



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 Shiite-led but broad-based constitutional government inaugurated in May 2006. However, it is now showing signs of fragmentation, it has been unwilling or unable to reduce sectarian violence, and the Bush Administration reportedly has lost some confidence in it. The December 6, 2006, Iraq Study Group report recommends a number of steps to accelerate factional reconciliation. (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, [<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). A transitional "presidency council" (a president and two deputies), a prime minister with executive power, and a cabinet were selected. 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. A permanent government, elected December 15, 2005 under the new constitution, was to take office by December 31, 2005.

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.

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. 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). 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.

Permanent Constitution and Referendum

The next step in the transition process was the drafting of a permanent constitution. The National 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 the August 15 deadline. A provision highly favorable to the Kurds was Article 140, 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. The constitution 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, and Article 34 made only primary education mandatory; these latter provisions raised concerns among women who fear that the males of their families might use Sharia (Islamic law) courts for family issues and limit girls' education. A 25% electoral goal for women was set (Article 47). Article 89 said that federal supreme court will include experts in Islamic law, as well as judges and experts in civil law.

A major controversy centered (and continues) 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, and gave the “regions” a role in determining allocation of revenues from new energy discoveries. Sunni negotiators, including chief negotiator Saleh al-Mutlak of the National Dialogue Council, 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 near Fallujah. Article 62 establishes a “Federation Council,” a second chamber of size and powers to be determined by subsequent law.

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 draft. 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.

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. However, the Administration praised the vote as evidence that Sunnis were supporting the political process.

December 15, 2005, Elections and Government Formation

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. The three-party “Iraqi Concord Front” was led by the IIP; another major Sunni faction (Mutlak’s National Iraqi Dialogue Front) ran a separate slate. The UIA slate formally included Sadr’s faction as well as other hard line Shiite parties *Fadila* (Virtue). 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. As shown in the table below, results suggest that voters chose lists representing their sects and regions, not secular lists. 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 they split over the UIA’s choice of 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 Concord Front/IIP leader Tariq al-Hashimi. National Dialogue Front figure Mahmoud Mashhadani, a Sunni hardliner, was chosen COR speaker.

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. 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. He commanded the post-Saddam army in western Iraq. 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; he previously headed the provincial council in Nassiriyah. 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. Hussein Shahristani, aide to Ayatollah Ali al-Sistani, became 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, eight are Sunnis; seven are Kurds; twenty-one are Shiites; and one is Christian.

Recent Developments, Disputes, and U.S. Policy

Politically, the Maliki government has focused on trying to reconcile with the resentful Sunni Arab community, although not with the progress — or, according to some Sunnis, with the degree of commitment — hoped for. On June 25, 2006, Maliki introduced the “National Reconciliation and Dialogue Project,” intended primarily to persuade insurgent groups to enter the political process. 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 tentatively agreed to share oil revenue on the basis of population size, although the Kurds’ insistence on their rights to sign deals with outside firms to explore for oil in the Kurdish areas is reportedly holding up final passage of the new oil law.

Despite some of the agreements, Sunni-Shiite and intra-Shiite factional polarization erupted as the National Assembly reconvened in September 2006. As the new session began, SCIRI leader Abdul Aziz al-Hakim inflamed Sunni fears by immediately pressing for legislation to implement the constitutional authorization for forming new regions (federalism). To reduce acrimony, all Assembly factions agreed on September 24 to (1) begin debate of the federalism legislation (the law passed on October 12, 2006, over Sunni opposition) but to delay the formation of any new region for 18 months; and (2) to constitute the constitutional review commission that was promised by the adopted constitution. However, the committee was given one year to complete its work, not the four months stipulated in the constitution. The committee has 12 UIA (Shiite) members, 5 Sunnis, 5 Kurds, 2 Allawi bloc representatives, and 3 members from other blocs.

Press reports say factional acrimony has progressively widened, not narrowed. Iraqi Sunni Arabs, as well as a reported memo by National Security Adviser Stephen Hadley (reported in the *New York Times*, November 29, 2006), question Maliki’s commitment to curbing Shiite militias, which Sunni leaders say are committing sectarian killings in the guise of police/security operations. Maliki, for his part, is politically dependent on Sadr’s support, and he has been hesitant to force his Mahdi Army to disarm. During October and November 2006, Maliki obstructed some U.S. operations against the Mahdi forces. In high-level visits to Iraq and meetings with Maliki, including a Bush-Maliki meeting in Jordan on November 30, 2006, senior U.S. officials have reportedly tried to forge a new

parliamentary coalition among mainstream Shiites, Sunnis, and secular blocs, excluding Sadr. Some reports say this U.S. strategy has at least the acquiescence of Ayatollah Sistani, who has previously sought to ensure full cooperation among all Shiite blocs. However, other indications suggest that forging such a new structure would be difficult, and Shiite politicians had some success in late December 2006 in persuading Sadr to return his boycotting parliamentarians and ministers to government (the boycott started in protest of Maliki's meeting with Bush in Jordan) and to curb the Mahdi Army. Others take the view that commanders in his Mahdi Army have acquired so much independence that even excluding him from a Shiite coalition would not curb sectarian violence. Still others are skeptical that an all-out U.S. military assault on the Mahdi forces would permanently reduce their activities. Some take the view that, should Maliki refuse or fail to curb Sadr, the United States might try to engineer his replacement by deputy president and SCIRI leader Adel Abd al-Mahdi; President Bush's meeting with SCIRI leader Hakim in Washington DC in early December 2006 fed such speculation.

Aside from intra-Shiite politics, the December 6, 2006, Iraq Study Group report recommends that steps toward Sunni-Shiite reconciliation be accelerated, such as the review of the constitution, oil revenue sharing, a return of ex-Baathists into national life, and provincial elections. The Study Group recommends that the United States should reduce its political, military, and economic support for the government if it fails to meet reconciliation milestones. Maliki attempted to signal his concurrence at a national reconciliation conference in Iraq during December 16-17, 2006, at which he publicly invited members of the Saddam-era military to rejoin the new army.

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).