



**United Nations Assistance Mission for Iraq
(UNAMI)**

**UNAMI Political Affairs Office (PAO)
Background Papers Series**

***Iraq Election Planning
Timeline Considerations***

About PAO Background Papers:

The paper series encompasses concise briefing papers covering topics of current interest and longer background papers related to institutions, organizations or more complex subjects from the realms of politics, religion, society and economy. It is produced by the PAO and receives regular contributions from the Office of Constitutional Support and the Electoral Assistance Team.

The purpose of this series is to inform, stimulate, and invite discussion with a view to develop a more accurate perspective of the subject at hand and of the environment within which the UN operates in the region. These papers are subject to regular up-date and may not reflect UNAMI policy.

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Introduction

For any election in Iraq there are two timelines that must be considered: the legislative timeline followed by an operational timeline. In most countries with periodic elections the focus is on the operational timeline because election policies are generally accepted and little changes from one election event to the other. In conflictive and transitional electoral environments however the situation is reversed. The legislation that will govern any election is often contentious and it can be difficult to reach consensus in a timely manner. This paper will describe the primary policy decisions that must be taken by the Iraqi government before any operational timeline for an election event can be triggered. It will also describe the key elements of the operational timeline. UNAMI recognizes that setting the date for any election is the responsibility of the Iraqi government. However, when setting such dates it is essential to consider both the legislative and operational requirements that must be satisfied in order for the election to be credible, and accepted by the population, political parties, candidates and the international community.

Generally speaking, there are five significant classifications of legislative decisions that need to be addressed in order for the newly established Independent High Electoral Commission (IHEC) to begin operational planning and implementation. These include (1) the selection and appointment of new IHEC commissioners and directors of 19 Governorate Election Offices (GEOs); (2) the adoption of a legal framework for a potential election (such as Governorate elections, referendums on disputed territories including Kirkuk, a referendum on constitutional amendments and a referendum for the formation of regions¹); (3) agreement on boundary delimitation; (4) agreement on the modalities for voter registration; and (5) a supplemental budget by the Government of Iraq. Only after these policy matters have been clarified at the legislative level can the operational timeline managed by the IHEC be activated. The pace and length of the legislative timeline cannot be predicted with any certainty while the operational timeline is generally accepted to be approximately six (6) months following the fulfilment of the political timeline.

Legislative Timeline

1. **IHEC Establishment.** The law establishing the permanent election management body in Iraq was enacted at the end of February 2007. In accordance with the IHEC law, the following decisions must be taken by Iraqi representatives before the IHEC can be considered operational and able to conduct an election event:
 - a. Appointment of nine (9) new commissioners by the Council of Representatives (CoR) (IHEC law stipulates a deadline of 60 days which would be 26 April 2007).
 - b. Selection of a Chairperson, Deputy Chairperson, Rapporteur and Chief Electoral Officer by a majority of the new IHEC Commissioners.

¹ As per Article 22 of the Law on formation of Regions, the procedures can be initiated 18 months after the adoption of the law on October 11, 2006.

- c. CoR selects five (5) candidates for each of the (19) director posts of the GEOs and the IHEC Commissioners make the final appointment².
- d. IHEC Commissioners ratify organizational structure of central and Governorate Offices and ratify appointment of senior divisional staff upon the recommendation of Chief Electoral Officer.
- e. IHEC Commissioners adopt a Code of Conduct and Rules of Procedure to legitimise the enactment of needed regulations and decision-making.
- f. IHEC Commissioners retain existing election staff and do not adopt policies leading to their dismissal, transfer or demotion.
- g. Agreement by the IHEC Commissioners to continuing the International Election Assistance Team (IEAT), a mechanism endorsed by the out-going Commissioners to coordinate electoral assistance to Iraqi institutions. The IEAT is UNAMI led and includes assistance provided by IFES/USAID, EU, Scuola Superiore Sant'Anna/Italian Ministry of Foreign Affairs, UNDP and UNOPS (IRFFI Cluster G).
- h. Agreement by the IHEC Commissioners to the UNAMI proposed training and briefing plan for their new positions. This will include internal briefings by IHEC departments, a workshop with outgoing election Commissioners, study tour with detailed briefings from international electoral experts, out-of-country election observations et cetera.

