

Obstacles and Options in Baghdad-Erbil Negotiations

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The recent decisions of the Iraqi Federal Court regarding the direct payment of civil servants’ salaries in the Kurdistan Region of Iraq (KRI) and the abolition of minority quota seats, alongside the division of the KRI into at least four electoral areas (<https://www.reuters.com/world/middle-east/iraqi-kurdish-kdp-says-it-will-boycott-regional-election-2024-03-18/>), have rekindled the debate about federalism in Iraq and the future of Baghdad-Erbil relations. These decisions highlighted the urgent need for a decisive defining of this relationship, which has seen numerous ebbs and flows since the ratification of the Iraqi constitution in 2005. Despite the challenges to the legitimacy of this court, its decisions were based on the constitutional paragraphs that defined the court's powers, specifically section two, four, and five of Article 93 of the Iraqi Constitution, in addition to Article 94, which concluded that the decisions of the Federal Court are final and binding for all authorities.

Examining the areas of conflict between the federal government and the Kurdistan Regional Government (KRG), it is clear that there is a widening rift between Baghdad and Erbil. By finding lasting solutions in coordination with both parties, relations can be mended and the gridlock and animosity that is crippling cooperation between the two parties can be put to an end.

The delay in legislating the oil and gas law : This law regulates the relationship between Baghdad and Erbil in the context of oil and gas extraction, marketing, and investment in the KRI. Each party views the oil and gas revenues as a critical economic resource under their purview. Baghdad insists that the national oil marketing company (SOMO) should market Kurdistan's oil, while Erbil objects to this. Many officials and observers take issue with the federal claim by emphasizing that the constitution mentions “the management of oil and gas extracted from *current* fields” (existing in 2005), while Kurdistan's fields appeared after 2005, and are therefore not included. Disagreements over

revenues are just one aspect; there is also a dispute over the management (exploration, extraction, and marketing) of oil fields in KRI territory, although Article 112 of the constitution defines the joint responsibility of the federal government and the regional government for investing oil in the regions of the region, and distributing the revenues to all provinces of Iraq, in proportion to their population distribution.

The federal government in Baghdad seeks a real and effective presence in KRI oil fields to monitor their actual production and marketing plans, something the KRG considers an infringement of its constitutional rights. In order to mediate this dispute, outside specialization is likely needed; there is a need to consult the opinion of an international technical committee specialized in energy affairs to establish mechanisms for exploring, extracting, and marketing oil and gas jointly between Baghdad and Erbil. Bringing in an outside perspective that can provide a professional and middle-ground solution is the most likely path to satisfying all parties. A committee's recommendations can help establish a unified oil and gas law in Iraq.

The delay in legislating the customs law: this law regulates customs operations and resources between Baghdad and Erbil at the border crossings and airports located in the KRI. Article 114 of the constitution defined the joint powers between the federal government and the regional government in managing the KRI's customs. Although Erbil agreed to hand over half of the customs revenues to Baghdad in 2020, there is a constant tug-of-war due to the lack of trust between the two parties. In contrast to the question of oil and gas, the answer to this issue is more likely the formation of an Iraqi committee, albeit with the inclusion of international experts, to study the customs systems in federal countries and derive the most suitable for organizing customs between the federal government and the region. With a better understanding of these federal models, a judicial Iraqi committee will legislate the customs law based on the decisions of the mentioned committee.

Overseeing the salaries of civil servants in the KRI: A persistent point of contention between the two sides has been the payment of public sector employees in the KRI. Previously, the federal government would provide loans to the KRG, relying on the regional government to distribute salaries to state employees. Baghdad feels that there are phantom employees receiving salaries from the federal government, hence it demands increased control over salaries of the region's employees to uncover the real number of employees. Many civil servants in the KRI, who have gone months without payment, lauded the Federal Court's decisions. However, the regional government has strongly condemned it, considering it an infringement of its constitutional rights and an overreach of federal authority. One option to address this issue could be the establishment of a federal bank in Erbil where all salaries of the region's employees are deposited. The bank could then transfer the salaries to the employees' accounts after receiving work continuation notices from their institutions.

The disputed territories: These disputed areas (<https://epc.ae/en/details/featured/disputed-territories-in-iraq-security-dilemma-and-geopolitics>) form a strip of land extending from the Iraqi-Syrian border to the Iraqi-Iranian border. This strip is 1000 kilometers long and covers an area of 37,000 square kilometers. It includes important oil and gas wealth, specifically in Kirkuk province, which makes control of these provinces even more consequential. The Kurdish parties dream of annexing Kirkuk to the KRI due to its potential as a vital economic base, while many leaders in Baghdad insist that Kirkuk be part of Iraq proper to strengthen Iraqi unity and deprive Kurdish parties of such leverage.

