



PEACE NEGOTIATIONS  
POST-CONFLICT CONSTITUTIONS  
WAR CRIMES PROSECUTION

# LOCALIZED POWER-SHARING AGREEMENTS

## Legal Memorandum

Prepared by the

**Public International Law & Policy Group**

## **LOCALIZED POWER-SHARING AGREEMENTS**

### **Executive Summary**

The purpose of this memorandum is to identify and analyze, through comparative state practice, the effects of localized power-sharing agreements within conflict zones.

Through exploring four examples of city, provincial, and regional level power-sharing agreements, this memorandum discusses the positive and negative implications of local power-sharing on the communities they affect. Each example touches upon different concerns related to localized power-sharing arrangements, including civilian involvement, national level politics, and international intermeddling.

All of the power-sharing examples discussed in this memorandum failed to bring unified peace to the communities involved in the long term. However, some were successful in bringing cohesion to their communities in the short term. This was accomplished by allowing for the maintenance of a healthy public sector with a well-defined integration plan and by involving local civilian community leaders in power-sharing decisions. The long-term failure of each of the agreements discussed in the memorandum resulted from volatile national-level conflicts within which each agreement was forged and, in some cases, the unwavering stances of some regional leaders due to national and international influence.

The following state practice examples can serve as guidelines and warnings for all future local-level power-sharing agreements, but any localized power-sharing agreement will ultimately need to be tailored to the community it is set to serve.

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## LOCALIZED POWER-SHARING AGREEMENTS

### Statement of Purpose

The purpose of this memorandum is to identify and analyze, through comparative state practice, the effects of localized power-sharing agreements within conflict zones.

### Introduction

The Syrian Democratic Forces (“SDF”) have recently taken control of the city of Manbij in the northern Aleppo Governorate of Syria.<sup>1</sup> In seizing Manbij, the SDF expelled Islamic State (“IS”) forces from the city, which IS had occupied for the last two-and-a-half years.<sup>2</sup> Manbij is an ethnically diverse city that already possesses an active Civilian Council that is focused on democracy building in the city.<sup>3</sup> Manbij’s diverse make-up and its liberation by a majority Kurdish fighting force have raised concerns about how democratic civilian rule can actually be established in the city.

The following memorandum explores the potential for the establishment of a localized power-sharing mechanism in Manbij by analyzing four recent community level power-sharing agreements from conflict zones around the globe. These four illustrations include the power-sharing agreements between: (1) the Serbs and Albanians in Mitrovica, Kosovo; (2) rebel forces and the local population in Man, Cote d’Ivoire; (3) the central government and multiple rebel groups in North and South Kivu, Democratic Republic of Congo (“DRC”); and (4) the Kurds and the Iraqi Government in Kirkuk, Iraq.

### Power Sharing in Mitrovica, Kosovo

Mitrovica is a large city and municipality in northern Kosovo that has found itself split between an Albanian majority and a Serb minority for almost two decades. The following section explores the roots of the divides in Mitrovica, the

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<sup>1</sup>Jiyar Gol, *IS Conflict: Syria’s Kurds Set Sights on al Baba after fall of Manbij*, BBC News, Aug. 16, 2016, available at <http://www.bbc.com/news/world-middle-east-37093856>.

<sup>2</sup>Jiyar Gol, *IS Conflict: Syria’s Kurds Set Sights on al Baba after fall of Manbij*, BBC News, Aug. 16, 2016, available at <http://www.bbc.com/news/world-middle-east-37093856>.

<sup>3</sup>Wladimir van Wilgenburg, *Arab Tribes Meet to Discuss post-ISIS Manbij Future*, ARA NEWS, Aug. 8, 2016, available at <http://aranews.net/2016/08/arab-tribes-meet-discuss-post-isis-manbij-future/>.

attempts that local and national leaders have made to bring the municipality together, and the effects of the power-sharing process on the municipality.

### *Background on the Conflict in Mitrovica*

Mitrovica is an ethnically diverse city in northern Kosovo. In 2005, while Mitrovica was continuing to work through peace and localized power-sharing agreements, the municipality of Mitrovica was home to 100,970 people, 15,000 of whom were ethnic Serbs.<sup>4</sup> In fact, Mitrovica is home to the second largest community of ethnic Serbs in Kosovo.<sup>5</sup> To date, Mitrovica also contains populations of ethnic Turks, Roma, and Bosniaks, but the vast majority of the municipality's population is Albanian.<sup>6</sup>

Mitrovica's diversity created immediate problems in that aftermath of the Kosovo War. The Kosovo War took place between 1998 and 1999.<sup>7</sup> The war was fought over Kosovo-Albanians' attempts to secede from Serbia, and the now defunct Yugoslavia, to form their own state, Kosovo.<sup>8</sup> The War came to an end with the signing of the Rambouillet Accords in 1999.<sup>9</sup>

As the Rambouillet Accords paved the way for Kosovo to govern itself free of Serbian influence,<sup>10</sup> Mitrovica entered a period of brief peace overseen by United Nations Mission in Kosovo ("UNMIK").<sup>11</sup> However, this period of peace

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<sup>4</sup>Council of Europe, *Report Submitted by the United Nations Interim Administration Mission in Kosovo (UNMIK) Pursuant to Article 2.2 of the Agreement Between UNMIK and the Council of Europe Related to the Framework Convention for the Protection of National Minorities*, 4-5 (June 2, 2005), available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008b2b7>.

<sup>5</sup>Council of Europe, *Report Submitted by the United Nations Interim Administration Mission in Kosovo (UNMIK) Pursuant to Article 2.2 of the Agreement Between UNMIK and the Council of Europe Related to the Framework Convention for the Protection of National Minorities*, 4-5 (June 2, 2005), available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008b2b7>.

<sup>6</sup>Council of Europe, *Report Submitted by the United Nations Interim Administration Mission in Kosovo (UNMIK) Pursuant to Article 2.2 of the Agreement Between UNMIK and the Council of Europe Related to the Framework Convention for the Protection of National Minorities*, 4-5 (June 2, 2005), available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008b2b7>.

<sup>7</sup>Arrmend R. Bekaj, *The KLA and the Kosovo War*, BERGHOF CONFLICT RESEARCH, 21-22 (2010), available at [http://edoc.vifapol.de/opus/volltexte/2011/3023/pdf/transitions8\\_kosovo.pdf](http://edoc.vifapol.de/opus/volltexte/2011/3023/pdf/transitions8_kosovo.pdf).

<sup>8</sup>Arrmend R. Bekaj, *The KLA and the Kosovo War*, BERGHOF CONFLICT RESEARCH, 21-22 (2010), available at [http://edoc.vifapol.de/opus/volltexte/2011/3023/pdf/transitions8\\_kosovo.pdf](http://edoc.vifapol.de/opus/volltexte/2011/3023/pdf/transitions8_kosovo.pdf).

<sup>9</sup>Ramouillet Accords (Kosovo, 1999), available at [http://peacemaker.un.org/sites/peacemaker.un.org/files/990123\\_RambouilletAccord.pdf](http://peacemaker.un.org/sites/peacemaker.un.org/files/990123_RambouilletAccord.pdf).

<sup>10</sup>Ramouillet Accords (Kosovo, 1999), available at [http://peacemaker.un.org/sites/peacemaker.un.org/files/990123\\_RambouilletAccord.pdf](http://peacemaker.un.org/sites/peacemaker.un.org/files/990123_RambouilletAccord.pdf).

<sup>11</sup>International Crisis Group, *UNMIK's Albatross: Tackling Division in Mitrovica*, 3-4 (June 3, 2002), available at <http://repository.forcedmigration.org/pdf/?pid=fmo:3862>.

and power-sharing did not last long as tensions mounted in Mitrovica city.<sup>12</sup> By 2000, Mitrovica's Serbs backed out of the previously unified public systems active in the municipality, including a hospital and the municipality's courts.<sup>13</sup>

After sporadic public violence engulfed Mitrovica in early 2000, Kosovo-Serbs secluded themselves in the northern part of Mitrovica city and created their own self-sufficient parallel systems of governance supported heavily by the Serbian Government.<sup>14</sup> These public offices openly defied UNMIK's mission to create a unified civil administration program in the municipality and, to this day, divide the municipality along ethnic lines.<sup>15</sup> Additionally, the Kosovo-Serbs in Mitrovica created and maintained multiple law enforcement mechanisms of their own. These security forces include the Serbian Ministry of Internal Affairs Police ("MUP") and a small militia group known as the "bridge-watchers," who essentially guarded the southern border of Kosovo-Serb inhabited Mitrovica.<sup>16</sup>

Mitrovica remained tense and divided along ethnic lines, despite attempts to integrate the city,<sup>17</sup> such as the April 2013 Brussels Agreement. Today, the municipality remains divided between parallel systems of governance and ethnically-motivated violence is common.<sup>18</sup>

### *The Brussels Agreement and Power Sharing in Kosovo*

On April 19, 2013, five years after Kosovo's unilateral declaration of independence and 13 years after the Rambouillet Accords ended the Kosovo war, the Brussels Agreement was concluded between Serbia and Kosovo at the

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<sup>12</sup>International Crisis Group, *Kosovo's Linchpin: Overcoming Division in Mitrovica*, 1-2 (May 31, 2000), available at <https://www.ciaonet.org/attachments/4313/uploads>.

<sup>13</sup>International Crisis Group, *UNMIK's Albatross: Tackling Division in Mitrovica*, 3 (June 3, 2002), available at <http://repository.forcedmigration.org/pdf/?pid=fmo:3862>.

<sup>14</sup>Organization for Security and Co-operation in Europe, *Parallel Structures in Kosovo*, 5 (Oct., 2003), available at <http://www.osce.org/kosovo/42584?download=true>.

<sup>15</sup>See Security Council Resolution 1244, U.N. Doc. S/RES/1244 (June 10, 1999); Charles M. Sennott, *Mitrovica, a City Divided*, Public Radio International, July 1, 2014, available at <http://www.pri.org/stories/2014-07-01/mitrovica-city-divided>.

<sup>16</sup>Organization for Security and Co-operation in Europe, *Parallel Structures in Kosovo*, 12 (Oct., 2003), available at <http://www.osce.org/kosovo/42584?download=true>.

