



CRS Report for Congress

Iraq: Reconciliation and Benchmarks

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Summary

Iraq's current government, the result of a U.S.-supported election process designed to produce democracy, is instead a sectarian government incapable of reconciliation. The Administration says that the passage of some key laws represents progress on national reconciliation, and is a result of the U.S. "troop surge." Others say that combat among Shiite groups since March 2008, possibly motivated by provincial elections planned for October 2008, shows that force will not stabilize Iraq. See CRS Report RL31339, *Iraq: Post-Saddam Governance and Security*, by Kenneth Katzman.

Elections and Constitutional Referendum in 2005

After about one year of occupation, the United States handed sovereignty to an appointed Iraqi government on June 28, 2004. A government and a constitution were voted on thereafter, in line with a March 8, 2004, "Transitional Administrative Law" (TAL). The first election (January 30, 2005) was for a 275-seat transitional National Assembly, provincial assemblies in each of Iraq's 18 provinces (41 seats each; 51 for Baghdad), and a Kurdistan regional assembly (111 seats). The election system was proportional representation (closed list) — voters chose among "political entities" (a party, a coalition of parties, or persons); 111 entities were on the national ballot, of which nine were multi-party coalitions. A female candidate occupied every third position on electoral lists to produce 25% female membership. Sunni Arabs (20% of the overall population), perceiving electoral defeat, boycotted and won only 17 seats. At the provincial level, Sunnis won only one seat on Baghdad province's 51-seat council. Radical Shiite cleric Moqtada Al Sadr boycotted the elections as a sign of opposition to the U.S.-led political process, and his faction believes it is under-represented on the provincial councils in the Shiite south. After the elections, an interim government was formed that placed Shiites and Kurds in the most senior positions, although it had Sunnis as Assembly speaker, deputy president, deputy prime minister, defense minister, and five other ministers. The presidency went to Patriotic Union of Kurdistan (PUK) leader Jalal Talabani and Da'wa (a Shiite party) leader Ibrahim al-Jafari became Prime Minister.

Permanent Constitution. The elected 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. On May 10, 2005, the Assembly appointed a 55-member drafting committee, including only two Sunni Arabs (15 Sunnis were later added as full members and 10 as advisors). In August 2005, the talks produced a draft, providing for: a December 31, 2007, deadline to hold a referendum on whether Kirkuk (Tamim province) will join the Kurdish region (Article 140); designation of Islam “a main source” of legislation and prohibiting laws from contradicting the “established” provisions of Islam (Article 2);¹ setting a 25% electoral goal for women (Article 47); allowing families to choose which courts to use for family issues such as divorce and inheritance (Article 41); making only primary education mandatory (Article 34); and including Islamic law experts and civil law judges on the federal supreme court (Article 89). Many women opposed the two latter provisions as giving too much discretion to males of their families, and Islamic extremists in Iraq purportedly cite these provisions to impose restrictions against women. It made all orders of the U.S.-led occupation authority (Coalition Provisional Authority, CPA), applicable until amended (Article 126), and established a “Federation Council” (Article 62), a second chamber with its size and powers to be determined by subsequent law (not passed to date).

The major disputes — which continue — centered on regional versus central power. The draft permitted two or more provinces together to form new autonomous “regions” – reaffirmed in passage of an October 2006 law on formation of regions. Article 117 allows each “region” to organize internal security forces, legitimizing the fielding of militias, including the Kurds’ *peshmerga* (allowed by the TAL). Article 109 requires the central government to distribute oil and gas revenues from “current fields” in proportion to population, and gives regions a role in allocating revenues from new energy discoveries. Disputes over these concepts continue to hold up passage of national hydrocarbons legislation – Sunnis dominated areas of Iraq have few proven oil or gas deposits, and favor centralized control of oil revenues. The Kurds want to maintain maximum regional control of their own burgeoning oil sector.

With contentious provisions unresolved, Sunnis registered in large numbers (70%-85%) to try to defeat the constitution, prompting a U.S.-mediated agreement (October 11, 2005) providing for a panel to propose amendments within four months after a post-December 15 election government took office (Article 137), to be voted on within another two months (under the same rules as the October 15 referendum.) The Sunni provinces of Anbar and Salahuddin had a 97% and 82% “no” vote, respectively, but the constitution was adopted because Nineveh province only voted 55% “no,” missing the threshold for a “no” vote by a two-thirds majority in three provinces.

