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Iraq: Elections, Government, and Constitution

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Summary

Elections in 2005 for a transition government (January 30, 2005), a permanent constitution (October 15), and a permanent (four year) government (December 15) were concluded despite insurgent violence, progressively attracting Sunni participation. On May 20, a unity government was formed as U.S. officials had been urging, but it is not clear that the new government will be able to reduce ongoing insurgent and sectarian violence. (See CRS Report RL31339, *Iraq: Post-Saddam Governance and Security*, by Kenneth Katzman.)

After Operation Iraqi Freedom (OIF) deposed Saddam Hussein in April 2003, the Bush Administration linked the end of U.S. military occupation to the adoption of a new constitution and national elections, tasks expected to take two years. Prominent Iraqis persuaded the Administration to accelerate the process, and sovereignty was given to an appointed government on June 28, 2004, with a government and a permanent constitution to be voted on thereafter, as stipulated in a Transitional Administrative Law (TAL, signed March 8, 2004; [<http://cpa-iraq.org/government/TAL.html>]), as follows:

- The January 30, 2005, elections were for a 275-seat transitional National Assembly; a provincial assembly in each of Iraq's 18 provinces (41 seats each; 51 for Baghdad); and a Kurdistan regional assembly (111 seats). The Assembly chose a transitional "presidency council" (a president and two deputies), a prime minister with executive power, and a cabinet.
- The transitional Assembly was to draft a constitution by August 15, 2005, to be put to a referendum by October 15, 2005. The draft could be vetoed with a two-thirds majority of the votes in any three provinces. A permanent government, elected by December 15, 2005, would take office by December 31, 2005. If a constitution was defeated, the December 15 elections would be for another transitional National Assembly (which would re-draft a constitution).

January 30 Elections

The January 30, 2005, elections, run by the “Independent Electoral Commission of Iraq” (IECI), were conducted by proportional representation (closed list); voters chose among “political entities” (a party, a coalition of parties, or individuals). Seats in the Assembly and the provincial assemblies were allocated in proportion to a slate’s showing; any entity receiving at least 1/275 of the vote (about 31,000 votes) won a seat. A female candidate occupied every third position on electoral lists in order to meet the TAL’s goal for at least 25% female membership. A total of 111 entities were on the National Assembly ballot: 9 multi-party coalitions, 75 single parties, and 27 individual persons. The 111 entities contained over 7,000 candidates. About 9,000 candidates, organized into party slates, ran in provincial and Kurdish elections.

In the January 30 (and December 15) elections, Iraqis abroad were eligible to vote. The International Organization for Migration (IOM) was tapped to run the “out-of-country voting” (OCV) program. OCV took place in Australia, Canada, Denmark, France, Germany, Iran, Jordan, Sweden, Syria, Turkey, UAE, Britain, Netherlands, and the United States. (See [<http://www.iraqocv.org>].) About 275,000 Iraqi expatriates (dual citizens and anyone whose father was Iraqi) registered, and about 90% of them voted (in January).

Polling places were staffed by about 200,000 Iraqis in all three elections in 2005. International monitoring in both elections was limited to 25 observers (January) and some European parliament members and others (December).

The Iraqi government budgeted about \$250 million for the January elections, of which \$130 million was offset by international donors, including about \$40 million from the European Union. Out of \$21 billion in U.S. reconstruction funds, the United States provided \$40 million to improve IECI capacity; \$42.5 million for Iraqi monitoring; and \$40 million for political party development, through the International Republican Institute and National Democratic Institute. OCV cost an additional \$92 million, of which \$11 million was for the U.S. component, but no U.S. funds were spent for OCV.

Violence was less than anticipated; insurgents conducted about 300 attacks, but no polling stations were overrun. Polling centers were guarded by the 130,000 members of Iraq’s security forces, with the 150,000 U.S. forces in Iraq available for backup. Two days prior to election day, vehicle traffic was banned, Iraq’s borders were closed, and polling locations were confirmed. Security measures were similar for the October 15 and December 15 votes, although with more Iraqi troops and police trained (about 215,000) than in January.