<sup>17</sup>United States Department of State Overseas Security Advisory Council, *Kosovo 2013 Crime and Safety Report* (March 23, 2013), available at <https://www.osac.gov/pages/ContentReportDetails.aspx?cid=13795>;

<sup>18</sup>Republic of Kosovo, Ministry for Dialogue, *Brussels Agreements Implementation State of Place*, 11-12 (June 15, 2016), available at [http://www.kryeministri-ks.net/repository/docs/Kosovo\\_Report\\_on\\_State\\_of\\_Play\\_in\\_the\\_Brussels\\_Dialogue\\_15\\_June\\_2016-signed.pdf](http://www.kryeministri-ks.net/repository/docs/Kosovo_Report_on_State_of_Play_in_the_Brussels_Dialogue_15_June_2016-signed.pdf); Charles M. Sennott, *Mitrovica, a City Divided*, Public Radio International, July 1, 2014, available at <http://www.pri.org/stories/2014-07-01/mitrovica-city-divided>.

European Union.<sup>19</sup> One of the main purposes of the Brussels Agreement was to integrate Serbian-dominated northern Kosovo, in which Mitrovica sits, with the rest of Kosovo.<sup>20</sup> The Agreement’s 15-point plan, in part, sets out a transitional power-sharing agreement between the Kosovo-Serb government and the government of Kosovo.<sup>21</sup>

The first six elements of the Brussels Agreement call for the creation of an “association” of Serb majority municipalities in Kosovo.<sup>22</sup> This association is to follow Kosovo law in its formation and its internal hierarchical structure is supposed to mimic the internal municipal structure already in place throughout Kosovo.<sup>23</sup> The association also possesses the power to control all “economic development, education, health, and urban and rural planning” within the regions it controls.<sup>24</sup> The association’s purpose therefore is to serve as an autonomous Kosovo-Serb government structure within Kosovo, separate from the Serbian government.

The Brussels Agreement’s integration plan also calls for the creation of a unified police force in Kosovo.<sup>25</sup> The Agreement requires that: (1) all police financing come from Kosovo’s central government, (2) all officers within the Kosovo-Serb police force be given equivalent positions in Kosovo’s police force, (3) Kosovo’s police personnel in its northern municipalities reflect the ethnic

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<sup>19</sup>Dan Bilefsky, *Serbia and Kosovo Reach Agreement on Power-Sharing*, NEW YORK TIMES, April 19, 2013, available at [http://www.nytimes.com/2013/04/20/world/europe-serbia-and-kosovo-reach-milestone-deal.html?\\_r=0](http://www.nytimes.com/2013/04/20/world/europe-serbia-and-kosovo-reach-milestone-deal.html?_r=0).

<sup>20</sup>Aleksandar Vasovic & Justyna Pawlak, *EU Broker historic Kosovo Deal, Door Open to Serbia Accession*, REUTERS, April 19, 2013, available at <http://www.reuters.com/article/us-serbia-kosovo-eu-idUSBRE93I0IB20130419>.

<sup>21</sup>Andrew Rettman, *Ashton Clinches Kosovo-Serbia deal*, EUOBSERVER, April 19, 2013, available at <https://euobserver.com/enlargement/119873>; *Brussels Agreement* (Kosovo & Serbia, 2013) available at <http://www.rts.rs/upload/storyBoxFileData/2013/04/20/3224318/Originalni%20tekst%20Predloga%20sporazuma.pdf>.

<sup>22</sup>*Brussels Agreement*, art. 1-6 (Kosovo & Serbia, 2013) available at <http://www.rts.rs/upload/storyBoxFileData/2013/04/20/3224318/Originalni%20tekst%20Predloga%20sporazuma.pdf>.

<sup>23</sup>*Brussels Agreement*, art. 1-3 (Kosovo & Serbia, 2013) available at <http://www.rts.rs/upload/storyBoxFileData/2013/04/20/3224318/Originalni%20tekst%20Predloga%20sporazuma.pdf>.

<sup>24</sup>*Brussels Agreement*, art. 4 (Kosovo & Serbia, 2013) available at <http://www.rts.rs/upload/storyBoxFileData/2013/04/20/3224318/Originalni%20tekst%20Predloga%20sporazuma.pdf>.

<sup>25</sup>*Brussels Agreement*, art. 7 (Kosovo & Serbia, 2013) available at <http://www.rts.rs/upload/storyBoxFileData/2013/04/20/3224318/Originalni%20tekst%20Predloga%20sporazuma.pdf>.

composition of the municipalities in which they operate, and (4) the police commander of the northern, Serb-dominated municipalities be a Kosovo-Serb.<sup>26</sup>

The third major component of the Brussels Agreement's integration plan requires a united judiciary.<sup>27</sup> Specifically, the Agreement allows for the creation of an appellate court panel composed of a majority of Kosovo-Serb judges to deal with all cases from Serb dominated municipalities.<sup>28</sup>

The Agreement lastly calls for municipal elections in the Serb dominated municipalities of northern Kosovo to take place in 2013.<sup>29</sup> Residual terms within the agreement call for the parties to continue to engage in dialogue and for neither side to "block, or encourage[s] others to block, the other side's progress in their respective European Union paths."<sup>30</sup>

### *The Effects of the Brussels Agreement on Mitrovica*

The Brussels Agreement has had little effect on the overall integration of Mitrovica to date. The Agreement's full implementation was initially stalled until the beginning of 2015 because of elections in the EU, Serbia, and Kosovo.<sup>31</sup> Since 2015, the Serbians and Kosovars have moved in the right direction, but little progress is being made in integration.

The Kosovo government, as of June 2016, claims that the Kosovo-Serb portion of Mitrovica has done little to implement the municipality-governing plan

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<sup>26</sup>*Brussels Agreement*, art. 7-9 (Kosovo & Serbia, 2013) available at <http://www.rts.rs/upload/storyBoxFileData/2013/04/20/3224318/Originalni%20tekst%20Predloga%20sporazuma.pdf>.

<sup>27</sup>*Brussels Agreement*, art. 10 (Kosovo & Serbia, 2013) available at <http://www.rts.rs/upload/storyBoxFileData/2013/04/20/3224318/Originalni%20tekst%20Predloga%20sporazuma.pdf>.

<sup>28</sup>*Brussels Agreement*, art. 11 (Kosovo & Serbia, 2013) available at <http://www.rts.rs/upload/storyBoxFileData/2013/04/20/3224318/Originalni%20tekst%20Predloga%20sporazuma.pdf>.

<sup>29</sup>*Brussels Agreement*, art. 12 (Kosovo & Serbia, 2013) available at <http://www.rts.rs/upload/storyBoxFileData/2013/04/20/3224318/Originalni%20tekst%20Predloga%20sporazuma.pdf>.

<sup>30</sup>*Brussels Agreement*, art. 13-15 (Kosovo & Serbia, 2013) available at <http://www.rts.rs/upload/storyBoxFileData/2013/04/20/3224318/Originalni%20tekst%20Predloga%20sporazuma.pdf>.

<sup>31</sup>Marki Prelec & Naim Rashiti, *Serb Integration in Kosovo After the Brussels Agreement*, BALKANS POLICY RESEARCH GROUP, 1 (March 19, 2015), available at <http://balkansgroup.org/wp-content/uploads/2015/03/Serb-Integration-Kosovo-19-March-2015.pdf>.

laid out in the Brussels Agreement.<sup>32</sup> Specifically, Kosovo claims that the north Mitrovica municipality is not performing its duties in accordance with Kosovo law because the Serbian government is still interfering with the functioning of the municipality.<sup>33</sup> Kosovo blames the Serbian government for directly intermeddling in municipality affairs and supporting the maintenance of the Kosovo-Serbs' pre-Agreement parallel governing structures.<sup>34</sup> For these same reasons, the greater Kosovo-Serb association plan has also been stalled at the national level, even after the Kosovo government and courts have confirmed the association's mandate over opposition condemnation of the plan.<sup>35</sup>

Integration in Mitrovica is also stalled because, to date, makeshift checkpoints on the city's bridges across the Ibar River, which divides the northern (Kosovo-Serb) and southern (Albanian) parts of the municipality, have not been removed.<sup>36</sup> Kosovo's government continues to blame the blocking of the bridges on Serbian efforts to maintain the pre-Agreement status quo.<sup>37</sup> These restrictions on the freedom of movement through Mitrovica continue to serve as an overt symbol of ethnic divisions in northern Kosovo.<sup>38</sup>

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<sup>32</sup>Republic of Kosovo, Ministry for Dialogue, *Brussels Agreements Implementation State of Place*, 10 (June 15, 2016), available at [http://www.kryeministri-ks.net/repository/docs/Kosovo\\_Report\\_on\\_State\\_of\\_Play\\_in\\_the\\_Brussels\\_Dialogue\\_15\\_June\\_2016-signed.pdf](http://www.kryeministri-ks.net/repository/docs/Kosovo_Report_on_State_of_Play_in_the_Brussels_Dialogue_15_June_2016-signed.pdf).

<sup>33</sup>Republic of Kosovo, Ministry for Dialogue, *Brussels Agreements Implementation State of Place*, 10 (June 15, 2016), available at [http://www.kryeministri-ks.net/repository/docs/Kosovo\\_Report\\_on\\_State\\_of\\_Play\\_in\\_the\\_Brussels\\_Dialogue\\_15\\_June\\_2016-signed.pdf](http://www.kryeministri-ks.net/repository/docs/Kosovo_Report_on_State_of_Play_in_the_Brussels_Dialogue_15_June_2016-signed.pdf).

<sup>34</sup>Republic of Kosovo, Ministry for Dialogue, *Brussels Agreements Implementation State of Place*, 10-12 (June 15, 2016), available at [http://www.kryeministri-ks.net/repository/docs/Kosovo\\_Report\\_on\\_State\\_of\\_Play\\_in\\_the\\_Brussels\\_Dialogue\\_15\\_June\\_2016-signed.pdf](http://www.kryeministri-ks.net/repository/docs/Kosovo_Report_on_State_of_Play_in_the_Brussels_Dialogue_15_June_2016-signed.pdf).

<sup>35</sup>Republic of Kosovo, Ministry for Dialogue, *Brussels Agreements Implementation State of Place*, 10 (June 15, 2016), available at [http://www.kryeministri-ks.net/repository/docs/Kosovo\\_Report\\_on\\_State\\_of\\_Play\\_in\\_the\\_Brussels\\_Dialogue\\_15\\_June\\_2016-signed.pdf](http://www.kryeministri-ks.net/repository/docs/Kosovo_Report_on_State_of_Play_in_the_Brussels_Dialogue_15_June_2016-signed.pdf); Fatos Bytyci, *Protesters Fight Police as Kosovo Approves Serbia Deal*, REUTERS, June 27, 2013, available at <http://www.reuters.com/article/us-kosovo-protests-idUSBRE95Q0P420130627>; Erjone Popova, *Kosovo Court Approves Serbian Municipal Association*, BALKAN INSIGHT, December 24, 2015, available at <http://www.balkaninsight.com/en/article/kosovo-constitutional-court-approves-the-association-agreement-with-serbia-12-24-2015>.