December 15, 2005 Elections. In the December 15, 2005, elections for a four year government, a formula was adopted to attract Sunni participation; each province contributed a predetermined number of seats to a “Council of Representatives” (COR). Of the 275-seat body, 230 seats were allocated this way, with 45 “compensatory” seats for entities that would have won additional seats had the constituency been the whole nation. 361 political “entities” registered, of which 19 were multi-party coalitions. As shown in the table below, voters chose lists representing their sects and regions, and the UIA and the Kurds again dominated the elected COR. The COR was inaugurated on March 16, 2006, but wrangling ensued and Kurdish and other opposition caused the UIA

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

to agree to another Da'wa figure, Nuri Kamal al-Maliki, as Prime Minister. On April 22, the COR approved Talabani to continue as president, and selected his two deputies — Adel Abd al-Mahdi (incumbent) of the Islamic Supreme Council of Iraq (ISCI) and Tariq al-Hashimi, leader of the Consensus Front. Another Consensus Front figure, the hardline Mahmoud Mashhadani (National Dialogue Council party), was chosen COR speaker. Maliki won a COR vote for a 37-member cabinet (including himself and two deputy prime ministers) on May 20, 2006. Three key slots (Defense, Interior, and National Security) were not filled permanently until June 8 because of infighting. Of the 37 posts, there were 19 Shiites; 9 Sunnis; 8 Kurds; and 1 Christian. Four were women.

Iraqi Performance on Benchmarks and Reconciliation

In August 2006, the Administration and the Iraqi government agreed on a series of “benchmarks” that, if adopted and implemented, would presumably achieve political reconciliation. Under Section 1314 of a FY2007 supplemental appropriation (P.L. 110-28), “progress” on eighteen political and security-related benchmarks — as assessed in Administration reports due by July 15, 2007 and then September 15 — were required for the United States to provide \$1.5 billion in Economic Support Funds (ESF) to Iraq. The President has used the waiver provision. The law mandated a separate assessment by the GAO, by September 1, 2007, of the degree to which the benchmarks have been achieved, as well as an assessment of the Iraqi security forces (ISF) by an outside commission (headed by ret. Gen James Jones). Results, as well as subsequent legislative actions and implementation, are shown in the chart below.

Iraq's communities remain sharply divided over their relative positions in the power structure, but the Administration, as expressed in the April 8 and 9, 2008 testimony of U.S. Ambassador to Iraq Ryan Crocker, sees signs of movement toward reconciliation, facilitated by a reduction in violence attributed partly to the “troop surge.” The February 13, 2008 passage (unanimously, with 206 members voting) of two significant laws (amnesty law and provincial powers law) and the 2008 national budget represented a breakthrough, although U.S. officials say that the effects will depend on implementation. Others believe that these legislative moves have done little to heal the rifts among Iraq's major communities. These splits include that between Iraq Kurds and Iraq's Arabs (both Sunni and Shiite), and within the Shiite community in the form of the often violent rift between ISCI and the Da'wa Party on the one side, and the faction of Moqtada Al Sadr on the other. The budget had been help up over Iraqi Arab assertions that the 17% revenue allocation to the Kurdish region was too generous – a figure already agreed to in previous budgets. The Kurds accepted a national census to determine long term percentage allocations for the Kurds. Many Iraqi Arabs say that a new flag was adopted (January 22, 2008) only because of Kurdish pressure and some factions refuse to fly it. There is also a growing split within the Sunni community between the established political parties and the tribal leaders who, as of 2007, have cooperated with U.S. forces to expel the tribal leaders' former allies, Al Qaeda in Iraq, from Sunni areas.

Signs point to a political strengthening of Prime Minister Maliki, who was considered politically vulnerable in mid-2007 after the pullout of the cabinet by the Consensus Front, the Sadr faction, and the bloc of former Prime Minister Iyad al-Allawi. Those withdrawals left the cabinet with about 13 vacant seats out of a 37 seat cabinet. Of those three have since been filled by new appointments and one returning Minister (Ali Baban, Minister of Planning). The Consensus Front has been negotiating since April

2008 to rejoin the cabinet (six seats), but a deal fell through in May 2008 when Maliki refused to give the bloc some of the important ministerial positions it wanted, instead offering what the bloc felt were relatively insignificant position such as Minister of Communications. All blocs have resumed participating in the COR.