Since the last election in 2005, UNAMI estimates that as much as 30% of the staff and operational capacity of the IECI/IHEC has been lost. Together with UNDP, UNOPS and IFES/USAID, a capacity building initiative was launched by the IEAT in January 2007 to rebuild the Commission's ability to plan and conduct elections and this will continue throughout the calendar year.

2. **Legal Framework.** There is no complete legal framework in place to conduct any election event in 2007. Any legal framework must include relevant constitutional provisions, the election law (and other related laws), referendum law and all regulations promulgated by the IHEC. The following are described as key (not exhaustive) elements for the needed framework for events currently under discussion.

Governorate Elections. A series of laws must be enacted by the CoR and while there is no single way to prepare these laws, in the Iraqi context the following legislative initiatives are under discussion in CoR working committees.

- a. **Draft Law on Provinces/Governorates not Part of a Region.** UNAMI has previously provided the CoR with comments on this draft law and they will not be repeated in their entirety in this document. In essence, this law defines the roles, responsibilities and powers of Governorates under the developing Iraqi system of federalism. Summary of key UNAMI recommendations:
 - i. UNAMI recommends that all election related clauses in this draft law be removed and that a separate election law be drafted.

² No timetable for this has been discussed yet.

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- ii. UNAMI recommends that provisions be included that clearly describe how existing Governorate Councils will be dissolved given that the mandate and term of office for existing Governorate Councils is not clearly defined in existing legislation.
- b. **Governorate Election Law(s).** As mentioned above, some election provisions are included in the Draft Law on Provinces/Governorates not part of a Region. For the ease of convenience all key electoral provisions will be described under this section recognizing that the Iraqi CoR is free to craft legislation in the manner they deem best and that more than one law may be promulgated. Key clauses should however include the following:
- i. **Defining the size and terms of councils subject to election.** Often the size of councils will be based on a census. In the Iraqi context, since the 1950s there has been general acceptance of a ratio of 1 representative for every 200,000 people. Internationally, there tends to be much less focus on this kind of ratio. If elections are to be held before an updated census, their size can be based on other population data provided there is political agreement to accept it as reliable. This may be difficult in Iraq since the Public Distribution System (the only national database available at this time) is highly controversial. Another option in Iraq is to define the size according to a voter registration exercise. This has its own complexities (see below). Other options include defining the size according to voter turn out or through population estimates. It is recommended that the legislative body make the decision on what basis will be used to derive the number of seats for the Councils as well as their term and conditions for dissolution.
 - ii. **Type of electoral system.** The electoral system provides the rules and procedures through which votes cast are translated into seats won. In Iraq, the most important constraint for selecting a Governorate election system is the impracticality of creating new constituencies or registering voters at the current district level due to the lack of demographic data, reliable political and judicial institutions, and personal security. Substantial internal displacement and the danger of further politically-motivated forced displacement make any consideration of district based voter registration or creating new sub-governorate electoral constituencies still more problematic.

Recognizing these constraints Governorate elections in Iraq, in the absence of a district based voter registry, will most likely need to be conducted in single, governorate-level electoral constituencies. Proportional representation based on party-based lists (list-PR), is operationally feasible, familiar to Iraq voters, and offers political

advantages. Most important of these is that list-PR allows the representation of small movements, whether defined by identity, ideology, or otherwise. List-PR facilitates the election of women and allows for the replacement of members without re-running the elections.

Within list-PR systems, a number of more specific decisions must be made by the CoR. The most important of these is the choice between open and closed lists of candidates. Open list elections create a stronger bond of accountability between the voters and specific elected representatives. However, a list-PR system inherently vests accountability in the political parties, not in the individual representatives, and simply using an open rather than a closed list system cannot reverse this fundamental relationship. Further, where party lists are comprised of well defined and organized sub-factions, open list systems can have unexpected and pernicious effects, rewarding better organized factions with more representatives than their public support would suggest. In addition, special provisions can be considered for under-represented groups. In the past, Iraq has reserved seats to accommodate smaller often minority-based parties and has adopted quotas to ensure the representation of women.

