

IEAT working paper # 8a:
OPTIONS FOR PROVINCIAL COUNCIL ELECTIONS

1. **Introduction.** A number of matters must be decided before a new law to govern elections to provincial councils can be **approved** by the Council of Representatives (CoR). The most critical matters are:
 - the manner in which votes are translated into seats (the “electoral formula”);
 - the division of the people into groups to be represented (the “basis of representation” or electoral districts); and
 - the ballot structure (whether voters should choose between parties, or whether they should be able to vote directly for candidates).

2. In making decisions on these matters, the CoR will also have to take into account some other important issues:
 - the best method of guaranteeing representation of women and minorities;
 - the most appropriate voting arrangements for internally displaced persons;
 - the need for an electoral process that is not too difficult for voters to use and understand;
 - the need for an electoral process that can be implemented successfully and in the time available; and
 - the need for an electoral process that suits the circumstances of Iraq.

3. Factsheets and working papers produced by IEAT have outlined the main options that should be taken into account as a new election law for councils is developed and considered by the CoR. Decisions on the matters outlined above are, of course, matters for Iraqis. However it is the purpose of this working paper to present IEAT’s views of the electoral arrangements for council elections that should be given very careful consideration before final decisions are made on a new law.

4. **Assessment criteria.** The following specific criteria have been used to assess the options discussed in this working paper:
 - will it be **practical** and **affordable**?
 - will it result in provincial councils that are **representative** of (or reflect accurately) the will of the voters?
 - is it **easy to understand** by parties, voters and observers?
 - will it be **acceptable to most political groups**?
 - will it be **inclusive** by enabling the representation of women and minority groups?
 - will it **encourage participation** and **minimize wasted votes**?

5. **Electoral districts.** Article 3(1) of the Provincial Powers Law passed on February 13, 2008 says that each provincial council shall have 25 seats, plus one seat for each 200,000 inhabitants if the population of the governorate exceeds 500,000. The following table shows the total number of seats for each governorate not organized into a region, calculated according to the latest available population figures:

Governorate	Population	Total seats
Neenewah	2,860,655	39
Tamim	1,169,445	31
Dyala	1,299,267	31
Anbar	1,370,021	32
Baghdad	7,069,331	60
Babil	1,622,605	33
Karbala	936,555	30
Wassit	1,079,439	30
Salahdin	1,182,126	31
Najaf	1,158,084	31
Qadisiat	1,066,739	30
Muthana	666,308	28
Dheqar	1,749,494	34
Missan	983,272	30
Basrah	2,488,187	37
Total	30,652,957	509

6. Each governorate is divided into a number of administrative districts, ranging from four (in Tamin, Babil, Qadisiat and Muthana) to ten in Baghdad. However, the boundaries of some these districts are disputed, as are the boundaries between some governorates.
7. There are at present no accurate population figures for administrative districts, and that information is not likely to be available before preparations must start for the council elections to be held on October 1, 2008. In addition, the current disputes concerning the boundaries of administrative districts will not be resolved before those preparations must begin.
8. For these reasons, the most practical option is to treat each governorate as a single electoral district for the 2008 elections of the members of governorate councils. This could, however, be regarded as a temporary arrangement until disputed boundaries are settled and accurate population data is available so that further consideration can be given to using administrative districts as the electoral districts for election of members to governorate councils. It is to be hoped that these matters can be resolved before the council elections that will be due in 2012.
9. **Election system.** The lack of accurate population data also means that it would be difficult to consider district-based election systems for governorate council elections. Moreover, even if that data was available, the short time remaining before election preparations must begin would rule out trying to determine electoral districts below

the level of the governorate. For these reasons, the First Past the Post and Mixed Member Proportional election systems should not be given further consideration.