<sup>36</sup>Republic of Kosovo, Ministry for Dialogue, *Brussels Agreements Implementation State of Place*, 9 (June 15, 2016), available at [http://www.kryeministri-ks.net/repository/docs/Kosovo\\_Report\\_on\\_State\\_of\\_Play\\_in\\_the\\_Brussels\\_Dialogue\\_15\\_June\\_2016-signed.pdf](http://www.kryeministri-ks.net/repository/docs/Kosovo_Report_on_State_of_Play_in_the_Brussels_Dialogue_15_June_2016-signed.pdf).

<sup>37</sup>Republic of Kosovo, Ministry for Dialogue, *Brussels Agreements Implementation State of Place*, 9-10 (June 15, 2016), available at [http://www.kryeministri-ks.net/repository/docs/Kosovo\\_Report\\_on\\_State\\_of\\_Play\\_in\\_the\\_Brussels\\_Dialogue\\_15\\_June\\_2016-signed.pdf](http://www.kryeministri-ks.net/repository/docs/Kosovo_Report_on_State_of_Play_in_the_Brussels_Dialogue_15_June_2016-signed.pdf).

<sup>38</sup>Republic of Kosovo, Ministry for Dialogue, *Brussels Agreements Implementation State of Place*, 9-10 (June 15, 2016), available at

Although the Brussels Agreement is failing to unify Mitrovica today, the Agreement seems to have been successful in integrating Kosovo-Serb security forces into the national Kosovo police force.<sup>39</sup> Since the Agreement, 715 security and police personal from Kosovo-Serb territories, including Mitrovica, have been integrated into Kosovo's security and police forces.<sup>40</sup> Furthermore, all pre-Agreement Serb-dominated security structures have been abolished.<sup>41</sup> Additionally, the regional director of the police in Kosovo-Serb territory is a Kosovo-Serb, as the Brussels Agreement requires.<sup>42</sup>

The integrated judicial system envisioned by the Brussels Agreement also has, to an extent, successfully been established in northern Kosovo.<sup>43</sup> Old Kosovo-Serbian parallel courts have not heard cases since 2013, and the Kosovo government has successfully filled the Kosovo-Serbian judge and prosecutor positions for the new appellate panel created by the Brussels Agreement.<sup>44</sup> The assimilated panel, however, is not yet fully operational.<sup>45</sup>

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[http://www.kryeministri-ks.net/repository/docs/Kosovo\\_Report\\_on\\_State\\_of\\_Play\\_in\\_the\\_Brussels\\_Dialogue\\_15\\_June\\_2016-signed.pdf](http://www.kryeministri-ks.net/repository/docs/Kosovo_Report_on_State_of_Play_in_the_Brussels_Dialogue_15_June_2016-signed.pdf).

<sup>39</sup>Republic of Kosovo, Ministry for Dialogue, *Brussels Agreements Implementation State of Place*, 14-15 (June 15, 2016), *available at*

[http://www.kryeministri-ks.net/repository/docs/Kosovo\\_Report\\_on\\_State\\_of\\_Play\\_in\\_the\\_Brussels\\_Dialogue\\_15\\_June\\_2016-signed.pdf](http://www.kryeministri-ks.net/repository/docs/Kosovo_Report_on_State_of_Play_in_the_Brussels_Dialogue_15_June_2016-signed.pdf).

<sup>40</sup>Republic of Kosovo, Ministry for Dialogue, *Brussels Agreements Implementation State of Place*, 14-15 (June 15, 2016), *available at*

[http://www.kryeministri-ks.net/repository/docs/Kosovo\\_Report\\_on\\_State\\_of\\_Play\\_in\\_the\\_Brussels\\_Dialogue\\_15\\_June\\_2016-signed.pdf](http://www.kryeministri-ks.net/repository/docs/Kosovo_Report_on_State_of_Play_in_the_Brussels_Dialogue_15_June_2016-signed.pdf).

<sup>41</sup>Republic of Kosovo, Ministry for Dialogue, *Brussels Agreements Implementation State of Place*, 14-15 (June 15, 2016), *available at*

[http://www.kryeministri-ks.net/repository/docs/Kosovo\\_Report\\_on\\_State\\_of\\_Play\\_in\\_the\\_Brussels\\_Dialogue\\_15\\_June\\_2016-signed.pdf](http://www.kryeministri-ks.net/repository/docs/Kosovo_Report_on_State_of_Play_in_the_Brussels_Dialogue_15_June_2016-signed.pdf).

<sup>42</sup>Republic of Kosovo, Ministry for Dialogue, *Brussels Agreements Implementation State of Place*, 15 (June 15, 2016), *available at*

[http://www.kryeministri-ks.net/repository/docs/Kosovo\\_Report\\_on\\_State\\_of\\_Play\\_in\\_the\\_Brussels\\_Dialogue\\_15\\_June\\_2016-signed.pdf](http://www.kryeministri-ks.net/repository/docs/Kosovo_Report_on_State_of_Play_in_the_Brussels_Dialogue_15_June_2016-signed.pdf).

<sup>43</sup>Republic of Kosovo, Ministry for Dialogue, *Brussels Agreements Implementation State of Place*, 16-19 (June 15, 2016), *available at*

[http://www.kryeministri-ks.net/repository/docs/Kosovo\\_Report\\_on\\_State\\_of\\_Play\\_in\\_the\\_Brussels\\_Dialogue\\_15\\_June\\_2016-signed.pdf](http://www.kryeministri-ks.net/repository/docs/Kosovo_Report_on_State_of_Play_in_the_Brussels_Dialogue_15_June_2016-signed.pdf).

<sup>44</sup>Republic of Kosovo, Ministry for Dialogue, *Brussels Agreements Implementation State of Place*, 17-18 (June 15, 2016), *available at*

[http://www.kryeministri-ks.net/repository/docs/Kosovo\\_Report\\_on\\_State\\_of\\_Play\\_in\\_the\\_Brussels\\_Dialogue\\_15\\_June\\_2016-signed.pdf](http://www.kryeministri-ks.net/repository/docs/Kosovo_Report_on_State_of_Play_in_the_Brussels_Dialogue_15_June_2016-signed.pdf).

<sup>45</sup>Republic of Kosovo, Ministry for Dialogue, *Brussels Agreements Implementation State of Place*, 16-19 (June 15, 2016), *available at*

[http://www.kryeministri-ks.net/repository/docs/Kosovo\\_Report\\_on\\_State\\_of\\_Play\\_in\\_the\\_Brussels\\_Dialogue\\_15\\_June\\_2016-signed.pdf](http://www.kryeministri-ks.net/repository/docs/Kosovo_Report_on_State_of_Play_in_the_Brussels_Dialogue_15_June_2016-signed.pdf).

Despite the Brussels Agreement's all-inclusive integration aspirations, Mitrovica is still split along ethnic lines. These lasting rigid divisions continue to create a tense situation on the ground in Mitrovica. On August 16, 2016 – the day after a local agreement on a new timeline to open Mitrovica's main Ibar River crossing bridge was reached – a hand grenade was exploded on the Kosovo-Serbian side of an Ibar crossing bridge.<sup>46</sup>

## **Power Sharing in Man, Cote d'Ivoire**

The localized power-sharing system established in Man, Cote d'Ivoire differed greatly from the power-sharing agreements created in Mitrovica. In Man, a civilian town was taken over and occupied by rebel forces in the context of a civil war.<sup>47</sup> The implications of such an occupation differ from the hardline ethnic divides discussed in the Mitrovica illustration and different avenues for peace and power-sharing were therefore explored in Man. This section discusses the overall contextual conflict in Man and how peace was reached in the city through a basic power-sharing agreement.

### *Background on the Conflict in Western Cote d'Ivoire*

Laurent Gbagbo became president of Cote d'Ivoire in the fall of 2000 after a seven-year power struggle and a hotly contested national election.<sup>48</sup> The pre-2000 power struggles that plagued Cote D'Ivoire did not come to an end with Gbagbo's election. Instead, tensions continued to build between political opponents for the next two years.<sup>49</sup> Finally, on September 19, 2002, civil war broke out in Cote d'Ivoire when rebels from the Patriotic Movement of Cote d'Ivoire ("MPCI") attacked military outposts in two of the Cote d'Ivoire's largest cities.<sup>50</sup> By the end of September 2002, the MPCI had taken control of the northern half of the state.<sup>51</sup> Soon after MPCI's expansion, two additional rebel groups emerged in the western part of the state and managed to occupy large swaths of land, including the

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<sup>46</sup>*No Peace Park, No Peace: Explosion in K. Mitrovica*, b92, Aug. 16, 2016, available at [http://www.b92.net/eng/news/crimes.php?yyyy=2016&mm=08&dd=16&nav\\_id=98914](http://www.b92.net/eng/news/crimes.php?yyyy=2016&mm=08&dd=16&nav_id=98914).

<sup>47</sup>Kathrin Heitz, *Power-Sharing in the Local Arena: Man – a Rebel-Held Town in Western Cote d'Ivoire*, Vol. 44 AFRICA SPECTRUM 109, 114-115 (2009).

<sup>48</sup>Secretary-General, *Report of the Secretary-General on Cote d'Ivoire*, para. 2-6, delivered to the Security Council, U.N. Doc. S/2003/374 (March 26, 2003).

<sup>49</sup>Secretary-General, *Report of the Secretary-General on Cote d'Ivoire*, para. 4-7, delivered to the Security Council, U.N. Doc. S/2003/374 (March 26, 2003).

<sup>50</sup>Secretary-General, *Report of the Secretary-General on Cote d'Ivoire*, para. 8, delivered to the Security Council, U.N. Doc. S/2003/374 (March 26, 2003).

<sup>51</sup>Secretary-General, *Report of the Secretary-General on Cote d'Ivoire*, para. 10, delivered to the Security Council, U.N. Doc. S/2003/374 (March 26, 2003).

