



CRS Report for Congress

Iraq: Elections, Constitution, and Government

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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) produced a broad-based but Shiite-led government that has been unable to reduce Sunni popular resentment. U.S. officials are urging Iraqi leaders to complete efforts to achieve national reconciliation; these efforts, subject of a provision of the House-passed FY2007 supplemental appropriation (H.R. 1591), have proceeded far more slowly than expected but are not broadly deadlocked. (See CRS Report RL31339, *Iraq: Post-Saddam Governance and Security*, by Kenneth Katzman.)

After deposing Saddam Hussein militarily 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. A government and a permanent constitution were voted on thereafter, as stipulated in a March 8, 2004, Transitional Administrative Law (TAL).¹

Elections and Constitutional Referendum in 2005

The first of the 2005 elections was 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). Run by an "Independent Electoral Commission of Iraq" (IECI), the elections were conducted by proportional representation (closed list); voters chose among "political entities" (a party, a coalition of parties, or individuals). 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 had 7,000 candidates.

¹ Text available at [<http://cpa-iraq.org/government/TAL.html>].

The Iraqi government budgeted about \$250 million, 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 IECE capacity; \$42.5 million for Iraqi monitoring; and \$40 million for political party development. 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, which 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. OCV cost \$92 million (\$11 million was for the U.S. voting), but no U.S. funds were spent for OCV.

Violence was less than anticipated; insurgents conducted about 300 attacks. Polling centers were guarded primarily by the 130,000 members of Iraq’s security forces, with U.S. forces available for backup. In all the 2005 votes, two days prior to election day, vehicle traffic was banned, Iraq’s borders were closed, and polling locations were confirmed. 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).

In the January elections, the best-positioned parties were long-established Shiite Islamist parties, the Kurds, and a few secular parties. The main bloc was the Shiite Islamist “United Iraqi Alliance” (UIA), which fielded 228 candidates from 22 parties, primarily the Supreme Council for the Islamic Revolution in Iraq (SCIRI) and the Da’wa Party. Eight followers of radical Shiite cleric Moqtada al-Sadr won seats on that slate. 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 nationally and very few seats on the provincial councils (only one seat on Baghdad’s 51-seat provincial council, for example). Government formation was delayed by factional bargaining over governmental posts, particularly the “presidency council” (president and two deputies) and the post of prime minister, which had executive power. During April and May 2005, 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 two deputy presidents, one of three deputy prime ministers, Defense Minister, and five other ministers. Other major positions were held by Shiites or Kurds, such as PUK leader Jalal Talabani (President) and Da’wa leader Ibrahim al-Jafari (Prime Minister).

Permanent Constitution and Referendum. One duty of the Assembly was to draft a constitution by August 15, 2005, to be put to a referendum by October 15, 2005, subject to veto by a two-thirds majority of voters in any three provinces. The Assembly appointed (May 10, 2005) a 55-member drafting committee, chaired by SCIRI official 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 an August 15 deadline) that, favoring the Kurds, set a December 31, 2007, deadline to resettle Kurds in Kirkuk and to hold a referendum on whether Kirkuk will join the Kurdish region (Article 140); designated Islam “a main source” of legislation and said no law can contradict the

“established” provisions of Islam (Article 2);² set a 25% electoral goal for women (Article 47); allowed families to choose which courts to use for family issues such as divorce and inheritance (Article 39); made only primary education mandatory (Article 34); and said that federal supreme court would include Islamic law experts and civil law judges and experts (Article 89). These provisions concerned many women who fear that too much discretion was given to males of their families in personal legal issues.

The major disputes centered (and continue) on the draft’s provision allowing two or more provinces together to form new autonomous “regions” and on provisions to allocate oil revenues. 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, and gave the “regions” a role in determining allocation of revenues from new energy discoveries. Sunni negotiators opposed the draft on these grounds; Sunni-dominated areas of Iraq have few oil or gas deposits, although some oil fields are said to lie in Anbar Province. Article 62 established a “Federation Council,” a second chamber of size and powers to be determined by subsequent law (but still not determined, to date).

After further talks, the Assembly approved a September 19, 2005, “final” draft, but with the contentious provisions unresolved. Sunnis registered in large numbers (70%-85% in some Sunni cities) to try to defeat the draft, which was printed and distributed by the United Nations. Sunni opposition prompted U.S. Ambassador to Iraq Zalmay Khalilzad to mediate an agreement (October 11) providing for a panel to propose amendments within four months after the installation of a post-December 15 election government (Article 137); the amendments would require a majority Assembly vote of approval and, within another two months, would be put to a referendum under the same rules as the October 15 referendum. 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.