Maliki's political position was enhanced by his willingness to confront fellow Shiites, in this case the Sadr faction. In late March 2008, Maliki sent about 30,000 Iraqi Security Forces (ISF) to Basra to defeat militias (Sadr's Jaysh al-Mahdi, or JAM, Fadhila Party, and Tharallah militia) in the oil export hub. Major fighting ended with a reported Iran-brokered ceasefire announced by Sadr on March 30, 2008, which did not require the JAM to surrender or disarm, and in which 1,300 ISF deserted the fight. Critics viewed the action as Maliki's attempts to defeat Sadr in advance of planned provincial elections in which Sadr's movement is expected to do well. Sunni and Kurdish leaders saw the move as an indicator of increased sectarian even-handedness, and some rallied to Maliki. Subsequently, the ISF has slowly gained control over formerly JAM controlled areas of Basra, and U.S.-Iraq clashes with the JAM in Baghdad have tailed off following a May 10, 2008 tentative ceasefire agreement between Maliki and the Sadr faction.

Table 1. Election Results (January and December 2005)

Bloc/Party	Seats (Jan. 05)	Seats (Dec. 05)
United Iraqi Alliance (UIA, Shiite Islamist). Now 84 seats after departure of Fadilah (15 seats) and Sadr faction (29 seats) in 2007. Islamic Supreme Council of Iraq of Abd al-Aziz al-Hakim has 29 seats; Da'wa Party (faction of Maliki, and a competing faction) - 25 seats; and independents - 30. Sadr faction not formally in UIA for January 2005 election.	140	128
Kurdistan Alliance - joint list of PUK and Kurdistan Democratic Party	75	53
Iraqis List (secular, Allawi); added Communist and other mostly Sunni parties for Dec. vote. Lost two members in December 2007- now 23 seats	40	25
Iraq Consensus Front. Main Sunni bloc; not in Jan. vote. Consists of Iraqi Islamic Party (IIP) of Tariq al-Hashimi; National Dialogue Council of Khalaf Ulayyan; and General People's Congress of Adnan al-Dulaymi.	—	44
National Iraqi Dialogue Front (Sunni, led by former Baathist Saleh al-Mutlak) Not in Jan. 2005 vote.	—	11
Kurdistan Islamic Group (Islamist Kurd) (votes with Kurdistan Alliance)	2	5
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 (Message, Dec) pro-Sadr	3	2
People's Union (Communist, non-sectarian); on Allawi list in Dec. vote	2	—
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).