Dix-Huit Montagnes region, home to the city of Man.<sup>52</sup> These three groups, although generally divided, eventually came together, occupying their respective territorial gains under a common umbrella coalition known as the New Forces (“NF”).<sup>53</sup>

On May 3, 2003, a ceasefire quickly brought direct hostilities to an end throughout the state, four months after the signing of the slowly progressing Linas-Marcoussis Agreement.<sup>54</sup> The Linas-Marcoussis Agreement was reached in January 2003 after roundtable discussions between NF and the Gbagbo government.<sup>55</sup> At the core of the Agreement is a complex power-sharing arrangement between NF and the Gbagbo government.<sup>56</sup>

The Linas-Marcoussis Agreement never came to fruition due to Gbagbo’s reluctance to give up power over the state’s internal security agencies and the Agreement’s overall failure to distinctly lay out a power-sharing formula.<sup>57</sup> Despite the Linas-Marcoussis Agreement’s failures, by May 2003, a nationwide cease-fire came into effect.<sup>58</sup> At the time of the ceasefire, the NF controlled roughly 60% of Cote d’Ivoire in 10 “Zones,” each of which was governed by a single military commander.<sup>59</sup>

In Zone 6 of the rebel-held territory, at the western edge of Cote d’Ivoire, is the city of Man.<sup>60</sup> Man sits in an area known as the “Wild West” because of its reputation for violence.<sup>61</sup> After the May 2003 ceasefire, Zone 6 came under the

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<sup>52</sup>Kathrin Heitz, *Power-Sharing in the Local Arena: Man – a Rebel-Held Town in Western Cote d’Ivoire*, Vol. 44 AFRICA SPECTRUM 109, 114 (2009).

<sup>53</sup>Kathrin Heitz, *Power-Sharing in the Local Arena: Man – a Rebel-Held Town in Western Cote d’Ivoire*, Vol. 44 AFRICA SPECTRUM 109, 114 (2009).

<sup>54</sup>International Crisis Group, *Cote d’Ivoire: “The War is Not Over”*, 3 (Nov. 28, 2003), available at <https://www.ciaonet.org/attachments/4127/uploads>.

<sup>55</sup>*Linas-Marcoussis Agreement* (Cote d’Ivoire, 2003), available at [http://www.usip.org/sites/default/files/file/resources/collections/peace\\_agreements/cote\\_divoire\\_01242003en.pdf](http://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/cote_divoire_01242003en.pdf).

<sup>56</sup>*Linas-Marcoussis Agreement* (Cote d’Ivoire, 2003), available at [http://www.usip.org/sites/default/files/file/resources/collections/peace\\_agreements/cote\\_divoire\\_01242003en.pdf](http://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/cote_divoire_01242003en.pdf).

<sup>57</sup>Kathrin Heitz, *Power-Sharing in the Local Arena: Man – a Rebel-Held Town in Western Cote d’Ivoire*, Vol. 44 AFRICA SPECTRUM 109, 117 (2009).

<sup>58</sup>Kathrin Heitz, *Power-Sharing in the Local Arena: Man – a Rebel-Held Town in Western Cote d’Ivoire*, Vol. 44 AFRICA SPECTRUM 109, 115 (2009).

<sup>59</sup>Kathrin Heitz, *Power-Sharing in the Local Arena: Man – a Rebel-Held Town in Western Cote d’Ivoire*, Vol. 44 AFRICA SPECTRUM 109, 115 (2009).

<sup>60</sup>Kathrin Heitz, *Power-Sharing in the Local Arena: Man – a Rebel-Held Town in Western Cote d’Ivoire*, Vol. 44 AFRICA SPECTRUM 109, 116 (2009).

<sup>61</sup>Kathrin Heitz, *Power-Sharing in the Local Arena: Man – a Rebel-Held Town in Western Cote d’Ivoire*, Vol. 44 AFRICA SPECTRUM 109, 114 (2009).

complete control of rebel commander Losseni Fofana.<sup>62</sup> Fofana and his colleagues, upon taking control of Man, set up basic civil society institutions and a functioning police force, but never established legitimate legal institutions.<sup>63</sup> Thus, although an expansive power-sharing peace agreement existed at the national level in Cote d'Ivoire, Man found itself being governed at a hyper-localized level and therefore had to find a way to create peace and power-sharing at a local level.<sup>64</sup>

### *National and Local Power Sharing in Man*

The Linas-Marcoussis Agreement did little to affect the everyday realities of the local, rebel-administered areas of Cote d'Ivoire.<sup>65</sup> To counter the local governmental vacuum, rebel forces, like those in Man, formed their own semi-autonomous municipalities.<sup>66</sup> These makeshift governments dictated the everyday functionality of the communities they governed by maintaining and controlling pre-occupation civil service institutions, continuing to levy taxes, and running police and prison services.<sup>67</sup> As the realities of the new rebel government's control set in, local power-sharing mechanisms had to be established for Man to function. These agreements were not set out by treaty, but instead were facilitated by mutual respect carved out of basic business and social relationships between the rebel forces and the Man community.<sup>68</sup> These relationships set the foundation for an ultra-localized, *de facto* power-sharing arrangement in Man.

Man's *de facto* power-sharing agreement revolved around a former local leader, Mamadou Soumahoro Mamery, who was an active member of a political opposition party prior to the civil war.<sup>69</sup> Mamery was able to facilitate the success of the agreement because he was well respected by both the Man community and

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<sup>62</sup>Kathrin Heitz, *Power-Sharing in the Local Arena: Man – a Rebel-Held Town in Western Cote d'Ivoire*, Vol. 44 AFRICA SPECTRUM 109, 116 (2009).

<sup>63</sup>Kathrin Heitz, *Power-Sharing in the Local Arena: Man – a Rebel-Held Town in Western Cote d'Ivoire*, Vol. 44 AFRICA SPECTRUM 109, 116 (2009).

<sup>64</sup>Kathrin Heitz, *Power-Sharing in the Local Arena: Man – a Rebel-Held Town in Western Cote d'Ivoire*, Vol. 44 AFRICA SPECTRUM 109, 119-120 (2009).

<sup>65</sup>Kathrin Heitz, *Power-Sharing in the Local Arena: Man – a Rebel-Held Town in Western Cote d'Ivoire*, Vol. 44 AFRICA SPECTRUM 109, 121 (2009).

<sup>66</sup>Kathrin Heitz, *Power-Sharing in the Local Arena: Man – a Rebel-Held Town in Western Cote d'Ivoire*, Vol. 44 AFRICA SPECTRUM 109, 121-122 (2009).

<sup>67</sup>Kathrin Heitz, *Power-Sharing in the Local Arena: Man – a Rebel-Held Town in Western Cote d'Ivoire*, Vol. 44 AFRICA SPECTRUM 109, 116 (2009).

<sup>68</sup>Kathrin Heitz, *Power-Sharing in the Local Arena: Man – a Rebel-Held Town in Western Cote d'Ivoire*, Vol. 44 AFRICA SPECTRUM 109, 122 (2009).

<sup>69</sup>Kathrin Heitz, *Power-Sharing in the Local Arena: Man – a Rebel-Held Town in Western Cote d'Ivoire*, Vol. 44 AFRICA SPECTRUM 109, 121(2009).

Fofana's forces.<sup>70</sup> Mamery met Fofana once a week during the rebel occupation to discuss the problems of the people in and around Man, including specific problems people had with Fofana and his troops.<sup>71</sup> Fofana would listen to Mamery and then discipline his personnel and adjust his governance based on Mamery's information.<sup>72</sup>

In addition to Fofana and Mamery's interactions, power-sharing was achieved in Man through the rebels allowing local administrative organizations to operate during the occupation.<sup>73</sup> Indeed, Man's administrative associations never stopped functioning under Fofana's forces.<sup>74</sup> Moreover, Man's mayor's office continued to operate under rebel rule, and the mayor's deputies, who ran the daily administrative work for the city, had good rapport with all the rebel leaders in Man.<sup>75</sup> Lastly, Man's state administrative organizations were able to continue operating during the occupation because they were financed by local taxes. However, Fofana's forces kept the majority of the city's tax revenue for themselves.<sup>76</sup>

### *The Effects of Man's Power-Sharing Mechanism on Man*

Man's *de facto* power-sharing agreements brought relative calm to a city that was known for its outlaw nature. This can be attributed not only to the NF's desire to initiate and maintain order within their territory, but also to the people of Man's willingness to work with the occupying forces, especially when they had specific grievances.<sup>77</sup> Together, the community and NF were able to create local unity when the state as a whole was struggling to implement its own power-sharing and peace agreements.

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<sup>70</sup>Kathrin Heitz, *Power-Sharing in the Local Arena: Man – a Rebel-Held Town in Western Cote d'Ivoire*, Vol. 44 AFRICA SPECTRUM 109, 122 (2009).

<sup>71</sup>Kathrin Heitz, *Power-Sharing in the Local Arena: Man – a Rebel-Held Town in Western Cote d'Ivoire*, Vol. 44 AFRICA SPECTRUM 109, 122 (2009).

<sup>72</sup>Kathrin Heitz, *Power-Sharing in the Local Arena: Man – a Rebel-Held Town in Western Cote d'Ivoire*, Vol. 44 AFRICA SPECTRUM 109, 122 (2009).

<sup>73</sup>Kathrin Heitz, *Power-Sharing in the Local Arena: Man – a Rebel-Held Town in Western Cote d'Ivoire*, Vol. 44 AFRICA SPECTRUM 109, 123 (2009).

<sup>74</sup>Kathrin Heitz, *Power-Sharing in the Local Arena: Man – a Rebel-Held Town in Western Cote d'Ivoire*, Vol. 44 AFRICA SPECTRUM 109, 123 (2009).

<sup>75</sup>Kathrin Heitz, *Power-Sharing in the Local Arena: Man – a Rebel-Held Town in Western Cote d'Ivoire*, Vol. 44 AFRICA SPECTRUM 109, 123(2009).

<sup>76</sup>Kathrin Heitz, *Power-Sharing in the Local Arena: Man – a Rebel-Held Town in Western Cote d'Ivoire*, Vol. 44 AFRICA SPECTRUM 109, 123 (2009).

<sup>77</sup>Kathrin Heitz, *Power-Sharing in the Local Arena: Man – a Rebel-Held Town in Western Cote d'Ivoire*, Vol. 44 AFRICA SPECTRUM 109, 127 (2009).

Ultimately, the lesson that can be drawn from Man is that an occupying power can keep relative calm within a city or locality during conflict through power-sharing agreements that directly engage locals. This is because when local civilians are engaged and feel their grievances are being heard, they seem to be more inclined to interact and conduct business with occupying forces. Man stands out as an illustration of how peace can be brought at a community level, even in the face of civil war, through local power-sharing arrangements.

## **Power Sharing in North and South Kivu, Democratic Republic of the Congo**

The Democratic Republic of the Congo (“DRC”) has been a catalyst for conflict for the last two decades, and most of the violence has broken out in spite of elaborate peace and power-sharing agreements. The situation in the DRC differs from the power-sharing agreements explored above because of the elaborate nature of the conflict in the eastern DRC. Specifically, the analysis below explores a conflict and peace agreement that involves multiple international actors and rebel groups all vying for power across a wide swath of land in the eastern DRC.

