

Iraq: International Institutional Design

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Historical Background

The Independent Electoral Commission of Iraq (IECI) was created by Coalition Provisional Authority (CPA) Order no. 92 of 31 May 2004 and empowered to be ‘the exclusive electoral authority throughout Iraq during the Transitional Period’. The IECI was set up as an ‘independent and autonomous, non-partisan, neutral and professional government office’ mandated to ‘organize, oversee, conduct, and implement all elections set forth in’ the Law of Administration for the State of Iraq for the Transitional Period (Transitional Administrative Law, TAL). These included:

- elections to a Transitional National Assembly (TNA), the Kurdistan National Assembly (KNA), and governorate councils, held on 30 January 2005;
- a referendum on a draft constitution (to be drafted by the TNA), held on 15 October 2005; and
- general elections under the new constitution on 15 December 2005.

The Legal Framework

CPA orders formed the basis of the electoral legal framework, including the system of representation, the rules governing political parties, and the creation of an independent electoral authority. These orders were the result of inclusive discussions between the major Iraqi political factions, moderated by the United Nations and approved by the Interim Governing Council and the CPA. The major components of the legal framework were:

- the TAL, which described the elections required in the transition process and established fundamental rights, including the definition of the citizenship and political rights (e.g. freedom of speech and peaceful assembly) that are essential to the electoral process;
- CPA Order no. 92, which established the IECI and a panel of judges to hear appeals against IECI decisions;
- CPA Order no. 96 of 15 June 2004, including a transitional electoral law specifying the system of representation and voter eligibility for the TNA elections;

- an act of the interim government specifying the system of representation for the governorate council elections and an amendment to the KNA electoral law adopted by the former KNA, bringing that law into substantive agreement with the rest of the legal framework, especially on issues of system of representation, candidate eligibility and voter eligibility;
- CPA Order no. 97 of 15 June 2004, including a transitional political party law; and
- 17 regulations adopted by the IECI covering issues ranging from electoral offences to election observation to polling and counting.

Bearing in mind that CPA Order no. 96 applied only to the 30 January 2005 TNA election, this legal framework was expanded by the TNA in order to provide guidance for the referendum and general election. The TNA adopted a law on the ‘referendum process’, which included the form of the referendum question, eligibility criteria, and an interpretation of the TAL’s requirements for the passage of the constitution. This interpretation proved to be controversial as it would have made defeat of the constitution very difficult, and it was outside the bounds of a normal legal reading of the TAL, and it was eventually changed by a TNA decision. An electoral law was adopted on 12 September 2005 for the 15 December 2005 general elections. The law established a system of representation, voter eligibility criteria, eligibility requirements for candidates, and restrictions on the election campaign for the new legislative body, the Council of Representatives.

Although CPA Order no. 92 was still in effect, leaving the IECI with all necessary authorities to conduct the general election, the new electoral law did specifically reaffirm the IECI’s role. This gave the IECI the ‘right to issue regulations and instructions necessary for the implementation of this law’.

The Structure of the IECI

The IECI has two major components. The Board of Commissioners heads the IECI, and the Electoral Administration implements the election operation under the board’s authority. In addition, a Transitional Electoral Panel of three judges has been set up to hear appeals against IECI decisions.

The Board of Commissioners has seven voting members and a non-voting chief electoral officer (CEO). All current members were selected after a process of public nomination followed by vetting and interviews conducted by the United Nations. Almost 1,900 Iraqis were nominated for positions on the board in April and May 2004 despite severe domestic unrest at the time. Nominations were received from residents of all of Iraq’s 18 governorates, and 111 women were nominated. In addition, an international electoral expert appointed by the United Nations serves as a non-voting member of the board. A secretariat and an audit unit report directly to the Board of Commissioners.

The Electoral Administration is managed by the CEO and has a national headquarters and several levels of electoral offices. The national headquarters has divisions for administration, finance, public outreach, capacity building and operations. There are electoral offices in the Kurdistan region, in each of the 18 governorates (with two in Baghdad), and in 542 districts. Each district electoral office is responsible for an average of ten polling centres with up to 3,000 voters each. Due to the security situation prevailing in Iraq, not all governorate and district offices have been open or staffed at all times, requiring the IECI to direct staff and resources flexibly to ensure that the voter is served as well as possible.

Staff of the Electoral Administration were appointed through a competitive application process, with members of the Board of Commissioners participating in the appointment of

senior officers such as division directors and governorate electoral officers. IECI staff are to be professional and non-partisan, but in the transitional period their precise status as professional civil servants is unclear.