Although Article 140 (https://www.constituteproject.org/constitution/Iraq_2005#s859) of the Iraqi constitution affirmed the responsibility of the executive authority to "undertake the necessary steps to complete the implementation of the requirements of all subparagraphs of Article 58 of the Transitional Administrative Law," as that authority must "accomplish completely (normalization and census and concludes with a referendum in Kirkuk and other disputed territories to determine the will of their citizens), by a date not to exceed the 31st of December 2007," this has not yet been achieved due to complex political and security considerations.

The fate of oil-rich Kirkuk and other disputed territories has caused a rift not only on the national level but also within the KRG; the two main Kurdish parties, the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK) both desire to control Kirkuk for its resources and cultural significance. Such an issue must be addressed by examining the disputed regions at a granular level. One potential solution is dividing the disputed areas into eight regions to conduct separate statistics and referendums, for each region to decide its geographical and administrative affiliation by the majority of its population. Given the political sensitivity and complexity of such an approach, this would require international moderation through the supervision of the United Nations and international organizations.

Political disputes between the PUK in Sulaymaniyah and the KDP in Erbil and Dohuk : Baghdad-Erbil

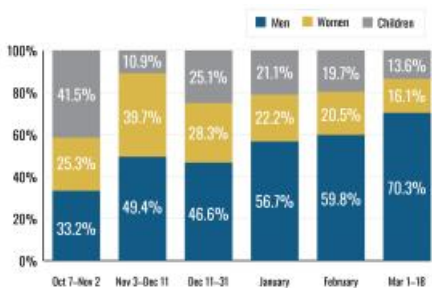
negotiations have been complicated by the exaggerated political competition between the two parties over local and federal positions, largely as a result of the Kirkuk crisis in 2017. Moreover, there are signs of mistrust in managing the border crossings that fall within the geographical scope of both parties, as well as the failure to unify the Kurdish forces (Peshmerga) and the stance towards the Kurdistan Workers' Party (PKK). This political infighting and lack of coordination greatly weaken the region's negotiating position with the federal government in Baghdad in a way that may lead the latter to deal separately with both parties and divide the region's share of the financial budget between them.

Therefore, the regional government must realize that solving disputes with Baghdad starts from resolving issues between Erbil and Sulaymaniyah first, as Baghdad wants to rely on a unified Kurdish stance to resolve the controversial issues. Sulaymaniyah must also realize that weakening the KRG will lead to dire consequences for the entire region. Hence, there is no option for both parties but to resolve the existing problems between them once and for all. The bright side is that solutions to these issues are feasible as long as there is a focus on drawing a common Kurdish vision that ensures the prosperity of the region and building a healthy relationship with Baghdad within a federal Iraq. If the two sides acquiesced, an Iraqi expert committee—in conjunction with members from the international coalition against ISIS, members from the KDP, PUK, and other Kurdish parties—can help settle the internal disputes that currently divide them.

The bureaucratic obstacles entrenched in the federal government: For its part, Baghdad's bureaucracy complicates its dealings with the KRG, as there are several federal entities that decide the nature of the relationship with Erbil—including the Ministry of Oil, the Ministry of Finance, the Central Bank, the Ministry of Defense, and the Prime Minister's office. This requires the government of PM Mohammed Shia' Al Sudani to form a specialized federal authority to manage the affairs of the regions entirely as outlined by the Iraqi constitution, ensuring that the federal ministries do not succumb to political or personal considerations in dealing with the region's issues.

The process of organizing relations between the federal government in Baghdad and the KRG within a constitutional framework requires a significant period of time. However, laying out the most critical points of negotiation—as well as the internal barriers to these negotiations—is a key step in understanding the future of Baghdad-Erbil relations. It is critical for all parties to recognize that joint concessions, flexibility in negotiations, acceptance of the opinions of professional international technical committees on controversial issues, the role of Washington in bridging views, and the role of international organizations in providing technical and advisory support to Baghdad and Erbil, all are accelerators for the nation's partners in building a prosperous federal Iraq. All these steps require political will and the acknowledgement that solving these issues—in spite of the compromise they require—is an urgent necessity. Otherwise, inaction on these files and an inability for Erbil and Baghdad to solve their internal issues will bear negative consequences for all. ❖

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