



CRS Report for Congress

Iraq: Reconciliation and Benchmarks

Kenneth Katzman
Specialist in Middle Eastern Affairs
Foreign Affairs, Defense, and Trade Division

Summary

The current government is the product of a U.S.-supported election process designed to produce a democracy, although many believe it produced a sectarian government incapable of reconciliation. The Administration says that, partly as a result of the U.S. “troop surge,” it is now seeing signs of national political reconciliation with the passage of some key laws. Debate remains over whether to continue to try to reconcile Iraq’s communities and strengthen Baghdad or to promote regional and communal autonomy. See CRS Report RL31339, *Iraq: Post-Saddam Governance and Security*, by Kenneth Katzman.

Elections and Constitutional Referendum in 2005

After about one year of formal occupation, the United States handed sovereignty to an appointed Iraqi government on June 28, 2004. A government and a constitution were voted on thereafter, in line with a March 8, 2004, Transitional Administrative Law (TAL). The first election (January 30, 2005) was for a 275-seat transitional National Assembly, provincial assemblies in each of Iraq’s 18 provinces (41 seats each; 51 for Baghdad), and a Kurdistan regional assembly (111 seats). The election system was proportional representation (closed list) — voters chose among “political entities” (a party, a coalition of parties, or individuals). A female candidate occupied every third position on electoral lists to produce 25% female membership. A total of 111 entities were on the national ballot, of which nine were multi-party coalitions. Sunni Arabs (20% of the overall population), perceiving electoral defeat, mostly boycotted and won only 17 seats. At the provincial level, Sunnis won only one seat on Baghdad province’s 51-seat council. Radical Shiite cleric Moqtada Al Sadr boycotted the provincial elections as a sign of opposition to the U.S.-led political process, and his supporters are underrepresented on the provincial councils in the mostly Shiite south. After the elections, an interim national government was formed that U.S. officials said under-represented Sunnis, although it had Sunnis as Assembly speaker, deputy president, deputy prime minister, defense minister, and five other ministers. The presidency went to Patriotic Union of Kurdistan (PUK) leader Jalal Talabani and Da’wa leader Ibrahim al-Jafari became Prime Minister.

Permanent Constitution. The 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. On May 10, 2005, the Assembly appointed a 55-member drafting committee which included only two Sunni Arabs, although 15 Sunnis were later added as full members and 10 more as advisors. In August 2005, the talks produced a draft, including the following provisions: a December 31, 2007, deadline to hold a referendum on whether Kirkuk (Tamim province) will join the Kurdish region (Article 140); designation of Islam “a main source” of legislation and prohibiting laws from contradicting the “established” provisions of Islam (Article 2);¹ setting a 25% electoral goal for women (Article 47); allowing families to choose which courts to use for family issues such as divorce and inheritance (Article 41); making only primary education mandatory (Article 34); and including Islamic law experts and civil law judges on the federal supreme court (Article 89). These provisions concern many women who fear that too much discretion was given to males of their families, and Islamic extremists in Iraq are purportedly citing these provisions to impose, including through killings, restrictions against women. Article 126 made all orders of the U.S.-led occupation authority (Coalition Provisional Authority, CPA), applicable until amended. Article 62 established a “Federation Council,” a second chamber with its size and powers to be determined by subsequent law (not passed to date).

The major disputes — which continue unresolved — centered on regional versus central power. The draft permitted two or more provinces together to form new autonomous “regions,” which was reaffirmed in an October 2006 law on formation of regions. Article 117 allows each “region” to organize internal security forces, legitimizing the fielding of militias, including 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 “regions” a role in allocating revenues from new energy discoveries. These concepts continue to hold up passage of national hydrocarbons legislation – Sunnis dominated areas of Iraq have few oil or gas deposits, and favor centralized control of the oil industry and revenues. The Kurds want to maintain maximum regional control of their own burgeoning oil sector.

