

**IRAQ'S KURDS:  
TOWARD AN HISTORIC COMPROMISE?**

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## IRAQ'S KURDS: TOWARD AN HISTORIC COMPROMISE?

### EXECUTIVE SUMMARY AND RECOMMENDATIONS

The removal of the Ba'ath regime in 2003 opened a Pandora's box of long-suppressed aspirations, none as potentially explosive as the Kurds' demand, expressed publicly and with growing impatience, for wide-ranging autonomy in a region of their own, including the oil-rich governorate of Kirkuk. If mismanaged, the Kurdish question could fatally undermine the political transition and lead to renewed violence. Kurdish leaders need to speak more candidly with their followers about the compromises they privately acknowledge are required, and the international community needs to work more proactively to help seal the historic deal.

The Kurdish demand for a unified, ethnically-defined region of their own with significant powers and control over natural resources has run up against vehement opposition from Iraqi Arabs, including parties that, while still in exile, had broadly supported it. The Kurds in turn vigorously objected to the kind of federalism envisaged in the agreement reached in November 2003 by Paul Bremer of the Coalition Provisional Authority (CPA) and the Interim Governing Council, which would have been based on Iraq's eighteen existing governorates, including three individual, predominately Kurdish ones, and have left them without control of Kirkuk.

A series of negotiations produced a compromise in the interim constitution (Transitional Administrative Law, TAL) signed on 8 March 2004 that recognised a single Kurdish region effectively equivalent to what the Kurds have governed in semi-independence since 1991 (that is, without Kirkuk), elevated Kurdish to official language status alongside Arabic and met another Kurdish demand by providing that a census would be held in Kirkuk before its final status was determined. In return, the Kurdish leaders accepted postponement of the knotty Kirkuk question until the constitutional process that begins only sometime in 2005 is complete and a legitimate and sovereign Iraqi government has been established through direct elections.

Meanwhile, away from the give and take of the negotiations in Baghdad, the Kurds are contributing mightily to a volatile atmosphere by creating demographic and administrative facts in Kirkuk, using their numbers and superior organisation to undo decades of Arabisation and stake a strong claim to the area. The Turkoman, Arab and Assyro-Chaldean communities are increasingly worried about Kurdish domination evident in control of key directorates, strength on the provincial council and the steady return of Kurds displaced by past Arabisation campaigns in a process that many see as reverse ethnic cleansing. In March 2004, rising tensions led the Arab and Turkoman members to resign from the Kirkuk provincial council. A pattern, new for Kirkuk, has begun to emerge of sectarian-based protests that erupt into violence.

Significantly, however, the tough bargaining and rhetoric during the TAL negotiations and the friction in Kirkuk mask a profound shift in Kurdish strategy that is yet to be broadcast and understood publicly. The top leadership of the two principal Kurdish parties, the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK), is offering Iraqi Arabs what amounts to an historic compromise: acceptance of an autonomous region as the maximum objective of the Kurdish national movement they represent and, even more importantly, a willingness, expressed in interviews with ICG, to abandon the exclusive claim to Kirkuk in favour of a sharing arrangement under which the city and governorate would receive a special status.

Regrettably, Kurdish leaders have yet to announce their decision or start preparing the Kurdish people for this profound and seemingly genuine strategic shift. Indeed, there is a growing discrepancy between what the Kurds want, what they say they want and what non-Kurds suspect they want. Given strong pro-independence sentiments in both the Kurdish region and Kurdish diaspora, they may encounter large-scale popular opposition to their plan at precisely the time -- the run-up to the constitutional process -- when they will need

to persuade a sceptical Arab public, as well as neighbouring states such as Turkey, of their true intentions in order to realise even their reduced aspirations. For their part, Arab leaders have yet to lower their rhetoric and negotiate seriously with their Kurdish counterparts to preserve Iraq's unity by hammering out constitutional guarantees assuring Kurds that the atrocities of the past will not recur.

If the U.S.-designed political transition comes unstuck in the face of continuing Sunni alienation and insurgency and escalating Shiite discontent, as the events of April 2004's first week threaten, Kurdish leaders may alter their stance again and be tempted to protect the gains they have made since 1991 by asserting unilateral control over claimed territories, including Kirkuk. That would likely cross a Turkish red line and risk a grave regional confrontation. Even if matters calm down and the political transition is able to proceed more or less as planned, however, the Kurdish question will require sustained international engagement.

The occupying powers, and the international community more generally, should pay heed to the Kurds' fair demands. Continuing instability, the Kurds' high expectations and their ability not only to express but possibly to realise long-standing aspirations by institutional power or violence make it imperative for non-Iraqi actors, including the UN, to step in and mediate a fair resolution of competing claims. Failure to quench the Kurdish thirst, after 80 years of betrayals, discrimination and state-sponsored violence, for a broad margin of freedom within a unitary Iraq could well pave the way for more radical elements to gain the upper hand in the Kurdish community and press a separatist agenda -- with possibly disastrous consequences for Iraq and the region.

## **RECOMMENDATIONS**

### **To the Kurdish Leadership:**

1. Start preparing the Kurdish public now for the compromise solution on Kirkuk and Kurdish national aspirations that senior Kurdish officials outline in private, including autonomy within a unitary Iraq and a special status for the city and governorate of Kirkuk.
2. Relinquish the directorates in Kirkuk over which the Kurdish parties took control at the war's end, and cooperate in an equitable redistribution of power in Kirkuk under the leadership of the full provincial council, the CPA and, after 30 June 2004, the provisional government in Baghdad.

3. Halt the return of displaced Kurds to Kirkuk city and governorate until and unless the Property Claims Commission has ruled favourably in cases of individual Kurdish families.
4. Step up efforts to reunify the Kurdistan Regional Government, starting with the "service" ministries and the Kurdistan National Assembly, and -- within a year -- encompass the remainder of the administration, including the *peshmerga* militias.
5. Organise free and fair elections to the Kurdistan National Assembly, according to the national timetable as laid out in the Transitional Administrative Law (TAL) and in no case later than 31 January 2005.

### **To the Coalition Provisional Authority (CPA) and the Interim Governing Council:**

6. Establish offices of the Property Claims Commission in Kirkuk rapidly, and make available all the necessary resources for the commission to start receiving, processing and adjudicating claims forthwith and at a steady pace.
7. Help Iraqis redistribute administrative power in Kirkuk as soon as possible in order to balance the interests and sizes of the principal communities more fairly.
8. Set up a committee charged with monitoring claims of abuse of power and discrimination in Kirkuk and thereby helping the local authorities to redress them.

### **To U.S. Forces in Kirkuk:**

9. Continue to ban weapons in Kirkuk, disarm any person carrying a weapon without a permit, and conduct searches of political party offices and their affiliates for the illegal possession of weapons.

### **To the UN:**

10. Supervise and monitor general elections in the Kurdish region by the 31 January 2005 deadline, as specified in the Transitional Administrative Law.
11. Play an active role in the constitutional process and consider the appointment of a senior advisor with experience in constitution making and the management of inter-community relations in transitional societies to

assist Iraqi political actors in the negotiations for a permanent constitution.

**To the U.S. Government:**

12. Tell the Kurdish leadership and public unequivocally that the U.S. will not support an independent Kurdistan but will do everything in its power to bring about Kurdish autonomy in Iraq with rights and protections for the Kurds that are acceptable to Kurdish leaders.

**Amman/Brussels, 8 April 2004**

## IRAQ'S KURDS: TOWARD AN HISTORIC COMPROMISE?

### I. INTRODUCTION: THE FEDERALISM FRACAS

Faced with a crisis of legitimacy -- an unremitting insurgency and continuing hardships for the Iraqi people, who lacked basic services and jobs -- and realising that only Iraqis themselves could bring stability, Washington executed a sharp U-turn in its plans for the country's political transition in the fall of 2003. Following consultations at the White House, the administrator of the Coalition Provisional Authority (CPA), L. Paul Bremer III, returned to Baghdad in mid-November and hurriedly hammered out a blueprint and timetable for the hand-over of sovereignty to a new Iraqi leadership within seven months. Accepted by the Interim Governing Council, this became known as the November 15 Agreement.

In addition to a time line, it set out a political process by which the Interim Governing Council would draft what was to be in effect an interim constitution (the Transitional Administrative Law, TAL) by 28 February 2004.<sup>1</sup> It also detailed the key elements of that interim constitution, the selection procedure for a Transitional National Assembly and the process for adopting a permanent constitution. One of the most controversial clauses concerned a vague reference to Iraq becoming a federal state, with decentralisation based on the existing governorates. As with other key elements of the agreement, this clause was tossed out within two months, forcing yet another about-face in the CPA's approach toward the political transition.

The clause in question -- part of what the November 15 Agreement called "Elements of the Fundamental Law", including a bill of rights, independence of the judiciary and civilian political control over Iraqi armed forces -- envisaged a "Federal arrangement for Iraq, to include governorates and the separation and specification of powers to be exercised by central and local entities".

This language was vague. It did not specify whether the federal arrangement would include all eighteen existing governorates, whether it would be based *exclusively* on the system of eighteen governorates, or whether any of these governorates could merge into a separate federal region. Nevertheless, it was interpreted by many Kurds as a repudiation of their long-standing demand for a federal structure in which they would have their own united Kurdish federal region.<sup>2</sup> Such a region would, in their view, have to include the three governorates they have controlled since late 1991, as well as significant parts of three other governorates that have Kurdish populations, in particular the governorate of Ta'mim and its capital Kirkuk.<sup>3</sup> The injury was compounded

<sup>1</sup> Coalition Provisional Authority, "The November 15 Agreement: Timeline to a Sovereign, Democratic and Secure Iraq", available at <http://www.cpa-iraq.org/government/AgreementNov15.pdf>. The Transitional Administrative Law (TAL) is also known formally as the "Law for the Administration of Iraq in the Transitional Period", and more informally as the "Fundamental Law".

<sup>2</sup> See, ICG Middle East Report N°10, *War in Iraq: What's Next for the Kurds?*, 19 March 2003, and ICG Middle East Report N°19, *Iraq's Constitutional Challenge*, 13 November 2003. Between October 1991 and April 2003, the two principal Iraqi Kurdish parties, the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK), ruled over a quasi-independent enclave that encompassed predominantly Kurdish areas in Iraq, including the governorates of Erbil, Dohuk and Suleimaniyeh, as well as small parts of adjoining governorates, but that excluded, notably, those mixed-population areas in the lowlands that had been marked for Arabisation by successive republican regimes, most importantly the oil-rich governorate of al-Ta'mim and its capital Kirkuk.

<sup>3</sup> In one typical commentary, KurdishMedia.com angrily noted that the agreement "deprives the Kurds and their country from the basic national rights, ... which Kurds in Iraq historically enjoyed. Kurds will also lose what they have gained since the Gulf War...in 1991....This is less than what Saddam offered Kurds over three decades ago....The

by the fact that Jalal Talabani, leader of the Kurdish PUK, had signed the agreement, as Interim Governing Council president in November 2003, in apparent contradiction to everything he had said he stood for.<sup>4</sup> A Kurdish observer recalled:

The Kurdish street almost exploded. After all the suffering, how could we accept federalism of eighteen governorates? People turned a bit anti-American. Before, people would be sorry when an American was killed in Falluja, but now they said they themselves would kill Americans if they came here. They saw the agreement as yet another betrayal. But the parties told everyone to quiet down, saying they were going to negotiate.<sup>5</sup>

The Kurdish response was a month in coming but manifested itself almost simultaneously at two levels, suggesting careful orchestration between the leadership and the "street". On 20 December 2003 the five Kurdish leaders on the Interim Governing Council -- Jalal Talabani (PUK), Masoud Barzani (KDP), Salaheddin Bahauddin (Kurdistan Islamic Union), Mahmoud Othman (Independent) and Dara Nur al-Din (Independent)<sup>6</sup> -- submitted a draft bill in

which they outlined, in great detail, their vision of federalism. They sought to incorporate this into the TAL well before the launch of the process for a definitive constitution anticipated for spring 2005. Masoud Barzani explained in the KDP's newspaper the next day:

After twelve years of self-rule, without the control of the Baghdad government, the Kurds will not accept less than their existing situation. They aspire for the inclusion of the other Kurdish areas in the Kurdistan region, which, before the liberation of Iraq, were subject to the policy of demographic change by the central authority....If the Kurds claim these areas, particularly Kirkuk, it is not because it is an oil-rich city as some sides claim, but because these towns and townships are an important part of Kurdish history. They are within the administrative and geographic boundaries of Kurdistan.<sup>7</sup>

One day later Kurdish demonstrators poured into the streets of Kirkuk, chanting "we demand federalism for Kurdistan!" and "Kirkuk, Kirkuk, heart of Kurdistan!"<sup>8</sup> On 31 December, an ad hoc coalition of Arabs and Turkomans marched through the same streets with counter slogans: "Kirkuk, Kirkuk is an Iraqi city! No to federalism!"<sup>9</sup> At least five demonstrators lost their lives in circumstances that remain hotly contested.<sup>10</sup> U.S. forces restored at least outward calm and then raided the offices of all political parties in Kirkuk to search for weapons. It was "a systematic sweep throughout the city on an even-handed basis", said one international observer. Some weapons were seized, some people were questioned, and things quieted down. The governor (an unaffiliated Kurd) issued new regulations on demonstrations to reduce the likelihood of a further violent confrontation.<sup>11</sup>

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'Political Process' is the first step for the Kurdish genocide, the denial of their identity". It then warned: "The time is short for Kurds, who need to flood the streets of Kurdistan to demand their legitimate rights to self-determination". KurdishMedia.com, "The US and Iraqi Governing Council deny the Kurdish identity", 17 November 2003, available at <http://www.casi.org.ul/discuss/2003/msg04859.html>.

<sup>4</sup> The language was so inconsistent with established Kurdish policy that two months later a senior Kurdish leader flatly denied that the November 15 Agreement had made any reference to a federal structure based on governorates, but added that the agreement had been concluded in undue haste and was a political mistake: "This is typical of Jalal Talabani. Not even Bremer was in a hurry, only Talabani was". ICG interview, Baghdad, January 2004. At the end of December 2003, KDP leader Masoud Barzani reportedly called for revising the November 15 Agreement to reflect "Kurdish rights". Agence France-Presse, "Barzani says 'Kurdish rights' must be part of Iraqi power transfer", 29 December 2003.

<sup>5</sup> ICG interview with Rebin Rasul Ismail, deputy editor of the non-affiliated weekly Kurdish-language newspaper *Hawlati*, Erbil, 16 January 2003. He added that the agreement was so embarrassing that the party newspapers did not publish it, though *Hawlati* did; students at Suleimaniyeh University demonstrated against the accord, while a similar demonstration at Salahuddin University in Erbil was banned.

<sup>6</sup> There is a sixth Kurdish member on the Interim Governing Council, Mohsen Abd-al-Hamid, who as leader of the Iraqi Islamic Party represents a grouping based more on religion (Sunni Islam) than ethnicity.

