



## 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 government that many Sunnis view as biased. The December 6, 2006, Iraq Study Group report recommends a number of steps to accelerate national reconciliation. President Bush's new Iraq initiative, announced January 10, 2006, requires promised cooperation from the Iraqi government to act against Shiite armed elements participating in sectarian violence. (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).<sup>1</sup>

### January 30 Elections

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). 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). 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.

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<sup>1</sup> 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 IECI 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 (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. Most notable was the Shiite Islamist “United Iraqi Alliance” (UIA): 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, 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. 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, 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 as president and Da’wa leader Ibrahim al-Jafari as Prime Minister.

## **Permanent Constitution and Referendum**

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. To do so, 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. A provision favoring 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 draft designated Islam “a main source” of legislation and said no law can contradict the “established” provisions of Islam (Article 2).<sup>2</sup> 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 provisions concerned many women who fear that the provisions gave too much discretion to males of their families in personal legal issues. 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” and on provisions to allocate oil revenues. Debates occurred later on laws to implement this and other contentious provisions, as discussed further below. 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 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, but no major changes to the contentious provisions were made. 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 a bloc of amendments within four months after the installation of a post-December 15 election government (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.

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 and Government Formation**

The next transition 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 the new “Council of Representatives” (COR). Of the 275-seat body, 230 seats were allocated this way, and

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

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. 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.

A key U.S. goal has been to invest Sunnis in the political process, and major Sunni slates, fearing complete exclusion from Iraqi politics, competed in the December elections. The three-party “Iraqi Consensus” was led by the Iraq Islamic Party (IIP), which initially 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, but 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 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. The COR first convened on March 16 but did not meet its deadlines to convene and 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, the post that has executive power (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 governing alliance, but they split 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.

**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. 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 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, there are eight Sunnis; seven Kurds; twenty-one Shiites; and one Christian.

## **Recent Developments, Disputes, and U.S. Policy**

U.S. policy has been predicated on achieving reconciliation among Iraq's major communities to reduce the causes of insurgency and sectarian violence. According to the Iraq Study Group report, the Iraqi government has put forward several milestones to achieve national reconciliation: (1) by early 2007, approval of a provincial election law (which would presumably lead to more Sunnis on provincial councils), approval of a law on sharing of oil revenues, approval of a new de-Baathification law, approval of a law to curb militias, an increase in security spending over 2006 levels, a raise in interests rates and appreciation of the Iraqi dinar, and an increase in domestic gas prices; (2) by March 2007, a referendum on amending the constitution; (3) by April 2007, Iraqi assumption of control of its military; (4) by May 2007, implementation of the militias law, approval of an amnesty agreement (with insurgent supporters), and completion of reconciliation efforts; (5) by June 2007, the holding of provincial elections; (6) by September 2007, Iraqi security control of all 18 provinces; and (7) Iraqi security self-reliance.

As of President Bush's January 10, 2007, speech announcing a new Iraq security plan, none of the above milestones had been completely met, but the Maliki government has made advances on some. On June 25, 2006, Maliki introduced a "National Reconciliation and Dialogue Project," intended primarily to persuade insurgent groups to enter the political process. A foreign investment law was adopted in November 2006. The major factions have agreed to many provisions of a new oil law, including agreement to share oil revenue on the basis of population size, although a final agreement awaits consensus on several issues including the powers of the central government to handle oil revenues and to approve deals between individual regions and outside firms to explore for oil in the regional issues. A finalized draft would need cabinet and parliamentary approval. A constitution review committee has been established, but it has not to date drafted proposed amendments. About 700 ex-Baathists have been returned to their jobs, but a new de-Baathification law has not been passed to date. Nor has a provincial election law. A further complication to Sunni-Shiite reconciliation has been the insistence of SCIRI leader Abdul Aziz al-Hakim on legislation to implement the constitutional authorization for forming new regions (federalism). A law to provide for new regions was passed on October 12, 2006, over Sunni opposition, but the factions agreed to delay the formation of any new region for 18 months. On security issues, several Iraqi Army divisions are now under Iraqi control, and the Iraq Security Forces now have security control for the provinces of Muthanna, Dhi Qar, and Najaf.

The President's January 10, 2007, statement on Iraq requires cooperation from Iraq, such as progress on the steps discussed above. The President's Baghdad security plan requires the commitment of 3 Iraqi brigades and an unspecified number of police commandos and regular police in nine sectors of Baghdad. Iraq is to designate a commander and deputy commander of Baghdad and commit \$10 billion in unspent Iraqi funds for reconstruction.

Perhaps most important is the Iraqi commitment to allow U.S. and Iraqi forces to conduct raids and patrols against Shiite militias that are responsible for much of the sectarian violence in Baghdad. Maliki, for his part, is politically dependent on Sadr's

support, and he has previously been hesitant to force Sadr's Mahdi Army militia to disarm. During October and November 2006, Maliki obstructed some U.S. operations against the Mahdi forces. However, he reportedly is shifting position and has told Sadr supporters that the Mahdi Army will not be immune from U.S.-Iraqi operations under the new security plan. Possibly in response, Mahdi commanders reportedly are planning not to challenge the new security operations. The President's January 10 plan does not adopt the Iraq Study Group recommendation that the United States reduce its political, military, and economic support for the government if it fails to meet reconciliation milestones.

In other efforts, U.S. officials have reportedly tried to forge a new coalition among mainstream Shiites, Sunnis, and secular blocs that would exclude Sadr. This strategy reportedly ran into opposition from Ayatollah Sistani, who has sought to ensure full cooperation among all Shiite blocs. Demonstrating the difficulty of forging unity in Iraq, the COR has only attracted a quorum on a few occasions since November 2006, and many of the sessions are characterized by verbal arguments by parliamentarians from the rival sects. One positive development for the COR, although not necessarily for U.S. efforts to isolate Sadr, was the January 2007 decision by Sadr to end the boycott of his 32 parliamentarians, which helped the COR obtain a quorum on January 25, 2007. Some take the view that, should Maliki not cooperate with the January 10 plan and 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.

**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 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).