December 15, 2005 Elections. The next step was the election of a permanent government, to take place on December 15, 2005, and with the new government to take office by December 31, 2005. In these elections, under a formula designed to enhance Sunni representation, each province contributed a pre-determined number of seats to a “Council of Representatives” (COR). Of the 275-seat body, 230 seats were allocated this way, and there were 45 “compensatory” seats for entities that 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. The UIA slate formally included Sadr’s faction as well as other hard line Shiite parties including *Fadilah* (Virtue). Former Prime Minister Allawi’s mostly secular 15-party “Iraqi National” slate was broader than his January 2005 list, incorporating not only his Iraq National Accord but also several smaller secular parties. The Kurdish alliance slate was intact from January.

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

Major Sunni slates competed, fearing long-lasting exclusion from Iraqi politics. The three-party “Iraqi Consensus Front” was led by the Iraq Islamic Party (IIP), the party that entered but then withdrew from the January 2005 elections. Another major Sunni faction (Saleh al-Mutlak’s National Iraqi Dialogue Front) ran a separate slate. The hardline Muslim Scholars Association (MSA) did not participate, although it did not, as it had in January 2005, call for a broad Sunni boycott. Violence was minor (about 30 incidents) as Sunni insurgents, supporting greater Sunni representation, facilitated the voting. As shown in the table, results suggest that voters chose lists representing their sects and regions, not secular lists. The COR was inaugurated on March 16 but did not meet its deadlines to choose a speaker (February 25 deadline); to select a President and two deputies (no deadline specified, but a thirty-day deadline for the choice after subsequent COR elections, by two thirds vote); to designate the “nominee of the [COR] bloc with the largest number” as Prime Minister (15 days after choosing the presidency council, by two thirds vote); or to name a cabinet and obtain approval (with another 30 days, by majority vote).

With 181 seats combined (nearly two thirds of the COR), the UIA and the Kurds continued their joint dominance, but they differed over the UIA’s preference for Jafari to continue as Prime Minister. On April 20, Jafari stepped aside in favor of another senior Da’wa Party figure, Nuri Kamal al-Maliki. On April 22, the COR approved Talabani to continue as president, and selected his two deputies — SCIRI’s Adel Abd al-Mahdi (incumbent) and Consensus Front/IIP leader Tariq al-Hashimi. National Dialogue Front figure Mahmoud Mashhadani, a Sunni hardliner, was chosen COR speaker.

Amid U.S. and other congratulations, Maliki won approval of a 39 member cabinet (including deputy prime ministers) on May 20, 2006, one day prior to a 30-day deadline. Three key slots (Defense, Interior, and National Security) were not filled permanently until June 8 because of factional infighting; the Defense Ministry went to Gen. Abdul Qadir Mohammad Jassim al-Mifarji, a Sunni who had been expelled from the Iraqi military and imprisoned for criticizing the 1990 invasion of Kuwait. The Interior Ministry went to Jawad al-Bulani, a relatively non-partisan Shiite, replacing SCIRI’s Bayan Jabr, who became Finance Minister. Sherwan al-Waili, a Shiite from a faction of the Da’wa Party, became Minister for National Security. Kurdish official Barham Salih and Sunni Arab Salam al-Zubaie are deputy prime ministers. Four ministers are women. The KDP’s Hoshiyar Zebari remained Foreign Minister. Hussein Shahrastani, aide to Ayatollah Ali al-Sistani, is Oil Minister. Sadr followers are Ministers of Health, of Transportation, and of Agriculture; another is Minister of State for Tourism and Antiquities. Of the 37 ministerial posts, there were eight Sunnis; seven Kurds; twenty-one Shiites; and one Christian.

Recent Developments and U.S. Policy

According to the Administration, the Iraqi government has put forward milestones to achieve national reconciliation. Under a provision of the House-passed FY2007 supplemental appropriation (H.R. 1591) to fund operations in Iraq (and Afghanistan), progress on these milestones is a condition to delay the start of a U.S. redeployment, although redeployment would be required to be completed by September 1, 2008, whether or not the milestones are completed. President Bush’s Baghdad security plan demands progress on the milestones, although the plan does not follow the ISG recommendation that the United States reduce its political, military, and economic support for the

government if it fails to meet them. Few of the milestones have been completely met, and others are in various stages of progress or negotiation. Some believe that national reconciliation will require full implementation of the benchmarks, and not just their legal adoption, and possibly many other measures beyond that, such as the following.