- iii. **Defining the boundaries.** Defining the boundaries of the geographical area subject to the election is a basic requirement for any election law. In the Iraqi elections of 2005 the previous administrative boundaries used by Saddam Hussein were used. Many of these boundaries are locally disputed and a political agreement must be reached before any voter registration or election planning can begin. Given the scope of this problem in Iraq and its potential impact on sequencing elections this is discussed in more detail below. An election law however should state what the electoral unit(s) is/are and this requires agreement on boundaries.
- iv. **Eligibility to be a member of the council.** Residency, age, experience and background are common requirements. Residency requirements must be closely examined in Iraq given internal displacement due to conflict and previous regime policies. The eligibility criteria must also be harmonized with the De-Ba'athification requirements. There must be a fair and transparent procedure to vet candidates with timeframes consistent with the overall election calendar. It should be noted that this exercise was hugely contested and problematic in the 2005 elections.
- v. **Removal and replacement mechanism of council members.** Procedures for removing council members for malfeasance, improper conduct or in the event of death must be elaborated.

- vi. **Political party registration.** This includes, when, where and how political parties can register for an election. If a specific number of signatures are required for registration, sufficient time must be provided for all parties to comply. The rights of parties to observe the electoral process and file complaints must also be provided. (Note: these provisions are often contained in a separate law).
- vii. **Political party finance.** Defining access and disclosure of public and private funds available to political parties are essential to level the playing field. Public funding can come in different forms including access to public broadcasting outlets, use of government facilities, public grants and tax benefits to name a few (Note: a separate law is often promulgated on this issue).
- viii. **Voter eligibility.** Who is eligible to cast a vote in the election and the compilation of the voters' registry is another core element of any election law. The international best practice for voter registration is that the register must be comprehensive, inclusive, accurate, and up to date, and the process must be fully transparent. Clauses should be included in the legal framework to prevent the unlawful or fraudulent registration or removal of persons as well as personal data and information protection. Also the registration of voters must allow for a period of exhibition and challenges. Given the complexities facing Iraqi officials in any voter registration process, this matter is discussed in greater detail below.
- ix. **Campaign period.** Although the details of conducting campaigns and resolving related complaints are generally covered by regulations issued by the IHEC (in the case of Iraq) the actual commencement and termination period for campaigning is generally contained in the election law.
- x. **Observation.** An election law should provide for the presence of observers, both domestic and international, in addition to the presence of the media, political parties and candidates although the details can be left to regulation by the IHEC.
- xi. **Media and freedom of expression.** Political parties and candidates should have guaranteed equal access to state-owned media and protected freedom of expression in their campaign. Care must be taken not to restrict campaigning and free speech by overly broad definitions or excessive use of defamation charges.

- xii. **Balloting.** The requirements for how candidates and political parties can get on a ballot are generally included in the election law while the specific modalities are left for the regulatory body (e.g. IHEC).
- xiii. **Counting and tabulation.** A fair, honest and transparent vote count is the cornerstone for any election. The election law should provide access to political party representatives, candidate and observers to the count and tabulation process. Criteria for determining valid and invalid ballots to be counted must be in the law while regulations may reference the more detailed modalities of handling and transporting ballots to the counting and tabulation centres. The process for certifying the election results must also be included.
- xiv. **Complaint and appeal procedures.** The election law must lay out the role and responsibilities of the IHEC and judiciary in the complaint and appeal procedure. Some provisions are already included in the IHEC law, which should be harmonized with clauses contained in any election law.

The enactment of an election law for Governorate elections must be promulgated well in advance of any election date to allow the IHEC to issue needed regulations and to inform political parties, candidates, domestic and international observers, media and authorities and the general public. Election legislation enacted at the last minute tends to undermine the credibility of the process and may affect party/candidate participation and voter turnout. Late enactment of the election law will make it more difficult for electoral contestants to comply with legal requirements – a situation which led to some parties failing to be certified for the 30 Jan 2005 elections, creating political and security dilemmas in Diyala and elsewhere.