### *Background of the Conflict in the Democratic Republic of the Congo*

The DRC has been in perpetual conflict since the Rwandan genocide of 1994 spilled into its eastern territories.<sup>78</sup> The First Congo War officially began in 1996 after a rebel group known as the Alliance of Democratic Forces for the Liberation of Congo-Zaire (“AFDL”) invaded the DRC.<sup>79</sup> The AFDL’s goals in launching its offensive were to overthrow long-time dictator Mobutu Sese Seko and eradicate Hutu rebels who had made their home in the eastern DRC after the Rwandan genocide.<sup>80</sup> By the summer of 1997, the AFDL had taken over the DRC’s capital and set up a new government headed by its leader, Laurent Kabila.<sup>81</sup>

People throughout the DRC saw Kabila as a Rwandan puppet when he first came to power; therefore, Kabila quickly tried to distance himself from Rwanda to gain legitimacy.<sup>82</sup> The Rwandan government became dissatisfied with Kabila’s

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<sup>78</sup>Christopher Williams, *Explaining the Great War in Africa: How Conflict in the Congo Became a Continental Crisis*, Vol. 37 THE FLETCHER FORUM OF WORLD AFFAIRS 81, 86-87 (2013).

<sup>79</sup>Christopher Williams, *Explaining the Great War in Africa: How Conflict in the Congo Became a Continental Crisis*, Vol. 37 THE FLETCHER FORUM OF WORLD AFFAIRS 81, 87 (2013).

<sup>80</sup>Christopher Williams, *Explaining the Great War in Africa: How Conflict in the Congo Became a Continental Crisis*, Vol. 37 THE FLETCHER FORUM OF WORLD AFFAIRS 81, 87 (2013).

<sup>81</sup>Christopher Williams, *Explaining the Great War in Africa: How Conflict in the Congo Became a Continental Crisis*, Vol. 37 THE FLETCHER FORUM OF WORLD AFFAIRS 81, 87 (2013).

<sup>82</sup>Christopher Williams, *Explaining the Great War in Africa: How Conflict in the Congo Became a Continental Crisis*, Vol. 37 The FLETCHER FORUM OF WORLD AFFAIRS 81, 88 (2013).

actions and, with help from Uganda, sought to ally with rebel groups in the eastern DRC to overthrow Kabila's new government.<sup>83</sup> What ensued was the Second Congo War, which officially lasted for the next five years, but in reality, destabilized the eastern DRC to a point from which it has never recovered.<sup>84</sup>

The Second Congo war ended in 2003 with the signing of a comprehensive power-sharing peace agreement.<sup>85</sup> However, this peace agreement did little to effect change in the two major eastern provinces of the state, North and South Kivu. In the immediate aftermath of the nationwide power-sharing agreement, multiple rebel groups continued to jostle for power in the east, including Mai Mai militias, the Conseil National pour la Defense du Peuple ("CNDP"), and the Forces Democratique de Liberation du Rwanda ("FDLR"), which is made up of Hutu militiamen from the Rwandan genocide.<sup>86</sup> To date, nothing has been able to stop these groups and other rebel groups from openly vying for power in the east. As recently as 2012, a large rebel movement known as M23 was able to overtake and control large swaths of North Kivu land.<sup>87</sup>

### *National and Local Power Sharing in North and South Kivu*

A series of peace agreements between the multiple countries involved in the Second Congo War finally brought about its conclusion. The culmination of these agreements was the Global and Inclusive Agreement on Transition in the Democratic Republic of the Congo ("GIAT").<sup>88</sup> The GIAT is heavily reliant on trickle down power-sharing mechanisms that start at a national level, but are supposed to run all the way through the provincial system of governance.<sup>89</sup>

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<sup>83</sup>Christopher Williams, *Explaining the Great War in Africa: How Conflict in the Congo Became a Continental Crisis*, Vol. 37 THE FLETCHER FORUM OF WORLD AFFAIRS 81, 89 (2013).

<sup>84</sup>Claudia Simons, Franziska Zanker, Andreas Mehler & Denis M. Tull, *Power-Sharing in Africa's war Zones: How Important is the Local Level*, Vol. 51 THE JOURNAL OF MODERN AFRICAN STUDIES 681, 697 (2013).

<sup>85</sup>Claudia Simons, Franziska Zanker, Andreas Mehler & Denis M. Tull, *Power-Sharing in Africa's war Zones: How Important is the Local Level*, Vol. 51 THE JOURNAL OF MODERN AFRICAN STUDIES 681, 697 (2013).

<sup>86</sup>Claudia Simons, Franziska Zanker, Andreas Mehler & Denis M. Tull, *Power-Sharing in Africa's war Zones: How Important is the Local Level*, Vol. 51 THE JOURNAL OF MODERN AFRICAN STUDIES 681, 698-699 (2013).

<sup>87</sup>Goma: M23 Rebels Capture DR Congo City, BBC News, Nov. 20, 2012, available at <http://www.bbc.com/news/world-africa-20405739>.

<sup>88</sup>*Global and Inclusive Agreement on Transition in the Democratic Republic of the Congo* (Democratic Republic of the Congo, 2002), available at [http://peacemaker.un.org/sites/peacemaker.un.org/files/CD\\_021216\\_Global%20and%20Inclusive%20Agreement%20on%20Transition%20in%20DRC.pdf](http://peacemaker.un.org/sites/peacemaker.un.org/files/CD_021216_Global%20and%20Inclusive%20Agreement%20on%20Transition%20in%20DRC.pdf).

<sup>89</sup>*Global and Inclusive Agreement on Transition in the Democratic Republic of the Congo*, art. V (Democratic Republic of the Congo, 2002), available at [http://peacemaker.un.org/sites/peacemaker.un.org/files/CD\\_021216\\_Global%20and%20Inclusive%20Agreement%20on%20Transition%20in%20DRC.pdf](http://peacemaker.un.org/sites/peacemaker.un.org/files/CD_021216_Global%20and%20Inclusive%20Agreement%20on%20Transition%20in%20DRC.pdf).

The GIAT's power-sharing terms, at the national level, first call for a shared executive branch that includes one President and four Vice Presidents.<sup>90</sup> The GIAT splits the Vice President positions equally between rebel group personnel, existing government employees, and political opposition leaders.<sup>91</sup> The Vice Presidents are also each given control of a specific cabinet committee.<sup>92</sup> The GIAT then fairly distributes minister and deputy minister positions along party lines to rebel leaders and opposition movement members.<sup>93</sup> The DRC's National Assembly and Senate are also divided equally amongst opposing groups from the War.<sup>94</sup>

In addition to governmental integration, the GIAT also attempts to integrate the DRC's military by absorbing six different rebel groups that took part in the war into the national army.<sup>95</sup> The GIAT also calls for a provisional constitution that upholds the same core elements as those set forth in the peace agreement, including the GIAT's extensive power-sharing apparatus.<sup>96</sup> At the local level, the GIAT called for provincial leaders to be selected by the unity government with due consideration being given to the power-sharing nature of the new government.<sup>97</sup>

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<sup>90</sup>*Global and Inclusive Agreement on Transition in the Democratic Republic of the Congo*, art. V(1)(B) (Democratic Republic of the Congo, 2002), available at [http://peacemaker.un.org/sites/peacemaker.un.org/files/CD\\_021216\\_Global%20and%20Inclusive%20Agreement%20on%20Transition%20in%20DRC.pdf](http://peacemaker.un.org/sites/peacemaker.un.org/files/CD_021216_Global%20and%20Inclusive%20Agreement%20on%20Transition%20in%20DRC.pdf).

<sup>91</sup>*Global and Inclusive Agreement on Transition in the Democratic Republic of the Congo*, art. V(1)(C) (Democratic Republic of the Congo, 2002), available at [http://peacemaker.un.org/sites/peacemaker.un.org/files/CD\\_021216\\_Global%20and%20Inclusive%20Agreement%20on%20Transition%20in%20DRC.pdf](http://peacemaker.un.org/sites/peacemaker.un.org/files/CD_021216_Global%20and%20Inclusive%20Agreement%20on%20Transition%20in%20DRC.pdf).

<sup>92</sup>*Global and Inclusive Agreement on Transition in the Democratic Republic of the Congo*, art. V(1)(C) (Democratic Republic of the Congo, 2002), available at [http://peacemaker.un.org/sites/peacemaker.un.org/files/CD\\_021216\\_Global%20and%20Inclusive%20Agreement%20on%20Transition%20in%20DRC.pdf](http://peacemaker.un.org/sites/peacemaker.un.org/files/CD_021216_Global%20and%20Inclusive%20Agreement%20on%20Transition%20in%20DRC.pdf).

<sup>93</sup>*Global and Inclusive Agreement on Transition in the Democratic Republic of the Congo*, art. V(1)(D) (Democratic Republic of the Congo, 2002), available at [http://peacemaker.un.org/sites/peacemaker.un.org/files/CD\\_021216\\_Global%20and%20Inclusive%20Agreement%20on%20Transition%20in%20DRC.pdf](http://peacemaker.un.org/sites/peacemaker.un.org/files/CD_021216_Global%20and%20Inclusive%20Agreement%20on%20Transition%20in%20DRC.pdf).

<sup>94</sup>*Global and Inclusive Agreement on Transition in the Democratic Republic of the Congo*, annex (B)-(C) (Democratic Republic of the Congo, 2002), available at [http://peacemaker.un.org/sites/peacemaker.un.org/files/CD\\_021216\\_Global%20and%20Inclusive%20Agreement%20on%20Transition%20in%20DRC.pdf](http://peacemaker.un.org/sites/peacemaker.un.org/files/CD_021216_Global%20and%20Inclusive%20Agreement%20on%20Transition%20in%20DRC.pdf).

<sup>95</sup>*Global and Inclusive Agreement on Transition in the Democratic Republic of the Congo*, art. VI (Democratic Republic of the Congo, 2002), available at [http://peacemaker.un.org/sites/peacemaker.un.org/files/CD\\_021216\\_Global%20and%20Inclusive%20Agreement%20on%20Transition%20in%20DRC.pdf](http://peacemaker.un.org/sites/peacemaker.un.org/files/CD_021216_Global%20and%20Inclusive%20Agreement%20on%20Transition%20in%20DRC.pdf).

<sup>96</sup>*Global and Inclusive Agreement on Transition in the Democratic Republic of the Congo*, art. VII (Democratic Republic of the Congo, 2002), available at [http://peacemaker.un.org/sites/peacemaker.un.org/files/CD\\_021216\\_Global%20and%20Inclusive%20Agreement%20on%20Transition%20in%20DRC.pdf](http://peacemaker.un.org/sites/peacemaker.un.org/files/CD_021216_Global%20and%20Inclusive%20Agreement%20on%20Transition%20in%20DRC.pdf).