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<sup>7</sup> Masoud Barzani, "Iraqi Kurdish claim for federalism: A Kurdish-Arab Partnership", *Khabat*, 21 December 2003, available in English translation from the KDP at <http://www.kurdnet.net/www.kdp.info/>.

<sup>8</sup> Rouba Kabbar, "Kurds march to press claim on Kirkuk", Agence France-Presse, in *Daily Star*, 23 December 2003.

<sup>9</sup> Agence France-Presse, "Arabs, Turkmen demonstrate against Kurds in Kirkuk", 31 December 2003.

<sup>10</sup> PUK officials admit that their partisans fired the fatal shots but otherwise the communities' narratives clash as to motive, circumstance, the identity and purpose of the demonstrators, and just about any other aspect of the events. ICG interviews, Kirkuk and Erbil, January 2004.

<sup>11</sup> ICG interview, Kirkuk, January 2004.

In the meantime, in Baghdad, talks in the Interim Governing Council committee preparing the TAL had run aground over Kurdish demands based on the draft constitutions for Iraq and the Kurdish federal region adopted by the Kurdistan National Assembly in October 2002.<sup>12</sup> These included the establishment of a federal Kurdish region, recognition of Kurds as one of the two main nationalities of Iraq, recognition of Kurdish as an official national language alongside Arabic, recognition of the Kurdish (regional) flag and anthem, reversal of Arabisation in mixed areas and a highly evolved form of decentralisation that would give Kurds a significant degree of autonomy and control over resources in their federal region.<sup>13</sup> Proposed language concerning non-Kurdish matters proved relatively non-controversial but everything having to do with Kurdish aspirations led to stalemate in the committee, which operated by consensus.<sup>14</sup>

To break the deadlock, Paul Bremer trekked to the Kurdish resort of Salahuddin (where the KDP has its headquarters) twice within 72 hours in early January 2004 to meet with the KDP and PUK leaders.<sup>15</sup> By several accounts, the first session was acrimonious and unproductive, Bremer reiterating the November 15 Agreement and the Kurds presenting their maximalist demands. One of those present, the KDP's Sami Abd-al-Rahman, said Bremer's proposals "would have given us nothing: No federalism, no Kurdistan. What would you have expected us to tell him? Of course we gave him a flat no. There was real disappointment". Referring to the Kurds' allergic reaction to such proposals bred by experience with serial betrayals, he cited a Kurdish proverb: "One who has been bitten by a snake fears the sight of a rope".<sup>16</sup>

By the second visit, both sides were ready for compromise: Bremer conceded to the Kurds the right to their own federal region on the basis of the three existing Kurdish governorates and to language to this effect in the TAL; the Kurds agreed to postpone the Kirkuk question until the constitutional process in 2005. The new understanding, informally known as "the status quo plus", allowed reversal of demographic changes the Ba'ath regime had effected in Kirkuk and envisaged the holding of a census to establish the population balance in the city and governorate.

These meetings were followed by an invitation from the KDP and PUK to selected Arab representatives on the Interim Governing Council to join them in Salahuddin for discussion about a Kurdish federal region.<sup>17</sup> This took place on 8 January 2004 and was an attempt to remind council members who had supported Kurdish rights while in exile before the war of their promises concerning federalism and to bring all sides behind the understanding reached with Bremer. Although the meeting ended without a formal accord, it was amicable and, for Kurdish audiences glued to their television sets, psychologically important. They witnessed Arab leaders renew a pledge of support for federalism, even if they did not all see eye to eye on its precise definition. For example, one council member, Muwaffaq al-Ruba'i, spoke of federalism based on five regions, one of which would be Kurdish (the existing three Kurdish governorates), and a Kirkuk with special status.<sup>18</sup>

Those gathered in Salahuddin also agreed to speed Interim Governing Council passage of the Iraq Property Claims Commission Law (referred to commonly as the Property Law, or *qanoun mulkiyeh*), which would establish a mechanism to

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<sup>12</sup> Kurdistan Regional Government, "Constitution of the Federal Republic of Iraq and Constitution of the Iraqi Kurdistan Region", at: [http://www.krg.org/docs/K\\_Const.asp/](http://www.krg.org/docs/K_Const.asp/) and [http://www.krg.org/docs/Federal\\_Const.asp/](http://www.krg.org/docs/Federal_Const.asp/).

<sup>13</sup> "Draft Law of the Administration of Iraq in the Transitional Period" (*Mashrou' Qanoun Idaarat al-Dawla al-Iraqiyeh li al-Marhalet al-Intiqaliyeh*), submitted by the Kurdish members of the Interim Governing Council in December 2003; ICG interview with Fersat Ahmad, a senior KDP official and member of the erstwhile Constitutional Preparatory Committee, Baghdad, 12 January 2004.

<sup>14</sup> ICG interviews with TAL drafters, Baghdad, January 2004.

<sup>15</sup> The KDP was represented by Masoud Barzani and Sami Abd-al-Rahman (the deputy prime minister of the Kurdistan Regional Government/KDP), the PUK by Jalal Talabani and Barham Salih (the prime minister of the KRG/PUK).

<sup>16</sup> ICG interview, Erbil, 16 January 2004. Sami Abd-al-Rahman, a veteran KDP leader, was killed in a suicide attack

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on the KDP headquarters in Erbil on the first day of the 'Eid al-Adha, 1 February 2004.

<sup>17</sup> Not all who attended were members of the Interim Governing Council (or their deputies). For example, Abd-Allah al-Nasrawi, the leader of the Iraqi Socialist Movement, was among the invitees.

<sup>18</sup> ICG interview with Muwaffaq al-Ruba'i, Baghdad, 7 January 2004. The other regions he proposed were: 2. Al-Gharbiya (the West) or Al-Jazera (the Peninsula), otherwise known as the Sunni Triangle (incorporating Mosul, Tikrit, Samarra, Ramadi and Falluja); 3. Greater Baghdad (including Ba'quba); 4. Furat al-Awsat (Mid-Euphrates, also referred to as Al-Mantaqet al-Muqaddaseh, the Holy Region, comprising Karbala, Najaf, Hilla and Kut); and 5. Al-Junoub (the South, incorporating the mixed Sunni/Shiite city of Basra, Naseriyeh, Samawa and al-'Amara).



settle property disputes, including in Kirkuk, and thus allow Kurds and Turkomans to recoup lands and homes lost to the Ba'ath regime's Arabisation policy.<sup>19</sup> The law was indeed passed and took effect on 15 January 2004.

One more meeting was held before the Kurdish leaders returned to Baghdad to continue work on the TAL. On 12 January, representatives of the Christian and Turkoman communities, selected by the KDP and PUK, travelled to Salahuddin to express their support for Kurdish federalism and press for greater representation of their communities and protection of minority rights in a Kurdish region.<sup>20</sup> Opponents of Kurdish federalism from these two communities, such as the Iraqi Turkmen Front and the (unaffiliated) Turkoman member of the Interim Governing Council, Songul Chapook, were not invited.<sup>21</sup>

The Kurdish question appeared to have been temporarily settled, with tempers calmed, dreams postponed, and basic principles reiterated. But the inflammatory Kurdish draft bill, with its minute detail on Kurdish federalism, was still on the table of the Interim Governing Council. It was countered by a rival bill submitted by the January president, Adnan Pachachi, which sought to amalgamate ideas but was deliberately short on detail. The Kurds say they rejected this bill because it confined itself to general principles. A KDP official working on the TAL explained:

The devil is in the details. If something is not included, such as some of the Kurdish issues that do not appear in the Pachachi bill, it is very difficult for us to get it inserted. At the same time, whatever is included, as in our draft bill, will be very hard for others to remove. The Kurdish draft is very powerful for that reason, because it is so detailed.<sup>22</sup>

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<sup>19</sup> The law was officially called the statute on the "Iraq Property Claims Commission" and is dated 15 January 2004. A statute of the Interim Governing Council, it was enabled by CPA Regulation Number 8, "Delegation of Authority Regarding an Iraq Property Claims Commission", signed by CPA administrator Bremer on 14 January. CPA documents are available at <http://www.cpa-iraq.org>.

<sup>20</sup> Officials of Kurdish parties other than the KDP and PUK also attended.

<sup>21</sup> ICG interviews with Songul Chapook, Baghdad, 8 January 2004, and ITF head Sobhi Sabir, Kirkuk, 19 January 2004.

<sup>22</sup> ICG interview with Fersat Ahmad, Baghdad, 12 January 2004.

There was a further hiccup just as the drafting process shifted into overdrive in the middle of February, two weeks before the deadline. Fearing that the compromise reached with Bremer and key members of the Interim Governing Council might be lost, especially its details, the Kurdish members submitted a new draft for the operative sections on the Kurdish region.<sup>23</sup> While leaving out the explosive issue of Kirkuk, it included a number of controversial points: the Kurdish wish to maintain the *peshmerga* as a standing military force in their own region; a proposed ban on the deployment of non-Kurdish soldiers in the Kurdish areas without the permission of the Kurdish assembly; the freedom of the Kurdistan Regional Government (KRG) to reject laws passed by the central government; and control over the region's resources, most importantly oil and water.<sup>24</sup> To justify raising the stakes, Kurdish officials said they were under intense pressure not to compromise, citing a petition calling for a referendum on future status that reportedly had gathered close to two million signatures by the end of February 2004.<sup>25</sup>

To Kurdish officials, the effort to insert as much as possible of their demands -- both serious and fanciful -- into the TAL reflected a twofold concern: that their organisational power so evident in the immediate aftermath of the Ba'ath regime's fall might wane as Iraqi Arabs mobilised and formed new parties and coalitions, leading to a "tyranny of the majority" at the constitutional conference in 2005<sup>26</sup>; and that the TAL might go the way of previous Iraqi "interim" constitutions, namely turn by default into the final document in the event of a later deadlock.<sup>27</sup>

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<sup>23</sup> The bill was submitted shortly after a further visit by Paul Bremer and his deputy, the British diplomat Jeremy Greenstock, to the PUK and KDP leaders in Salahuddin on 15 February 2004.

<sup>24</sup> Draft text available at <http://www.krg.org/docs/federalism/provisions-IK-constitution-feb04.pdf>.

<sup>25</sup> One PUK official, Qubad Talabani (Jalal Talabani's son), was quoted as saying: "We have a street to worry about. We can't be seen to be selling out". Rajiv Chandrasekaran, "Kurds Reject Key Parts of Proposed Iraq Constitution", *The Washington Post*, 21 February 2004. For more on the referendum drive, see below.

<sup>26</sup> Jaber Habib Jaber, professor of political science at Baghdad University, said: "The Kurds want to press hard now, before elections are held and the Arab majority will dominate. They constitute a bloc in the Interim Governing Council, while the Arabs are divided". ICG interview, Baghdad, 13 January 2004.

<sup>27</sup> For example, a Kurdish official declared: "Iraqis look at the Fundamental Law as a provisional constitution. Yet another one! It could well become the permanent constitution, or the

But the CPA and Interim Governing Council were in no mood to renegotiate the grand bargain that had apparently been struck with the Kurdish leaders: recognition of the Kurdish region in exchange for postponement of the Kirkuk question.<sup>28</sup> None of the Kurds' new demands made it into the TAL, except for one: that a two-thirds majority in at least three governorates could block adoption of the permanent constitution.<sup>29</sup> "Three governorates" is virtually a code phrase for the three Kurdish governorates, so the inclusion of this crucial bit of text was seen, correctly, as a successful ploy to secure the interests of a minority against those of the majority. It produced an outburst of public anger. The Kurdish leaders, by contrast, signed the TAL jubilantly, declaring themselves to feel truly like Iraqis for the first time in their history.

## II. INDEPENDENCE OR FEDERALISM?

To the Kurds, enjoying a position of strength after more than eight decades of betrayals, discrimination, oppression and suffering, the time to press for advantage is now. Organised (though still internally divided), disciplined and determined, they have set about creating facts that Iraqi Arabs, who are still disorganised and preoccupied with more pressing matters, will find difficult to undo. These new realities include the return of displaced Kurds to Kirkuk, the administrative seizure of key directorates there and the presentation of their maximalist agenda, laid out in great detail.

Their political partners have become increasingly resentful of what they see as arrogance and an effort to impose a one-sided solution, but the Kurds are persuaded they cannot afford to wait. They fear domination by the (Arab) majority in the wake of any legitimate election for a parliament or constituent assembly. They already see their erstwhile allies in the Iraqi opposition in exile retreating from support for Kurdish rights and a federal state structure. One year hence, when Iraqis embark on the constitutional process, the Kurds may have few friends left who are sympathetic to their aspirations and risk facing an ad hoc coalition of Sunni and Shiite Arabs and Turkomans determined to counter their demands. By then, the U.S., while still grateful for wartime assistance and extremely influential, will have lost some leverage and be likely to give priority to its strategic relationship with Turkey and the desire of other groups for a more centralised, unitary Iraq.

Asked to what political future they aspire, virtually every Kurd will answer independence, if not for all Kurds, then at least for those residing, by historical fate, in Iraq. A petition drive organised by Iraqi Kurdish intellectuals in early 2004 and then co-opted by the main Kurdish parties calls for a referendum among Kurds to settle their future status.<sup>30</sup> Should such a referendum materialise, offering two, possibly three, basic choices -- independence, an autonomous

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backbone of one". ICG interview with the PUK's Muhammad Tawfiq, the interim minister of industry and mines, Baghdad, 7 January 2004.

<sup>28</sup> ICG interview with a CPA official, Amman, March 2004.

<sup>29</sup> The TAL is available at <http://www.cpa-iraq.org/government/TAL.html>.

