



CRS Report for Congress

Iraq: Government Formation and Benchmarks

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Summary

The current government is the product of a U.S.-supported election process designed to produce a democracy, although many now believe it produced a sectarian government incapable of reconciling Iraq's communities. This sentiment has grown to the point where some believe that the United States should seek a decentralized Iraq with substantial autonomy for each community. However, the Administration says that, partly as a result of the U.S. "troop surge," it is now seeing some concrete signs of political accommodation, most notably at local levels. 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 in order to ensure 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 and very few provincial council seats. Sunnis won only one seat on Baghdad province's 51-seat council. The faction of radical Shiite cleric Moqtada Al Sadr also mostly boycotted the provincial elections because he was opposing the U.S.-led political process; his supporters did not win many seats on the provincial councils of the mostly Shiite south. After the elections, an interim national government was formed that U.S. officials said was not sufficiently inclusive of 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 that set a December 31, 2007, deadline to hold a referendum on whether Kirkuk will join the Kurdish region (Article 140); designated Islam “a main source” of legislation and said no law can contradict the “established” provisions of Islam (Article 2);¹ set a 25% electoral goal for women (Article 47); allowed families to choose which courts to use for family issues such as divorce and inheritance (Article 41); made only primary education mandatory (Article 34); and said that the federal supreme court would include Islamic law experts and civil law judges and experts (Article 89). These provisions concerned many women who fear that too much discretion was given to males of their families, and many women say the provision is being misused by Islamic extremists in southern Iraq and elsewhere 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.

The major disputes were — and continue to be — centered on the draft’s allowing two or more provinces together to form new autonomous “regions” and to allocate oil revenues. Article 117 allowed each “region” to organize internal security forces, which would legitimize 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. Sunnis opposed the draft on these grounds; Sunni-dominated areas of Iraq have few oil or gas deposits, although some oil fields might lie in Anbar Province. Article 62 established a “Federation Council,” a second chamber with its size and powers to be determined by subsequent law (not passed to date).

With contentious provisions unresolved, Sunnis registered in large numbers (70%-85%) to try to defeat it, 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). The amendments would require a majority Assembly vote of approval and, within another two months, would be put to a referendum under the same rules as the October 15 referendum. However, in the referendum, the Sunni provinces of Anbar and Salahuddin had a 97% and 82% “no” vote, respectively. Mostly Sunni Nineveh province voted 55% “no,” which meant that the constitution was adopted (only two provinces, not three, voted “no” by a two-thirds majority).

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 shown in the table below, voters chose lists representing their sects and regions, and the

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

UIA and the Kurds again dominated the elected COR, as they had in the January election. The full term 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 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, discussed below) and the 2008 national budget, represented clear breakthroughs. The effect on reconciliation will depend on implementation. 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 fund the Kurds' *peshmerga* militia, who are now funded from the Kurds' own regional funds. This follows the January 12, 2008 passage of the De-Baathification reform law and the January 22, 2008 adoption (not part of those named in P.L. 110-28 but cited by the Iraqi themselves) of a law adopting a new national flag. Many Iraqi Arabs say the new flag was adopted only because of Kurdish pressure and some factions refuse to fly it. 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”.

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 Sadrists, 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, leaving the cabinet with 13 vacancies. As of February 2008, the Iraqi Islamic Party, the main faction of the Consensus Front, reportedly is considering rejoining the cabinet. 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. On the other hand, demonstrating that new alliances are forming across sectarian lines, 120 parliamentarians from Sadr's faction, Allawi's faction, and part of the Da'wa Party members signed a statement on January 13, 2008, opposing Kurdish takeover of Kirkuk and energy deals signed by the Kurds.

Table 2. 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 Patriotic Union of Kurdistan and Kurdistan Democratic Party. | 75 | 53 |
| Iraqis List (secular, Allawi); added some mostly Sunni parties for Dec. vote (2 members left the bloc in September 2007, leaving it with 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. Hardline Sunni group Muslim Scholars Association did not join slate but did not call for election boycott, as it had in January vote. | — | 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 1. Assessments of the Benchmarks

| Benchmark | July 12 Administration Report | GAO Report | Sept. 14 Administration Report | Subsequent Actions |
|--|--|------------------------|---------------------------------------|---|
| 1. Forming Constitutional Review Committee (CRC) and completing review | satisfactory | unmet | satisfactory | No recent discernible progress. Deadlines for CRC recommendations repeatedly extended, now to May 2008. |
| 2. Enacting and implementing laws on De-Baathification | unsatisfactory | 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 | unsatisfactory | unmet | unsatisfactory | no passage of oil laws, but revenue being distributed equitably. 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 | satisfactory | partially met | satisfactory | 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 | satisfactory on (a) and unsatisfactory on the others | overall unmet; (a) met | satisfactory on (a) and (c). | Draft law stipulating powers of provincial governments adopted February 13, 2008, and COR agreed to hold provincial elections by October 1, 2008. Election law will need to be adopted first. Some of the nine Higher Election Commission (IHEC) members to be replaced 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 | conditions do not allow a rating | Crucial to Sunnis who are the overwhelming majority of detainees in Iraq, the law to amnesty 5,000 “non-terrorist” detainees held by Iraq passed on February 13, 2008. However, would not affect 25,000 detainees held by U.S, and, depending on implementation, 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 | conditions do not allow rating | No progress on disarmament program or related laws |
| 8. Establishing political, media, economic, and services committee to support U.S. Baghdad “surge” | satisfactory | met | met | No change |

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| Benchmark | July 12 Administration Report | GAO Report | Sept. 14 Administration Report | Subsequent Actions |
|---|--|---------------|--|--|
| 9. Providing three trained and ready brigades to support U.S. surge | satisfactory | partially met | 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 | unsatisfactory | unmet | Mixed: satisfactory to pursue extremists, but political interference continues | No significant change |
| 11. Ensuring Iraqi Security Forces (ISF) providing even-handed enforcement of law | unsatisfactory | unmet | overall mixed. Satisfactory on Iraqi military, unsatisfactory 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 | satisfactory | partially met | satisfactory | No change. Mahdi Army at reduced level of activity due to Sadr six month suspension and reported decline in Iranian weapons shipments. Sadr might end suspension in later Feb. |
| 13. (a) Reducing sectarian violence and (b) eliminating militia control of local security | Overall mixed. Satisfactory on (a) but unsatisfactory on (b) | unmet | same as July 12 | Sectarian violence continues to drop, but militias still operating. 80,000 Sunni "Concerned Local Citizens" and 15,000 tribal "Awakening" fighters combatting Al Qaeda, but still distrusted by Maliki government as potential Sunni militia forces. Only 15% CLC's have been allowed to join ISF. |
| 14. Establishing Baghdad joint security stations | satisfactory | met | satisfactory | No change |
| 15. Increasing ISF units capable of operating independently | unsatisfactory | unmet | unsatisfactory | 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 rights of minority parties in Iraqi parliament | satisfactory | met | satisfactory | No change |
| 17. Allocating and spending \$10 billion in 2007 capital budget for reconstruction projects, on an equitable basis | satisfactory | partially met | satisfactory | About 4.5% of the \$10 billion spent by August 2007, according to Iraqi figures. \$13 billion more in 2008 Iraqi budget adopted on February 13, 2008. |
| 18. Ensuring that Iraqi authorities are not undermining or making false accusations against ISF members | unsatisfactory | unmet | unsatisfactory | No change |