Referendum Law. There are two possible referendums for Iraq in 2007, one on the constitutional amendment process (as defined in the Constitution) and the other on “disputed territories including Kirkuk.” Both will require separate enabling legislation (a referendum law) that must include: voter eligibility (who votes), the question to be asked, the electoral unit (geographical area that will vote) and the threshold for passage. Given that political processes are currently underway to answer these respective questions for each potential referendum, no election planning or preparation has yet begun at the IECI/IHEC.

3. **Boundary Delimitation.** As noted above, boundary delimitation disputes are widespread in Iraq, both between Governorates and also at the district and sub-district level. UNAMI estimates there are more than 40 disputes, which include the southern boundary of the Kurdish region (districts in Kirkuk/Tameem, Diyala, Salah al Din and Ninewa), Anbar and Kerbala, and Baghdad. After assuming power in 1968, the Ba’ath party increased the number of Governorates in Iraq from 14 to 18 and in so doing drew fault lines, which continue to be the source of conflict and violence. The elections in 2005 reduced these issues by mandating that the existing boundaries as

redesigned by the former regime would be applicable in the three elections held that year. For any election event in 2007, or thereafter, decisions on the following must be considered by Iraqi officials:

- a. Whether to adopt a Governorate election law that applies the same administrative boundaries as those used in 2005, or whether new boundaries will be drawn.
- b. If existing boundaries are used, consideration of how that decision will impact and be harmonized with any subsequent referendum on “disputed territories, including Kirkuk” pursuant to Article 140 of the Iraqi Constitution must be evaluated and managed.
- c. If the boundaries are to be reviewed and even changed then Iraqi officials must decide on a process and timeline for completion. Because this is a politically sensitive process, in many jurisdictions the election administration (e.g. IHEC) is not directly involved. Instead a special commission often undertakes the process. Such a commission or similar body may be made up of a combination of the following:
 - i. Representatives of political parties;
 - ii. Independent non-political individuals such as judges, leaders of civil society;
 - iii. Relevant experts – demographers, geographers, statisticians, cartographers, historians, mediators, international experts.

When reviewing boundaries for electoral units there must be clearly defined criteria for making line determinations, including some degree of public participation, clarity on the respective roles of the legislature, judiciary and executive in the process, and what or who will have ultimate authority for the final determination of the boundary lines. These criteria are usually contained in the enabling legislation that sets up a boundary commission or similar body.

Boundary delimitation or redistricting practices vary greatly around the world however there are three universal principles that guide the process:

- i. “Representativeness” – boundaries should be drawn so that constituents have an opportunity to elect candidates they feel truly represent them. Generally this means that the boundaries should coincide with communities of interest as much as possible. Communities of interest can be defined in a variety of ways including administrative, ethnic or cultural groups, or natural communities such as islands.
- ii. Equality of voting strength – boundaries should be drawn so that constituencies are relatively equal in voter strength, resulting in each voter casting a vote of equal weight to the greatest degree possible.

- iii. Reciprocity and non-discrimination – the rules adopted for delimiting boundaries must be applied consistently and equally. The process should be non-partisan so that no majority party is able to steer the outcome.

If the boundaries used in 2005 are not adopted for new Governorate elections then Iraqi authorities should consider the method and process they plan to employ, so that boundary delimitation disputes can be resolved peacefully in a transparent manner, which the general public can understand. Until this question is answered, no meaningful voter registration exercise can occur which will further delay the start of the operational timeline.

Additionally, until boundary delimitation is clarified for the referendum on “disputed territories including Kirkuk” and the eligible voters identified, no operational timeline can begin.

4. **Voter Registration.** Assuming an election or referendum law defines voter eligibility then the IHEC can promulgate a voter registration regulation. The key policy decision facing the IHEC Commissioners will be how to create a voter registry in an environment of on-going conflict related displacement. The practical options available to the IHEC Commissioners for conducting a voter registration exercise are limited to the following: drawing a voter registry from the Public Distribution System (PDS) with a public update (as was done in 2004 and 2005), preparing a voter registry from a planned national census calendared for late 2007, or creating a new credible voter registry from scratch which can take between 12-18 months (subject to public security).