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<sup>30</sup> According to one observer, the KDP and PUK "provided personnel and support for the referendum teams working in smaller towns and villages, including the use of their offices". The campaign reportedly had collected close to two million signatures from Kurds both in Iraq and the diaspora by the middle of February 2004. Twana Osman, "Kurds Moot Future Status", Institute of War and Peace Reporting, *Iraqi Crisis Report*, N°48, 17 February 2004, available at [www.iwpr.net](http://www.iwpr.net).

region within a federal Iraq, or possibly Iraqi federalism based on the existing eighteen governorates -- a majority would likely opt for independence.<sup>31</sup>

In the Kurdish street, media and universities, pro-independence sentiment runs high, fuelled by twelve years of self-rule bordering on independence and a keen awareness that the removal of Saddam's regime in Baghdad offers a unique and perhaps fleeting opportunity. "After 80 years, this is the first chance to redress the wrongs of the past", a Kurdish official said. "People feel it should not be passed up".<sup>32</sup> If such sentiment is tempered, it is by voices in support of federalism, but upon close inspection it appears that this federalism is designed to serve as a stepping-stone toward independence rather than a permanent settlement of the Kurdish question within a unitary Iraq. It calls for the inclusion of Kirkuk with its significant oil resources in the Kurdish federal region and demands such extensive regional rights that the Kurds' eventual separation from the Iraqi centre would be a more natural outcome than cohabitation with Iraqi Arabs.<sup>33</sup>

The draft TAL the Kurdish representatives submitted to the Interim Governing Council in December 2003 exemplified this approach to federalism, at least as a negotiating posture. Other Iraqis almost inevitably understand Kurdish pronouncements precisely in that

way: "The source of the problem is the unrealistic ambitions of the Kurdish national movement", said one party representative. "They want to establish a state extending from the Arabian [Persian] Gulf to the Mediterranean. Such a state needs an economic base. This is what is behind the Kurdish demand for Kirkuk -- without regard for its demographic or historic reality".<sup>34</sup>

What emerges from conversations with Kurdish politicians is that for the most part they are still hedging their bets, aware of the local and international obstacles to independence, yet fearful that they will ever obtain sufficient guarantees from the eventual government in Baghdad to protect Kurdish interests and rights in a unitary Iraq. "Saddam Hussein never honoured any agreements with the Kurds, so why would [Sunni Interim Governing Council members] Pachachi and Chadirchi", asked the deputy editor of the weekly *Hawlati*. "The majority of Kurds do not want to stay inside Iraq because it is not a stable country, and they do not want any central government representatives entering the Kurdish region". The allergy to the central government is such, he said, that they do not even accept the Iraqi Civil Defence Corps on Kurdish territory, even though in Erbil and Suleimaniyeh it is staffed by local Kurds belonging to the KDP and PUK.<sup>35</sup>

The result has been a growing discrepancy between what the Kurds want, what they say they want and what non-Kurds suspect they want. Realising that the threat to leave the Iraqi state is not realistic under current conditions, Kurds insist on maximum terms when agreeing to federalism. Yet in doing so they are perceived to be pressing for independence even when they say they are not, but especially when they say they are "*not now*". As one university student put it: "Our choice now is federalism. But our *real* choice, and our right, is independence". Another said: "Federalism is our choice *at this stage*".<sup>36</sup> Mahmoud Othman, an unaffiliated Kurd on the Interim Governing Council, declared in a statement of perfect equivocation:

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<sup>31</sup> "I don't know what the outcome will be", said Muwaffaq Dergalei, head of the media department at the University of Suleimaniyeh and a petition organiser, who added: "History shows that the Kurdish question in Iraq can only be solved through independence". ICG interview, Suleimaniyeh, 15 January 2004.

<sup>32</sup> ICG interview with Muhammad Tawfiq, Baghdad, 7 January 2004.

<sup>33</sup> As one indication of the sentiments of the Kurdish "street", an opinion poll conducted among 2,000 Kurds in January 2004 yielded the following results. Question: "What kind of federalism do you want?" Answer: 97 per cent of the respondents indicated a desire for a Kurdish region that incorporates Kirkuk. Question: "What should Kurds do if the Interim Governing Council and Coalition Provisional Authority fail to give us such a Kurdish region?" Answer: 77 per cent insisted on an independence referendum, 5 per cent said they were willing to contemplate an administrative form of federalism, and 18 per cent said the Kurds should go back to the mountains (that is, resume a military campaign). Question: "In that case, what should the Kurdish representatives on the Interim Governing Council do?" Answer: 49 per cent said they should withdraw and stay out of Baghdad, 29 per cent said they should simply boycott the council, and 22 per cent said they should stay on the council but postpone the matter until the constitutional process. *Hawlati*, 14 January 2004.

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<sup>34</sup> ICG interview with Iyad al-Samarra'i, deputy head of the Iraqi Islamic Party, Baghdad, 21 February 2004.

<sup>35</sup> ICG interview with Rebin Rasul Ismail, Erbil, 16 January 2004. The Iraqi Civil Defence Corps is one of the security organisations established by the CPA in the second half of 2003 to counter the growing insurgency.

<sup>36</sup> ICG interviews with students at Suleimaniyeh University, 15 January 2004.

Every Kurd wants a Kurdish state, and we are entitled to it as a nation. But the international community does not allow it, and so we must be realistic and press for our rights in the countries in which we are living. We'll need international and constitutional guarantees in case, at some future time, the government in Baghdad is overthrown by coup d'état. For now, if Iraqi Arabs recognise our right to federalism, we will stay inside Iraq. But if they fail to do so, we reserve the right to secede.<sup>37</sup>

There also is a significant discrepancy developing between the orientation the PUK and KDP leaderships describe privately and their public pronouncements -- whether toward their own people or in Baghdad. In confidence, they say they have adopted a strategic decision to stay within an Iraqi federation and make the best of it. Nowshirwan Mustafa, Jalal Talabani's deputy and the PUK's long-time ideologue, has outlined a pragmatic approach that he claims -- and other senior PUK and KDP officials confirm -- reflects the decisions of the political bureaus of the two principal parties:

The time of the mini-state is over. The Kurds have to live with the Arabs. It will be a point of strength for the Kurds. Federalism will protect us from a repeat of history, as long as we win adequate guarantees. We need these also to give the new generations the will to stay inside Iraq. The young people here and in the diaspora are clamouring for independence and are using bad words against us [the Kurdish leaders]. But we can build a new model for the Middle East. We are two nations, Arab and Kurd. Britain tried to turn Iraq into a melting pot [in the 1920s] but failed. So now we should seek to weave a carpet instead.<sup>38</sup>

Falak al-Din Kaka'i, the editor of the KDP's Arabic-language daily *Ta'akhi* and a senior adviser to Masoud Barzani, echoed this view: "Federalism is a strategic, not a tactical, choice. The Kurds will be strong within a strong Iraq. We can no longer think of independence. We cannot be a mini-state among hostile neighbours besieging us. Our economic situation is terrible. We don't want to be independent and die from starvation".<sup>39</sup>

"There is no responsible Kurdish leader today who would call for independence", agreed Sami Abd-al-Rahman, a senior KDP leader, who was killed in a suicide bombing on 1 February 2004, the first day of the Muslim feast of 'Eid al-Adha. When asked whether the federal solution could be the natural conclusion to the Kurdish national movement, he said that the movement's aim was to "achieve the rights of its people and to create an entity within which their rights could be protected" and that a properly constituted Kurdish federal region could accomplish this.<sup>40</sup> Barham Salih, the prime minister of the PUK-administered part of Iraqi Kurdistan, said:

We have made the biggest compromise of all -- that we want to be part of Iraq. This is very hard to swallow for Kurds who have seen only traumas and massacres. But now it is a matter of survival, not just an emotional issue. Are the Arabs afraid of a Kurdish federal region? Why should they be? It's the other way around! We can assure the Arabs, but can they assure us that the new Iraq will be radically different from the old one?

The Kurdish leadership potentially faces the wrath of the combined power of the Kurdish street and Kurdish diaspora, where the call for independence resonates loudest, should they spring their internal agreement to what would amount to an historic compromise on their constituents without careful preparation. Their current approach is to embrace the referendum drive rhetorically ("the Kurds are entitled to independence") in an effort to control it and limit its fall-out,<sup>41</sup> and to make maximalist demands for bargaining purposes (and to placate their constituents) at the outset of negotiations over the Kurdish future.

Yet, in interviews with ICG, senior leaders disparaged the petition. Nowshirwan Mustafa, for example, said he found the referendum drive "unrealistic", stemming from the belief, common among many Kurds, that the world community, including the U.S., would support independence. But, he said, "if the United States were to be forced to choose between Arabs, Kurds and Turks, it will go with the Arabs [a unitary Iraq] and Turkey. This does not mean we are entirely without

<sup>37</sup> ICG interview, Baghdad, 20 January 2004.

<sup>38</sup> ICG interview, Suleimaniyeh, 15 January 2004.

<sup>39</sup> ICG interview, Salahuddin, 16 January 2004.

<sup>40</sup> ICG interview, Erbil, 16 January 2004.

<sup>41</sup> By co-opting the referendum drive, the parties could seek to control its outcome, for example by formulating key questions in such a way as to ensure that the majority of responses served to advance the Kurdish leadership's declared policy of federalism, not independence.

power, but it is the principal reason why we are choosing to be part of the Iraqi state and the Arab nation".<sup>42</sup> Falak al-Din Kaka'i dismissed the call for a referendum as a pointless exercise: "Who will hear us?" he asked. "Who will help us establish a state? No one recognises the [Turkish-controlled] Republic of Northern Cyprus! We cannot defend ourselves against foreign intervention. To call for independence is unrealistic".<sup>43</sup>

The key question on the agenda, postponed in negotiations over the interim constitution but critical to the success of drafting a permanent constitution, is the shape of the future federal Iraq. Agreement will have to be reached on the number of federal regions, as well the precise boundaries of the Kurdish region and its powers vis-à-vis the central government. Several proposals have circulated, the most detailed from the Kurds themselves. But the moment it became clear that the TAL would adopt the status quo for the interim period -- recognition of the existing Kurdish region, incorporating the governorates of Dohuk, Erbil and Suleimaniyeh, as well as some small parts of adjoining governorates -- the need for clarity was subordinated to the continued creation of "facts" in order to position the Kurds more advantageously for the constitutional process in 2005.

### III. THE KIRKUK CRUCIBLE

Trends noted in the oil-rich city in the fall of 2003<sup>44</sup> have accelerated, and Kirkuk has become the crucible many had feared it would become at a much earlier date. Tensions that flared as the Kurdish parties drove into town ahead of U.S. forces in April 2003 were effectively suppressed by prudent management of conflicting passions and clever engineering by U.S. military commanders of a city council that was accepted by all sides for lack of a better alternative under prevailing circumstances. The division of power among the four primary communities -- Arabs, Kurds, Turkomans and Assyro-Chaldeans -- on the basis not of size but of their mere presence as a community, i.e., each receiving a fifth of city council seats (with the last fifth for independents), was a contrivance that worked because it entrenched the sectarian status quo. However, it held little long-term potential since the demographic and political status quo was subject to dramatic change.

The Kurdish parties, the dynamic new actor in Kirkuk, had no interest in maintaining things as they were. They consider the Kurds to be the majority in the governorate if not the city, and if not in actual numbers then by right, and demand an early return of those displaced under the previous regime's Arabisation policy before there is any population count. Unsurprisingly, those who stand to lose from Kurdish domination are striving to prevent it, or at least secure the best possible deal for their own communities. The Turkomans, in particular, who consider themselves to be the majority inside the city (as well as nearby towns such as Tuz Khurmatu and Altun Kupri) and its original inhabitants, are apprehensive, increasingly restive and starting to raise claims of a federal region of their own -- one, needless to say, that would overlap with a putative Kurdish region in the lowland areas that have mixed populations and significant oil deposits.<sup>45</sup>

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<sup>44</sup> See ICG Report, *Iraq's Constitutional Challenge*, op. cit., pp. 15-17.

<sup>45</sup> ICG has seen Kurdish and Turkoman maps that show the two communities' maximum claims to territory, in both cases straddling a wide belt running in a south easterly direction from Sinjar on the Syrian border to Khanaqin on the frontier with Iran. The Kurdish map additionally incorporates the three existing Kurdish governorates of Dohuk, Erbil and Suleimaniyeh, and stretches as far as points south of

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<sup>42</sup> ICG interview, Suleimaniyeh, 15 January 2004.

<sup>43</sup> ICG interview, Salahuddin, 16 January 2004.

## A. DUELLING NARRATIVES

In Kirkuk, heritage and identity are important but economic spoils matter as much. The prospect of controlling the area's considerable oil wealth<sup>46</sup> is giving rise to fierce disputes over population statistics, boundaries and heritage. This is reflected in duelling narratives, each with its own embellishments and denials of discomfiting but established facts, but each also endowed with a powerful kernel of truth. In all these narratives the word "oil" is taboo, the very suggestion that its pull is the source of current strife viewed as an insult to the legitimacy of competing claims to Kirkuk.<sup>47</sup> Instead, in public discourse, claims are founded on a community's historical presence as the area's original inhabitants or, failing this, its numerical predominance in human memory demonstrated through the selective use of old census figures and the contents of gravesites, or -- in the absence of accurate data -- even a presumed numerical predominance today.

"The region of Kirkuk is a Turkoman area in which all the communities are present", said Sobhi Sabir, the Kirkuk representative of the Iraqi Turkmen Front (ITF), one of several Turkoman political organisations. "They came from Asia around 650 AD and they settled here".<sup>48</sup> A Turkoman

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Baghdad. The Turkoman map comprises the town of Erbil, which it claims as originally Turkoman.

<sup>46</sup> According to the CPA, Iraq's northern regions account for 25 per cent of the nation's oil production. ICG interview with a CPA official, Baghdad, 28 February 2004. Although there is significant oil in the north, the fields there require much more rehabilitation than those in the south, leading the Iraqi Ministry of Oil to concentrate on the latter for massive exports and the former mainly for domestic consumption. ICG interview with Ibrahim Bahr al-Uloum, interim oil minister, Baghdad, 2 March 2004.

<sup>47</sup> One Kurdish student said: "If there were no oil in Kirkuk, I promise you that not a single Arab would stay". Another, exhibiting a degree of collective self-perception, said: "When there is treasure buried in the earth, we say it is a gift from God. But to the Kurds, oil in Kirkuk is a gift from hell". ICG interviews, Suleimaniyeh, 15 January 2004.

<sup>48</sup> ICG interview, Kirkuk, 19 January 2004. The ITF, according to Sabir, is an umbrella organisation consisting of four Turkoman parties: the National Turkoman Party (*Hezb al-Watani al-Turkmani*), the Movement of Independent Turkomans (*Hareket al-Mustaqilin al-Turkman*), the Turkoman Region Party (*Hezb Turkman Eli*) and the Turkoman Islamic Movement (*Hareket al-Islamiyeh al-Turkmaniyeh*). He accused all other Turkoman parties of being fronts for Kurdish interests from Erbil: "They speak in the name of Turkomans but for all practical purposes they

intellectual declared: "The Turkomans have always been in the heart of the city. There are no Kurds in the town centre. The Kurdish neighbourhoods such as Shorja, Rahim Awa and Iskaan are relatively new; they did not exist before oil was found [some 80 years ago]. All the culture here is Turkoman".<sup>49</sup>

Not so, say the Kurds, who claim they have been in these parts since time immemorial, building villages and working the land. Politically and administratively, Kirkuk "used to be the capital of the Wilayet Shahrazour until the rulers of the Ottoman Empire transferred the seat of government to Mosul in the nineteenth century".<sup>50</sup> The Turkomans came to Kirkuk "during Ottoman times, when there were no borders, as soldiers and administrators of empire. Attracted

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are Kurds, controlled by them, with Kurdish employees and Kurdish guards". In turn, the Kurds and non-ITF Turkomans accuse the ITF of being Ankara's proxy in Iraq. See also ICG Report, *War in Iraq: What's Next for the Kurds?* Op. cit., pp. 6-7. A Christian educator said that the Turkoman members of the city council were all returnees from exile or Erbil, whereas the ITF officials had stayed put in Iraq during the Ba'ath regime. ICG interview, 19 January 2004.

