



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) have produced a Shiite-led government that has been unable to reduce Sunni resentment. President Bush's new Iraq initiative, announced January 10, 2007, requires progress on a series of steps intended to achieve national reconciliation, as well as Iraqi government action against Shiite 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).¹

Elections and Constitutional Referendum in 2005

The first of the 2005 elections was 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.

¹ 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 IECE 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).

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. One duty of the newly 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. 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).² 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 changes to the most 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 would 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 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. 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 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

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

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 including *Fadila* (Virtue). Former Prime Minister Iyad al-Allawi’s mostly secular 15-party “Iraqi National” slate was broader than his January 2005 list, incorporating not only his Iraq National Accord but also several smaller secular parties. The Kurdish alliance slate was little changed from January.

Major Sunni slates, fearing exclusion from Iraqi politics, competed in these 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. 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, 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.

Recent Developments, Disputes, and U.S. Policy

Amid U.S. and other congratulations, Maliki won approval of a 39 member cabinet (including deputy prime ministers) on May 20, 2006, 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 Hoshyar Zebari remained Foreign Minister. Hussein Shahrastani, 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.

According to the Administration and the Iraq Study Group, the Iraqi government has put forward several milestones to achieve national reconciliation. The President's January 10, 2007, security plan — announcing the addition of 21,500 U.S. troops to secure Baghdad and Anbar Province — requires progress on the uncompleted steps to achieve reconciliation, discussed below, but 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 part because the parliament has not reached a quorum on most days since November 2006, only a few of the milestones have been completely met, as follows.

- (1) By September 2006, formation of a committee to review the constitution under the special amendment process promised; approval of a law to implement formation of regions; approval of an investment law; and approval of a law for the Independent High Electoral Commission (IHEC). The investment law was adopted in October 2006. The constitutional review committee has been formed, but it has not completed drafting amendments. The law on regions was adopted October 12, 2006, although, to mollify Sunni opposition, the major factions agreed to delay the formation of any new region for 18 months. The IHEC law is close to completion, according to U.S. officials in Iraq.
- (2) By October 2006, approval of a provincial election law (which would presumably lead to more Sunnis on provincial councils; the 51-seat Baghdad city council has only one Sunni Arab, for example) and approval of a new oil law. On February 18, 2007, Iraqi leaders submitted for cabinet consideration a draft oil law that would share revenues according to population of major communities; the cabinet approved the draft and sent it to parliamentary consideration on February 26, 2007. The draft had been long delayed by differences over the central government's review process for energy deals with foreign firms.
- (3) By November 2006, approval of a new de-Baathification law and approval of a flag and national anthem law. Iraqi leaders announced on January 17, 2007, that they had returned 2,300 ex-Baathists to their jobs or given them pensions instead, but a draft law that reportedly would allow all but 1,500 senior ex-Baathists to return to their jobs or receive pensions remains stalled by the dominant Shiite and Kurdish factions.
- (4) By December 2006, approval of laws to curb militias and to offer amnesty to insurgent supporters.
- (5) By January 2007, completion of the constitutional review process.
- (6) By February 2007, the formation of independent commissions to oversee governance.
- (7) Holding of a referendum on the special amendments to the constitution.
- (8) By April 2007, Iraqi assumption of control of its military.
- (9) By June 2007, the holding of provincial elections.
- (10) By September 2007, Iraqi security control of all 18 provinces. Several Iraqi Army divisions are now under Iraqi control, and Iraq Security Forces now have

security control for the provinces of Muthanna, Dhi Qar, and Najaf. Britain said on February 21, 2007, that it would turn over Basra Province by mid-2007.

(11) By December 2007, Iraqi security self-reliance.

The President's Baghdad security plan also requires the commitment of three Iraqi brigades and an unspecified number of police commandos and regular police in nine sectors of Baghdad. U.S. commanders say that these units are showing up, at a better than anticipated 80% strength. Iraq has, as was required, designated a commander (Lt. Gen. Abboud Qanbar) and deputy commander of Baghdad, and its 2007 budget, adopted February 8, 2007, commits the pledged \$10 billion in Iraqi funds for reconstruction.

Skeptics argue that Maliki's government will not allow U.S. and Iraqi forces to conduct raids against Shiite militias as well as against Sunni insurgent hotbeds. 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. However, on February 13, 2007, he issued a statement announcing the launching of the Baghdad security plan and its requirements, banning all fielding of weapons by those not in the ISF. This was a signal to Moqtada Al Sadr that the Mahdi Army will not be immune from U.S.-Iraqi operations under the new plan. Possibly in response, Sadr reportedly directed his Mahdi commanders not to challenge the new security operations, and some reports say Sadr himself fled to Iran to avoid being targeted by the new plan. In other efforts, U.S. officials have reportedly tried to forge a new coalition that would exclude Sadr. This strategy reportedly ran into opposition from Ayatollah Sistani, who has sought to ensure full Shiite unity.

Table 1. Election Results (January and December 2005)

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
Iraqi 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).