

# NON - PAPER

## **Referendum on the Future of “Kirkuk and other Disputed Territories”**

At a minimum all referenda must meet three basic criteria:

1. *equal participation*: all groups must have an equal influence in the result;
2. *informed participation*: all individuals must have a basic understanding of the issues;
3. *minority protection*: no referendum may threaten recognized civil and political rights

### ***Necessary Pre-conditions for a Credible Referendum***

With regard to planning for a successful referendum on Kirkuk and other disputed territories there are four key questions which must be answered. The Constitution does not provide sufficient clarity. The answers to these questions are political and highly controversial as they would largely determine the outcome of such referenda. Who (CoR) and how (by law) would these answers be determined?

1. What is the question to be voted on by the electorate? This requires clarification and agreement of the Constitutional language providing for “a referendum in Kirkuk and other disputed territories to determine the will of their citizens<sup>1</sup>.”
  - a. Is the question simply a ‘yes’ or ‘no’ to becoming part of the Kurdistan Region, or
  - b. Could the question have other options such as “would you prefer Kirkuk have special status”?
2. What is the definition of “Disputed Territories? Neither the term “disputed” nor “territory” has been defined in the Constitution.
  - a. What is the definition of “disputed territories?”
  - b. What in fact makes a “territory,” e.g., Governorate, District, Sub-district?
  - c. What is meant by “Kirkuk”, the city of Kirkuk or the governorate of Kirkuk? And, what would be the accepted boundaries for the city and/or governorate of Kirkuk? The present boundaries or pre-Saddam boundaries? There are a number of pre-Saddam boundaries to choose from.
  - d. Who decides what is “disputed” or what is a “territory”? Is there a threshold percent to decide?
3. Who will be the electorate that votes? A voters’ register must be created for such referenda and that process cannot begin until the basic criteria of who will vote is agreed. (Note that a census is not essential for preparing a voter register).

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<sup>1</sup> Article 140 (2). This Article must be read together with Articles 53 and 58 of the TAL.

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- a. What are the voter eligibility criteria? Article 140(2) says “citizens,” how is that to be defined? Residency requirements?
  - b. Where will voters be assigned to cast their ballot? What will be the geographical or administrative boundaries for the vote? National, governorate, district, sub-district? This must also be decided before a voter registry can be created for a referendum.
4. What will be the threshold for passage of a referendum? Agreement must also be reached on the threshold for declaring a referendum successful. For example, will there be a required % of voter turnout? Followed by what % of positive/negative votes will be needed? 50%? 55%? 67%?

### *Necessary Pre-conditions for an Effective UN Involvement*

In addition, the UN role in a referendum on the future of Kirkuk and the disputed territories, if any, must be clarified. Presently, the UN has received no formal request from the Government or affected parties to participate in either the process leading up to the referendum or the actual referendum event. In fact, the Kurdistan Regional government appears hostile to a UN role in the referendum. Also, the affected Arab communities might oppose any UN referendum, fearing a UN sanction of what they see as land grab.

The UN must take into account the wishes of its member states. Virtually all neighboring countries are hostile to the “Kirkuk referendum” and hence might oppose a UN involvement in the referendum. In particular, Turkey has openly expressed its strong opposition to a UN role fearing that such a referendum would be the first step to dividing Iraq. In addition, the EU has called for the referendum to be postponed.

Therefore, for any direct UN involvement there are four necessary pre-conditions:

- A political process to determine clear answers to the four questions that were raised above;
- A clear definition of the role of the UN in the referendum process;
- The agreement of all Iraqi parties to the UN playing such a role including official requests from the federal and regional governments; and
- The support for a UN role from the international community including from Iraq’s neighbors.

Irrespective of any decision about UN involvement, the UNAMI plans to continue technical advice and assistance to the IECI/IHEC which is empowered to administer the referendum in Kirkuk and the disputed territories.

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5 March 2007