<sup>97</sup>*Global and Inclusive Agreement on Transition in the Democratic Republic of the Congo*, annex 1(D) (Democratic Republic of the Congo, 2002), available at [http://peacemaker.un.org/sites/peacemaker.un.org/files/CD\\_021216\\_Global%20and%20Inclusive%20Agreement%20on%20Transition%20in%20DRC.pdf](http://peacemaker.un.org/sites/peacemaker.un.org/files/CD_021216_Global%20and%20Inclusive%20Agreement%20on%20Transition%20in%20DRC.pdf).

Two events occurred after the signing of the GIAT that further attempted to bring local peace to the eastern DRC in particular. First, the national government passed an inclusive citizenship law that accommodated Banyarwanda, people of Rwandan origin.<sup>98</sup> This sought to bring the previously alienated populations in the eastern part of the state into the national fray.<sup>99</sup> Second, the new national constitution, when passed in 2005, included terms that gave extensive power to localized provincial governments so that outlying, diverse provinces could manage their own needs without national government interference.<sup>100</sup> This was an attempt to combat the formation of divisive opposition movements in the east by allowing opposition in the eastern provinces to autonomously control themselves to an extent.<sup>101</sup>

### *The Effects of National Power Sharing on North and South Kivu*

The end of the Second Congo War and the signing of the GIAT had little effect on the eastern provinces of the DRC. Although the conflict briefly stalled in the east during the negotiation and signing of the GIAT, by 2004, full on war had again broken out in South Kivu.<sup>102</sup> In what was known as the “War of Bukavu,” divisions of the Rassemblement Congolais pour la Democratie (“RCD”), a group that was heavily integrated into the national government by the GIAT, began a bloody campaign against the newly integrated national army and Mai-Mai militias.<sup>103</sup> The “War of Bukavu” resulted in the deaths and displacement of hundreds of civilians.<sup>104</sup>

After the “War of Bukavu,” the RCD breakaway faction that initiated the conflict formed the CNDP under the leadership of Laurent Nkunda and created a

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<sup>98</sup>Claudia Simons, Franziska Zanker, Andreas Mehler & Denis M. Tull, *Power-Sharing in Africa's war Zones: How Important is the Local Level*, Vol. 51 THE JOURNAL OF MODERN AFRICAN STUDIES 681, 697 (2013).

<sup>99</sup>Claudia Simons, Franziska Zanker, Andreas Mehler & Denis M. Tull, *Power-Sharing in Africa's war Zones: How Important is the Local Level*, Vol. 51 THE JOURNAL OF MODERN AFRICAN STUDIES 681, 697 (2013).

<sup>100</sup>Claudia Simons, Franziska Zanker, Andreas Mehler & Denis M. Tull, *Power-Sharing in Africa's war Zones: How Important is the Local Level*, Vol. 51 THE JOURNAL OF MODERN AFRICAN STUDIES 681, 697 (2013).

<sup>101</sup>Claudia Simons, Franziska Zanker, Andreas Mehler & Denis M. Tull, *Power-Sharing in Africa's war Zones: How Important is the Local Level*, Vol. 51 THE JOURNAL OF MODERN AFRICAN STUDIES 681, 697-698 (2013).

<sup>102</sup>Human Rights Watch, *D.R. Congo: War Crimes in Bukavu*, 1-9 (June, 2004), available at [https://www.hrw.org/sites/default/files/reports/2004\\_DRCongo\\_WarCrimesinBukavu.pdf](https://www.hrw.org/sites/default/files/reports/2004_DRCongo_WarCrimesinBukavu.pdf).

<sup>103</sup>Claudia Simons, Franziska Zanker, Andreas Mehler & Denis M. Tull, *Power-Sharing in Africa's war Zones: How Important is the Local Level*, Vol. 51 THE JOURNAL OF MODERN AFRICAN STUDIES 681, 699 (2013).

<sup>104</sup>Human Rights Watch, *D.R. Congo: War Crimes in Bukavu*, 1-9 (June, 2004), available at [https://www.hrw.org/sites/default/files/reports/2004\\_DRCongo\\_WarCrimesinBukavu.pdf](https://www.hrw.org/sites/default/files/reports/2004_DRCongo_WarCrimesinBukavu.pdf); Claudia Simons, Franziska Zanker, Andreas Mehler & Denis M. Tull, *Power-Sharing in Africa's war Zones: How Important is the Local Level*, Vol. 51 THE JOURNAL OF MODERN AFRICAN STUDIES 681, 699 (2013).

state within a state in North Kivu.<sup>105</sup> The CNDP continued to fight government troops in the Kivus until 2009, when a peace agreement essentially gave the CNDP legitimate, unofficial authority to govern North Kivu.<sup>106</sup> South Kivu was relinquished by the CNDP back to forces loyal to the DRC's national government.<sup>107</sup>

Threats from other groups, like the Mai-Mai and FDRL, have never left the region.<sup>108</sup> The FDRL regularly carried out killings, lootings, and rapes in the Kivus through the end of the 2000s.<sup>109</sup> Today, the FDRL has scaled back its operations, but still terrorizes local villages throughout the Kivus.<sup>110</sup> Mai-Mai Militias, although not actively engaged in combat, also currently pose a threat to the national and regional government in the Kivus.<sup>111</sup>

The DRC is coming up on its third presidential election process since the end of the Second Congo War, and yet peace is still elusive in the eastern provinces.<sup>112</sup> The DRC's power-sharing mechanism has manifestly failed the state at large and, among the peace agreements explored in this memorandum, probably did the least to effectuate real change in the state. This can be blamed on the size of the state, its diverse tribal and ethnic nature, its large deposits of natural resources, and/or the constant intermeddling of foreign powers like Rwanda and Uganda.<sup>113</sup> In the eastern part of the Congo especially, insurmountable obstacles to peace exist due to constant competition for control over the mineral wealth of the region and the 20 year-old ethnic tensions that have existed since the Rwandan

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<sup>105</sup>Claudia Simons, Franzisca Zanker, Andreas Mehler & Denis M. Tull, *Power-Sharing in Africa's war Zones: How Important is the Local Level*, Vol. 51 THE JOURNAL OF MODERN AFRICAN STUDIES 681, 699 (2013).

<sup>106</sup>Claudia Simons, Franzisca Zanker, Andreas Mehler & Denis M. Tull, *Power-Sharing in Africa's war Zones: How Important is the Local Level*, Vol. 51 THE JOURNAL OF MODERN AFRICAN STUDIES 681, 699 (2013).

<sup>107</sup>Claudia Simons, Franzisca Zanker, Andreas Mehler & Denis M. Tull, *Power-Sharing in Africa's war Zones: How Important is the Local Level*, Vol. 51 THE JOURNAL OF MODERN AFRICAN STUDIES 681, 700 (2013).

<sup>108</sup>Armed Groups Kill 14 in Troubled East DR Congo, YAHOO News, August 8, 2016, available at <https://www.yahoo.com/news/seven-dead-troubled-east-dr-congo-103116261.html>.

<sup>109</sup>Claudia Simons, Franzisca Zanker, Andreas Mehler & Denis M. Tull, *Power-Sharing in Africa's war Zones: How Important is the Local Level*, Vol. 51 THE JOURNAL OF MODERN AFRICAN STUDIES 681, 699 (2013).

<sup>110</sup>Elsa Buchanan, *Battle for Control of the DRC: Who are the Democratic Forces for the Liberation of Rwanda (FDLR)*, INTERNATIONAL BUSINESS TIMES, Oct. 29, 2015, available at <http://www.ibtimes.co.uk/battle-control-drc-who-are-democratic-forces-liberation-rwanda-fdlr-1526271>.

<sup>111</sup>Press Release, Human Rights Watch, *DR Congo: Wanted Rebel's Troops Instill Fear* (Jan. 6, 2015).

<sup>112</sup>Jason Burke, *Scores Arrested in Democratic Republic of Congo Clashes*, THE GUARDIAN, May 26, 2016, available at <https://www.theguardian.com/world/2016/may/26/democratic-republic-of-congo-clashes-protests-joseph-kabila>.

<sup>113</sup>Claudia Simons, Franzisca Zanker, Andreas Mehler & Denis M. Tull, *Power-Sharing in Africa's war Zones: How Important is the Local Level*, Vol. 51 THE JOURNAL OF MODERN AFRICAN STUDIES 681, 698 (2013).

genocide.<sup>114</sup> Despite who or what is to blame for the problem, the DRC serves to show how a national power-sharing agreement can fail at a localized level.

## Power Sharing in Kirkuk, Iraq

A full-fledged power-sharing agreement has never been reached in Kirkuk, Iraq. However, the situation in Kirkuk over the last half-century is extremely relevant to this analysis because the politics and players involved in Kirkuk closely resemble the situation in northern Syria today. The following section explores the background of the conflict in Kirkuk and how the province has developed socially, politically, and economically in spite of the large ethnic divides amongst its leaders and general population. This analysis differs from the situations above because Kirkuk has seen relative calm without a formalized peace agreement, whereas some of the communities above have failed to reach peace even with a formalized agreement.

### *Background on the Conflict in Northern Iraq*

Kirkuk is a diverse province in northeastern Iraq that is home to large communities of Kurds, Turkmen, Arabs, Assyrians and Christians.<sup>115</sup> Kirkuk was originally annexed to Iraq in 1925 and, soon after that, became an important hub for Iraq's petroleum industry.<sup>116</sup> The oil industry allowed Kirkuk to flourish, but the influx of new labor to work the oil fields created an increase in local ethnic tensions.<sup>117</sup> By 1963, the revolutionary Baath party had taken control of Iraq and immediately began using its military to oppress the Kurdish population in and around Kirkuk.<sup>118</sup> The Iraqi government would do this by using Arab military forces to clear Kurdish villages and redevelop Kurdish land without offering the Kurds any compensation.<sup>119</sup>

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<sup>114</sup>Enough Project, *A Comprehensive Approach to Congo's Conflict Minerals*, 2, 17 (April, 2009), available at <http://www.enoughproject.org/files/Comprehensive-Approach.pdf>; Elsa Buchanan, *Battle for Control of the DRC: Who are the Democratic Forces for the Liberation of Rwanda (FDLR)*, INTERNATIONAL BUSINESS TIMES, Oct. 29, 2015, available at <http://www.ibtimes.co.uk/battle-control-drc-who-are-democratic-forces-liberation-rwanda-fdlr-1526271>.

<sup>115</sup>Michael Knights & Ahmed Ali, *Kirkuk in Transition*, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY, 1 (April, 2010), available at <https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus102.pdf>.

<sup>116</sup>Michael Knights & Ahmed Ali, *Kirkuk in Transition*, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY, 1 (April, 2010), available at <https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus102.pdf>.