Regardless of what election event may occur in 2007, a voter registration exercise must begin if Iraq is to develop a credible baseline to hold future elections. The voter registry from 2005 has not been updated. Up to two million people are now internally displaced in Iraq with an estimated 700,000 Iraqis internally displaced since February 2006. In addition the number of Iraqis leaving the country continues to climb by the thousands each month. If any election is held in the next 12 months, the PDS will by default form the basis for the voter registry. In such a case, it is almost certain that all internally displaced persons will be disenfranchised. In addition, it is also likely that refugees and the Iraqi diaspora would not be registered – there is simply not enough time to register these groups. Of particular concern to UNAMI is the disenfranchisement of IDPs and refugees who have protected status under the UN Convention on Refugees and the Guiding Principles for Internal Displacement. The impact of disenfranchising these groups will affect election credibility and possibly the participation of political parties, candidates and voter turnout.

In the event the PDS is used as a basis for preparing a voter’s registry, and based on the experiences of 2004 and 2005, an estimated 600 registration centres would be visited by Iraqis to confirm their registration. This would require the temporary employment of approximately 3,000 registration clerks over at least an eight-week

period or as defined by the IHEC (see Operational Timeline below). It must be stressed that the credibility of using the PDS combined with a public update cannot be guaranteed and if great care is not exercised, political party and candidate participation as well as voter turnout may be negatively affected.

Previous Iraqi regimes used the national census results to prepare a voters registry. The last census was in 1997 with its results widely questioned by all Iraqi communities. The Iraqi government is preparing to conduct another census in late 2007. UNAMI does not recommend that the IHEC Commissioners wait for such a census in order to prepare a voters list, particularly as this census will be conducted by other parts of the Iraqi government and will consequently not be supervised by the IHEC. It is a preferred best practice for voter registries to be within the control and management of the national election body to ensure its credibility. In addition election timelines should, as much as possible be independent from other government activities including the census calendar. The preparation of a voters' registry is not dependent on conducting a census.

Iraq needs a new credible voters registry and creating one from scratch, as difficult as that may be, is the preferred option or, as part of a new civil registry. However, this is not an option for any election held in 2007. It is estimated that preparing a full registration exercise, independent of the PSD and census, would require every Iraqi to visit one of approximately 6,000 registration centres and could require employing more than 30,000 registration clerks for a minimum period of 8 weeks followed by an update immediately before an election event. Obviously, this would have security and financial implications for the Iraqi government. At some point, however a full voter registration exercise will be needed in Iraq and this will be a significant policy challenge for the new IHEC Commissioners to tackle.

No matter the choice made by the IHEC Commissioners, a new voter registration regulation will have to be promulgated early in their tenure. Fundamental issues that must be dealt with in that regulation (assuming they are not elaborated in an election law) include: citizenship and age qualifications, residential qualifications, methods of voter registration, a process for dealing with objections and appeals, identification procedures for voters and documents required by voters. Such methods and processes must be clearly stated, objective and not subject to arbitrary decisions.

Voter registration will not only be required for Governorate elections but also for any planned referendums. If done correctly, it may be possible to use the same voter registry as a basis for all events recognizing that additional public updates may be needed depending on the period between the events. If done wrongly it may bring into question any upcoming election or referenda.

5. **Budgetary Appropriation.** The 2007 Iraqi budget allocation to the IHEC does not provide funding for any of the election events discussed above. A supplemental budget appropriation would have to be prepared and approved by the Government of Iraq.

Operational Timeline

Only after the legislative action is taken (an election law and/or referendum law) can the operational timeline begin. While specific operational details are not discussed here (for the sake of clarity), the widely accepted timeline draws on an estimated six-month period for implementation of the relevant operational benchmarks. This includes provision for regulatory activities, voter registration, and operational implementation – including registration of political entities, subsequent ballot printing and the count.