<sup>49</sup> He considered the Assyro-Chaldeans and Arabs equally to be mostly imports or, if local, of lesser standing: "Many Arabs were brought here by the previous regime and settled on land taken from Turkomans on which the Kurds used to work as labourers. The Hadidis are an original Arab tribe in Kirkuk, animal traders who used to live in mud houses. Saddam Hussein let them register here. Ask a Kurd where his grandfather's grandfather is from, and the answer most certainly will not be Kirkuk. All the old houses and cemeteries here are Turkoman, and so is the old *khan* [caravanserai]. The Assyrians came with the British early last century. And a number of the Chaldeans are, by their customs, actually Turkomans". ICG interview, Kirkuk, 18 January 2004. Other Turkomans also claimed the existence of "Christian Turkomans" in Kirkuk -- Christian in religion but Turkoman in language and custom. One Chaldean said to be a "Christian Turkoman", when tracked down by ICG said that she was an Armenian who associated herself with the local Chaldean, not the Turkoman, community, and that there was no such thing as Christian Turkomans.

<sup>50</sup> ICG interview with Fuad Masoum, a senior PUK official, Baghdad, 13 January 2004. He used this argument to justify his demand that Kirkuk become the capital of the Kurdish federal region. Another PUK official, Adnan Mufti, said: "We have: (1) A map of 200 years ago bearing the Ottoman sultan's signature that shows that Kirkuk was part of Wilayet Kurdistan; (2) a nineteenth century Ottoman census showing a Kurdish majority in Kirkuk; (3) a UK census from the early twentieth century showing the same, and Arabs outnumbering Turkomans; and (4) a secret Ba'ath survey of 1977, again showing Kurds in the majority in Kirkuk". ICG interview, Erbil, 16 January 2004.

by the abundance of land and water, many chose to stay".<sup>51</sup>

Yes, say the Arabs, the Turkomans settled in Kirkuk during the Ottoman Empire, and there were Kurds in Kirkuk previously ("but not in the numbers they claim"), but most Kurds and Turkomans arrived only once oil was found: "Their immigration to Kirkuk began only in the 1950s". By contrast, an Arab elder from Kirkuk governorate's Hawija district said, "the Arab tribes are originally from this area. The Kurdish question is not an Iraqi question but a foreign question that was imported to Iraq".<sup>52</sup>

Outdoing Kurds, Arabs and Turkomans alike, the Assyro-Chaldeans claim that the Kirkuk and Mosul regions are originally Assyrian country -- in an era long before the others came. To them, the Kurds, Turkomans and Arabs are all interlopers, destroying Assyrian villages and marginalising the community's ancient culture.<sup>53</sup> "We are the original 'castle people' from Kirkuk. Everyone else immigrated", said a community representative.<sup>54</sup>

## **B. DE-ARABISATION**

The demographic and political balances in the city and governorate were never static, thanks to a combination of employment and urban migration, especially after the discovery of oil. Recognising the importance of controlling the area and its valuable resources, Iraq's republican regimes launched a series of Arabisation campaigns from the 1960s on. The Baath regime, in particular, made it a priority to

remove Kurds and Turkomans from Kirkuk (the few Christians were seen as less threatening) or force them to undergo "nationality correction" -- virtual ethnicity conversions -- while importing Arabs from other parts of Iraq into the region by offering land, housing and jobs.<sup>55</sup> Many of these were known as the "10,000-Arabs" (*'Arab 'asharat alaaf*), indicating not their numbers but the money each family received, in Iraqi dinars, as an incentive to settle in Kirkuk.<sup>56</sup> At the height of the counter-insurgency Anfal campaign toward the end of the Iran-Iraq war, the majority of mass killings of Kurdish women and children involved Kurds from Kirkuk-area villages, a transparent and particularly vicious attempt by the regime to exploit wartime conditions to reduce the Kurdish population of Kirkuk sharply.<sup>57</sup> Jobs in the oil industry went mostly to Arabs, who also controlled the local government and security services. Today true population figures in Kirkuk are elusive and await a census (though each community enthusiastically presents its own fanciful numbers and percentages).<sup>58</sup>

The entry of the Kurdish parties into Kirkuk in April 2003 heralded a reversal of Arabisation, in both its demographic and administrative dimensions.<sup>59</sup> Seeking

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<sup>51</sup> ICG interview with students at Suleimaniyeh University, 15 January 2004.

<sup>52</sup> ICG interview with Ghassan Muzhir al-Assi, a leader of the Obeid tribe, Hawija, 17 January 2004. He accused the Kurdish parties of wanting Kirkuk in order to secede from Iraq: "The Kurdish parties want to destroy the Iraqi nation, and they want to turn Kirkuk into a city of war".

<sup>53</sup> ICG interview, Kirkuk, 19 January 2004. See also ICG Report, *War in Iraq: What's Next for the Kurds?*, op. cit., pp. 18-19. One Kurdish response to the Assyrian claim: "In ancient times, the Christians were living here among us [in the plains]. When they came under pressure, they fled to the Kurdish mountains and built their churches there, protected by the Kurds". ICG interview with Saadi Barzinji, president of Salahuddin University, Erbil, 7 June 2003.

<sup>54</sup> ICG interview with Sargun Lazar Sleewa, a member of the Assyrian Democratic Movement and the Kirkuk provincial council, Kirkuk, 8 June 2003. Sleewa also said: "Let's agree now that everyone who was born in Kirkuk should be considered a Kirkuki".

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<sup>55</sup> See ICG Report, *War in Iraq: What's Next for the Kurds?*, op. cit., pp. 18-20. There has also been more natural immigration to Kirkuk, encouraged by the successive regimes, involving civil servants, military personnel, job seekers in an expanding economy and others.

<sup>56</sup> Most Arabs who immigrated or were imported to Kirkuk and bought property there claim that they acquired it through legal purchase from the state. The issue, therefore, is not whether individual Arab owners obtained their property by legal means, but whether the regime had confiscated it from its original owners.

<sup>57</sup> For an analysis of the Anfal campaign, see Human Rights Watch, "Iraq's Crime of Genocide: The Anfal Campaign Against the Kurds", New Haven and London, 1995.

<sup>58</sup> At least one voice dismissed all circulating population figures as "fictions" that only a census could correct. But, he said, "in the end, rights are more important than numbers". ICG interview with Falak al-Din Kaka'i, editor of *Ta'akhi* (KDP), Salahuddin, 16 January 2004.

<sup>59</sup> An additional area in which de-Arabisation has been particularly evident is education. At the beginning of the school year in September 2003, "mother tongue" teaching was introduced in Kirkuk schools without any study or pilot project. Said one international observer: "At a time when strategies were needed to bring communities together and to rehabilitate schools for the new year, prioritisation was placed on establishing mother-tongue schools". As a result, "there are now reports of children in school being divided into separate classes according to their ethnicity". At the same time, the Kurdish parties brought in teachers from Erbil and Suleimaniyeh despite the fact that there were thousands

to fill the immediate post-war vacuum, the KDP and PUK seized control of the key directorates (the governorate's administrative departments) in the city and staffed them with their own civil servants from Suleimaniyeh and Erbil.<sup>60</sup> The Kurdish parties readily admit they have been paying the salaries of those they sent to Kirkuk to run the local administration. They justify their seizure of the directorates by the claim that the previous regime had banned Kurds from most state jobs "for security reasons". As a result, they say, Kurds held only 10 percent of state jobs and, almost even more critically, Kirkuk's Northern Oil Company had only a handful of Kurdish employees when the Ba'ath regime was ousted; all the Kurds are doing now is reversing Arabisation.<sup>61</sup> Non-Kurdish Kirkukis complain, however, that Kurdish control of most directorates has led to job discrimination.<sup>62</sup> An international observer said that claims of discrimination could be true but the U.S. military did not have a mechanism to monitor these.<sup>63</sup>

Their alliance with the U.S. military during the war ensured favoured treatment in its aftermath, when the Kurdish parties were given a quarter of the 24 seats on the new city council that were allotted to the four communities, and five of the six council members brought on as "independents" were also Kurds -- independent politically, but Kurdish nationalists by inclination.<sup>64</sup> Thus finding themselves in control of

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of unemployed teachers (including Kurds) in Kirkuk, especially at a time when Arab teachers were being laid off as part of the de-Ba'athification campaign. Unsurprisingly, the haemorrhage of teachers from the Kurdish governorates led to shortages there. E-mail communication from Emma Skye, a CPA official in Baghdad, 22 March 2004.

<sup>60</sup> For example, a letter from the health ministry of the Kurdistan Regional Government dated 12 April 2003 announced the appointment of Sabah Amin Ahmad al-Da'oudi, a Kurd, as head of the health department in Kirkuk.

<sup>61</sup> ICG interview with Mahmoud Othman, Baghdad, 20 January 2004.

<sup>62</sup> ICG interview with Yahya Assi al-Hadidi, a lawyer and former city council member, Kirkuk, 18 January 2004.

<sup>63</sup> ICG interview, Kirkuk, 18 January 2004.

<sup>64</sup> The Kirkuk city council established in May 2003 consisted of six Arabs, six Kurds, six Turkomans, six Assyro-Chaldeans and, additionally, five independent Kurds and one independent Assyro-Chaldean (one of the five Kurds later died and was not replaced). This led to charges by Arabs and Turkomans that the Kurds were heavily favoured, and in August 2003 two Arab council members, Ghassan Muzhir al-Assi and Yahya Assi al-Hadidi, withdrew in protest. By contrast, the Kurds feel that they compromised on the composition of the city council in May 2003, as they consider themselves to be in the majority but received only a quarter of

the main levers of power in the city (and, ipso facto, the governorate) and emboldened by the moral certainty they were redressing the terrible wrongs of the past, the Kurdish parties started to encourage the return of displaced Kurds to Kirkuk, whether or not their original homes still existed and whether or not they had a place to settle.<sup>65</sup> This process was still underway in March 2004, though many displaced Kirkukis were still where they had been resettled (mostly in Erbil and Suleimaniyeh) because there were no homes or jobs in Kirkuk.<sup>66</sup> The "refreshment" of the city council and its enlargement to include members from the districts in Kirkuk governorate in January 2004 did little to reverse the Kurds' political predominance.<sup>67</sup>

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the seats. ICG interview with Muhammad Tawfiq of the PUK, Baghdad, 7 January 2004.

<sup>65</sup> Today many remain in tent encampments on the outskirts of the city, deprived of elementary facilities and humanitarian assistance. See Nicholas Birch, "CPA's fear of sparking political conflict leaves Kurdish refugees out in the cold", *Daily Star*, 1 March 2004.

<sup>66</sup> Kurdish sources claim that by early January 2004 3,987 Kurdish families (21,517 persons) had returned to Kirkuk governorate. Of these, 1,146 families moved into their original homes, the Arab residents having left or been forced out. The remaining Kurdish families were settled on former government and army sites. As for "Arabisation Arabs", according to the same source, 2,351 families (21,298 persons) left Kirkuk for the south. Some 200,000 registered displaced Kurds were yet to return. ICG interview with Rebin Rasul Ismail, deputy editor of the independent Kurdish weekly *Hawlati*, Erbil, 16 January 2004; Ismail was citing the statistics of a Kurdish organisation devoted to the rights of the internally displaced.

<sup>67</sup> The city council was expanded and transformed into a provincial (governorate-wide) council during a process of "refreshment" that was completed in mid-January 2004. The new breakdown, including eleven seats from towns in Kirkuk governorate, then was thirteen Kurds (including the governor), twelve Arabs (including the deputy governor and the seats of the two council members boycotting the council, which have been left unoccupied in case they return), eight Turkomans and seven Assyro-Chaldeans. A fairer distribution, said al-Hadidi, would be twelve Kurds, twelve Arabs, twelve Turkomans and seven (or perhaps four) Assyro-Chaldeans. ICG interview, Kirkuk, 18 January 2004. A representative of the Iraqi Turkmen Front complained that the Turkomans already on and added to the council were not nominated by the ITF. "If the United States chooses the representatives, why do we have political parties", he asked. "The selection should be done in a democratic, not a demographic, way". ICG interview with Sobhi Sabir, Kirkuk, 19 January 2004. One Turkoman intellectual declared that the Turkomans on the council are "descendants of the Turkoman levies of the British rulers after [the] 1920s. They are all appointees attracted by dollars. We don't recognise these



The onset of the dynamic new (Kurdish) reality in Kirkuk has caused deep resentment among the region's Arabs, Turkomans and Assyro-Chaldeans,<sup>68</sup> as well as accusations of "reverse ethnic cleansing". They charge Kurds with taking over properties to which they claim title and pressing Arabs, especially "Arabisation Arabs" (also referred to as *al-mustawfidin*, "those who were brought"), to return to their original areas, wherever those might be, regardless of whether they still own property there. Yet, there is no evidence suggesting such practices constitute a pattern; displaced Kurds generally seem to be heeding their leadership's admonitions of restraint and insistence on due process.

Barham Salih, the prime minister of the PUK-administered region of the Kurdistan Regional Government, referred to the Saddam Hussein regime's policy of ethnic cleansing as "an evil that must be reversed". But, he indicated, the problem was only that of Arabisation, not the presence of Arabs in Kirkuk as such. Much as Kurds can live in Baghdad and even Basra, he said, so Arabs should be welcome in Suleimaniyeh. "But we object to a deliberate policy of Arabisation. This should be reversed. Those who want to remain in Kirkuk can do so but they will have to surrender their ill-gotten gains, and they cannot have a say in the future status of Kirkuk."

Moreover, Kurdish leaders such as Barham Salih say, every predominantly Kurdish district (*qadha*) or sub-district (*nahya*) severed from Kirkuk governorate by the Ba'ath regime should be reunited administratively with the governorate. Subsequently, the original inhabitants of a reconstituted Kirkuk governorate should, in his view, decide in a referendum whether to become part of a federal Kurdish region. Residency, he said, should be determined on the basis of pre-Ba'ath censuses -- either of 1957 or 1967. He also insisted that the Arab settlers not be treated as perpetrators but as victims, their departure

facilitated through a program of voluntary repatriation that should include an aid package enabling them to build new homes elsewhere.<sup>69</sup>

Other Kurdish leaders generally agree that "Arabisation Arabs" should not be expelled but rather made by legal means to return to their original owners properties given them by the previous regime.<sup>70</sup> The consensus seems to be, though, that a humanely-executed departure of these Arabs is the preferred method of dealing with the first stage of the Kirkuk question, the criterion being "whether the government paid for them to settle in Kirkuk and they did not have to pay for themselves".<sup>71</sup> Once Arabisation has been reversed, Kurdish officials say, it will be time to move to the second stage: a referendum whose results the Kurds do not doubt given their conviction they are a majority in the governorate as long as it is based on pre-Ba'ath boundaries and population.<sup>72</sup>

The Turkomans, the other victims of Ba'ath policies in Kirkuk, agree with the Kurds that Arabisation must be reversed but they are worried that might favour the Kurds, who are virtually in charge of the area, more. Consequently, their call for restoration of Kirkuk's original administrative boundaries is limited to those districts they consider predominantly Turkoman, such as Tuz Khurmatu and Altun Kupri. One local leader expressed this as follows:

The Turkomans should be named as Iraq's third nationality in the Iraqi constitution along with Arabs and Kurds, given that we are 15 per cent of the population. We demand that the imported Arabs leave Kirkuk and return to their original places. The districts of Tuz Kurmatu and Tel 'Afar should become governorates in their own right, while [the sub-district of] Altun Kupri should be returned to Kirkuk. Then there should be a census and

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councils". ICG interview, Kirkuk, 18 January 2004. The head of a local human rights organisation, himself a Turkoman, said he did not recognise the council because it had been appointed, not elected, and that he therefore was calling for free, direct elections. ICG interview with Muayyed Ibrahim Ahmad, director of the Iraqi Institute for Human Rights, Kirkuk, 17 January 2004.

