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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 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]. Elections were held on January 30, 2005, 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, was to take office by December 31, 2005. If the 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). 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.

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. About 275,000 Iraqi expatriates (dual citizens and anyone whose father was Iraqi) registered, and about 90% of them voted (in January).

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

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, as 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. 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. 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 Sunnis as Assembly speaker; one of the two deputy presidents; one of the three deputy prime ministers; Defense Minister; and five other ministers. Most major positions were dominated by Shiites and Kurds, such

as PUK leader Jalal Talabani as president and Da'wa leader Ibrahim al-Jafari as Prime Minister. In provincial elections, the Kurds won about 60% of the seats in Tamim (Kirkuk) province (26 out of 41 seats), strengthening Kurdish efforts to control it.

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 were later added as full committee members, with 10 more as advisors. The talks produced a draft on August 28, missing the August 15 deadline. A provision highly favorable to the Kurds was Article 136, setting December 31, 2007, as a deadline to resettle Kurds in Kirkuk and to hold a referendum on whether Kirkuk will join the Kurdish region. It also designated Islam "a main source" of legislation and said no law can contradict the "established" provisions of Islam (Article 2).[1] Article 39 implied that families could choose which courts to use for family issues such as divorce and inheritance. Article 34 made only primary education mandatory. These latter provisions were opposed by women, who fear that the males of their families will decide to use Sharia (Islamic law) courts for family issues and to 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 (presumably Shiite) militias, in addition to the Kurds' *peshmerga* (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 few known oil or gas deposits. Sunni negotiators, including chief negotiator Saleh al-Mutlak of the National Dialogue Council opposed the draft on these grounds. Article 62 established a "Federation Council, a second chamber of a size with powers to be determined, purportedly to review legislation on regions.

After further negotiations, the National Assembly approved a September 19, 2005, "final" draft, with such Sunni proposals as a statement that Iraq has always been part of the Arab League. However, no major changes to the provisions on regions were made and 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 a panel to convene after the installation of a post-December 15 election government and, within four months, propose a bloc of amendments (Article 137). 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.

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

In the relatively peaceful October 15 referendum, 78.6% in favor and 21.4% against, nationwide. The Sunni provinces of Anbar and Salahuddin had a 97% and 82% "no" vote, respectively. Mostly Sunni Nineveh province voted 55% "no," and Diyala, believed mostly Sunni, had a 51% "yes" vote. The draft passed because only two provinces, not three, voted "no" by a 2/3 majority. The Administration praised the vote as evidence that Sunnis support the political process. The special amendment process has not formally begun, to date, and might not until September 2006, according to observers. The Sunnis apparently are not pressing the amendment process because they fear that the Shiites will not agree to major amendments, and the Sunnis do not want to force a confrontation.

December 15, 2005, Elections

In the December 15 elections, under a formula designed to enhance Sunni representation, each province contributed a pre-determined number of seats to the new "Council of Representatives" (COR). 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. The UIA slate formally included Sadr's faction as well as other hard line Shiite parties *Fadila* (Virtue). 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 several smaller secular parties. The Kurdish alliance slate was little changed from January.

Violence was minor (about 30 incidents) as Sunni insurgents, supporting greater Sunni representation in parliament, facilitated the voting. However, results suggest that voters chose lists representing their sects and regions, not secular lists. The table gives results that were court-certified on February 10, 2006. According to the constitution: within 15 days of certification (by February 25), the COR was to convene to select a speaker and two deputy speakers. The COR first convened on March 16, but without selecting these or any other positions. After choosing a speaker the COR was to select (no deadline specified, but a thirty-day deadline for the choice after subsequent COR 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 [COR] 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.

With 181 seats combined (nearly two thirds of the COR), the UIA and the Kurds were positioned to continue their governing alliance, but this alliance frayed when the Kurds, Sunnis, and Allawi bloc opposed the UIA's February 12 nomination of Jafari to continue as Prime Minister. On April 20, Jafari agreed to step aside, breaking the logjam. Another senior Da'wa Party figure, Jawad al-Maliki, was nominated Prime Minister

instead. Maliki, who was in exile in Syria during Saddam's rule, is considered a Shiite hardliner, although he now professes non-sectarianism. On April 22, the COR approved Talabani to continue as president, and two deputy presidents — SCIRI's Adel Abd al-Mahdi (incumbent) and Concord Front/IIP leader Tariq al-Hashimi. National Dialogue Front figure Mahmoud Mashhadani, a Sunni hardliner, was chosen COR speaker, with deputies Khalid al-Attiya (UIA/Shiite) and Arif Tayfour, a KDP activist (incumbent).

