it would block Kurdish ambitions. Specifically, Iraq's federal system allows governorates, like Kirkuk, to join existing autonomous regions, like the Kurdistan region. It does not allow two autonomous regions to merge.³ If Kirkuk became an autonomous region it would be precluded from joining the Kurdistan region—a bitter defeat for the Kurdish political parties.

Continued Stalemate Could Lead to Serious Problems

The stalemate in Kirkuk has destabilizing consequences. Kirkuk has repeatedly disrupted progress on key political issues at the national level, and its unsettled status complicates security arrangements and the delivery of public services in the province.

Day-to-day governance in the province is politicized due to the fact that the provision of services and security can be seen to establish facts on the ground. In particular, since 2003, Kirkuk has developed dual and sometimes competing administrative arrangements between the federal government and Kurdistan Regional Government (KRG). In several areas of the nationally administered 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 effectively split between the Iraqi Army, Kurdish peshmerga, Iraqi Police, Kurdish asayesh (secret police) and Awakening Councils.⁴

From one perspective the dual arrangements in Kirkuk can be seen as practical local problem-solving.⁵ However, competing service and security arrangements also have the potential to be profoundly destabilizing in the context of persistent disagreement over Kirkuk's status. In the current political stalemate, the parties have an incentive to continually press for advantage on the ground and barter on Kirkuk in national politics.

Indeed, disputes over Kirkuk have threatened to derail successive Iraqi elections and Kirkuk has cast a shadow over the drafting of national oil legislation. Kirkuk will almost certainly complicate the ongoing government formation process. However, given the repeated Arab-Kurdish military conflicts in Kirkuk over the last four decades, the greatest risk posed by the lack of an agreed framework to address the province's status is that constant probing for advantage on the ground will escalate into fighting as the buffering presence of U.S. troops is withdrawn.

In tandem with efforts to resolve its status, it is therefore a priority to develop a process for stabilizing the governance and security structures in Kirkuk. Kirkukis themselves want to see current ambiguities clarified and are dismayed that national committees on Kirkuk have not contained local representation. This is important not just from a democratic consent standpoint but also because, by virtue of having to live with each other, Kirkukis are generally more flexible than their national counterparts.

A Special Governorate

The finely balanced 2010 elections in Kirkuk indicate that no group is likely to achieve its preferred arrangement for the province without offending a large part of the population. Along with the unpredictable situation on the ground, the elections call for fresh thinking on how to address Kirkuk's status.

The focus thus far has been on a permanent resolution to the status of Kirkuk. The options put forward by the parties would result in clear winners and losers in an environment where there is a probability that the losers could resort to violence.

It may be more productive to instead consider models that could help stabilize governance and security in the province, travel some way towards meeting each community's core interests on status, and do not require any party to definitively forego their ultimate aspirations for Kirkuk. In this vein, Article 123 of the Iraqi Constitution offers a framework that Iraqis may wish to employ to allow Kirkuk to emerge as a "special governorate."

In general, Article 123 was drafted to allow the federal government and provincial councils to delegate powers back and forth by mutual consent.⁶ In the case of Kirkuk, this article might be applied to develop a flexible special governorate model wherein:

- Through mutual agreement, Kirkuk could maintain significant administrative ties with Baghdad, institutionalize some of the de facto links that have developed with the KRG since 2003, and be given the autonomy to protect local language and cultural traditions.
- By remaining a governorate, Kirkuk would be capable at a later stage of becoming an independent region, or joining the Kurdistan region, or reverting to an ordinary governorate, meaning that the full range of final status options would stay on the table.
- Since the application of Article 123 requires the consent of the implicated province, Kirkuki authorities would be directly involved in designing Kirkuk's status.

The Article 123 mechanism also has the advantage of being firmly grounded in the Iraqi Constitution and poses no contradiction to Article 140. Specifically, there is nothing in a special governorate status for Kirkuk that is inconsistent with normalization efforts continuing in the province, a census being conducted, or a referendum on its permanent status ultimately being held. In fact, if the political will to organize a referendum on Kirkuk does emerge, its result would supersede a negotiated agreement to make Kirkuk a special governorate.

Finally, it should be noted that the concept of both Baghdad and Erbil playing a role in administering Kirkuk has been previously proposed by the United Nations and subsequently explored in a Washington Institute of Near East Studies report.⁷ This Peace Brief furthers the discussion on the U.N. "dual nexus" model by introducing the concept of a dual status that deliberately avoids precluding each group's preferred option for Kirkuk's future—thus lowering the political costs of compromise. The special governorate model also strategically seeks to provide a direct role in the process for Kirkukis, who are believed to be more pragmatic on the province's future status as compared to their national counterparts.