<sup>117</sup>Michael Knights & Ahmed Ali, *Kirkuk in Transition*, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY, 2 (April, 2010), available at <https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus102.pdf>.

<sup>118</sup>Michael Knights & Ahmed Ali, *Kirkuk in Transition*, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY, 2-3(April, 2010), available at <https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus102.pdf>.

<sup>119</sup>Michael Knights & Ahmed Ali, *Kirkuk in Transition*, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY, 2-3 (April, 2010), available at <https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus102.pdf>.

After the start of the Iran-Iraq war in 1980, Saddam Hussein increasingly turned his forces on Kurdish communities in Kirkuk and encouraged the resettlement of Arabs into the emptied Kurdish villages. Hussein was said to have completely destroyed and/or cleared out 121 of 122 villages in northern Kirkuk in just a two-month span in 1988.<sup>120</sup> Hussein also turned chemical weapons on his own Kurdish population when he released mustard and sarin gas on the town of Halabja in 1988.<sup>121</sup>

In 1991, in tandem with the general Kurdish uprising and succession movement in Iraqi-Kurdistan, Kurdish forces briefly took full control over Kirkuk.<sup>122</sup> The rebellion in Kirkuk was short-lived and, in its immediate aftermath, over 120,000 Kurds and other ethnic minorities were expelled from the province.<sup>123</sup> However, the Iraqi-Kurdish rebellion was successful overall with the assistance of a United States-enforced no fly zone due to its war in southern Iraq.<sup>124</sup>

By the time of the U.S. invasion of Iraq in 2003, Kirkuk remained tense, but still under Iraqi government control, just outside the reach of now *de facto* autonomous Iraqi-Kurdistan. During the U.S.'s Second Gulf War, Kurdish Peshmerga and Security Services were able to gain and retain control over Kirkuk.<sup>125</sup> With the Kurds' momentary occupation of Kirkuk and the U.S.'s eventual occupation of the whole of Iraq, Kirkuk fell into a strange position of limbo.<sup>126</sup> For instance, Iraq's 2005 Constitution recognizes, for the first time, the autonomous federal region of Kurdistan, but this area does not include Kirkuk.<sup>127</sup> The Constitution also outlines a procedure for allowing Kirkuk province to gain

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<sup>120</sup>Michael Knights & Ahmed Ali, *Kirkuk in Transition*, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY, 3 (April, 2010), available at <https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus102.pdf>.

<sup>121</sup>Michael Knights & Ahmed Ali, *Kirkuk in Transition*, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY, 3 (April, 2010), available at <https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus102.pdf>; *Iraqi Kurds Mark 25 Years Since Halabja Gas Attack*, BBC News, March 16, 2013, available at <http://www.bbc.com/news/world-middle-east-21814734>.

<sup>122</sup>Human Rights Watch, *Endless Torment: The 1991 Uprising in Iraq and its Aftermath*, 29-30 (June 1, 1992), available at <https://www.hrw.org/report/1992/06/01/endless-torment/1991-uprising-iraq-and-its-aftermath>.

<sup>123</sup>Human Rights Watch, *Claims in Conflict: Reversing Ethnic Cleansing in Northern Iraq*, 46 (August, 2004), available at <https://www.hrw.org/reports/2004/iraq0804/iraq0804.pdf>.

<sup>124</sup>*Iraqi Kurdistan Profile*, BBC News, Feb. 5, 2016, available at <http://www.bbc.com/news/world-middle-east-28147263>.

<sup>125</sup>Michael Knights & Ahmed Ali, *Kirkuk in Transition*, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY, 4 (April, 2010), available at <https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus102.pdf>

<sup>126</sup>Sean Kane, *Iraq's Disputed Territories: a View of the Political Horizon and Implications for U.S. Policy*, UNITED STATES INSTITUTE OF PEACE, 23 (March, 2011), available at <http://www.usip.org/sites/default/files/resources/PW69.pdf>.

<sup>127</sup>IRAQ CONST. art. 117.

federal independence after a normalization process, census, and referendum vote.<sup>128</sup> To date, Kirkuk has been unable to solidify a normalization process, conduct a census, or vote in on a referendum.<sup>129</sup>

Kurdistan sat in a vacuum of power, under new Iraqi authority, until the Islamic State’s (“IS”) incursion through northern Iraq in the summer of 2014.<sup>130</sup> At that time, Kurdish Peshmerga, on the orders of the Kurdish Regional Government (“KRG”), entered and occupied Kirkuk in an effort to defend the province and its oil deposits.<sup>131</sup> The KRG has retained power in Kirkuk to this day.<sup>132</sup> In March of this year, a new movement, started by Kirkuk City’s Mayor, began to again push for an independence referendum in Kirkuk province.<sup>133</sup>

### *Local Power Sharing in Kirkuk*

To date, no official power-sharing agreement has ever been reached in Kirkuk. However, the United Nations and others in the region have attempted to form a power-sharing agreement in the province since the passing of Iraq’s Constitution in 2005.<sup>134</sup> The Kurdish-led Kirkuk Provincial Council (“KPC”), attempted to form Kirkuk’s first potential power-sharing agreement in December 2007.<sup>135</sup> The proposal was comprised of a ratio formula that allotted a specific number of seats in Kirkuk’s Provincial Council to certain ethnic groups based on their representation in the community.<sup>136</sup> Under the proposal, the Kurds would retain the largest share of seats, but would not hold a complete majority of the total

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<sup>128</sup>IRAQ CONST. art. 140.

<sup>129</sup>Michael Knights & Ahmed Ali, *Kirkuk in Transition*, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY, 6-7 (April, 2010), available at <https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus102.pdf>.

<sup>130</sup>UN Warns of ‘Tragedy’ as Militants Take Over Iraq Towns, BBC News, Aug. 3, 2014, available at <http://www.bbc.com/news/world-middle-east-28631770>.

<sup>131</sup>Jeffrey Young, *Kurdish Peshmerga Force Secure Kirkuk, Its Oil*, VOICE OF AMERICA, July 20, 2014, available at <http://www.voanews.com/a/kurdish-peshmerga-force-secures-kirkuk-and-its-oil/1961585.html>.

<sup>132</sup>Martin Chulov, *Kurds and Shias Face off over Kirkuk in Vacuum Left by Iraqi Army*, THE GUARDIAN, Jan. 22, 2016, available at <https://www.theguardian.com/world/2016/jan/22/kurds-and-shias-face-off-over-kirkuk-in-vacuum-left-by-iraqi-army>

<sup>133</sup>Florian Neuhof, *On Iraq’s Faultline: Kirkuk Governor Calls for Vote on Kurdish Autonomy*, March 19, 2016, available at <http://www.middleeasteye.net/news/kirkuk-governor-interview-644397263>.

<sup>134</sup>Michael Knights & Ahmed Ali, *Kirkuk in Transition*, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY, 7 (April, 2010), available at <https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus102.pdf>; *UN Suggests Power-Sharing for Kirkuk*, GULF NEWS IRAQ, March 30, 2009, available at <http://gulfnews.com/news/mena/iraq/un-suggests-power-sharing-for-kirkuk-1.60133>.

<sup>135</sup>Michael Knights & Ahmed Ali, *Kirkuk in Transition*, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY, 7 (April, 2010), available at <https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus102.pdf>.

<sup>136</sup>Michael Knights & Ahmed Ali, *Kirkuk in Transition*, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY, 7 (April, 2010), available at <https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus102.pdf>.

allotted seats.<sup>137</sup> This power-sharing effort was ultimately blocked by the KRG in Kurdistan.<sup>138</sup>

The next power-sharing effort in the region came with the passing of Iraq's provincial election law on September 24, 2008.<sup>139</sup> Article 23 of the law specifically says that no elections would be held in Kirkuk until a power-sharing agreement in the province was reached.<sup>140</sup> The agreement itself was supposed to be drafted and executed by a committee of representatives that accurately reflected Kirkuk's ethnic composition.<sup>141</sup> The committee was then to stay in transitional power until elections, pursuant to the agreed upon power-sharing mechanism, could be held.<sup>142</sup> This Article 23 resolution, however, ultimately failed due to its committee of representatives' failure to gain legitimacy at a local level and its overall unwillingness to reach a compromise.<sup>143</sup>

After the failed Article 23 efforts to form a power-sharing agreement in Kirkuk, the province entered into a *de facto*, unorganized power-sharing coalition. Iraq's federal government generally has left its outlying provinces, including Kirkuk, to their own devices in terms of day-to-day public administration.<sup>144</sup> In Kirkuk, this resulted in a large amount of power falling into the hands of the KPC, who, as described earlier, is led by a Kurdish majority.<sup>145</sup> This Kurdish majority has remained in power due to Kirkuk's failure to hold provincial elections since 2005.<sup>146</sup>

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<sup>137</sup>Michael Knights & Ahmed Ali, *Kirkuk in Transition*, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY, 7 (April, 2010), available at <https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus102.pdf>.

<sup>138</sup>Michael Knights & Ahmed Ali, *Kirkuk in Transition*, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY, 7 (April, 2010), available at <https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus102.pdf>.

<sup>139</sup>International Crisis Group, *Oil for Soil: Toward a Grand Bargain on Iraq and the Kurds*, footnote 28 (Oct. 28, 2008), available at <https://d2071andvip0wj.cloudfront.net/80-oil-for-soil-toward-a-grand-bargain-on-iraq-and-the-kurds.pdf>.

<sup>140</sup>International Crisis Group, *Oil for Soil: Toward a Grand Bargain on Iraq and the Kurds*, footnote 28 (Oct. 28, 2008), available at <https://d2071andvip0wj.cloudfront.net/80-oil-for-soil-toward-a-grand-bargain-on-iraq-and-the-kurds.pdf>.

<sup>141</sup>International Crisis Group, *Oil for Soil: Toward a Grand Bargain on Iraq and the Kurds*, footnote 28 (Oct. 28, 2008), available at <https://d2071andvip0wj.cloudfront.net/80-oil-for-soil-toward-a-grand-bargain-on-iraq-and-the-kurds.pdf>.

<sup>142</sup>International Crisis Group, *Oil for Soil: Toward a Grand Bargain on Iraq and the Kurds*, footnote 28 (Oct. 28, 2008), available at <https://d2071andvip0wj.cloudfront.net/80-oil-for-soil-toward-a-grand-bargain-on-iraq-and-the-kurds.pdf>.

<sup>143</sup>Michael Knights & Ahmed Ali, *Kirkuk in Transition*, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY, 7 (April, 2010), available at <https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus102.pdf>.

