

Iraqi People Get the Vote

Under a new rule of law, broad elections will let a nation determine its own destiny.

By Eric Pelofsky and Brett H. McGurk

All eyes are focused on the upcoming elections in Iraq. In recent weeks, we have seen an increase in extreme acts of violence and intimidation intended to derail the elections by deterring election workers and voters from participating in the first credible election in Iraq in decades. These acts have attracted more headlines, but they have not stopped the steady preparations underway by the Independent Electoral Commission of Iraq with the support of the Iraqi Interim Government, the United Nations, the international community, and many non-governmental organizations.

The Jan. 30 balloting will elect a National Assembly, provincial councils for each of Iraq's 18 provinces, and the Kurdistan Regional Government. Voting for the National Assembly by Iraqis living outside Iraq will take place in 14 countries (including the United States) from Jan. 28 to Jan. 30.

It is worth understanding the legal framework for this electoral process in some detail. Here we will briefly map the process and how it came about. We hope this article will be a resource for those analyzing the Iraqi elections and the results.

THE POLITICAL BACKGROUND

Elections have loomed large over the Iraqi political landscape since the fall of Saddam Hussein. In late June 2003, influential Ayatollah Ali Al-Hussaini Al-Sistani called for an election to create an assembly to write a new Iraqi constitution. Shortly thereafter, Ambassador L. Paul Bremer III, the administrator of the Coalition Provisional Authority, announced a plan to hold elections following the approval of a permanent constitution by national referendum. On Nov. 15, 2003, the Coalition Provisional Authority and the Iraqi Governing Council modified the timetable and agreed to hold elections for a body to draft a permanent constitution. A National Assembly chosen by caucuses, however, would govern the country during the constitution drafting process and until the election of a new government under a permanent constitution—an election that was to be held by the end of 2005.

By late winter of 2004, the different visions had been blended into a single plan to hold elections “no later than by 31 January 2005” for a Transitional National Assembly that would both govern Iraq and draft a new constitution. That plan was laid out in the Law of Administration for the State of Iraq for the Transitional Period (frequently called the Transitional Administrative Law or the TAL, available at www.coalitioniraq.org/government/TAL.html), which the Iraqi Governing Council approved on March 8, 2004.

The TAL also requires that elections for provincial councils in Iraq's 18 provinces and an election for the Kurdistan Regional Government be held “at the same time as the National Assembly elections, no later than January 31st.” While adding significant logistical challenges, these sub-federal elections buttress the federalism enshrined in the TAL by ensuring that different levels of government can legitimately claim to represent segments of the Iraqi population.

THE ELECTORAL FRAMEWORK

U.N. election experts led the coordinated effort to draft by June 30, 2004, an electoral framework that would remain above Iraqi politics. The Iraqi Governing Council had invited the United Nations to play this advisory role in a letter to the U.N. secretary-general and established a committee to work with the United Nations, the Coalition Provisional Authority, and IFES, a leading non-governmental organization in the area of transitional elections. Starting in early April, the U.N. team traveled to key Iraqi cities to learn from and consult with political and civic leaders. The U.N. team included experts from a variety of countries and electoral systems, including Colombia, Mexico, South Africa, and Uruguay. Back in Baghdad, the U.N. team engaged in extensive discussions with the Iraqi Governing Council, other key Iraqi leaders, and the Coalition Provisional Authority, including its lawyers, to develop the three orders establishing the electoral framework: (1) the Independent Electoral Commission of Iraq, (2) the Electoral Law, which determines precisely how the National Assembly will be elected, and (3) the Political Parties and Entities Law.

Coalition Provisional Authority Order No. 92 establishes the

Independent Electoral Commission of Iraq and authorizes this commission to organize, oversee, conduct, and implement all the elections set forth in the TAL. The order firmly establishes the commission's independence, neutrality, and authority as the final arbiter in election matters.

The Independent Electoral Commission is headed by a board of seven Iraqi voting members, an Iraqi chief electoral officer (who runs the commission's administration), and an elections expert chosen by the United Nations. These members were nominated by the United Nations after an extensive outreach campaign and were drawn from more than 1,800 applications submitted by individuals in all areas of Iraq.

The commission also includes a Transitional Electoral Panel, which consists of three Iraqi judges, to hear appeals from certain board decisions. If the panel decides that a particular appeal meets jurisdiction and standing requirements, the panel must render a decision within 10 days or else the board's decision automatically becomes final. This mechanism was designed to ensure that challenges receive fair review and due process but do not unravel the commission's authority or needlessly postpone the announcement of election results.

The Electoral Law, set forth in Coalition Provisional Authority Order No. 96, declares that the entire country will be treated as a single constituency and that Iraqi voters will elect a 275-member National Assembly based on proportional representation. This means that each party will offer a list of candidates (in rank order) and will receive a number of seats in the Assembly based on the percentage of votes that they received from nationwide voting. The party lists are "closed," meaning that if a party wins 10 seats, its first 10 candidates—as originally ranked in its list—will become members of the National Assembly. The remaining candidates on the list cannot be given seats out of order.

AN INCLUSIVE PROCESS

Given the general public skepticism associated with political parties in Iraq, the Coalition Provisional Authority and the United Nations favored an electoral framework that allowed individual candidates and relatively small parties to participate. Thus, the Electoral Law allows individuals to run alone and parties to submit lists with as few as 12 candidates. Similarly, the Iraqi Governing Council committee favored keeping the number of signatures that each party must collect to run in the election very low—thus, only 500 are required.

To achieve the TAL goal that women constitute no less than one-quarter of the members of the National Assembly, parties are required to have women make up one-third of each candidate list (or three of every 10 candidates), and the parties cannot group the women candidates at the bottom. Finally, the Electoral Law also establishes a broad basis for voter eligibility drawn primarily on the criteria for Iraqi nationality in Article 11 of the TAL. Under this standard, there are more than 15 million Iraqis eligible to vote in the January elections.

The Political Parties and Entities Law, set forth in Coalition Provisional Authority Order No. 97, establishes some basic principles for certification and treatment of Iraqi parties. It authorizes, among other things, the Independent Electoral Commission of Iraq to promulgate a code of conduct for parties, establish electoral offenses, and sanction political parties that commit these offenses. The law declares that no political entity may have, be associated with, or be funded by a militia. The law discusses coalition building and authorizes the Independent Electoral Commission to issue financial disclosure rules.

MAKING VOTING A REALITY

Since its appointment on June 3, 2004, the Independent Electoral Commission of Iraq has issued more than 15 regulations and a number of public notices expanding upon and implementing the electoral framework promulgated in these three Coalition Provisional Authority orders. The board members have repeatedly and consistently demonstrated their independence and resilience.

No doubt many challenges are still ahead, and debate over the electoral framework will certainly continue long after Jan. 30. The elections are also but one part of a transition process that will unfold over the coming year. Yet, even with imperfections, these elections offer the Iraqi people a chance to freely determine their own political future—taking the ideals of democracy another step forward in Iraq.

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