Mechanics of Article 123

The application of Article 123 to Kirkuk would require two steps. First, the Iraqi Parliament must pass an Article 123 framework law to generally regulate how special authorities can be transferred to governorates. Subsequently, a specific agreement on Kirkuk must be negotiated under the framework law. While complex, this mechanical two-step has international precedent, for example with Spain's Self-Governing Communities.⁸

Strictly speaking, since Kirkuk is under the national administration, any Article 123 arrangement for the province should be a bilateral agreement between Baghdad and Kirkuk. However, in keeping with political realities, the exceptional treatment Kirkuk receives in the Iraqi Constitution and other laws, and the *de facto* role that the KRG already plays in the province, the framework law should also require KRG participation in the negotiation of an Article 123 agreement on Kirkuk. The Kurdish political parties, by virtue of their likely participation in any new national government coalition, would also be involved in drafting the Article 123 legislation and any special arrangements it foresees for Kirkuk.

It is beyond the scope of this sketch to elaborate the full range of subjects an Article 123 framework law would need to cover, but it would at a minimum need to define:

- Who is empowered to negotiate an agreement on behalf of the Iraqi government and the relevant governorate.
- How any resulting agreements are to be ratified by the relevant governments.
- Procedures for modifying or terminating the agreement.
- Exceptional requirements or procedures for Article 123 agreements on Kirkuk governorate.

Similarly, the follow-on agreement negotiated between Baghdad, Erbil and Kirkuk to make Kirkuk a special governorate would need to address:

- What powers, for example education, public sector hiring and increased budgetary control, would be immediately delegated to Kirkuk.
- What additional powers would be transitioned over time, including related to security, as Kirkuk demonstrates the governance capacity and institutions to administer them.
- What role the Kurdistan region would play in providing certain services to Kirkuk or in certain geographic areas of Kirkuk.
- How those authorities transferred to Kirkuk are transitioned and funded.

Conclusion

It is vital to Iraq's future that major disputes, such as Kirkuk's status, be addressed through political and constitutional means. At the same time, the closely divided 2010 election results in Kirkuk underscore that the pursuit of winner-take-all solutions in the province will likely result in continued stalemate. The danger is that in the meantime the situation the ground will deteriorate and claims to Kirkuk might be pursued by other means.

This Peace Brief is intended to help Iraqis explore how to break the Kirkuk impasse by applying Article 123 of the Iraqi Constitution to address serious governance ambiguities in the province and negotiate a deliberately open-ended special governorate status for Kirkuk. By not removing any permanent status options from the table, the special governorate model seeks to allow all parties to game some measure of victory without any having to confront definitive defeat.

Endnotes

1. Iraqiya received 38 percent of the vote and the Kurdistan Alliance won 37 percent (provisional, uncertified results).
2. It is assumed supporters of the Kurdistan Alliance, Kurdish opposition party Gorran and smaller Kurdish parties would vote in favor of Kirkuk joining the Kurdistan region while secular, Arab and Turkoman parties would vote against. Kurdish parties totaled just under 50 percent of the March 2010 vote—suggesting an extremely close referendum result.

ABOUT THIS BRIEF

This Peace Brief was written by Sean Kane, Iraq Program officer in the Center of Post-Conflict, Peace and Stability Operations at the United States Institute of Peace. In his previous capacity at the United Nations, he conducted significant field research on Kirkuk's history and administrative arrangements.

3. The 2006 Iraqi Law on Executive Procedures to Form Regions sets out the steps for a governorate to "join" an existing region. The penultimate draft of the legislation also included provisions for the merger of regions, but these were dropped, indicating that Iraqis considered and rejected this possibility.
4. United Nations District Analysis Summaries for Kirkuk governorate. These reports detail service and security arrangements in Kirkuk, but are not publicly available.
5. This argument, along with a case for formalizing Kirkuk's dual arrangements can be found in Michael Knights and Ahmed Ali, "Kirkuk in Transition: Confidence Building in Northern Iraq," The Washington Institute for Near East Policy, Policy Focus #102, April 2010.
6. Article 123 reads in full: "Powers exercised by the federal government can be delegated to the governorates or vice versa, with the consent of both governments, and this should be regulated by law."
7. See "Kirkuk in Transition: Confidence Building in Northern Iraq," in particular pgs. 20-26 and 42-43.
8. Under Spain's 1978 Constitution, Self-Governing Communities are given a standard set of powers, but through an "organic act" of the national parliament can be transferred additional powers. Self-Governing Communities are also given the ability to reach cooperation agreements where they provide each other services, although these may be subject to the approval of the national courts.



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