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Iraq: Elections, Government, and Constitution

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Summary

Elections in 2005 for a transitional National Assembly and government (January 30, 2005), a permanent constitution (October 15), and a permanent (four year) Council of Representatives and government (December 15) were concluded despite insurgent violence and attracted progressively increasing Sunni participation. However, escalating sectarian violence and factional infighting have delayed formation of a new government. (See CRS Report RL31339, *Iraq: Post-Saddam Governance and Security*, by Kenneth Katzman.)

Shortly after Operation Iraqi Freedom (OIF) deposed Saddam Hussein's regime in April 2003, the Bush Administration linked the end of U.S. military occupation to the completion of a new constitution and the holding of 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), as follows:¹

- The elections held on January 30, 2005 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 would be elected by December 15, 2005, and it would take office by December 31, 2005. If a constitution was defeated,

¹ For text, see [<http://cpa-iraq.org/government/TAL.html>].

the December 15 elections would be for another transitional National Assembly (which would draft a new 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 who can demonstrate that their father was Iraqi) registered, and about 90% of them voted (in January).

There were about 14 million eligible voters (15 million in the two subsequent votes in 2005). Voters need to be at least 18 years old. There were about 5,200 polling centers in January, and 6,200 in the December elections, both staffed by about 200,000 Iraqis. Monitoring was limited in both elections; in January, a Canada-led contingent of about 25 observers from eleven nations based in Jordan, which assessed reports on the voting by about 50,000 Iraqi monitors. (One of the international observers was in Iraq). In the December election, some European parliament members and others contributed to the monitoring of the voting.

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.

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 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 “Kurdish Alliance” 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.²

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.

Violence was far less than some anticipated; insurgents conducted about 300 attacks, but no polling stations were overrun. Polling centers were guarded on election day 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 available (about 215,000) than in January.

Total turnout in January was about 58% (about 8.5 million votes); results are in **Table 1**. 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 the Sunni minority, 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. The other 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 police commando forces; and KDP activist Hoshyar Zebari as Foreign Minister. Chalabi and KDP activist Rosch Shaways were named as the two other deputy prime ministers. There is also 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, with a SCIRI official, Humam al-Hammoudi, as chair. 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

² For information on these groups, see CRS Report RL31339, *Iraq: Post-Saddam Governance and Security*, by Kenneth Katzman.

August 28 that included some compromises sought by Sunnis, and the Shiites and Kurds declared it final. The Kurds achieved a major goal; Article 136 sets 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)³ 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 domestic issues such as divorce and inheritance, and Article 34 made only primary education mandatory. These provisions provoked opposition from women who fear that the males of their families will decide to use Sharia (Islamic law) courts for family issues and for 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.

Sunni negotiators, including chief negotiator Saleh al-Mutlak of the National Dialogue Council opposed the August 28 draft because it allowed 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. Article 62 establishes a “Federation Council” — a second chamber of a size and with powers to be determined — presumably to review legislation affecting the 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. The United Nations subsequently printed and distributed 5 million copies of the draft. Ending their political boycott, Sunnis registered in large numbers (70%-85% in some Sunni cities) in an effort to try to defeat the constitution. 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 their participation in the December 15 election and would be well positioned to achieve adoption of amendments.

The referendum was relatively peaceful, with total turnout about 60% (about 10 million voting), suggesting high Sunni turnout. 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

³ [<http://www.washingtonpost.com/wp-dyn/content/article/2005/10/12/AR2005101201450.html>].

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, 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 that 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. The altered format was intended to improve the prospects for Sunnis to win seats. 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 (about 30 candidates on the slate) as well as other harder line Shiite parties *Fadila* (Virtue) and Iraqi Hizballah. Ahmad Chalabi’s Iraqi National Congress ran separately. Grand Ayatollah Ali al-Sistani’s office tacitly, but not publicly, endorsed the UIA slate. 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 “Kurdistan Alliance” slate was little changed from January.

Turnout was about 70%, mostly because of a Sunni vote that exceeded 50%. Violence was minor (about 30 incidents) as some Sunni insurgents, supporting greater Sunni representation in parliament, helped guard rather than disrupt the voting. Results suggest that voters appear to have chosen lists representing their sects and regions and did not support secular, non-sectarian lists. The table gives final results that were released on January 20, 2006, and court-certified on February 10, 2006. According to the constitution, the timetable for subsequent government formation should be as follows:

- within 15 days of certification (February 25), the Council of Representatives was to convene to select a speaker and two deputy speakers. (The Council convened on March 16 to be sworn in, but it did not select a Speaker or any other Council leadership positions);
- after choosing a Council speaker the Council is 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 require a 2/3 vote of the Council;
- within another 15 days, the presidency council (by consensus of its three officials) is 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 names 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, but they could probably recruit small allied parties (pro-Sadr Shiites or Islamist Kurds) to exceed that threshold. However, their alliance has frayed over the UIA's February 12 nomination of Jafari to continue as Prime Minister. In an internal UIA poll, Jafari fended off a challenge by SCIRI's Adel Abd al-Mahdi, by one vote, largely because Moqtada al-Sadr threw his support to Jafari. With senior U.S. officials urging formation of a "unity government" as soon as possible, the Kurds, Sunni groupings, and Allawi's bloc, reportedly with U.S. backing, have jointly sought to reverse the Jafari choice on the grounds that he has been ineffective in securing Iraq and is too close to Sadr. In a March 30, 2006, interview with the *New York Times*, Jafari criticized what he called U.S. interference with the "democratic process" to oppose him and said he is trying to coax Sadr's Mahdi Army and other militias into the legitimate Iraqi Security Forces (ISF). Militias such as that of Sadr are widely blamed for the growing sectarian violence that has reportedly claimed over 1,000 Iraqi lives since the February 22 bombing of the Shiite Askariya mosque in Samarra. The Kurds have nominated Talabani to continue as president, and no challengers to him have emerged to date, but the dispute over Jafari, coupled with clashes between Sadr militiamen and U.S. forces in March 2006, has delayed progress on formation of the government. On the other hand, in March 2006, Iraqi leaders agreed to a U.S. proposal to form an overarching economic and security council, representing all factions but not provided for in the constitution.

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 seats: SCIRI ~ 30; Da'wa ~ 28; Sadr ~ 30; others, remainder)	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 on 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 Cadre (Jan)/Risalyun (Mission, Dec) Shiite, 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