With contentious provisions unresolved, Sunnis registered in large numbers (70%-85%) to try to defeat the constitution, prompting a U.S.-mediated agreement (October 11) providing for a panel to propose amendments within four months after a post-December 15 election government took office (Article 137), to be voted on within another two months (under the same rules as the October 15 referendum.) The Sunni provinces of Anbar and Salahuddin had a 97% and 82% “no” vote, respectively, but the constitution was adopted because Nineveh province only voted 55% “no,” missing the threshold for a “no” vote by a two-thirds majority in three provinces.

December 15, 2005 Elections. In the December 15, 2005, elections for a four year government, a formula was adopted to attract Sunni participation; each province contributed a predetermined number of seats to a “Council of Representatives” (COR). Of the 275-seat body, 230 seats were allocated this way, with 45 “compensatory” seats for entities that would have won additional seats had the constituency been the whole nation. 361 political “entities” registered, of which 19 were multi-party coalitions. As

¹ [<http://www.washingtonpost.com/wp-dyn/content/article/2005/10/12/AR2005101201450.html>].

shown in the table below, voters chose lists representing their sects and regions, and the UIA and the Kurds again dominated the elected COR. The COR was inaugurated on March 16, but wrangling ensued and Kurdish and other opposition caused the UIA to agree to Jafari's Da'wa deputy, Nuri Kamal al-Maliki, as Prime Minister. On April 22, the COR approved Talabani to continue as president, and selected his two deputies — Adel Abd al-Mahdi (incumbent) of the Islamic Supreme Council of Iraq (ISCI) and Tariq al-Hashimi, leader of the Consensus Front. Another Consensus Front figure, the hardline Mahmoud Mashhadani (National Dialogue Council party), was chosen COR speaker. Maliki won COR majority vote approval of a 37-member cabinet (including himself and two deputy prime ministers) on May 20, 2006. Three key slots (Defense, Interior, and National Security) were not filled permanently until June 8 because of infighting. Of the 37 posts, there were 9 Sunnis; 8 Kurds; 19 Shiites; and 1 Christian. Four are women.

Iraqi Performance on Benchmarks and Reconciliation

In August 2006, the Administration and the Iraqi government agreed on a series of “benchmarks” that, if adopted and implemented, would presumably achieve political reconciliation. Under Section 1314 of a FY2007 supplemental appropriation (P.L. 110-28), “progress” on eighteen political and security-related benchmarks — as assessed in Administration reports due by July 15 and September 15 — was required for the United States to provide \$1.5 billion in Economic Support Funds (ESF) to Iraq. The President has indicated intent to use the waiver provision. The law mandated a separate assessment by the GAO, by September 1, 2007, of the degree to which the benchmarks have been achieved, as well as an assessment of the Iraqi security forces (ISF) by an outside commission (headed by ret. Gen James Jones). Results of the assessments, as well as subsequent legislative actions and implementation, are shown in the chart below.

Many experts agree that Iraq's major communities remain sharply divided over their relative positions in the power structure, but the Administration sees signs of movement, perhaps attributed to the success of the 2007 “troop surge” in reducing violence. The February 13, 2008 passage (unanimously, with 206 members voting) of two significant laws (amnesty law and provincial powers law) and the 2008 national budget, represented clear breakthroughs, although the provincial powers law was vetoed by the presidency council and is being renegotiated. These recent steps, to some degree, represent achievement of the steps committed to by signed by Hashimi, Maliki, Talabani, Abd al-Mahdi, and Kurdish regional president Masoud Barzani in their August 26, 2007, “Unity Accord”. On the other hand, the effects will ultimately depend on implementation, and some believe these legislative moves mask deeper rifts, including growing divisions between the Kurds and Iraq's Arabs (both Sunni and Shiite). The budget had been help up over Iraqi Arab assertions that the 17% revenue allocation to the Kurdish region was too generous – a figure already agreed to in previous budgets. The Kurds accepted a national census to determine long term percentage allocations for the Kurds, and the budget apparently does not, as the Kurds demanded, fund from government revenues the Kurds' *peshmerga* militia. Many Iraqi Arabs say that a new flag was adopted (January 22, 2008) only because of Kurdish pressure and some factions refuse to fly it. The De-Baathification reform law adopted January 12, 2008 could result in the expulsion of more Sunnis from government than it re-instates.