Given the demanding electoral calendar, formal professional development opportunities for IECI staff have been limited. 'On-the-job' learning has been augmented by training and study trips as appropriate.

The Transitional Electoral Panel was set up by CPA Order no. 92. It is made up of three judges appointed by the Higher Juridical Council to hear appeals against the IECI's decisions. Its jurisdiction is limited to final decisions of the Board of Commissioners, which can only be overturned if the panel finds them to be 'arbitrary, capricious, in excess of jurisdiction, or rendered in bad faith'. In addition, the panel must act according to strict timelines in order to allow the electoral process to continue on schedule. There is no appeal against its decisions to any other body.

Powers and Functions

The electoral legal framework gives the IECI very broad authorities – something that is unusual for settled or even transitional democracies, but less unusual for countries in conflict or emerging from conflict. According to CPA Order no. 92, 'the Commission is empowered to take all necessary measures consistent with [the fundamental rights guaranteed by] the TAL to oversee and administer genuine and credible elections throughout Iraq'. This order lists the following specific functions:

- to determine, establish, develop, certify, subdivide and maintain the electoral register;
- to help build social support for and confidence in the electoral process throughout Iraq;
- to regulate and conduct the registration and certification of political parties;
- to regulate and conduct the registration and certification of candidates for office;
- to accredit election observers and other officers engaged in monitoring and/or observing elections in Iraq;
- to manage the work of polling and vote tabulation;
- to adjudicate in electoral grievances and disputes; and
- to certify election results.

IECI regulations issued in each of these areas address questions which, under other circumstances, might be settled by legislation rather than regulation. While the IECI is not accountable to any other organ of state, it has usually interpreted its authorities as narrowly as possible, seeking legislative guidance from the various interim and transitional authorities as appropriate.

Because the systems of representation used for the 30 January 2005 elections did not require the delimitation of electoral districts (or constituencies) or the apportionment of seats, these responsibilities were not assigned to the IECI or any other body. All the 30 January 2005 elections used a system of proportional representation (PR) in a single national electoral district, so that for the TNA all of Iraq was the electoral district; for the KNA all of Kurdistan was the electoral district; and for each governorate council the whole area of the governorate was the electoral district. The 15 December 2005 elections to the Council of Representatives used a system of PR within electoral districts. The electoral law defined the electoral districts as the existing governorates, so that no delimitation was required. The IECI was, however, empowered to apportion seats between the electoral districts using a (legally specified) population database and the Quota and Least Remainder system of proportional division.

The IECI did not have regulatory authority over the media but did coordinate with the Iraqi National Communications and Media Commission on campaign-related media regulation. Similarly, although the IECI was empowered to issue financial disclosure regulations, it did not do so for the 2005 elections.

Financing

Given its broad authorities, and in order to ensure the IECI's effective independence, CPA Order no. 92 assigned the IECI extensive control of its finances, establishing that:

The Iraqi government shall ensure that the Commission receives all of the resources necessary for administering elections throughout the Transitional Period. Notwithstanding the foregoing, the Commission may seek to enlist the international community for appropriate assistance in this regard, including the direct provision of additional funds or resources. All Commission resources shall be solely managed and obligated by the Commission. The CEO shall be responsible for the accounting of these resources.

Although technical issues related to Iraqi government finances and payments were occasionally problematic, the IECI received all the support it requested from the interim government, as well as generous support from international donors, prior to the 30 January 2005 elections; it anticipated the same support for the remainder of the transitional electoral cycle. The IECI established an internal audit unit reporting directly to the Board of Commissioners in order to discharge its financial duties in the most transparent possible manner.

In addition to funds, the IECI received important material assistance from the Iraqi government and the international community. This included data from the Ministry of Trade used in creating a provisional electoral register; warehouse and other facilities from the ministries of trade and education, and others; security support from the Iraqi security forces and the UN-mandated Multi-National Force; and international technical assistance.

The Future of the IECI

The administration of future elections in Iraq is now the responsibility of the National Assembly elected in December 2005. The IECI, does, however, seem to have built support for the concept of independent electoral administration. A public opinion survey conducted by the International Republican Institute (IRI) in February and March 2005 found that 72 per cent of Iraqis believed the 30 January 2005 elections to be fair or very fair, and the responses to specific questions about aspects of the IECI's performance were similarly favourable.

Discussions within the TNA on constitutional and legislative matters included the possibility of establishing a permanent and independent electoral management body to succeed the IECI. Any new institution would require a more extensive legislative framework, along with more professional and institutional development for the EMB and its staff.