(1) *By September 2006, formation of a committee to review the constitution under the special amendment process promised; approval of a law to implement formation of regions; approval of an investment law; and approval of a law establishing the Independent High Electoral Commission (IHEC).* The constitution review committee has been formed. The investment law was adopted in October 2006. The regions law was adopted October 12, 2006, although, to mollify Sunni opposition, major factions agreed to delay the formation of new regions for 18 months. The IHEC law was passed on January 23, 2007. Election commissioners have not been named, to date.

(2) *By October 2006, approval of a provincial election law (which would presumably lead to more Sunnis on provincial councils); and approval of a new oil law.* On February 26, 2007, Iraq's cabinet passed and submitted to parliament a draft oil law that would set up a broad Federal Oil and Gas Council that would review exploration contracts signed with foreign energy companies, including those signed by Iraq's regions. According to circulating drafts, some seats on the Council could go to foreign energy firms. To be fully implemented, other laws are needed simultaneously, including a law on sharing oil revenues among Iraq's communities, and a law regulating the dealings with foreign energy firms. The draft had been long delayed by the Kurd's insistence that regions be allowed to sign contracts with foreign firms; the draft included a provision to this effect. Poorer Shiites have opposed the draft on the grounds that it would yield too much control over Iraq's main natural resource to foreign firms, and many Sunnis oppose it because the Shiites and Kurds would have determinative power over energy contracts and likely revenue distribution. No agreement on a provincial election law has been evident to date; the term of the existing councils expires in January 2009.

(3) *By November 2006, approval of a new de-Baathification law and approval of a flag and national anthem law.* The De-Baathification reform law reportedly remains stalled; members of the Supreme National De-Baathification Commission expressed opposition to a draft reform law reportedly agreed to in late March 2007 by President Talabani and Prime Minister Maliki. The draft would have allowed all but members of the three highest Baath Party levels to return to their jobs or obtain pensions. However, on April 7, 2007, Maliki ordered pensions be given to senior officers in the Saddam-era military and permission for return to service of lower ranking soldiers.

(4) *By December 2006, approval of laws to curb militias and to offer amnesty to insurgent supporters.* No progress is evident to date.

(5) *By January 2007, completion of the constitutional review process.* The constitution review committee has not completed proposed amendments to date.

(6) *By February 2007, the formation of independent commissions to oversee governance.* No progress has been reported to date.

(7) *By March 2007, holding of a referendum on the constitutional amendments.*

(8) *By April 2007, Iraqi assumption of control of its military.* Six of the ten Iraqi Army divisions are now under Iraqi control.

(9) *By June 2007, the holding of provincial elections.*

(10) *By September 2007, Iraqi security control of all 18 provinces.* Iraq Security Forces now have security control for the provinces of Muthanna, Dhi Qar, and Najaf. Maysan province is expected to be turned over later in April 2007, and Basra by mid-2007, according to British announcements in February 2007.

(11) *By December 2007, Iraqi security self-reliance.*

The President's Baghdad security plan also requires the commitment of three Iraqi brigades and an unspecified number of police commandos and regular police to Baghdad. U.S. commanders say that these units are showing up at a better than anticipated 80% strength and that Iraq has, as was required, designated a commander (Lt. Gen. Abboud Qanbar) and deputy commander of Baghdad. Its 2007 budget, adopted February 8, 2007, commits the pledged \$10 billion in Iraqi funds for reconstruction.

Splits within the ruling elite are increasingly evident as sectarian violence continues and as Iraq's leaders try to move forward on the key benchmarks, in part to address U.S. pressure. In March 2007, the Fadilah Party left the UIA, amid reports of negotiations with former Prime Minister Allawi on formation of a new governing alliance that would group his bloc, Fadilah, Sunni parliamentarians, and possibly Sadr's grouping, although even this might not be enough to gain a majority in parliament. In April 2007, Justice Minister Hashim al-Shibly, a Sunni, resigned, purportedly over a government plan to resettle Arabs from Kirkuk and pave the way for Kurds to win the planned December 2007 referendum on the province's affiliation with the Kurdish region.

Table 1. Election Results (January and December 2005)

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; Fadilah (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 Consensus 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).