If any election event is to be considered by the end of 2007 it must be appreciated that this time frame is considerably abbreviated. This is more so given the number and variety of pieces of legislation that require approval by the Council of Representatives before key operational activities can begin. Once key legislative instruments have been approved the new commission will have to consider a comprehensive review of all previous electoral regulations (in light of the new legislation). These include:

- Rule of Procedure of the new Board of Commission
- Voter Registration
- Referendum and electoral observers
- Political Party Agents
- Exhibition and Challenges
- Adjudication of Election Complaints
- Certification of Political Entities
- Certification of Coalitions
- Certification of Candidates Lists
- Political Campaigns
- Polling and Counting
- Referendum results
- Media regulation
- Electoral Offences
- Registration and out of country voting (including some consideration of internally displaced voters)
- Codes of conduct for electoral commission staff and political entities

As discussed above, if an election event is to be realized in 2007, then voter registration will have to be based on the increasingly erroneous PDS. While it is unclear how often this has been updated, for the purposes of electoral administration it will be central to any election to attempt at least one public update. This presents significant operational challenges, not least security related concerns. Identification of voters at centralized voter registration sites that can be better secured, may mitigate the risk of exposing the electorate to political violence, but will severely restrict access and therefore turnout. Turnout will be central to the credibility of any election event – often the success of any voter registration exercise will rest on support by political parties to encourage their constituency to register and then vote. The public display of names on a voter registry may in itself discourage potential voters from coming forward to register. Display will

be vital to ensure that the ineligible and the deceased are removed from the list (names that can be used to fraudulently sway the results one way or another). With large scale displacement observed in many governorates this exercise, if to be conducted for a 2007 event, will almost certainly disenfranchise many hundreds of thousands of voters.

The length of any voter registration exercise will be for the IHEC to determine – but the longer the period the more chance of capturing the electorate. This will be difficult to judge in the current security environment – but UNAMI estimates a six to eight week update would meet many of the demands to improve the credibility of a voters' list based on the PDS. Data entry and final list formulation would bring the voter registration activity to almost six months – the credibility of such a voters' list can not be guaranteed without an extensive sampling that can not be achieved in such a timeframe.

Simultaneous operational preparations can be undertaken for an election day event. Perhaps the most significant time sensitive operation will be the registering of political entities, the certification of coalitions, the vetting and certification of candidates and then ballot production – this is in addition to training of electoral officials and public outreach activities (including voter education). With single Governorate constituencies the only option for Governorate elections in 2007, this would entail the production of at least 15 different ballots (if those Governorates that form part of region do not participate). With an average of perhaps 45 seats per Governorate then the individual ballots could run to many hundreds of candidates. Production of ballots can take up to ten weeks once political entities have been registered and adjudication of any complaints finalized. Production of ballots can be undertaken within Iraq or outsourced; in any event a competitive bid process is advised. Ballots will have to be distributed to Governorates and then polling centres. Once distributed, ballots must be secured until election day.

Depending on the decision of the IHEC counting could take place either at the polling station level or be centralized to Governorate level. There are many arguments for and against counting at the local versus the central level that will not be articulated here. The credibility and hence the security of the count process will be fundamental to the success of any election event. Without credibility in the count the entire election process can be open to manipulation or worse, be destroyed by a few well-connected spoilers. Drawing on lessons from the last election a methodical and transparent count will be strongly encouraged by UNAMI - that must include a comprehensive complaint and appeals mechanism. UNAMI estimates the tabulation of the results could take up to a month to complete.

UNAMI Role

Unlike the role it held in 2005, UNAMI will not be represented on the IHEC Board of Commissioners. Nevertheless UNAMI will continue to lead the international electoral assistance and provide technical assistance and advice as requested by the IHEC and Government of Iraq through the IEAT.

UNAMI's focus will concentrate on providing legislative advice on the completion of the legal framework, capacity building of electoral officials and advising the IHEC in the preparation of any upcoming electoral event.

UNAMI will keep its support role under review; factoring the level of independence of the new IHEC and as to whether UNAMI can be involved in any abbreviated process – that may not meet electoral best practice or the level of credibility demanded by the Iraqi electorate.