Competition and Results. The Iraqi groups that took the most active interest in the January elections were those best positioned: Shiite Islamist parties, the Kurds, and established secular parties. The results of this and the December 2005 election are shown in the table below. The most prominent slate was the Shiite Islamist “United Iraqi Alliance” (UIA), consisting of 228 candidates from 22 parties, primarily the Supreme Council for the Islamic Revolution in Iraq (SCIRI) and the Da’wa Party. It was backed by Grand Ayatollah Ali al-Sistani. The first candidate on this slate was SCIRI leader Abd al-Aziz al-Hakim; Da’wa leader Ibrahim al-Jafari was number seven. Even though radical Shiite cleric Moqtada al-Sadr denounced the election as a U.S.-led process, 14 of his supporters were on the UIA slate; eight of these won seats. The two main Kurdish

parties, the Patriotic Union of Kurdistan (PUK) and the Kurdistan Democratic Party (KDP) offered a joint 165-candidate list. Interim Prime Minister Iyad al-Allawi filed a six-party, 233-candidate “Iraqi List” led by his Iraqi National Accord (INA) party. The Communist Party filed a 257-candidate “People’s Union” slate.¹

Sunni Arabs (20% of the overall population), perceiving electoral defeat and insurgent intimidation, mostly boycotted and won only 17 seats spread over several lists. The relatively moderate Sunni “Iraqi Islamic Party” (IIP) filed a 275-seat slate, but it withdrew in December 2004. The hard-line Iraqi Muslim Scholars Association (MSA), said to be close to the insurgents, called for a Sunni boycott.

After the election, factional bargaining over governmental posts and disagreements over Kurdish demands for substantial autonomy delayed formation of the government. During April and May, the factions formed a government that U.S. officials said was not sufficiently inclusive of Sunnis, even though it had a Sunni (Hajim al-Hassani) as Assembly speaker; a Sunni deputy president (Ghazi al-Yawar); a Sunni deputy prime minister (Abd al-Mutlak al-Jabburi); a Sunni Defense Minister (Sadoun Dulaymi); and five other Sunni ministers. The Sunnis complained that their ministerial slots (other than Defense) were relatively unimportant, such as the ministries of culture and of women’s affairs. Most major positions were dominated by Shiites and Kurds, such as PUK leader Jalal Talabani as president; Da’wa leader Ibrahim al-Jafari as Prime Minister; SCIRI’s Adel Abd al-Mahdi as the second deputy president; Bayan Jabr as Interior Minister, which controls the police and related commandos; and KDP activist Hoshyar Zebari as Foreign Minister. Ahmad Chalabi and KDP activist Rosch Shaways were named as the two other deputy prime ministers, and there was one Christian and one Turkoman minister. In provincial elections, the Kurds won about 60% of the seats in Tamim (Kirkuk) province (26 out of 41 seats), strengthening the Kurds’ efforts to gain control of the province.

Permanent Constitution and Referendum

The next step in the transition process was the drafting of a permanent constitution. On May 10, the National Assembly appointed a 55-member drafting committee, chaired by SCIRI activist Humam al-Hammoudi. The committee included only two Sunni Arabs, prompting Sunni resentment, and 15 Sunnis (and one member of the small Sabian community) were later added as full committee members, with 10 more as advisors. Missing the August 15 deadline to produce a draft, the talks produced a document on August 28 that included some compromises sought by Sunnis — the Shiites and Kurds declared it final. The Kurds achieved a major goal; Article 136 set December 31, 2007, as a deadline for resettling Kurds in Kirkuk and holding a referendum on whether Kirkuk will join the Kurdish region.

The draft (Article 2)² designated Islam “a main source” of legislation and said no law can contradict the “established” provisions of Islam. Article 39 implied that families could choose which courts to use to adjudicate family issues such as divorce and inheritance, and Article 34 made only primary education mandatory. These provisions

¹ For information on these groups, see CRS Report RL31339, *Iraq: Post-Saddam Governance and Security*, by Kenneth Katzman.

² [<http://www.washingtonpost.com/wp-dyn/content/article/2005/10/12/AR2005101201450.html>].

provoked opposition from women who fear that the males of their families will decide to use Sharia (Islamic law) courts for family issues and limit girls' education. The 25% electoral goal for women was retained (Article 47). Article 89 said that federal supreme court will include experts in Islamic law, as well as judges and experts in civil law.