10. Although the Block Vote system is used in multi-member electoral districts, it is not appropriate for Iraq, for two main reasons. First, it can give highly disproportional results that significantly reduce the number of seats won by parties that win large numbers of votes, thus leading to questions about the fairness and legitimacy of the electoral process. Second, in districts that elect a large number of representatives (as would be the case if governorates were single electoral districts), voters can be confused by the large number of votes they are entitled to cast. This can lead to long delays in polling stations and to wide disparities between the votes of successful candidates if many voters do not use most of their votes. It should also be pointed out that in its discussions, no political block expressed its desire to adopt a majoritarian system; all political blocks seem happy with the PR system. This consideration would also confirm that no majoritarian system (such as First Past the Post and Block Vote) should be considered.
11. The Free Vote Open List Proportional Representation system does result in a close relationship between votes and seats. However, at this stage, it should not be used in very large multi-member districts in Iraq because of the difficulties voters would have when faced with casting their votes from among hundreds or even thousands of candidates.
12. The Single Transferable Vote system should also be ruled out. Requiring voters to number candidates is not appropriate when a significant part of the population is illiterate. Although a 'party box' option can be used, the complexity of the system makes it difficult for voters and parties to understand, and this can lead to suspicion directed at those administering the counting process.
13. The Single Non-Transferable Vote should not be considered further. Although this system allows easy voting and counting, it can result in highly disproportional results in very large districts. Its successful use relies heavily on well-organized parties nominating the right number of candidates according to their support in the electoral district, and on each party being able to rely on its supporters to vote for the party's candidates in order to maximize the number of seats won by the party.
14. At this point, three possible election systems remain: Closed List Proportional Representation, Limited Open List Proportional Representation, and Mixed Open List Proportional Representation. As systems of proportional representation, all of them produce election results in which percentages of seats closely match percentages of votes, and they are all therefore likely to be regarded as producing fair outcomes. All are relatively simple for voters to understand and use, and none of them should lead to high numbers of invalid votes. All allow straightforward counting of votes and administration of the electoral process.
15. The major differences between these three systems are as follows:

- Closed List Proportional Representation only allows a voter to vote for a party and not for individual candidates on a party list. This was the system used for the 2005 parliamentary and provincial elections. Because voters are not able to vote directly for individual candidates, however, it is argued that closed lists result in elected members being less accountable to voters and that the choice of the voters is therefore “restricted”.
 - Limited Open List Proportional Representation allows a voter to vote for one candidate only. The number of votes for candidates from each list is added in order to determine the number of seats the party gets, and then the seats are awarded to the party’s candidates who won the most votes.
 - Mixed Open List Proportional Representation The voter marks the party of his or her choice and may also mark one candidate within that list if he or she wishes to alter the order of candidates put forward by the party.
16. All three systems have advantages and disadvantages. To assess their suitability for council elections in Iraq, it is now necessary to consider them in terms of other criteria.
 17. **Public understanding.** Even if the Closed List PR electoral system remains for the council elections, there will need to be effective public information and education campaigns prior to the elections. However a change from the Closed List PR system to either of the open list systems will mean that voters and parties will need to be educated and informed about the new system. Not to do so may create misunderstandings which can affect perceptions of the legitimacy of the new electoral process, and may increase the number of invalid votes and the number of complaints.
 18. Developing and implementing new education materials takes time and can be costly. The options available to voters under the Mixed Open List PR system are slightly more complicated than under the Limited Open List PR system, and thus will require slightly more complicated messages to be conveyed to voters and parties.
 19. **Accountability of elected representatives.** A major argument for changing from the Closed List PR system to an open list system is that the parties’ control over the composition and order of their lists does not allow voters to have any influence on who their elected representatives will be. Consequently, it is argued, elected representatives are more responsive to party leaderships than to voters. On the other hand, it is said, open lists allow the voters to influence the order in which candidates are elected, thus promoting closer links between elected representatives and the voters, and a stronger sense of accountability and responsiveness to the voters’ needs and opinions.
 20. Open lists can certainly make it in candidates’ interests to campaign for personal votes, particularly if electoral districts are smaller and allow candidates to become known throughout the district. This will be more difficult for candidates to do when

a governorate is a single electoral district and there are large numbers of candidates. Although Limited Open List PR requires a voter to vote for a candidate and Mixed Open List PR allows a vote for a candidate from the voter's preferred party, it is important not to exaggerate the degree of influence these systems will allow voters to have over the order of candidates or the behavior of elected representatives, since both candidates and representatives will still be accountable to the parties on whose lists they appear.

