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Iraq: Elections, Government, and Constitution

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Summary

Elections 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) have been concluded despite insurgent violence. Despite the Sunni Arab participation in the December 15 elections, post-election bargaining amid escalating sectarian violence has delayed formation of a new government. (See CRS Report RL31339, *Iraq: U.S. Regime Change Efforts and Post-Saddam Governance*, 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 on March 8, 2004, as follows:¹

- The elections held on January 30, 2005 (within the TAL's deadline) were for a 275-seat 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 would choose a transitional "presidency council" (a president and two deputies), and a prime minister with executive power, and a cabinet.
- The National Assembly would 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 a 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. About 200,000 Iraqis staffed the polls on both election days. 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. Some pro-Sadr Shiites

also competed separately. 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. 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. On election day in January, insurgents conducted about 300 attacks but no polling stations were overrun. (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 January election, factional bargaining over posts in the transition government and the future of Iraq centered on Kurdish demands for substantial autonomy, delaying 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 the ministerial slots they hold (other than Defense) are 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. The

² For a detailed discussion of many of these groups, see CRS Report RL31339, *Iraq: U.S. Regime Change Efforts and Post-Saddam Governance*, by Kenneth Katzman.

committee did not request a six-month extension (there was an August 1, 2005 deadline to do so), but instead amended the TAL to allow for extensions of the August 15 deadline. The talks produced a draft on 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 constitution (Article 2)³ designates Islam “a main source” of legislation and says no law can contradict the “established” provisions of Islam. Article 39 implies that families could choose which courts to use to adjudicate domestic issues such as divorce and inheritance. Article 34 makes 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 says 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 autonomous “regions.” Each “region” (Article 117) is able to organize internal security forces, which in practice could lead to the dissolution of the national security forces. Article 109 requires 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 achieve the two-thirds negative vote in three provinces needed 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

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

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 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 are moving into the political process.

December 15, 2005, Elections

In contrast to the January election, in the December elections each province constituted an election constituency and contributes a fixed number of seats to the new “Council of Representatives,” under a July 2005 election law. Of the 275-seat body, 230 seats are allocated that way, and there are 45 “compensatory” seats for entities that did not win provincial seats but garnered votes nationwide, or would have won additional seats had the election been conducted on a national basis. The format improved the prospects for Sunnis to win seats. At the October 28, 2005 deadline, 361 political “entities” had registered: 19 of them were coalition slates (comprising 125 different political parties), and 342 were other “entities” (parties or individual persons). A total of about 7,500 candidates spanned all entities.

The most notable difference from January was the filing of major Sunni slates. Most prominent is 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 — and Chalabi’s Iraqi National Congress ran separately. Grand Ayatollah Ali al-Sistani’s office only tacitly 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). However, Sunni and secular slates initially denounced the elections as unfair, claiming that the UIA used its control over governing institutions to affect the campaign and the vote, although they later softened those claims and are participating in post-election bargaining on a new government. Partly to assuage those criticisms, the IECI accepted help from international investigators (Arab League and Canadian and European experts) to look into about 50 serious allegations of fraud, and the observers issued their report on January 19, 2006, finding some instances of fraud but not sufficient to have affected the result. The table below gives final results that were released on January 20, 2006, and court-certified on February 10, 2006.

Voters appear to have chosen lists representing their sects and regions and did not support secular, non-sectarian lists. On the strength of their showings, the Shiite UIA and the Kurds were well positioned to continue their bilateral governing alliance; combined they have 181 seats, just shy of the 184 (two-thirds) needed to name a presidency council, but they can probably recruit small allied parties (pro-Sadr Shiites or Islamist Kurds) to exceed that threshold. However, this alliance might be fraying, as discussed below. Now that election results have been certified,

- within 15 days (February 25), the new Council of Representatives (Assembly) is to convene to select a speaker and two deputy speakers;
- subsequently (no deadline specified, but a thirty-day deadline for the choice in subsequent terms), the Council is to select a presidency council (President and two deputies) with a 2/3 vote of the Council;
- within 15 days of its selection, 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.

In post-election political bargaining, Prime Minister Jafari fended off a challenge by SCIRI’s Adel Abd al-Mahdi (currently a deputy president) for his post. Some gave the edge to Mahdi because of SCIRI’s strong support of him, but Sadr threw his weight to Jafari, who is more religious than is Mahdi, and Jafari won an intra-UIA poll (by one vote) over Mahdi on February 12; he became UIA pick for Prime Minister. The Kurds have nominated Talabani to continue as president. However, the Kurds, Sunni groupings, and Allawi’s bloc have since jointly sought to reverse the Jafari choice on the grounds that he has been ineffective in securing Iraq and he is too close politically to Sadr. The dispute has delayed the first meeting of the new Council of Representatives (now set for March 16). Sadr continues to publicly back Jafari. The United States is urging that the factions quickly come to agreement on a unity government, in part to reduce sectarian violence that accelerated after the February 22 bombing of the Shiite Askariya mosque in Samarra.

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