Others signs point to a political stabilization of Prime Minister Maliki, who was reeling in mid-2007 by the pullout of the cabinet of several major blocs, including the

Consensus Front, the Sadr faction, and the secular bloc of former Prime Minister Iyad al-Allawi. Those withdrawals left the cabinet with about 16 vacant seats out of a 37 seat cabinet. As of late 2007, Maliki's government has strengthened somewhat. Maliki filled two vacancies (agriculture and health ministers) in October 2007 with independent Shiites, replacing resigned Sadrist, although he failed in November 2007 to win COR confirmation for new ministers of justice or communications. At the same time, Minister of Planning Ali Baban broke with his Consensus Front bloc and rejoined the cabinet, but still leaving the cabinet with 13 vacancies. All blocs, including the Consensus Front, have ended their 2007 boycotts of the COR. Another positive development came in December 2007 with agreement by the Kurds to delay the contentious, constitutionally mandated referendum on Kirkuk until June 2008; it was to be held by December 31. U.S. officials say that the Kurds, with mediation from the U.N. Assistance Mission Iraq (UNAMI, further empowered as a mediator by U.N. Resolution 1770) are increasingly focused on resettling Kurds in traditionally Kurdish cities and might not press the issue of holding a formal referendum. The Kurds and mainstream Shiite Arab factions remain supportive of an expansive, long term defense pact being negotiated with the United States, while Sadr, the Sunni factions, and the secular groups are generally opposed on the grounds that U.S. forces in Iraq are protecting the Maliki government.

Table 1. Election Results (January and December 2005)

Bloc/Party	Seats (Jan. 05)	Seats (Dec. 05)
United Iraqi Alliance (UIA, Shiite Islamist). Now 84 seats after departure of Fadilah (15 seats) and Sadr faction (29 seats) in 2007. Islamic Supreme Council of Iraq of Abd al-Aziz al-Hakim has 29 seats; Da'wa Party (faction of Nuri al-Maliki, and a competing faction) - 25 seats; and independents - 30. Sadr faction not formally in UIA for January 2005 election.	140	128
Kurdistan Alliance - joint list of PUK and Kurdistan Democratic Party	75	53
Iraqis List (secular, Allawi); added Communist and other mostly Sunni parties for Dec. vote. Lost two members in December 2007- now 23 seats	40	25
Iraq Consensus Front. Main Sunni bloc; not in Jan. vote. Consists of Iraqi Islamic Party (IIP) of Tariq al-Hashimi; National Dialogue Council of Khalaf Ulayyan; and General People's Congress of Adnan al-Dulaymi.	—	44
National Iraqi Dialogue Front (Sunni, led by former Baathist Saleh al-Mutlak) Not in Jan. vote.	—	11
Kurdistan Islamic Group (Islamist Kurd) (votes with Kurdistan Alliance)	2	5
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 (Message, Dec) pro-Sadr	3	2
People's Union (Communist, non-sectarian); on Allawi list in Dec. vote	2	—
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).