21. **Effects on political parties.** Political parties have a central role in any transitional democracy, since they represent and aggregate the views and aspirations of social interests, recruit and promote political leaders, and are the mechanisms for developing and implementing public policy. It is also important that there are incentives for parties to be responsive to their supporters and for renewal of parties from within and through competition with other parties. But it is difficult to strike the right balance between the need for effective parties and the need to ensure that parties do not stagnate or become indifferent to the needs and aspirations of their supporters.
22. All three systems recognize the central role of parties in the electoral process, while also allowing individuals to stand as independent candidates. The Closed List PR system gives a more central role to parties than the two open list systems. In the absence of mandatory requirements for internal democracy within political parties, open lists can provide an element of voter influence over parties' decisions on candidate selections. However open lists can also lead to competition for votes between candidates from the same party, thus weakening party solidarity. On the other hand, open lists can show all candidates the real level of popular support they have, and can thus affect their standing within the party.
23. **Representation of women.** Article 49(4) of the Constitution says that at least 25% of the members of the CoR should be women. It is expected, therefore, that the council elections law should set the same goal for membership of provincial, district and sub-district councils. The mechanisms for achieving this goal for the three election systems are as follows:
 - Closed List PR: Ensuring that women comprise at least 25% of council memberships can be achieved through a candidate quota, i.e. a legal provision requiring each party list to include women candidates at specified intervals on the list. For example, Article 11 of the 2005 CoR elections law required at least one woman among the first three candidates on the list, at least two women among the first six candidates, and so on. This simple mechanism will ensure that women comprise close to 25% membership of councils, unless large numbers of independent male candidates are elected. However it does not allow voters to influence which women candidates will be elected from a party list.
 - Limited Open List PR: Including a candidate quota of at least one woman every three candidates will promote the election of women. However because voters can influence the party's ranking of candidates, this system does not *guarantee* that women will comprise at least 25% of council memberships. The easiest

way of doing so in addition to a candidate quota is for the unsuccessful women candidates with the most votes from each party to be allocated seats in place of that party's lowest polling male candidates, until women comprise at least 25% of the council's membership. This process will ensure women comprise close to 25% of the council's membership, unless there are no women candidates left on a party's list or large numbers of independent male candidates are elected. However it does risk having women elected with small numbers of votes, which could undermine their status as elected members of a council.

- Mixed Open List PR: The same arrangements of a candidate quota combined with replacement of the lowest polling male candidates by the highest polling unsuccessful female candidates will ensure that women comprise close to 25% of each council's members. The risks will be similar to the use of these mechanisms with the Limited Open List PR system.
24. The Closed List PR system provides the simplest mechanisms for guaranteeing women's representation, but that system reduces voter choice and the accountability links between voters and elected representatives. Because both the Limited Open List PR system and the Mixed Open List PR system do allow more voter choice, they require more complex mechanisms to guarantee a minimal level of elected women members of councils. A disadvantage is that women elected through these mechanisms may be perceived as having a lesser status as representatives of their communities. However they are more directly accountable to the voters than women elected under Closed List PR.
 25. **Representation of minorities.** Article 125 of the Constitution guarantees the "administrative and political rights (...) of the various nationalities such as Turkomen, Chaldeans Assyrians and other constituents". The minority groups mentioned in the different provisions of the Constitution include Turkomen, Yeşidis, Christians, Chaldeans, Assyrians, Mandaean, Sabean, Shabaks, Syriac, and Armenians.
 26. The best way to *guarantee* that members of councils are elected who represent and are accountable to these minority groups is through a specific number of council seats being reserved by law for identified minorities in selected governorates. The law will also need to state who is entitled to be a candidate for those seats, and who is entitled to vote for those candidates.
 27. Such a system of reserved seats could be used with any of the Closed List PR, Limited Open List PR, or Mixed Open List PR electoral systems. However it may require voters to register themselves as belonging to a particular minority group, which could complicate the voter registration update that needs to be held before the council elections. It may also require more complicated voting and counting arrangements, e.g. separate ballots and ballot boxes.
 28. Other mechanisms could be implemented to promote the election of candidates representing these groups in governorates where they are a significant proportion of the population. The most easily adopted would be to waive the threshold for

representation for parties representing minorities, thus allowing those parties to win seats more easily than would otherwise be the case. This could be used with any of the Closed List PR, Limited Open List PR, or Mixed Open List PR electoral systems. But it would not guarantee minority representation in the way that a system of reserved seats would do.