<sup>68</sup> Assyro-Chaldean staff members of Iraq Broadcast Radio in Kirkuk resigned in protest in February 2004, citing "biased and negative treatment" at the hands of Kurds, who allegedly controlled the organisation's administration. Statement in ICG possession signed by three staff members and circulated by members of the community.

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<sup>69</sup> ICG interview, Suleimaniyeh, 14 January 2004.

<sup>70</sup> ICG interviews with KDP and PUK officials in January 2004 and with local Kurdish leaders in Kirkuk in June 2003.

<sup>71</sup> ICG interview with Adnan Mufti, PUK representative, Erbil, 18 January 2004.

<sup>72</sup> Some would prefer to organise a new census along the way to obtain accurate demographic data that, they say, would underline the legitimacy of the Kurdish claim to Kirkuk. This is the position of Fuad Masoum, a PUK constitutional expert. He said de-Arabisation had to take place and a census be held before the transfer of sovereignty envisioned for 30 June 2004 -- a very ambitious timetable. ICG interview, Baghdad, 13 January 2004.

elections. We say no to secession, and we also do not wish to be a minority inside a Kurdish federal region.<sup>73</sup>

They, along with the Arabs and Assyro-Chaldeans, claim that many of the "returning" Kurds are not original Kirkukis at all but Kurds from Erbil, Suleimaniyeh, and even Turkey and Iran, dumped in Kirkuk by parties intent on swelling Kurdish numbers ahead of a population count. As Songul Chapook, a member of the Interim Governing Council, said:

The KDP and PUK brought Kurds from Turkey and Iran and put them in Kirkuk under their banner. These are foreigners, and they even include elements of the PKK [the Kurdistan Workers' Party, the principal Kurdish grouping in Turkey]. Paul Bremer rightly opposes ethnic federalism and supports the unity of Iraq. But the Kurds are armed and we are not. What can we do? If the Kurds get an ethnically defined federal state, then we should get one, too. There are 4 million Iraqi Turkomans. We have ruled Iraq for 750 years until 1918. How can they deny us now? We are the owners of this area. How can they call us a minority?<sup>74</sup>

On the issue of how Arabisation should be reversed, a local Turkoman intellectual proposed that, "all property registered to Turkomans must be returned to them. The Arabs who were brought here can stay if they are prepared to buy properties". As for the Kurds, he lamented, "their property papers show that they purchased their land and homes in the 1960s. Now the Kurds are taking all the public properties, government buildings, etc., in the centre of town. And they have weapons".<sup>75</sup> A local human rights activist agreed that "Arabisation Arabs" should not be forcibly expelled from Kirkuk: "The Arabs who were imported here have rights as Iraqis. If they want to return to their original places, that's fine, but if they want to stay, they can do so as well. They should not

be forced to leave". At the same time, he added as an important caveat, "they will have to get their identity cards adjusted to show their original towns as their official place of residence. While they are free to stay in Kirkuk, they should not be allowed to vote in local and provincial elections here. Inversely, anyone displaced from Kirkuk who has not returned should be permitted to vote in Kirkuk".<sup>76</sup>

On the other hand, some Turkomans -- especially those who lived in or moved to the Kurdish areas in the 1990s -- tend to take positions closely aligned with those of the Kurdish parties. A member of the city council, for example, declared:

The Kurds are not trying to inflate their numbers in Kirkuk. Those who were displaced are starting to return. It is Turkey and the ITF that are moving Turkomans from Turkey to Kirkuk -- 120 families so far. These are originally from Kirkuk but obtained Turkish citizenship. They are working with Turkish intelligence and are receiving housing and funding in Kirkuk.<sup>77</sup>

Kirkuki Arabs insist that no distinction ought to be made between original Arab inhabitants of Kirkuk and those who settled or were encouraged to settle in the area by the previous regime. They argue that many of the city's non-Arab residents also migrated to the area over the past decades, lured by the oil economy. "People who came to Kirkuk from the south are first of all Iraqis", said a local politician. "The Kurds and Turkomans themselves came only

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<sup>73</sup> ICG interview with Sobhi Sabir, head of the Iraqi Turkmen Front in Kirkuk, 19 January 2004. When asked whether districts such as Chamchamal that have predominantly or exclusively Kurdish populations should be returned to Kirkuk governorate, he said no but was unable to explain the logic.

<sup>74</sup> ICG interview with Songul Chapook, a civil engineer from Kirkuk and member of the Interim Governing Council, Baghdad, 8 January 2004. The claim of four million Turkomans is hard to sustain.

<sup>75</sup> ICG interview with a Turkoman intellectual, Kirkuk, 18 January 2004.

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<sup>76</sup> ICG interview with Muayyed Ibrahim Ahmad, director of the Iraqi Institute for Human Rights, Kirkuk, 17 January 2004, who made a point of saying he was a Turkoman. He said that right of residence should be determined by the 1957 Iraqi census: anyone residing in Kirkuk at that time should be considered a resident of Kirkuk, as well as any children and grandchildren, but that women resident in 1957 who subsequently married outside the governorate had forfeited their right of residence in Kirkuk. "This is the only way to solve the conflict peacefully".

<sup>77</sup> ICG interview with Jawdat Najar, head of the Turkmen Cultural Association, Erbil, 6 June 2003. Irfan Kirkukli, a Turkoman member of the Kirkuk council, said: "I support a federal and pluralist system in Iraq as the best way to protect Turkoman rights. We get along well with the Kurds because they respect our rights, and we respect their rights and culture. It doesn't matter who rules as long as he is democratic and just, and brings security". ICG interview, Kirkuk, 9 June 2003. Kirkukli said he became a member of the Iraqi opposition after the 1991 uprising and moved to the liberated Kurdish zone.

after oil had been found. There are a million Kurds in Baghdad. Should they now all be expelled as well"?<sup>78</sup> A second local politician concurred:

These [imported] Arabs have been here for three decades. They were given state lands [not property confiscated from private owners] and 10,000 Iraqi dinars to build a house. Kirkuk is a town for all and the economic capital of Iraq. A referendum should be held to determine whether Kirkuk should join a Kurdish region. Since the Arabs and Turkomans are in the majority in Kirkuk, this will not happen."<sup>79</sup>

A member of the city council insisted that, "The Arabs who were settled here by the regime should return their properties to the Kurds. These were tribal people who have already gone back to their own original areas, where they still have homes". He recounted the travails of some members of his own (Kirkuk-area) clan, the Hadidis, who had received Kurdish land from the former regime near Altun Kupri and were ordered to stay there. "They were in a dilemma," he said, "because many had very good relations with the Kurds. When war loomed, they returned to their homes in [the Hadidi quarter of] Kirkuk, knowing that an injustice had been committed. We hope that the Kurds will accept them. In turn, the Arabs are ready to accept the Kurds". But, he continued, "most Iraqis, including Kirkukis, will not accept a Kurdish federal state with Kirkuk as its capital. Kirkuk ought to be a shared city and income from its oil exploitation distributed fairly to all the people of Iraq".<sup>80</sup>

Finally, the Christians of Kirkuk are worried that they, as the smallest community in both city and governorate, will be faced with new rulers who may not recognise their rights. Said one local educator, "The Christians in Kirkuk are comfortable; we get along with everyone. But we don't want ethnic federalism. Kirkuk incorporates all communities; it should not fall under the control of a single one of them". She added, "Arabs who came here as part of Arabisation should be allowed to stay. As human beings, we cannot force them to leave. But those who were expelled must be able to come back, and all the

districts cut off from Kirkuk should be restored to the governorate".<sup>81</sup> Christians also express apprehension about the Kurds throwing around their weight in Kirkuk. A Chaldean security officer asserted: "There is a big problem with the Kurds because they suffered a lot under Saddam and are very angry. When they started coming back, they retook a lot of homes by force, including houses that were not theirs, for example an Arab house in a Kurdish neighbourhood, or government houses belonging to state employees not guilty of the regime's crimes".<sup>82</sup>

As already noted, the Interim Governing Council issued the "Iraq Property Claims Commission" statute in January 2004, which formed the legal basis for the establishment of a body to resolve disputes. The law spells out general principles for resolving competing claims but is ambiguous on the fate of the "imported" Arabs. It says: "Newly introduced inhabitants of residential property in areas that were subject to the policy of ethnic cleansing (i) can be resettled; (ii) can receive compensation from the state; (iii) can receive new land from the state near their residence in the governorate from which they came; and (iv) can receive cost of moving to such area".<sup>83</sup> What the law does not say, however, is that these "newly introduced inhabitants" *must* be sent back to the "governorate from which they came".<sup>84</sup> Yet, some have interpreted

<sup>78</sup> ICG interview with Ghassan Muzhir al-Assi, Hawijeh, 17 January 2004.

<sup>79</sup> ICG interview with Yahya Assi al-Hadidi, Kirkuk, 18 January 2004.

<sup>80</sup> ICG interview with Ismail Hadidi, a member of the Kirkuk city council, Kirkuk, 10 June 2003.

<sup>81</sup> ICG interview with an educator, Kirkuk, 19 January 2004. The editor of *Al-Hadaf*, Sabah Mikha'il, who is the media representative of the Beit Nahrayn National Democratic Party, a Christian political party, declared: "The Iraqi people, in all shades, have managed to live through monarchical, republican and even Saddam's rule. They have proven that they are one people, the Iraqi people. Peaceful coexistence can continue to exist if love for Iraq remains and nationalist feelings take precedence over the ambitions of political parties. With everyone making noises over the issue of federalism, we believe that the most suitable type would be federalism on the basis of the eighteen governorates". ICG interview, Baghdad, 11 February 2004.

<sup>82</sup> ICG interview with a former Army officer, Kirkuk, 8 June 2003, who, he claims, was put out of his house by the KDP as a regime loyalist immediately after the war but -- he said this to show his good credentials in the new Iraq -- had since been given an influential position in the Kirkuk city government. ("I had been imprisoned and tortured by the regime, was under surveillance because I had relatives living abroad, and was never a Ba'ath party member".) At the time of ICG's visit to Kirkuk in January 2004, he had been given proper housing.

<sup>83</sup> Art. 10A of the "Iraq Property Claims Commission" statute, 23 January 2004, available at [http://www.cpa-iraq.org/regulations/20040123\\_Reg8\\_Annex\\_Property\\_Claims\\_Commission.pdf](http://www.cpa-iraq.org/regulations/20040123_Reg8_Annex_Property_Claims_Commission.pdf).

<sup>84</sup> This ambiguity was replicated in the Transitional Administrative Law (TAL) of 8 March 2004, which stipulates

it that way: At least one Kurdish Interim Governing Council member insisted that the law mandated the departure of "imported" Arabs from Kirkuk.<sup>85</sup>

Through March 2004, the Property Claims Commission had yet to begin its important work.<sup>86</sup> For many in Kirkuk, its establishment was a *sine qua non* for peaceful settlement of the multitude of property disputes that are the troubled legacy of decades of demographic engineering by the Ba'ath regime. Although Paul Bremer enabled the statute, and -- under the terms of the interim constitution -- it will remain in effect following the planned transfer of sovereignty on 30 June 2004, the CPA's successor, the new U.S. Embassy, will have less influence on the work of the commission. There is little doubt that successful mediation of all outstanding claims will take years.<sup>87</sup> The composition of the commission and judicial oversight, therefore, will be of critical importance to its ultimate success in diffusing this particularly explosive issue.

### C. SHARING KIRKUK

A visitor to Kirkuk is likely to come across two powerful sentiments that cohabit even as they conflict: a strong yearning for reconciliation and peaceful settlement of the Kirkuk question, but also deepening anger among non-Kurds about changes being effected

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that "individuals newly introduced to specific regions and territories...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" (Art. 58A2). Separately, the TAL also makes clear, though, that, "Each Iraqi citizen shall have the full and unfettered right to own real property in all parts of Iraq without restriction" (Art. 16C). It makes no mention of the right of residence or to vote in one's place of residence. The TAL is available at <http://www.cpa-iraq.org/government/TAL.html>. A CPA official indicated that the ambiguous language was quite deliberate. ICG interview, Amman, March 2004.

<sup>85</sup> ICG interview with Mahmoud Othman, Baghdad, 20 January 2004. Likewise, Fersat Ahmad, a constitutional expert of the KDP, stated that the law "will compensate the Arabisation Arabs and place them in the original areas from which they were brought". ICG interview, Baghdad, 12 January 2004. However, he made this remark prior to the law's promulgation.

<sup>86</sup> The commission's scope is nation-wide, with an office in every governorate and sub-offices in the districts. By the middle of March 2004, it had opened an office in Baghdad. An office in Kirkuk was scheduled before the end of April 2004.

<sup>87</sup> ICG interview with an international observer, Kirkuk, 18 January 2004.

on the ground by Kurdish parties. Protestations by Kurdish leaders that they are restraining their people -- displaced Kurds eager to return to their land and homes -- even at the expense of their own popularity tend to fall on deaf ears in communities that fear a repressive Ba'ath regime might incrementally be replaced by an unofficial but very real Kurdish rule that is sending ominous signals about its future shape and intent. These include a progressive take-over of the administration of town and governorate, the steady return of displaced Kurds in the absence of official procedures, and threatening phone calls, backed implicitly by the *peshmerga's* might, to those who raise their voices in opposition.<sup>88</sup>

"All the tension in Kirkuk is the direct result of Kurdish ambitions", said a Kirkuk security officer.<sup>89</sup> "The Kurds are a people who want trouble", an Arab tribal leader charged.<sup>90</sup> For their part, some Kurdish politicians have done much to add oil to the fire -- through both actions and words -- while the statements of more prudent Kurdish leaders have been drowned out or dismissed as clever manoeuvres. Outside political actors, such as Muqtada al-Sadr, the leader of a political movement that has broad appeal among the Shiite urban poor in Baghdad and elsewhere and who in early April is in violent conflict with Coalition forces, have come to Kirkuk to mobilise those who potentially would be disenfranchised by Kurdish domination.<sup>91</sup> In recruiting among the "Arabisation Arabs", the majority of whom are Shiites, and Turkomans, a fair proportion of whom are also Shiites, al-Sadr is seeking to unify non-Kurdish groups around an anti-Kurdish agenda. By default, however, he may end up putting a confessional (Shiite vs. Sunni) gloss on a debate that is already heavily sectarian (Arab vs. Kurd).<sup>92</sup> "It is a miracle we haven't had a

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<sup>88</sup> ICG interviews with (non-Kurdish) Kirkukis, January 2004.