The remaining controversy centered on the draft's provision allowing two or more provinces together to form new autonomous "regions." Article 117 allowed each "region" to organize internal security forces, which would legitimize the fielding of sectarian militias, in addition to the Kurds' peshmerga, which were allowed by the TAL. Article 109 required the central government to distribute oil and gas revenues from "current fields" in proportion to population, implying that the regions might ultimately control revenues from new energy discoveries. These provisions raised Sunni alarms, because their areas have no known oil or gas deposits, and Sunni negotiators, including chief negotiator Saleh al-Mutlak of the National Dialogue Council opposed the draft on these grounds. Article 62 establishes a "Federation Council" — a second chamber of a size with powers to be determined — presumably to review legislation affecting regions.

After further negotiations, on September 19, 2005, the National Assembly approved a "final" draft, with some modifications that Sunnis wanted, including clarifying government control over water rights, and a statement that Iraq has always been part of the Arab League. However, no major changes to the provisions on new regions were made and, ending their political boycott, Sunnis registered in large numbers (70%-85% in some Sunni cities) to try to defeat the constitution. The United Nations printed and distributed 5 million copies. The continued Sunni opposition prompted U.S. Ambassador to Iraq Zalmay Khalilzad to mediate an agreement (October 11) between Kurdish and Shiite leaders and a major Sunni party, the Iraqi Islamic Party, providing for (Article 137) a panel to convene after the installation of a post-December 15 election government and, within four months, propose a bloc of amendments. The amendments require a majority Assembly vote of approval and, within another two months, would be put to a public referendum under the same rules as the October 15, 2005 referendum. The major assumption of the deal is that Sunnis would be politically strengthened by participating in the December 15 election and would be able to demand amendments.

The referendum was relatively peaceful. Final results (released October 25) nationwide were 78.6% in favor and 21.4% against. The mostly Sunni provinces of Anbar and Salahuddin had a 97% and 82% "no" vote, respectively. The mostly Sunni province of Nineveh voted 55% "no." Diyala province, believed mostly Sunni, had a slight majority "yes" vote (51%). The draft was declared adopted because only two provinces, not three, voted "no" with a 2/3 majority. The Administration praised the vote as evidence that Sunnis were moving into the political process.

December 15, 2005, Elections

Under a July 2005 election law designed to enhance Sunni representation, for the December 15 elections each province constituted an election constituency and contributed a fixed number of seats to the new "Council of Representatives." Of the 275-seat body, 230 seats were allocated this way, and there were 45 "compensatory" seats for entities that did not win provincial seats but garnered votes nationwide, or which would have won additional seats had the election constituency been the whole nation. A total of 361 political "entities" registered: 19 of them were coalition slates (comprising 125 different

political parties), and 342 were other “entities” (parties or individual persons). About 7,500 candidates spanned all entities.

Most notably for U.S. policy, major Sunni slates competed. Most prominent was the three-party “Iraqi Concord Front,” comprising the IIP, the National Dialogue Council, and the Iraqi People’s General Council. In contrast to the January election, the UIA slate formally included Sadr’s faction as well as other hard line Shiite parties *Fadila* (Virtue) and Iraqi Hizballah. Ahmad Chalabi’s Iraqi National Congress ran separately. Former Prime Minister Iyad al-Allawi’s mostly secular 15-party “Iraqi National” slate was broader than his January list, incorporating not only his Iraq National Accord but also the Communist Party, Yawar’s “Iraqis” party, and Adnan Pachachi’s “Independent Democratic Gathering.” The Kurdish alliance slate was little changed from January.

Violence was minor (about 30 incidents) as some Sunni insurgents, supporting greater Sunni representation in parliament, guarded rather than disrupted the voting. However, results suggest that voters chose lists representing their sects and regions, not secular, non-sectarian lists. The table gives results that were court-certified on February 10, 2006. According to the constitution, the timetable for subsequent government formation should have been as follows:

- within 15 days of certification (by February 25), the Council of Representatives was to convene to select a speaker and two deputy speakers. The Council first convened on March 16, but without selecting a Speaker or any other Council leadership positions;
- after choosing a Council speaker the Council was to select (no deadline specified, but a thirty-day deadline for the choice after subsequent Council elections), a presidency council for Iraq (President and two deputies). Those choices required a 2/3 vote of the Council;
- within another 15 days, the presidency council (by consensus of its three officials) was to designate the “nominee of the [Council] bloc with the largest number” as Prime Minister, the post that has executive power;
- within another 30 days, the prime minister designate was to name a cabinet for approval by majority vote of the Council.