29. **Internally displaced persons.** There are important matters that must be resolved concerning voting by internally displaced persons in Iraq, particularly who is to count as an internally displaced person for the purposes of the council elections, and whether internally displaced persons should be able to choose to vote in the council elections for their places of origin. The answers to these questions will have major implications for voter registration, and for the arrangements for casting and counting of the votes of internally displaced persons. However they will need to be implemented in the same way irrespective of which of the three election systems is chosen.
30. If internally displaced persons are able to vote for the elections in their places of origin, there may be some issues concerning the ability of parties and candidates contesting those elections to campaign in their places of displacement. It is possible that those issues may become somewhat more pressing if either the Limited Open List PR system or the Mixed Open List PR system is adopted, since candidates may wish to campaign personally among internally displaced persons in their places of displacement.
31. **Counting votes and determining the election result.** Counting votes is straightforward for the Closed List PR and Limited Open List PR systems. It is a little more complex for the Mixed Open List PR system, since a candidate vote as well as a party vote has to be recorded.
32. In general, determining the election result is easy for Closed List PR. The need to take account of reordering of party lists for Limited Open List PR and Mixed Open List PR makes determining the results for these systems only slightly more complicated. The final arrangements for representation of women and for representation of minorities could make counting of votes and determining the election result more complex, and could increase the risk of complaints and challenges.
33. **Security.** No additional security concerns arise if provincial elections are held using the Closed List PR system. The more personalized nature of the candidates' campaigns under Limited Open List PR and Mixed Open List PR may lead to security concerns if there are confrontations between rival party factions. None of the three systems should lead to voters spending more time in polling centers and hence to increased exposure to physical risk and intimidation on polling day.
34. **Implications for IHEC.** The current uncertainties about the election modalities are already making it very difficult for IHEC to prepare for the elections, even if the Closed List PR system is not changed. A change from the current system to either of the open list systems would increase the costs of the election and would create

significant operational pressures on IHEC, particularly given the 1 October elections date. Any change in the election system, or the introduction of new provisions for minority representation, will mean IHEC will need to revise its regulations, procedures, manuals and forms, and will then need to design and implement new training programs. IHEC will also need to design and implement new voter education programs. Whatever decisions are taken on the election modalities, IHEC will need to be assured that it will have an adequate budget to carry out its responsibilities.

35. **Conclusions.** It is accepted practice that all major changes to an electoral law should be completed well in advance of an election being held. Some argue that such changes should be completed no later than 12 months in advance of election day, whereas others are prepared to allow a lesser period, but certainly greater than six months. Clearly a lot depends on the scale of the changes and the circumstances of the society. But the later the changes are made, the more risk is created for the integrity of the election process. This risk can occur on two levels. First the election authority needs adequate time to identify the procedures that need to be changed, and to develop, test and document new procedures in accordance with the new law, and then develop and implement training programs for election staff. If these steps cannot be done properly, there is a much greater risk of complaints and challenges to the election process, and of perceptions that the election did not meet the standards required for it to be free and fair.
36. Second, new election modalities take time to be understood by voters and by parties. Despite voter education and information campaigns, if that time is seen as too short, there can be perceptions that the new electoral arrangements have been implemented quickly for partisan reasons. Such perceptions can destroy the basic consensus that underpins successful democratic elections.
37. These considerations should be taken into account when deciding on a modification of the electoral system. There are practical reasons that would support no modifications of the current system. Nevertheless, it should be highlighted that there are political arguments for changing the current Closed List PR system; some of the disadvantages highlighted by some political entities could be rectified by a change to Limited Open List PR or to Mixed Open List PR (where the voter is able to vote for one candidate from a list). In that context, a choice between Limited Open List PR and Mixed Open List PR is finely balanced. Neither system has such outstanding advantages or defects as to make it a clear choice or a system that would clearly not be suitable for Iraq. In any case, the new election law should include suitable arrangements for women's representation, for representation of minorities, and for registration and voting by internally displaced persons.

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