Table 2. Assessments of the Benchmarks

Benchmark	July 12 Administration Report	GAO	Sept. 14 Admin. Report	Subsequent Actions
1. Forming Constitutional Review Committee (CRC) and completing review	satis.	unmet	satisfactory	CRC continues debating 50 amendments regarding federal vs. regional powers; Kurds want Kirkuk issue settled before finalizing constitutional amendments. Deadlines for CRC recommendations repeatedly extended, now to May 2008.
2. Enacting and implementing laws on De-Baathification	unsatis.	unmet	satisfactory	“Justice and Accountability Law” passed Jan. 12 unanimously by 143 in COR present. Allows about 30,000 fourth ranking Baathists to regain their jobs, and 3,500 Baathists in top three party ranks would receive pensions instead. But, could allow for judicial prosecution of all ex-Baathists and to firing of about 7,000 ex-Baathists in post-Saddam security services, and bars ex-Saddam security personnel from regaining jobs.
3. Enacting and implementing oil laws that ensure equitable distribution of resources	unsatis.	unmet	unsatisfact.	Framework and three implementing laws stalled over Kurd-Arab disputes; only framework law has reached COR to date. However, revenue being distributed equitably, and 2008 budget adopted February 13, 2008 at least temporarily maintains existing 17% revenue share for Kurdish region.
4. Enacting and implementing laws to form semi-autonomous regions	satis.	partially met	satis.	Regions law passed October 2006, but main blocs agreed to moratorium on implementation until April 2008.
5. Enacting and implementing: (a) a law to establish a higher electoral commission, (b) provincial elections law; (c) a law to specify authorities of provincial bodies, and (d) set a date for provincial elections	satis. on (a) and unsatis. on the others	overall unmet; (a) met	satis. on (a) and (c).	Draft law stipulating powers of provincial governments adopted February 13, 2008, but vetoed over provision that Baghdad can remove provincial governors. Dispute could jeopardize election law (by May 2008) and provincial elections (by October 1, 2008). Some of the nine Higher Election Commission (IHEC) members to be replaced by UNAMI due to “non-transparent” selection process, despite passage of IHEC law in May 2007.
6. Enacting and implementing legislation addressing amnesty for former insurgents	conditions do not allow a rating	unmet	Same as July	Law to amnesty 5,000 “non-terrorist” detainees (almost all Sunnis) held by Iraq passed on February 13, 2008. Would not affect 25,000 detainees held by U.S, and might not lead to freedom for other approximately 20,000 detainees held by Iraq.
7. Enacting and implementing laws on militia disarmament	conditions do not allow rating	unmet	Same as July	No progress on disarmament program or related laws
8. Establishing political, media, economic, and services committee to support U.S. “surge”	satis.	met	met	No change

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Benchmark	July 12 Administration Report	GAO	Sept. 14 Admin. Report	Subsequent Actions
9. Providing three trained and ready brigades to support U.S. surge	satis.	partial	satisfactory	No change
10. Providing Iraqi commanders with authorities to make decisions, without political intervention, to pursue all extremists, including Sunni insurgents and Shiite militias	unsatis.	unmet	Mixed: satis. to pursue extremists, but political interference continues	No significant change
11. Ensuring Iraqi Security Forces (ISF) providing even-handed enforcement of law	unsatis.	unmet	overall mixed. Satis. on Iraqi military, unsatis on police	No significant change.
12. Ensuring that the surge plan in Baghdad will not provide a safe haven for any outlaw, regardless of sectarian affiliation	satis.	partial	satis	No change. Mahdi Army at reduced level of activity due to Sadr six month suspension (now extended until August 2008) and reported decline in Iranian weapons shipments.
13. (a) Reducing sectarian violence and (b) eliminating militia control of local security	Overall mixed. Satis.(a); unsatis. (b)	unmet	same as July 12	Sectarian violence continues to drop, but militias still operating. 90,000 Sunni "Sons of Iraq" combatting Al Qaeda, but still distrusted as potential Sunni militia forces. Only 20,000 allowed to join ISF to date.
14. Establishing Baghdad joint security stations	satis.	met	satis.	No change
15. Increasing ISF units capable of operating independently	unsatis.	unmet	unsatis.	Continuing but slow progress training ISF. U.S. officials say ISF likely unable to secure Iraq internally until 2012; and against external threats not until 2018-2020.
16. Ensuring protection of minority parties in COR	satis.	met	satis.	No change
17. Allocating and spending \$10 billion in 2007 capital budget for reconstruction projects equitably	satis.	partial.	satis.	About 4.5% of the \$10 billion for capital projects spent by August 2007; another \$13.2 billion is in 2008 Iraqi budget adopted February 13, 2008.
18. Ensuring that Iraqi authorities not making false accusations against ISF members	unsatis.	unmet	unsatis.	No change