The UIA and the Kurds were well positioned to continue their governing alliance; combined they have 181 seats, just shy of the 184 (two-thirds) needed to name a presidency council. However, their alliance frayed over the UIA’s February 12 nomination of Jafari to continue as Prime Minister. (With Sadr’s support, he edged out SCIRI’s Adel Abd al-Mahdi). With senior U.S. officials urging formation of a “unity government” as soon as possible, the Kurds, Sunni groupings, and Allawi’s bloc opposed the Jafari choice on the grounds that he did not secure Iraq and is too close to Sadr. In March 2006, attempting to promote comity, Iraqi leaders agreed to a U.S. proposal to form extra-constitutional economic and security councils including all factions.

On April 20, Jafari agreed to step aside, breaking the logjam. On April 22, the Council of Representatives approved Talabani to continue as president, Abd al-Mahdi to continue as a deputy president, and another deputy president, Concord Front/IIP leader

Tariq al-Hashimi. Concord Front figure Mahmoud Mashhadani was chosen Council of Representatives speaker, with deputies Khalid al-Attiya (UIA/Shiite) and Arif Tayfour, a KDP activist (continuing in that post). For the key post of Prime Minister, senior Da'wa Party figure Jawad al-Maliki replaced Jafari, his Da'wa superior. Maliki, who was in exile in Syria during Saddam's rule, is considered a decisive, Shiite hardliner who mostly shares Jafari's views and has sought to exclude former Baathists from government, although he has professed unity and non-sectarianism since being named to the post.

New Cabinet. Amid U.S. and other congratulations, Maliki named and won approval of a 39 member cabinet (including deputy prime ministers) on May 20, one day prior to his 30-day deadline. He did not name permanent figures for the major posts of Interior, Defense, and Ministry of State for National Security but said he would do so within a few days. It is expected that these three posts will go to a UIA selectee, a Sunni, and a Shiite, respectively. Among his other permanent selections were Kurdish official Barham Salih and Sunni Arab Salam al-Zubaie as deputy prime ministers, and four ministers are women. Of the 34 permanent ministerial posts named, a total of seven are Sunnis; seven are Kurds; nineteen are Shiites; and one is Christian. Ayatollah Sistani loyalist Hussein Shahrastani was named Oil Minister; SCIRI official Bayan Jabr moved to Finance Minister (from Interior); and KDP activist Hoshiyar Zebari remains as Foreign Minister. Sadr loyalists were named to the ministries of agriculture, health, and transportation.

Table 1. Election Results (January and December)

Slate/Party	Seats (Jan. 05)	Seats (Dec. 05)
UIA (Shiite Islamist); Sadr formally joined list for Dec. vote (Of the 128: SCIRI~30; Da'wa~28; Sadr~30; Fadila~15; others~25)	140	128
Kurdistan Alliance (PUK and KDP)	75	53
Iraqis List (secular, Allawi); added some mostly Sunni parties for Dec. vote	40	25
Iraq Concord Front (Sunni). Main Sunni bloc; not in Jan. vote	—	44
Dialogue National Iraqi Front (Sunni, Saleh al-Mutlak) Not in Jan. vote	—	11
Iraqi National Congress (Chalabi). Was part of UIA list in Jan. 05 vote	—	0
Iraqis Party (Yawar, Sunni); Part of Allawi list in Dec. vote	5	—
Iraqi Turkomen Front (Turkomen, Kirkuk-based, pro-Turkey)	3	1
National Independent and Elites (Jan)/Risalyun (Mission, Dec) pro-Sadr	3	2
People's Union (Communist, non-sectarian); on Allawi list in Dec. vote	2	—
Kurdistan Islamic Group (Islamist Kurd)	2	5
Islamic Action (Shiite Islamist, Karbala)	2	0
National Democratic Alliance (non-sectarian, secular)	1	—
Rafidain National List (Assyrian Christian)	1	1
Liberation and Reconciliation Gathering (Sunni, secular)	1	3
Ummah (Nation) Party. (Secular, Mithal al-Alusi, former INC activist)	0	1
Yazidi list (small Kurdish, heterodox religious minority in northern Iraq)	—	1

Number of polling places: January: 5,200; December: 6,200.

Eligible voters: 14 million in January election; 15 million in October referendum and December.

Turnout: January: 58% (8.5 million votes)/ October: 66% (10 million)/ December: 75% (12 million).