<sup>89</sup> ICG interview, Kirkuk, 19 January 2004.

<sup>90</sup> ICG interview with Ghassan Muzhir al-Assi, Hawijeh, 17 January 2004. He added facetiously: "The Kurds and their chauvinism are unifying the Arabs of Iraq, and for this I thank them".

<sup>91</sup> Muqtada al-Sadr's supporters organised a demonstration in Kirkuk on 28 February 2004 that sought to mobilise the city's Shiite population (both Arabs and Turkomans) and coincided with a general strike organised by Kirkuk Turkomans. "Iraq's leaders miss constitution deadline", Agence France-Presse, 29 February 2004.

<sup>92</sup> Muqtada al-Sadr has not pursued an expressly Shiite agenda in Kirkuk, lest he alienate those Arabs and Turkomans who are Sunnis. However, his entry into regional conflict -- carrying as he does the baggage of radical Shiite politics -- could complicate sectarian divisions by dividing

civil war over Kirkuk", said Barham Salih.<sup>93</sup>

And yet there is hope. This stems from the very political leaders who sent their forces into the city in April 2003 with every apparent intention to stay and incorporate Kirkuk into a Kurdish federal region or independent state. Listen to a Masoud Barzani or a Jalal Talabani, or put your ear to the Kurdish sidewalk, and the talk is maximalist. But speak to the political leaders behind those out in front in Baghdad, and a remarkably pragmatic strain becomes apparent -- one that does not presume the city will become the Kurdish region's capital or even an integral part of the Kurdish region.

"We will find a special status for Kirkuk", said Nowshirwan Mustafa, the PUK's number two, who asserted he reflected the official position of Jalal Talabani and his party's political bureau. "Perhaps Kirkuk should be like Brussels. I want a city with better harmony".<sup>94</sup> "Kirkuk city and governorate should be under a shared administration, reflecting fairly the complexion of Iraqi society here, both at the governorate and local levels", said Sami Abd-al-Rahman, a senior KDP leader known for his pragmatism and moderate voice.<sup>95</sup> Another senior KDP official, Falak al-Din Kaka'i, agreed: "The city of Kirkuk could be part of a shared governorate that would have a special autonomous status. This problem can be solved, because we are not setting up

an independent state".<sup>96</sup> The PUK's Barham Salih expressed his party's position more cautiously: "An important compromise was struck. Most Kurds see Kirkuk as an integral part of Kurdistan. But we accept that we cannot act unilaterally or by force. We do not want to fight for Kirkuk".<sup>97</sup>

These statements should be taken seriously by all Iraqis. No Kurdish leader would be so foolhardy as to offer a compromise on Kirkuk that he did not truly mean, given the huge sensitivity of this issue for the Kurdish public. The problem does not appear to be that the Kurdish leadership is dissembling on Kirkuk but that so far it has failed to inform the Kurdish people of its readiness to strike an historic deal for the greater good of Iraqi Kurdistan and to prepare them for the compromises this entails. Other Kurdish officials seem unaware of the KDP and PUK position on Kirkuk,<sup>98</sup> and certainly the prevailing perception among Iraqi Arab and Turkoman leaders is that the Kurds intend to grab Kirkuk. This is unfortunate, because nurturing trust ought to be one of the top priorities in a situation as volatile as Iraq, and in particular Kirkuk, today.

Moreover, there are non-Kurdish politicians who are also willing to contemplate a special status for Kirkuk as an acceptable compromise. Muwaffaq al-Ruba'i, a Shiite member of the Interim Governing Council, said it was better not to go into in detail at this time, but that a special status for Kirkuk could be envisioned, with possibly some Kurdish villages of the Kirkuk

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Sunnis from Shiites among non-Kurds even as it seeks to unite them around an anti-Kurdish platform. (Although there are Kurds who are Shiites, the so-called Fayliyin, primarily in Baghdad and Khanaqin, the majority of Kurds in the north are Sunnis; while many are devout, the Kurdish national movement has been staunchly secular.)

<sup>93</sup> "And hopefully it won't happen", he added. "Kirkuk is disputed territory, but this is not Bosnia....We want equal employment for the Kurds, if not affirmative action in work places like the oil company....The problem with the Turkomans is that they don't want Kurdish domination and therefore they will try to ally themselves with the Arab settlers. But the Turkomans are indigenous Kirkukis, and so we must accommodate them". ICG interview, Suleimaniyeh, 14 January 2004.

<sup>94</sup> ICG interview, Suleimaniyeh, 15 January 2004. Jalal Talabani made the same proposal in the CPA-sponsored Iraqi newspaper *Sabah* that same month. In drawing a comparison with Brussels, the intent appeared to be to highlight that city's special status as a bilingual buffer and administratively distinct entity between the Flemish-speaking Flanders and the French-speaking Wallonia regions, not the acrimonious battles for which the Belgian federal system has become known.

<sup>95</sup> ICG interview, Erbil, 16 January 2004.

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<sup>96</sup> ICG interview, Salahuddin, 16 January 2004.

<sup>97</sup> ICG interview, Suleimaniyeh, 14 January 2004. The deputy head of the Kurdistan Islamic Union (whose leader, Salah al-Din Baha al-Din, is a member of the Interim Governing Council) likewise suggested that while Kirkuk is "a Kurdish city ... this does not necessarily mean that there should be a single Kurdish region that incorporates all these areas. There is the possibility of federalism at the level of districts or governorates in which mixed areas would form autonomous regions containing multiple sects and religions. We can learn a great deal from the Indian experience with federalism". ICG interview with Sami al-Atroushi, Baghdad, 28 January 2004.

<sup>98</sup> Mahmoud Othman, an unaffiliated member of the Interim Governing Council, said he had not heard of any possible Kurdish compromise on Kirkuk, stressing that the only concession he was aware of was the Kurdish willingness to postpone the Kirkuk question until the constitutional process in 2005. Othman's aide, Bakhtyar Amin, did agree that Talabani had positively referred to the Brussels model in the local press. ICG interviews, Baghdad, 20 January 2004. A senior KDP official in Baghdad, Safeen Dizayee, purported to represent his party's point of view when he asserted that, "We cannot give up Kirkuk". ICG interview, Baghdad, 12 January 2004.

governorate joining a Kurdish region.<sup>99</sup> Iyad al-Samarra'i, the deputy secretary-general of the Iraqi Islamic Party, whose leader, Mohsen Abd-al-Hamid, served as Interim Governing Council president in February 2004, agreed that a special status for Kirkuk city would be acceptable.<sup>100</sup> And Sobhi Sabir, the head of the Iraqi Turkmen Front in Kirkuk, allowed that a special status was conceivable -- that it could be "an international city under the central Iraqi government".<sup>101</sup>

In March 2004, however, matters appeared to be turning for the worse. On 21 March, Paul Bremer, meeting in Baghdad with a delegation of Kirkuk Arabs to hear their concerns about the deteriorating situation, suggested that a fact-finding mission examine security conditions and recommend how to reduce tensions. The visit came after the assassination on 15 March of Sheikh Agar al-Tawil, a member of the Kirkuk provincial council. The killing, said a CPA official, "accentuated Arab fears of intimidation and expulsion from Kirkuk". Sheikh Agar was the council's only Arab Shiite member and was regarded by Kurds as an Arabisation Arab. He had spoken up for the rights of Arabs and mediated land disputes between "new" Arabs and returning Kurds and Turkomans. "The assassination was a professional job", the official said, "widely believed by Arabs to have been carried out by Kurdish secret services".<sup>102</sup> Two ITF leaders also became targets of attack: the president, Farouq Abdullah, on 14 March and Sobhi Sabir, the head of the Kirkuk branch, five days later.<sup>103</sup>

As violence threatened to spiral, most remaining Arabs suspended their membership in the provincial council on 21 March, followed a week later by most Turkomans as well, leaving the council in the hands of its Kurdish and Assyro-Chaldean members, one Arab (the deputy governor, Ismail Hadidi) and one Turkoman (the chairman, Tahseen Ali). Turkoman council member Mustafa Yaishi said that he and his colleagues took the decision in light of the "lack of security and chaos that prevails", as well as the fact that the city was being "overwhelmed" by Kurds.<sup>104</sup>

#### IV. TOWARD AN HISTORIC COMPROMISE?

The Kurdish leadership's professed readiness to compromise on Kirkuk should be seen as evidence of the bona fides of its call for a federal solution to the wider Kurdish question in Iraq -- not as a stepping stone to independence but as an end in itself. The word "federalism", though, is code for separatism among Iraqi Arabs and in the Arab world more generally. By raising its banner, the Kurdish leadership faces -- and generates -- a good deal of mistrust, especially among those who hear the voices of the Kurdish street, read the headlines in the Kurdish papers and are subjected to the maximalist rhetoric of Kurdish leaders posturing in Baghdad. Although many express genuine sympathy for the Kurds' past plight and agree that steps must be taken to prevent a recurrence, they vehemently oppose the Kurdish agenda of self-rule, fearing it will put Iraq on the slippery slope toward break-up. A Shiite cleric said:

There is a great deal of truth to Kurdish claims about the past but federalism on a sectarian basis will unleash other claims, such as a claim to establish an Iraqi Turkmenistan or demands from other religious minorities such as the Assyrians and Chaldeans for their own federal districts. All this would serve to weaken and divide Iraq, and so we reject it.<sup>105</sup>

Others are adamant that the Kurdish question should be delayed until after general elections. "Current conditions in Iraq do not allow for a debate" on the form of the Iraqi state structure, declared an Arab politician. "In principle, we believe in a federal Iraq, but its details should be postponed until a legitimate and elected authority is in place that is able to settle this issue".<sup>106</sup>

<sup>99</sup> ICG interview, Baghdad, 7 January 2004.

<sup>100</sup> ICG interview, Baghdad, 10 January 2004.

<sup>101</sup> ICG interview, Kirkuk, 19 January 2004.

<sup>102</sup> According to the CPA official, "Kirkuk is central to the CPA's overall effort in Iraq". E-mail communication from Emma Skye, 22 March 2004.

<sup>103</sup> Statements of the ITF's U.S. representative, available at <http://www.yahoo.com/group/TURKMEN-MEDIA/>.

<sup>104</sup> "Turkmen quit northern Iraqi city council, say Kurds taking over", Agence France-Presse, in *Jordan Times*, 29 March 2004.

<sup>105</sup> ICG interview with Sheikh Abbas Ruba'i, media representative of the Muqtada al-Sadr movement, Baghdad, 20 January 2004. Likewise, Jasem Issawi, a representative of the Unified National Movement of Sheikh Ahmad al-Qubaysi, said that, "Kurdish demands for ethnically-based federalism will lead to similar demands for an Iraqi Turkmenistan and ... will also open the door to confessional federalism. The result will be Iraq's disintegration." ICG interview, Baghdad, 13 January 2004.

<sup>106</sup> ICG interview with Ali Abd-al-Amir, media representative of the Iraqi National Accord of Iyad Allawi, Baghdad, 29 January 2004. A similar view was expressed by

Theoretically, federalism is not the only way to guard against the potential abuses of a central government. A truly democratic government in Baghdad, with significant guarantees in the constitution and ample powers devolved to administrative units such as governorates, could in principle constitute sufficient protection for human and minority rights. "We believe that an Iraqi constitution that governs all Iraqis of all shades will be the true guarantor of the rights of the Kurds", said an Arab politician. "We also believe in the benefit of decentralisation and granting the eighteen governorates the freedom to administer themselves in a democratic, liberal and highly transparent fashion. Under a decentralised system, there will not be a problem of Kirkuk or otherwise."<sup>107</sup>

To add weight to the Kurdish leaders' declared readiness to compromise and further allay Arab fears of Kurdish secessionism, the PUK's Barham Salih said that federalism should be translated in Arabic not as *al-federaliyeh* but as *al-ittihadiyeh*, a term that stresses its unifying quality.<sup>108</sup> "Arabs and Kurds are condemned to live together", he asserted. "So we need to work together. But the Arabs have to understand our anxieties: Halabja is still with us, and chemical weapons are still with us". And, pointing at his desk: "We raise the Iraqi flag here. This is painful for us but it is necessary....This is the fight of our life".<sup>109</sup>

It might be prudent if the Kurds were to refrain from referring to federalism altogether, even as they strive to gain significant rights and protections in what can only be considered an advanced degree of autonomy. "Look at the Sudanese peace agreement", said one Kurdish leader. "It is much more advanced than what we are calling for -- it envisions the virtual independence of the South -- and they don't even

mention the word federalism!"<sup>110</sup> Preferring for now to stay vague on the degree of devolution and resource allocation they desire, Kurdish officials nonetheless have transmitted unequivocal signals that they are willing to give up the essential trappings of a state -- control over foreign and defence policy, its own standing army (the *peshmerga* militias) and exclusive control over Kirkuk oil -- as part of an overall deal.<sup>111</sup> But the notion of federalism will be difficult to give up now that expectations have been raised. Moreover, the leaders say, Kurdish aspirations go beyond the prevention of a recurrence of the tragic past to a formal and highly symbolic recognition of the Kurdish identity in Iraq. "Why do we want a Kurdish region? Because identity matters", said Safeen Dizayee of the KDP.<sup>112</sup>

The interim constitution (TAL) signed by the 25 members of the Interim Governing Council on 8 March 2004 enshrined the existence of a Kurdish region with a special status, as the Kurdish leaders had demanded of Paul Bremer in Salahuddin in early January. Formally, the TAL prescribes a federal system for Iraq that "shall be based upon geographic and historical realities and the separation of powers, and not upon origin, race, ethnicity, nationality, or confession" (Art. 4).<sup>113</sup> Nevertheless, it recognises a Kurdish region that is expressly defined on ethnic grounds and assigns it rights and powers. Its key points relevant to the Kurdish question are:

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Sheikh Muhammad Bashar al-Fidi, spokesman of the (Sunni Arab) Committee of Muslim Ulemas. ICG interview, Baghdad, 15 January 2004.

<sup>107</sup> ICG interview with Adel Taher, spokesman of the National Democratic Movement of Hatem Jasem Mukhlis, Baghdad, 20 January 2004. This was also the view of Jaber Habib Jaber, a (Shiite) professor of political science at Baghdad University. ICG interview, Baghdad, 13 January 2004.

<sup>108</sup> The authoritative Hans Wehr, *Dictionary of Modern Written Arabic*, translates *hukoumeh ittihadieh* as "federal government". The word *ittihad* in Arabic means "oneness" and "unity", and also "amalgamation", "merger" and "federation".