<sup>144</sup>Michael Knights & Ahmed Ali, *Kirkuk in Transition*, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY, 22 (April, 2010), available at <https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus102.pdf>.

<sup>145</sup>Michael Knights & Ahmed Ali, *Kirkuk in Transition*, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY, 23 (April, 2010), available at <https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus102.pdf>.

<sup>146</sup>Michael Knights & Ahmed Ali, *Kirkuk in Transition*, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY, 25 (April, 2010), available at <https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus102.pdf>.

Generally, the existing Kurdish-run KPC has managed to maintain cohesion in Kirkuk, though the province remains on edge. The KPC has done this through filling funding and capacity gaps in the public sector that were left open by the federal government in Baghdad in the aftermath the 2005 Constitution.<sup>147</sup> After 2005, the KPC actively began subsidizing, with the help of the KRG, schools, security services, hospitals, agricultural offices, and national identity registries, among other things.<sup>148</sup> This influx of capital from the KPC outside the reach of the federal government has resulted in a public sector dominated by a combination of Arab and Turkman workers, but controlled by a majority of Kurdish managers.<sup>149</sup>

Today, a fragile *de facto* power-sharing mechanism exists in Kirkuk. This power-sharing apparatus became more evident after Peshmerga fighters took over and controlled Kirkuk in 2014, forcing the Iraqi federal government to again yield to Kurdish power in Kirkuk. One source claims that an unofficial power-sharing agreement was reached between Iraqi forces and the Kurds in Kirkuk in 2015,<sup>150</sup> but to date, no official agreement has ever been reached. Kirkuk may be set to vote on total independence from the central Iraqi governance by the end of this year.<sup>151</sup>

### *The Effects of Power Sharing on Kirkuk*

Kirkuk has never seen a legitimate power-sharing deal come to fruition; however, as discussed above, a sort of *de facto* power-sharing mechanism has been used in Kirkuk to this day. This *de facto* power-sharing has stopped the province from sliding into conflict since the fall of Hussein's government, but its overall consequence is that Kirkuk has remained in a constant state of apprehension.<sup>152</sup> This apprehension centers on the province's failure to follow the Constitution's

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<sup>147</sup>Michael Knights & Ahmed Ali, *Kirkuk in Transition*, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY, 23-24 (April, 2010), available at <https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus102.pdf>.

<sup>148</sup>Michael Knights & Ahmed Ali, *Kirkuk in Transition*, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY, 24 (April, 2010), available at <https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus102.pdf>.

<sup>149</sup>Michael Knights & Ahmed Ali, *Kirkuk in Transition*, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY, 25 (April, 2010), available at <https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus102.pdf>.

<sup>150</sup>Abul Aziz al-Taei, *Power-Sharing Agreement Between Shia Militias and Kurds in Kirkuk*, AL-ARABY NEWS, Feb. 22, 2015, available at <https://www.alaraby.co.uk/english/news/2015/2/22/power-sharing-agreement-between-shia-militias-and-kurds-in-kirkuk>.

<sup>151</sup>Florian Neuhof, *On Iraq's Faultline: Kirkuk Governor Calls for Vote on Kurdish Autonomy*, March 19, 2016, available at <http://www.middleeasteye.net/news/kirkuk-governor-interview-644397263>.

<sup>152</sup>Jesse Rosenfeld, *The Epicenter of Iraq's Next Civil War*, THE DAILY BEAST, Feb. 17, 2015, available at <http://www.thedailybeast.com/articles/2015/02/17/in-kirkuk-the-epicenter-of-iraq-s-next-civil-war.html>; Michael Knights & Ahmed Ali, *Kirkuk in Transition*, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY, 6-7 (April, 2010), available at <https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus102.pdf>.

Article 140 referendum procedures, its failure to hold provincial elections in over 10 years, and the constant threat of looming war.<sup>153</sup>

Despite all of this, Kirkuk has managed to continue utilizing its large deposits of petroleum, maintain an active public sector, and stay relatively safe at a community and provincial level. As touched on above, the oil industry in Kirkuk has continued to thrive under Kurdish management and a majority non-Kurdish workforce.<sup>154</sup> Additionally, in the public sector, the KPC has managed to operate all basic public necessities on its own at the sub-district level.<sup>155</sup> At the provincial level, in addition to the public operations discussed in the previous section, the KPC has been able to fund housing and other development projects within Kirkuk without federal assistance.<sup>156</sup> In total, nearly 20% of Kirkuk's public sector operates completely outside the control of the federal government.<sup>157</sup>

Kirkuk has also been able to maintain security. Although it required Peshmerga help, Kirkuk was the first major province in northern Iraq to successfully combat an IS assault.<sup>158</sup> Before 2014, federal Iraqi government troops, multiple times, crossed unofficial Kurdish borders causing tense standoffs;<sup>159</sup> however, none of these incursions resulted in any serious harm.<sup>160</sup> At the local level, prior to the Peshmerga occupation of the city in 2014, Kirkuk possessed an integrated militarized police force that relied heavily on KRG support and intelligence.<sup>161</sup> Also at this time, Kirkuk's police force, like its public sector, was led by Kurds, but staffed overwhelmingly by non-Kurds.<sup>162</sup>

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<sup>153</sup>Jesse Rosenfeld, *The Epicenter of Iraq's Next Civil War*, THE DAILY BEAST, Feb. 17, 2015, available at <http://www.thedailybeast.com/articles/2015/02/17/in-kirkuk-the-epicenter-of-iraq-s-next-civil-war.html>; Michael Knights & Ahmed Ali, *Kirkuk in Transition*, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY, 4-7 (April, 2010), available at <https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus102.pdf>;

<sup>154</sup>Michael Knights & Ahmed Ali, *Kirkuk in Transition*, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY, 24 (April, 2010), available at <https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus102.pdf>.

<sup>155</sup>Michael Knights & Ahmed Ali, *Kirkuk in Transition*, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY, 24 (April, 2010), available at <https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus102.pdf>.

<sup>156</sup>Michael Knights & Ahmed Ali, *Kirkuk in Transition*, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY, 23 (April, 2010), available at <https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus102.pdf>.

<sup>157</sup>Michael Knights & Ahmed Ali, *Kirkuk in Transition*, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY, 24 (April, 2010), available at <https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus102.pdf>.

<sup>158</sup>Fazel Hawramy, *Kurdish Peshmerga Seize a Chaotic Victory in Kirkuk*, THE GUARDIAN, June 12, 2014, available in <https://www.theguardian.com/world/2014/jun/12/kurdish-peshmerga-kirkuk-iraq-maliki>.

<sup>159</sup>Michael Knights & Ahmed Ali, *Kirkuk in Transition*, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY, 33 (April, 2010), available at <https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus102.pdf>.

<sup>160</sup>Michael Knights & Ahmed Ali, *Kirkuk in Transition*, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY, 33 (April, 2010), available at <https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus102.pdf>.

<sup>161</sup>Michael Knights & Ahmed Ali, *Kirkuk in Transition*, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY, 29 (April, 2010), available at <https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus102.pdf>.

<sup>162</sup>Michael Knights & Ahmed Ali, *Kirkuk in Transition*, THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY, 29 (April, 2010), available at <https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus102.pdf>.

Kirkuk's uneasy *de facto* power-sharing arrangement has created a city that has remained peaceful in the face of conflict for over a decade. However, with a new potential independence referendum on the horizon, Kirkuk's general political status remains unclear. That is to say, who governs Kirkuk (Iraq or Iraqi-Kurdistan) and how Kirkuk will be governed is still very much up in the air today. At the very least, if Kirkuk is able to secure any autonomy from the federal Iraqi government, then perhaps parties could create a legitimate power-sharing agreement supported by the stable governmental hand of the KRG.<sup>163</sup>

## Conclusion

In exploring the wide array of localized power sharing agreements above, this memorandum demonstrates that community level power-sharing arrangements can come in many different forms and address many different levels of local governance. Furthermore, the illustrations in this memorandum show that a power-sharing agreements' success can vary widely based on the groups involved, the quality of the agreement, and the location of the arrangement. Ultimately, a successful power-sharing agreement will be tailored on a case-by-case basis, considering the situation at hand.

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<sup>163</sup>Martin Chulov, *Kurds and Shias Face off over Kirkuk in Vacuum Left by Iraqi Army*, THE GUARDIAN, Jan. 22, 2016, available at <https://www.theguardian.com/world/2016/jan/22/kurds-and-shias-face-off-over-kirkuk-in-vacuum-left-by-iraqi-army>

## About the Public International Law & Policy Group

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- **Democracy and Governance**

Through its work, PILPG promotes the use of international law as an alternative to violent conflict for resolving international disputes. PILPG provides legal counsel to *pro bono* clients during peace negotiations, advises on the creation and operation of transitional justice mechanisms, provides expertise during the drafting of post-conflict constitutions, and advises on ways to strengthen the rule of law and effective institutions. To facilitate the utilization of this legal assistance, PILPG also provides policy formulation advice and training on matters related to conflict resolution.

In January 2005, a number of PILPG's *pro bono* clients nominated PILPG for the Nobel Peace Prize for "significantly contributing to the promotion of peace throughout the globe by providing crucial *pro bono* legal assistance to states and non-state entities involved in peace negotiations and in bringing war criminals to justice."

In addition to a staff of full-time attorneys that implement PILPG's programs, PILPG leverages volunteer assistance from international lawyers, diplomats, and foreign relations experts, as well as *pro bono* assistance from major international law firms. Annually, PILPG is able to provide over \$20 million worth of *pro bono* international legal services.

PILPG is based in Washington, D.C., New York, and The Hague. To date, PILPG has maintained project offices in: Bosnia and Herzegovina, Côte d'Ivoire, Egypt, Georgia, Iraq, Kenya, Kosovo, Libya, Nepal, Somaliland, South Sudan, Sri Lanka, Tanzania, Tunisia, Turkey, and Uganda.

Over the course of the past two decades, PILPG has provided assistance to *pro bono* clients in Afghanistan, Armenia, Bosnia and Herzegovina, Botswana, Burma, Cambodia, Côte d'Ivoire, Darfur, Dutch Antilles, East Timor, Egypt, Estonia, Ethiopia, Georgia, Iraq, Kenya, Kosovo, Lebanon, Liberia, Libya, Macedonia, Mauritius, Montenegro, Nepal, Philippines, Rwanda, Seychelles, Somalia, Southern Cameroons, Somaliland, South Sudan, Sri Lanka, Sudan, Syria, Tanzania, Tunisia, Uganda, Yemen, and Zimbabwe. PILPG has also provided *pro bono* legal assistance to all of the international and hybrid war crimes tribunals.