New Cabinet. Amid U.S. and other congratulations, Maliki won approval of a 39 member cabinet (including deputy prime ministers) on May 20, one day prior to a 30-day deadline. However, three key slots (Defense, Interior, and National Security) were not filled permanently until June 8 because of factional infighting. Of the 37 ministerial posts, a total of eight are Sunnis; seven are Kurds; twenty-one are Shiites; and one is Christian. Kurdish official Barham Salih and Sunni Arab Salam al-Zubaie are deputy prime ministers. Four ministers are women. KDP activist Hoshyar Zebari remained Foreign Minister. The Defense Minister is Gen. Abdul Qadir Mohammad Jasim al-Mifarji, a Sunni who had been expelled from the Iraqi military and imprisoned for criticizing the invasion of Kuwait in 1990. More recently, he commanded operations of the post-Saddam Iraqi Army in western Iraq. The Interior Minister is Jawad al-Bulani, a Shiite who is perceived as not aligned with any major faction. The Minister for National Security is Sherwan al-Waili, a Shiite who is from a different faction of the Da'wa Party. He has served since 2003 as head of the provincial council in the city of Nassiriyah and as adviser in the national security ministry. The Minister of Trade and Minister of Education are from this Da'wa faction.

Many believe that Iran has substantial influence over the Iraqi government because of the presence of several officials who belong to Shiite Islamist organizations that have had close ties to Iran. Reflecting Shiite strength,

- Sadr followers are Ministers of Health, of Transportation, and of Agriculture. Another is Minister of State for Tourism and Antiquities.

- From SCIRI, the most pro-Iranian party, Adel Abd al-Mahdi, is one of two Vice Presidents. Bayan Jabr is Finance Minister, moving there from Minister of Interior. The Minister of Municipalities and Public Works is from the Badr Organization, SCIRI's militia wing.

- Deputy COR speaker Khalid al-Attiyah spent time in exile in Iran. The Minister of Civil Society Affairs is from the Islamic Action Organization, a Shiite Islamist grouping based in Karbala. A minister of state (no portfolio) is from Iraqi Hizbollah, which represents former Shiite guerrilla fighters against Saddam's regime based in the city of Amarah. The Minister of Oil (Hussein Shahristani) is an aide to Shiite leader Ayatollah Ali al-Sistani. The Minister of Electricity and the Minister of Labor and Social Affairs are independent UIA Shiites.

Recent Actions. Politically, the Maliki government has focused on trying to reconcile with the resentful Sunni Arab community. In March 2006, Iraqi leaders agreed to a U.S. proposal to form extra-constitutional economic and security councils including all factions. On June 25, 2006, Maliki introduced the "National Reconciliation and Dialogue Project," intended primarily to persuade insurgent groups to disarm and support

the political process. As part of the reconciliation effort, on August 6, 2006, the government reinstated about 10,000 Iraqis purged from their jobs (mostly in the ministries of Defense and Interior) in the post-Saddam "de-Baathification" process. An additional positive development came in August 2006 when major factions agreed on the main outlines of an oil revenue sharing plan.

These agreements did not halt factional polarization as the National Assembly reconvened in September 2006. As the session began, there were reports that Assembly speaker Mashhadani would resign and that Interior Minister Bulani might be forced out, in addition to reports that Maliki might try to force out two pro-Sadr ministers in response to clashes between Sadr's militia and government forces. In the new Assembly session, SCIRI leader Abdul Aziz al-Hakim began pressing draft legislation specifying procedures for forming new regions; forming a large Shiite region in the south is a major SCIRI goal. Sunni leaders reacted by warning of civil collapse, and they boycotted consideration of the law, leading to its shelving, at least temporarily. The draft law reinforced Sunni frustration at lack of movement to amend the constitution, as was agreed in 2005, to strengthen the central government rather than facilitate formation of sub-regions. Compounding the tension was a decision in September 2006 by the Kurdish regional government not to fly the Iraq flag, asserting it is a holdover from the Saddam era.

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 (SCIRI~30; Da'wa~28; Sadr~30; Fadila (Virtue)~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).