<sup>109</sup> ICG interview, Suleimaniyeh, 14 January 2004.

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<sup>110</sup> ICG interview, Baghdad, January 2004. A constitutional lawyer similarly remarked that if the Kurds "were to drop their use of the word federalism, they could still get everything they want". ICG interview, 19 March 2004.

<sup>111</sup> ICG interviews, January 2004. For example, PUK leader Jalal Talabani was quoted as expressing a new willingness to place the *peshmerga* under the authority of the central government. Rajiv Chandrasekaran and Robin Wright, "Iraq Militias Near Accord to Disband", *The Washington Post*, 22 March 2004. The reported Kurdish flexibility on sharing oil revenue may be explained by the fact that most of Iraq's oil reserves are in the south (mostly Rumailah) while those in the north are believed to be smaller and of lower quality. As long as the Kurds insist on claiming regional ownership of natural resources, they stand to miss any significant profits from the south. Moreover, said an Iraqi policy adviser, "repairs of the oil fields in the north require huge investments. These fields have simply been over-used. This is also the main reason why the Kurds need to stay within Iraq: They can't fix the oil sector in the north by themselves". ICG interview, 1 March 2004.

<sup>112</sup> ICG interview, Baghdad, 12 January 2004.

<sup>113</sup> The TAL is available at <http://www.cpa-iraq.org/government/TAL.html>.

- The Kurdistan Regional Government (KRG) continues to be the official government of the "territories that were administered by that government on 19 March 2003 in the governorates of Dohuk, Arbil, Sulaimaniya, Kirkuk, Diyala and Neneveh" (Art. 53A), and it will continue to exercise the functions it has performed so far, "except with regard to those issues which fall within the exclusive competence of the federal government", as specified by the TAL. The KRG retains control over its own police and internal security forces and the right to impose taxes within the region (Art. 54A). In sum, these articles recognise the political status quo as per the Kurdish demand for a Kurdish federal region.
- The central government will be exclusively responsible for disbursing revenue from Iraq's natural resources through the national budget, but only (1) in an "equitable manner proportional to the distribution of population throughout the country", and (2) "with due regard for areas that were unjustly deprived of these revenues by the previous regime, for dealing with their situations in a positive way, for their needs, and for the degree of development of the different areas of the country" (Art. 25E). This, in less convoluted words, takes away the Kirkuk oil revenue the Kurds had asked for but gives part of it back according to criteria that can hardly be measured objectively and do not apply to the Kurds alone.
- The boundaries of Iraq's eighteen governorates "shall remain without change during the transitional period" (Art. 53B). This means no reversal of the previous regime's gerrymandering of Kirkuk governorate during the transitional period, and therefore no return of Kurdish districts to Kirkuk in advance of the constitutional process in 2005.<sup>114</sup>
- Any group of more than three governorates outside the Kurdistan region, "with the exception of Baghdad and Kirkuk", have the right to amalgamate (Art. 53C). This article makes clear, *inter alia*, that Kirkuk governorate cannot be joined to the three Kurdish governorates during the transitional period.

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<sup>114</sup> Art. 58B mentions the previous regime's policy explicitly and asks the future transitional government to "make recommendations to the National Assembly on remedying these unjust changes in the permanent constitution".

- More explicitly, the TAL states (Art. 58C) that, "The permanent resolution of disputed territories, including Kirkuk, shall be deferred *until after* these measures [i.e., the reversal of Arabisation] are completed, a fair and transparent census has been conducted *and the permanent constitution has been ratified*" (emphasis added).<sup>115</sup> This indicates that even the permanent constitution may not offer the Kurds a federal region that incorporates Kirkuk. In other words, the Kirkuk question is not postponed just until the negotiations over a permanent constitution, but until that process has come to a successful end. The provision does grant the Kurds their long-standing request for a census to establish population sizes.

There are other interesting parts in the TAL that affect Kurdish interests. Briefly, they include:

- Kurdish will be one of Iraq's two official languages, along with Arabic (Art. 9). With its explicit recognition of Kurdish identity, this article is a major victory for Iraqi Kurds.
- The TAL guarantees "the administrative, cultural, and political rights of the Turcomans, Chaldo-Assyrians, and all other citizens" (Art. 53D).
- When elections are held to the National Assembly, as well as to governorate councils (no later than 31 January 2005), they must also be held simultaneously to the Kurdistan National Assembly (Art. 57B).

The joy of Kurdish leaders at the signing ceremony in Baghdad on 8 March 2004 over the explicit recognition of both Kurdish identity and the status quo in the north washed away any sorrow from the indefinite postponement of the Kirkuk question. Masoud Barzani exulted: "This is the first time we feel as Kurds that we are equal with others in this country, that we are not second-class citizens".<sup>116</sup>

Reactions from the Kurdish street and diaspora, as well as from Iraqi Arabs were quite different. Iraqi Shiites, in particular, took offence at the recognition of a federal Kurdish region and the apparent Kurdish veto over a permanent constitution. A leading Shiite

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<sup>115</sup> Moreover, such resolution must be "consistent with the principle of justice, taking into account the will of the people of those territories".

<sup>116</sup> Quoted in Dexter Filkins, "Iraq Council, With Reluctant Shiites, Signs Charter", *The New York Times*, 9 March 2004.



clergyman, Sayyid Muhammad Taqi al-Mudarrasi, said the provision giving the Kurds that veto could precipitate civil war,<sup>117</sup> while the radical cleric Muqtada al-Sadr called on Kurds "to come closer to their Muslim brothers and to remember their Islamic identity, which is more important than their Kurdish identity".<sup>118</sup> A Sunni Arab coalition, the Committee of Muslim Ulemas, had already condemned "geographic federalism established on the basis of sect" a few days before the TAL's signing, claiming it contravened Islam, "since Islam does not view the *umma* [Muslim community] on a sectarian or national basis, but on the basis of devotion to God".<sup>119</sup>

At the same time, much grumbling could be heard among Kurds, especially the younger generation, which after twelve years of separation has lost much affinity for Arabs, their culture and language. Today, few young Iraqi Kurds speak even passable Arabic. After the signing of the TAL, many clamoured for inclusion of Kirkuk and other oil-rich areas with Kurdish populations such as Khanaqin in the Kurdish region.<sup>120</sup> In Kirkuk itself, thousands of Kurds celebrated the signing as declaring the city returned to Kurdistan despite the postponement of the Kirkuk question, thus emphasising the gap between reality and a wished-for future.<sup>121</sup> In the diaspora, a pro-independence commentator accused the five Kurdish signatories of betrayal, "shutting their ears to the deceptive words of anti-Kurdish strategists who are adamant to cheat our people out of this historic moment and opportunity".<sup>122</sup>

Ultimately, the TAL was a significant compromise for the Kurds, despite their obvious gains. The formula on Kirkuk was a trade-off for recognition of a Kurdish region and the Kurdish language, and reflected the insight, according to a CPA official, that "the question of Kirkuk can only be addressed by an elected Iraqi government which represents all the people of Iraq".<sup>123</sup>

What the TAL left open and must still be negotiated as part of the constitutional process or afterwards was the nature of Iraqi federalism (including the number of federal regions), the boundaries of the Kurdish and other federal regions, and the distribution of powers between the centre and the regions. On all these, Kurdish officials displayed significant flexibility when interviewed, although none was prepared to be drawn into details at this early stage. All stressed, however, that the Kurds were committed to granting minorities living in their midst -- Turkomans, Arabs and Christians -- full protection for their rights, and they cited their record in the areas they have controlled over the past decade as proof of good faith.<sup>124</sup>

In order to facilitate the KRG's administration and deprive detractors of the argument that the Kurds, due to schisms and civil strife, are disqualified from establishing and running a separate federal region, the KDP and PUK moved to reunify that government (split in the mid-1990s).<sup>125</sup> "Because we are against the proposal of a federalism of eighteen

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<sup>117</sup> *Al-Zaman*, 22 March 2004.

<sup>118</sup> Quoted from wire dispatches, "Thousands protest against interim Iraqi constitution", *Daily Star*, 13 March 2004.

<sup>119</sup> He added: "We would attest to our Kurdish brothers that they were grievously harmed by the previous regime and their rights were confiscated. But we ask God to enable us and them to build a relationship of equality in the new Iraq". Sheikh Abd-al-Sattar Abd-al-Jabbar, member of the Shura Council of the Committee of Muslim Ulemas, *Al-Zaman*, 25 February 2004.

<sup>120</sup> ICG interviews with students at Suleimaniyeh University, 15 January 2004; Borzou Daragahi, "Kurds say they deserve more rights, land, autonomy", *Washington Times*, 16 March 2004.

<sup>121</sup> Peter Beaumont, "Premature rejoicing in Kirkuk", *Guardian*, 9 March 2004.

<sup>122</sup> The writer also challenged the five Kurdish leaders' right to sign the TAL: "Five people appointed by Americans on an Arab-dominated illegitimate Governing Council do not have the right to sign something that overrides two million signatures of Kurdish people who have suffered from Anfal and genocide". Kamal Mirawdeli, "Danger bells ring: Just

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listen to our people's demand for a referendum"!, 6 March 2004, available at <http://www.kurdishmedia.com>.

<sup>123</sup> ICG interview, March 2004.

<sup>124</sup> The Iraqi Turkmen Front was not pleased with the TAL and organised protests in Baghdad prior to its signing. One official was quoted as saying, "this is not a victory but a failure....We don't want to be taken as a minority. We are one of the main ethnic constituents of Iraq. We will continue seeking our rights". Sadettin Mohamed cited in *Turkmen News*, 3 March 2004, available at <http://groups.yahoo.com/group/TURKMEN-MEDIA>. Demonstrations also took place in support of Turkoman rights in Kirkuk on 29 February. "Kirkuk celebrations leave one dead, ten wounded", *Agence France-Presse*, in *Daily Star*, 1 March 2004. A week later, 8 March 2004, Kurdish celebrations over the signing of the interim constitution led to renewed clashes in Kirkuk in which two persons were reported killed. *Iraqi Press Monitor*, 10 March 2004, quoting the daily *Al-Mada*, available at: <http://www.iwpr.net>.

<sup>125</sup> KRG reunification was part of the U.S.-brokered 1998 Washington Agreement between the two parties, but not implemented at the time. Discussions about reunification were resumed in summer 2002.

governorates, we could not be seen to have two separate governments in [the three governorates of] Kurdistan", said the PUK's Adnan Mufti, explaining the most recent impetus to merge the administrations in Erbil and Suleimaniyeh.<sup>126</sup> On 13 January 2004, the parties agreed to merge first the "service" ministries such as education, health, justice, and municipalities, under a prime minister appointed by the KDP and to reactivate the Kurdistan National Assembly with a PUK appointee as speaker. It was also agreed to keep security (interior ministry and *peshmerga*) and economic planning (including the budget) separate at least in 2004 -- in other words, a trial kiss-and-make-up.<sup>127</sup>

As part of the intended reunification, the parties discussed general elections inside the Kurdish region. The idea, since enshrined in the TAL as an obligation to be fulfilled by 31 January 2005, was received with mixed enthusiasm. It apparently had most support among the PUK, perhaps because in another pre-reunification trial run -- student elections in late 2003, when the parties agreed for the first time to compete in each other's areas -- the PUK did better than expected, especially in Erbil where the KDP had expected to win big.<sup>128</sup> There is no question that a

certain hunger for direct elections exists among the Kurds, who have not had the opportunity to select their leaders (except through limited intra-party contests) since May 1992.<sup>129</sup> Given the generational shift over the past twelve years and popular resentment, especially among the youth, over KDP/PUK domination and undemocratic tendencies, direct parliamentary elections might bring a significant shift to younger politicians who lack the political baggage of the two "mother" parties of the Kurdish movement.<sup>130</sup> The PUK-KDP coalition government could end, with one of the two taking power, either alone or in coalition with smaller parties, and the other going into opposition.<sup>131</sup>

Some have expressed doubt about either party's intent to consummate the reunification agreement or about the durability of a reconstituted KRG, given the continuing animosity between KDP and PUK and

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ensure the elections were democratic. Democracy cannot be taken for granted". ICG interviews, Erbil, 16 January 2004.

<sup>129</sup> "People want elections to the Kurdish parliament", said the deputy editor of the independent weekly *Hawlati*. "It has been twelve years. The situation has changed. Children have grown up and want to vote. Those in the Kurdistan National Assembly have no popular backing. People want a direct election to parliament, not an indirect one via party lists". He also said that the human rights situation in the Kurdish areas had improved since the end of the war. The fall of the Ba'ath regime had led the parties to lighten their touch in the face of steady dissent and criticism of their conduct in governing the territories under their control. "Nichervan [Barzani, the KDP prime minister] used to complain that we [at *Hawlati*] published only the bad news, for example concerning arrests. Now they don't say anything anymore. The security services used to summon us to Salahuddin, but we would refuse to go: You didn't know if you'd come back! This is over now". ICG interview with Rebin Rasul Ismail, Erbil, 16 January 2004. A journalist in Suleimaniyeh said, "we can poke fun at everything and everyone. Except Mam Jalal [Jalal Talabani]". ICG interview, 15 January 2004.

<sup>130</sup> "There should be direct (*da'iri*) elections", said Adnan Mufti, one of the younger leaders in the PUK. "This will bring diversification in the parliament. It would also be good for the parties themselves, because only the best will be chosen. If the decision is to hold indirect (*nisbi*) elections, via party lists, then at least the threshold should be lowered to 1 per cent, not the 7 per cent that we had in 1992 that prevented all the other parties from entering parliament. But I strongly prefer direct elections". ICG interview, Erbil, 16 January 2004.

<sup>131</sup> "Even if the KDP were to win new elections, we still believe in the need for a coalition-based KRG", said Safeen Dizayee. "We will need a coalition until such a time as there is full democracy and the parties are able to accept defeat and be in the opposition". ICG interview, Baghdad, 12 January 2004.

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<sup>126</sup> ICG interview, Erbil, 16 January 2004. Adnan Mufti was seriously injured in the suicide bombing of the PUK headquarters in Erbil on 1 February 2004.

<sup>127</sup> At this meeting, the KDP was presented by Sami Abd-al-Rahman, Nichervan Barzani (the KDP's prime minister) and other officials, and the PUK by Omar Said Ali (a senior member of the political bureau), Barham Salih and other officials. Professional associations have also started to merge, and the parties have re-opened offices in each other's territory.