Table 2. Assessments of the Benchmarks

Benchmark	July 12 Administration Report	GAO	Sept. 14 Admin. Report	Subsequent Actions
1. Forming Constitutional Review Committee (CRC) and completing review	(S) satisfactory	unmet	S	CRC continues debating 50 amendments regarding federal vs. regional powers and presidential powers; Kurds want Kirkuk issue settled before finalizing amendments. Some progress on technical, judicial issues. Deadlines for recommendations repeatedly extended, now beyond latest May 2008 deadline.
2. Enacting and implementing laws on De-Baathification	(U) unsatisfact.	unmet	S	“Justice and Accountability Law” passed Jan. 12 unanimously by 143 in COR present. Allows about 30,000 fourth ranking Baathists to regain their jobs, and 3,500 Baathists in top three party ranks would receive pensions. But, could allow for judicial prosecution of all ex-Baathists and to firing of about 7,000 ex-Baathists in post-Saddam security services, and bars ex-Saddam security personnel from regaining jobs. Seven members to be nominated by the cabinet to a High Commission that will implement the law.
3. Enacting and implementing oil laws that ensure equitable distribution of resources	U.	unmet	U	Framework and three implementing laws stalled over Kurd-Arab disputes; only framework law has reached COR to date. Revenue being distributed equitably, and 2008 budget adopted February 13, 2008 maintains 17% revenue for KRG.
4. Enacting and implementing laws to form semi-autonomous regions	S	partly met	S	Regions law passed October 2006, with relatively low threshold to form new regions, but main blocs agreed that law would take effect April 2008. No active movement to form new regions yet evident.
5. Enacting and implementing: (a) a law to establish a higher electoral commission, (b) provincial elections law; (c) a law to specify authorities of provincial bodies, and (d) set a date for provincial elections	S on (a) and U on the others	overall unmet; (a) met	S on (a) and (c)	Draft law stipulating powers of provincial governments adopted February 13, 2008, took effect April 2008 after dropping of presidential council objection to Baghdad’s ability to remove provincial governors. In order to meet October 1, 2008 election schedule, election law was due by June 1, 2008. Law not yet adopted because of differences over election system (Sadr faction wants “open list”), meaning elections delayed until at least November 2008. Some of the nine Higher Election Commission (IHEC) members to be replaced by UNAMI due to “non-transparent” selection process, despite passage of IHEC law in May 2007.
6. Enacting and implementing legislation addressing amnesty for former insurgents	conditions do not allow a rating	unmet	Same as July	Law to amnesty “non-terrorists” among 25,000 detainees held by Iraq, passed on February 13, 2008. Only a few hundred released to date due to slow judicial process. Does not affect 25,000 detainees held by U.S.
7. Enacting and implementing laws on militia disarmament	conditions do not allow rating	unmet	Same as July	Basra operation, discussed above, viewed by Bush Administration as move against militias. On April 9, 2008, Maliki demanded all militias disband as condition for their parties to participate in October 2008 provincial elections.
8. Establishing political, media, economic, and services committee to support U.S. “surge”	S	met	met	No change. “Executive Steering Committee” works with U.S.-led forces.

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Benchmark	July 12 Administration Report	GAO	Sept. 14 Admin. Report	Subsequent Actions
9. Providing three trained and ready brigades to support U.S. surge	S	partial	S	No change. Eight brigades were assigned to assist the surge.
10. Providing Iraqi commanders with authorities to make decisions, without political intervention, to pursue all extremists, including Sunni insurgents and Shiite militias	U	unmet	Mixed: S to pursue extremists U on political interference	No significant change. Still some, although diminished, concern over the Office of the Commander in Chief (part of Maliki's office) control over appointments to the ISF - favoring Shiites and excluding many Sunnis. Still, some politically-motivated leaders remain in ISF. In the past year, the commander of the National Police has fired over 5,000 officers for sectarian or politically-motivated behavior.
11. Ensuring Iraqi Security Forces (ISF) providing even-handed enforcement of law	U.	unmet	Mixed. S on Iraqi military, U on police	Administration interpreted Basra operation as effort by Maliki to enforce law even-handedly, but acknowledges continued militia influence and infiltration in some units.
12. Ensuring that the surge plan in Baghdad will not provide a safe haven for any outlaw, regardless of sectarian affiliation	S	partial	S	No change. Administration sees ISF acting against JAM in Sadr City, and ethno-sectarian violence has fallen sharply in Baghdad.
13. (a) Reducing sectarian violence and (b) eliminating militia control of local security	Mixed. S on (a); U on (b)	unmet	same as July 12	Sectarian violence continues to drop, but militias still armed, despite Basra operation. 91,000 Sunni "Sons of Iraq" combating Al Qaeda, but still distrusted as potential Sunni militia forces. Only 20,000 allowed to join ISF to date.
14. Establishing Baghdad joint security stations	S	met	S	No change. Over 50 joint security stations operating, more than the 33 planned.
15. Increasing ISF units capable of operating independently	U.	unmet	U	Continuing but slow progress training ISF. U.S. officials say ISF likely unable to secure Iraq internally until 2012; and against external threats not until 2018-2020. Basra operation widely viewed as exposing continued factionalism and poor leadership in ISF, but also ability to rapidly deploy.
16. Ensuring protection of minority parties in COR	S	met	S	No change. Rights of minority parties protected by Article 37 of constitution.
17. Allocating and spending \$10 billion in 2007 capital budget for reconstruction projects.	S	partial.	S	An estimated 63% of the \$10 billion 2007 allocation for capital projects was spent. Another \$18 billion is in 2008 Iraqi budget adopted February 13, 2008.
18. Ensuring that Iraqi authorities not making false accusations against ISF members	U	unmet	U.	Some governmental interference in ISF operations still observed.