<sup>128</sup> Elections were held at secondary schools and universities in the governorates of Dohuk, Erbil and Suleimaniyeh. In Dohuk, a KDP stronghold, the PUK student organisation withdrew, over the protests of senior PUK officials, claiming KDP pressure; in response, the KDP withdrew in Suleimaniyeh, a PUK stronghold. In Erbil, where competition between the two parties is strongest, the PUK says the KDP won at nine secondary schools and the PUK at eight (with two ties and one unclear result), while at the local university, the PUK won in some departments but the KDP in more. Overall, said Adnan Mufti, the PUK did better in Kurdistan than the KDP had expected. The latter "were very upset about the results, especially in the secondary schools in Erbil, because the PUK was new here and had not been expected to do well". The KDP's Sami Abd-al-Rahman said the elections had "not [been] a good exercise", and the KDP had collected 55 per cent of the votes in Erbil against the PUK's 30 per cent and the Islamists' 15 per cent. He said the KDP had won at the university but he did not know about the schools, and added ruefully: "More precautions should have been taken to

between some who live under their respective control.<sup>132</sup> "Two men began this fight", said a Kurdish commentator, "Ibrahim Ahmad and Mustafa Barzani [respectively, the founders of the PUK and KDP], and it will end only at the end of time".<sup>133</sup> But the Kurdish leaders themselves say they see matters differently. Nowshirwan Mustafa of the PUK readily accepted that there was no love lost between the two parties but, he said, "love is the stuff of boys and girls. We don't need confidence and mutual trust. We have found a common national interest: We now have a shared vision of our relationship with the centre, the development of the Kurdish region, and our relations with neighbouring states".<sup>134</sup> The KDP's Falak al-Din Kaka'i agreed: "The situation between the two parties is a lot better than before. Of course, there are differences, as there are between all parties, but there is no longer any strife between us. We now have a common vision of federalism".<sup>135</sup>

Speaking with one voice on fundamental matters affecting the Kurdish national interest, the KDP and PUK leaders now face two inter-linked challenges: to convince their non-Kurdish counterparts that their declared readiness to compromise on the most hotly contested issues is sincere, and to convince their own public that lowering the aspirations that have driven the Kurdish national movement until now is both wise and necessary. If they succeed, they will give a significant boost to chances that peace will come at last to Iraqi Kurdistan.

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<sup>132</sup> Competition for administrative control remains fierce between the two parties in such critical areas as Kirkuk, where new positions became available as part of de-Arabisation. ICG interview with an international observer, March 2004.

<sup>133</sup> ICG interview, Suleimaniyeh, 15 January 2004. Ibrahim Ahmad was the mentor of PUK leader Jalal Talabani, who is married to his daughter, Herow Ibrahim. Masoud Barzani is Mustafa Barzani's son. For a history of the Kurdish national movement, see David McDowall, *A Modern History of the Kurds* (London, 2000).

<sup>134</sup> ICG interview, Suleimaniyeh, 15 January 2004.

<sup>135</sup> ICG interview, Salahuddin, 16 January 2004.

## V. CONCLUSION

The Kurdish leadership, queried outside the glare of a politicised Baghdad and a mobilised Kurdish base, has expressed what should be understood as a genuine wish to settle the Kurdish question peacefully and fairly within a unitary Iraq. That will entail meaningful steps by other Iraqi groups. Kurdish leaders cannot be faulted for seeking the best protections for the people they represent, who have been victims of systemic discrimination and, on occasion, mass murder at the hands of central governments that exercised power without meaningful checks, internal or external, for decades. The Kurds also deserve redress for past wrongs, especially the policy of Arabisation; information about loved ones lost during the Anfal counter-insurgency campaign and sundry serial executions; and compensation for survivors.

At the same time, the Kurdish leaders, now that they have landed in a position of dominance in a significant portion of Iraq and have a virtual veto over the constitutional process, should moderate their public voice, articulate their reasonable bottom line and inform the Kurdish public of what they consider to be the maximum realistic solution to the Kurds' historic predicament. Although such an approach might create a shock and possible backlash among the Kurdish population, postponing the revelation of an historic compromise until the moment a deal is sealed could trigger an even worse reaction. For the moment, the KDP and PUK command majority support among the Kurdish population; they should use the significant credit they accumulated during the years of struggle for national liberation to convince their followers now of the wisdom of their decision. This is critical to instilling confidence among Kurds about the political transition and trust among non-Kurds in Kurdish intentions during the important negotiations to come.

Ultimately, a durable settlement of the Kurdish question will almost certainly need to include an autonomous Kurdish region that:

- shares its natural resources with the rest of the country (and in turn benefits from Iraq's natural resources on an equitable basis as part of the national budget);
- disbands its militias once such a settlement is reached (or rolls them into Iraqi national security forces);

- agrees to a special status for Kirkuk that places it administratively outside the federal Kurdish region (or any other federal region) but recognises fully the rights of the Kurdish population of the city and governorate; and
- provides solid guarantees to minorities that the rights of their communities as well as of individual members will be fully protected.

For their part, Iraqi Arab parties and politicians should publicly recognise the past injustices inflicted upon the Kurds, pledge to provide lasting guarantees against their recurrence, and negotiate in good faith for a settlement that will create an autonomous Kurdish region in a unitary Iraq that will have no appetite, indeed no reason, ever again to contemplate parting ways.

None of this will come to pass without the active engagement of the U.S. and UK -- the occupying powers until 30 June and the most influential outside powers beyond that date -- and more broadly the international community in the form of the UN. The Kurdish question, and the Kirkuk quandary in particular, have been important concerns for the CPA. Its stewardship of the volatile city and governorate has prevented the sorts of scenes that other parts of Iraq have witnessed since the beginning of April.

But if the U.S.-designed political transition comes unstuck in the face of continuing Sunni alienation and insurgency and escalating Shiite discontent, Kurdish leaders may alter their stance. If they sense that the chance for an acceptable form of Kurdish autonomy within a unitary Iraq is receding in all-engulfing chaos, they will seek to rescue the gains the Kurds have made since 1991. In extricating themselves from the weakening Iraqi embrace, they may deploy the *peshmerga* to take the territories they claim as theirs over the objections of Kirkuk's other communities and declare, if not an independent Kurdish state, at least a continuation of the self-rule to which they have

grown accustomed. Such a development would likely trigger a vigorous Turkish response. Management of the subsequent regional conflict would require all the diplomatic skill, and possibly military muscle, the international community could muster.

Even if things calm down in Iraq and the political transition proceeds more or less according to plan, however, the Kurdish question will require active international engagement. So much could still go wrong. Only credible outside actors can keep apart suspicious communities that, if left to their own devices, are bound to lunge at each other's throats -- through assassinations and protest marches at first, but eventually through communal war if no one is prepared to contain it.

The UN has been largely absent from Iraq's reconstruction since the bombing of its Baghdad headquarters in August 2003. The recent forays by Special Envoy Lakhdar Brahimi and technical teams offer some hope that there may be full re-engagement once the occupation formally ends. The UN will have to make a special and vigorous effort to manage the creation of a viable autonomy within a federal Iraq. In particular, it should make available senior staff with the requisite experience and expertise to shepherd the negotiations between the Kurds and the central authorities, help organise and supervise regional elections early in 2005, carry out a census in the area, and provide a blueprint for a workable solution to the status of Kirkuk.

Moreover, the U.S. will have to send a dual message to the Kurdish leadership and people. It should make unequivocally clear that it will not support an independent Kurdistan. In exchange, though, it should pledge to do everything in its power to bring about Kurdish autonomy in Iraq with rights and protections for the Kurds that are acceptable to the Kurdish leadership.

**Amman/Brussels, 8 April 2004**

## APPENDIX A

### MAP OF IRAQ





## APPENDIX B

### MAP OF IRAQI KURDISTAN



## APPENDIX C

### ABOUT THE INTERNATIONAL CRISIS GROUP

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The International Crisis Group (ICG) is an independent, non-profit, multinational organisation, with over 100 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

ICG's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, ICG produces regular analytical reports containing practical recommendations targeted at key international decision-takers. ICG also publishes *CrisisWatch*, a 12-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

ICG's reports and briefing papers are distributed widely by email and printed copy to officials in foreign ministries and international organisations and made generally available at the same time via the organisation's Internet site, [www.crisisweb.org](http://www.crisisweb.org). ICG works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The ICG Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring ICG reports and recommendations to the attention of senior policy-makers around the world. ICG is chaired by former Finnish President Martti Ahtisaari; and its President and Chief Executive since January 2000 has been former Australian Foreign Minister Gareth Evans.

ICG's international headquarters are in Brussels, with advocacy offices in Washington DC, New York, London and Moscow. The organisation currently operates thirteen field offices (in Amman, Belgrade, Bogotá, Cairo, Freetown, Islamabad, Jakarta, Kathmandu, Nairobi, Osh, Pristina, Sarajevo and Tbilisi) with analysts working in over 40 crisis-affected countries and territories across four continents. In Africa, those countries include Burundi, Rwanda, the Democratic Republic of the Congo, Sierra Leone, Liberia, Guinea,

Ethiopia, Eritrea, Somalia, Sudan, Uganda and Zimbabwe; in Asia, Indonesia, Myanmar, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan, Pakistan, Afghanistan, Kashmir and Nepal; in Europe, Albania, Bosnia, Georgia, Kosovo, Macedonia, Moldova, Montenegro and Serbia; in the Middle East, the whole region from North Africa to Iran; and in Latin America, Colombia.

ICG raises funds from governments, charitable foundations, companies and individual donors. The following governmental departments and agencies currently provide funding: the Australian Agency for International Development, the Austrian Federal Ministry of Foreign Affairs, the Canadian Department of Foreign Affairs and International Trade, the Canadian International Development Agency, the Dutch Ministry of Foreign Affairs, the Finnish Ministry of Foreign Affairs, the French Ministry of Foreign Affairs, the German Foreign Office, the Irish Department of Foreign Affairs, the Japanese International Cooperation Agency, the Luxembourgian Ministry of Foreign Affairs, the New Zealand Agency for International Development, the Republic of China Ministry of Foreign Affairs (Taiwan), the Royal Danish Ministry of Foreign Affairs, the Royal Norwegian Ministry of Foreign Affairs, the Swedish Ministry for Foreign Affairs, the Swiss Federal Department of Foreign Affairs, the Turkish Ministry of Foreign Affairs, the United Kingdom Foreign and Commonwealth Office, the United Kingdom Department for International Development, the U.S. Agency for International Development.

Foundation and private sector donors include Atlantic Philanthropies, Carnegie Corporation of New York, Ford Foundation, Bill & Melinda Gates Foundation, William & Flora Hewlett Foundation, Henry Luce Foundation Inc., John D. & Catherine T. MacArthur Foundation, John Merck Fund, Charles Stewart Mott Foundation, Open Society Institute, Ploughshares Fund, Sigrid Rausing Trust, Sasakawa Peace Foundation, Sarlo Foundation of the Jewish Community Endowment Fund, the United States Institute of Peace and the Fundação Oriente.

**April 2004**

## APPENDIX D

### ICG REPORTS AND BRIEFING PAPERS\*

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#### AFRICA

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##### ALGERIA\*\*

*The Civil Concord: A Peace Initiative Wasted*, Africa Report N°31, 9 July 2001 (also available in French)

*Algeria's Economy: A Vicious Circle of Oil and Violence*, Africa Report N°36, 26 October 2001 (also available in French)

##### CENTRAL AFRICA

*From Kabila to Kabila: Prospects for Peace in the Congo*, Africa Report N°27, 16 March 2001

*Burundi: Breaking the Deadlock, The Urgent Need for a New Negotiating Framework*, Africa Report N°29, 14 May 2001 (also available in French)

*International Criminal Tribunal for Rwanda: Justice Delayed*, Africa Report N°30, 7 June 2001 (also available in French)

*Disarmament in the Congo: Investing in Conflict Prevention*, Africa Briefing, 12 June 2001

*Burundi: 100 Days to Put the Peace Process Back on Track*, Africa Report N°33, 14 August 2001 (also available in French)

*"Consensual Democracy" in Post Genocide Rwanda: Evaluating the March 2001 District Elections*, Africa Report N°34, 9 October 2001

*The Inter-Congolese Dialogue: Political Negotiation or Game of Bluff?* Africa Report N°37, 16 November 2001 (also available in French)

*Disarmament in the Congo: Jump-Starting DDRRR to Prevent Further War*, Africa Report N°38, 14 December 2001

*Rwanda/Uganda: A Dangerous War of Nerves*, Africa Briefing, 21 December 2001

*Storm Clouds over Sun City: The Urgent Need to Recast the Congolese Peace Process*, Africa Report N°38, 14 May 2002 (also available in French)

*Burundi: After Six Months of Transition: Continuing the War or Winning the Peace*, Africa Report N°46, 24 May 2002 (also available in French)

*The International Criminal Tribunal for Rwanda: The Countdown*, Africa Report N°50, 1 August 2002 (also available in French)

*The Burundi Rebellion and the Ceasefire Negotiations*, Africa Briefing, 6 August 2002

*Rwanda at the End of the Transition: A Necessary Political Liberalisation*, Africa Report N°53, 13 November 2002 (also available in French)

*The Kivus: The Forgotten Crucible of the Congo Conflict*, Africa Report N°56, 24 January 2003

*A Framework for Responsible Aid to Burundi*, Africa Report N°57, 21 February 2003

*Rwandan Hutu Rebels in the Congo: a New Approach to Disarmament and Reintegration*, Africa Report N°63, 23 May 2003 (also available in French)

*Congo Crisis: Military Intervention in Ituri*, Africa Report N°64, 13 June 2003

*The International Criminal Tribunal for Rwanda: Time for Pragmatism*, Africa Report N°69, 26 September 2003

*Refugees and Displaced Persons in Burundi – Defusing the Land Time-Bomb*, Africa Report N°70, 7 October 2003 (only available in French)

*Réfugiés et Déplacés Burundais: Construire d'urgence un Consensus sur le Rapatriement et la Réinstallation*, Africa Briefing, 2 December 2003

##### HORN OF AFRICA

*God, Oil & Country: Changing the Logic of War in Sudan*, Africa Report N°39, 28 January 2002

*Capturing the Moment: Sudan's Peace Process in the Balance*, Africa Report N°42, 3 April 2002

*Somalia: Countering Terrorism in a Failed State*, Africa Report N°45, 23 May 2002

*Dialogue or Destruction? Organising for Peace as the War in Sudan Escalates*, Africa Report N°48, 27 June 2002

*Sudan's Best Chance for Peace: How Not to Lose It*, Africa Report N°51, 17 September 2002

*Ending Starvation as a Weapon of War in Sudan*, Africa Report N°54, 14 November 2002

*Salvaging Somalia's Chance for Peace*, Africa Briefing, 9 December 2002

*Power and Wealth Sharing: Make or Break Time in Sudan's Peace Process*, Africa Report N°55, 18 December 2002

*Sudan's Oilfields Burn Again: Brinkmanship Endangers The Peace Process*, Africa Briefing, 10 February 2003

*Negotiating a Blueprint for Peace in Somalia*, Africa Report N°59, 6 March 2003

*Sudan's Other Wars*, Africa Briefing, 25 June 2003

*Sudan Endgame* Africa Report N°65, 7 July 2003

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*CrisisWatch* is a 12-page monthly bulletin providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world. It is published on the first day of each month, as of 1 September 2003.

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\* The Algeria project was transferred from the Africa Program to the Middle East & North Africa Program in January 2002.

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