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International Mission for Iraqi Elections (IMIE)

Final Report on the Iraqi Constitutional Referendum, October 15, 2005

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Executive summary

With the support of the United Nations (UN) and the Independent Electoral Commission of Iraq (IECI), the International Mission for Iraqi Elections (IMIE) was formed in December 2004 to assess Iraq's electoral preparations, offer expertise and informed judgments, and contribute to electoral capacity in the course of Iraq's 2005 election cycle. Composed of electoral management bodies from a number of nations, the IMIE provided peer-level reviews and advice to the IECI for the January 30 election, and it repeated the process for the October 15 referendum. For the referendum, as for the election, international experts assessed a number of predetermined aspects of the referendum process based on criteria and questions established by the IMIE and relying on a range of information sources, including legal and regulatory documents, interviews with key participants inside and outside Iraq as well as information provided through the Amman and Baghdad offices.

Overall, the IMIE found that, despite the tremendous security risks and obvious logistical difficulties that exist in Iraq, the IECI developed and implemented a referendum that generally conformed to internationally recognized electoral standards. These include the legal framework, plans, procedures and logistical arrangements.

The IECI has made significant operational improvements since the election in January to, among other things, the extent and quality of its election planning and

organization, the update of the voter register and their voter education initiatives. The IECI was under significant pressure to manage three electoral events in a one-year period. Even in many long-established democracies, such an undertaking would be a significant, and possibly even insurmountable, challenge. The IMIE congratulates the IECI for its ability to perform within demanding time frames, under difficult security conditions, and under close scrutiny by the international community.

The legal framework for the referendum guaranteed all relevant political rights and freedoms and was generally in line with recognized democratic standards. The wording in the *Law of Administration for the State of Iraq for the Transitional Period* (TAL) of the requirement for ratification of the constitution caused some confusion, which was appropriately resolved by the IECI. There remains a need for campaign finance legislation and, in the long term, for the IECI regulations to be consolidated into a single regulatory body.

The update of the voter register was well-conducted, resulting in an increase of more than 8 percent in the number of registered voters and in a higher level of accuracy. However, there is still a need to remove duplicates and deceased persons from the register; to develop procedures to integrate, produce and distribute voter lists; and to improve the overall structure and quality of the voter lists.

The IECI has made significant progress in voter education and information since January. It is to be commended for running a diversified campaign and for allowing its field offices to adapt the campaign to local needs. Nonetheless, collaboration with Iraqi political entities, civil society groups and non-governmental organizations (NGOs) still needs to be strengthened.

There was clearly an effort by state media to present competing views on the draft constitution, although media coverage was generally not balanced. As recommended previously, it remains important to establish a fully independent media monitoring organization to work in conjunction with the IECI on future electoral events. There is also a need to clarify the roles of the National Communications and Media Commission (NCMC) and the IECI with respect to the *Code for Media during Elections* and to develop the NCMC's capacity to sanction media houses not abiding by the Code.

Despite the difficult conditions prevailing in Iraq, the pre-polling preparations were professionally organized and executed in a manner that ensured the overall integrity and legitimacy of the voting process. However, there is still a need for improved coordination and communication with electoral observers regarding preparations and polling staff training programs. Also, there were reports of a number of irregularities in the voting process on referendum day.

The counting of ballots and compilation of results were conducted professionally and competently. However, leaking of results by electoral officials before the release of

the official results should be avoided in future. There was also an initial lack of transparency in the rationale for and conduct of the IECI's audits in four governorates.

The IECI has implemented several improvements to the complaints process since the January election and, in general, regulations delineated clear lines of jurisdiction. Nonetheless, complaint submission procedures were overly restrictive. Furthermore, the IECI Board's responses to the most serious complaints were often inadequate and could, if not addressed, raise questions about its impartiality.

Voter turnout increased to 63 percent – a significant increase over the turnout in the January election and a remarkable feat for a referendum that was held under even more severe security conditions than were prevalent in January.

Introduction

The IMIE was formed in December 2004 to assess Iraq's electoral preparations, offer expertise and informed judgments, and add to electoral capacity as Iraq's three-step electoral process advanced through 2005. Composed of electoral management bodies from a number of nations, the IMIE provides peer-level reviews and advice to the IECI. Additional information on the IMIE can be found on its Web site at www.imie.ca.

Following its report on the January 2005 Transitional National Assembly election¹, the IMIE conducted a preliminary assessment of the October 15, 2005, constitutional referendum, which was issued on that day. This final report follows on from that assessment and draws on a range of information sources in and around Iraq, including reports by domestic observer groups in Iraq.

This report addresses eight aspects of the referendum process:

- legal framework
- voter registration update
- voter education and information
- equitable access to media
- electoral preparations
- polling
- vote counting and results compilation
- complaints process

The IMIE conducted peer reviews before, during and after the October 15 referendum. For each area, an international expert prepared an assessment report following criteria and questions laid out by the IMIE Steering Committee and relying

¹The IMIE Final Report on the January 30, 2005, election process is available at www.imie.ca.

on the legal and regulatory documents developed by the IECI as well as information provided through the IMIE offices in Amman and Baghdad. The ultimate goal continues to be to build the institutional capacity of the IECI by sharing information and expertise. In this way, the IMIE aims to assist and support the IECI over the longer term while maintaining sufficient distance to evaluate and assess Iraq's electoral process.

This final report highlights the strengths of the referendum process and areas for improvement. At the end of each topic, a list of main recommendations is made for future electoral events. As the IMIE continues to support the IECI, it will track further progress in each area.

Legal framework

The legal framework for the referendum was established through the:

- *Law of Administration for the State of Iraq for the Transitional Period*, also called the *Transitional Administrative Law (TAL)*
- Constitutional Provisional Authority order numbers 92, 96 and 97
- *Law on the Referendum on the Constitution Project*
- Regulations, procedures and codes of conduct set by the IECI

The referendum was conducted by the IECI, which is independent of the executive branch of the government and has full responsibility for the conduct of elections in Iraq, subject to the relevant laws. An external panel of judges hears appeals on final IECI decisions. The IECI is funded from the Iraqi government budget but can request additional international financial support, and there continues to be provision for the UN to provide consultative, management and financial assistance.² The IECI Board was composed of seven voting members and two non-voting members, one Iraqi and a second from the international community.

All relevant political rights and freedoms were legally guaranteed, despite the difficult security environment and the uncertainties of political change. The referendum law established, among other things, voter eligibility requirements (Iraqi citizenship, 18 years of age and being registered to vote according to IECI regulations), the manner of voting (general ballot, direct and secret) and the wording of the referendum question: "Do you agree with the draft constitution?" The wording was commendable for its clarity and brevity.

The legal framework governing the Iraqi electoral process was generally in line with recognized democratic standards. As noted in the IMIE's assessment of the January 2005 elections, there continues to be a need in the longer term to compile the regulations produced by the IECI into a single body of law; this would have the added

²Sections 1, 3 and 5, Order Number 92.

benefit of making the regulations easier to use. This need should be addressed as soon as the electoral law under the new constitution and the regulations derived from this law have been finalized.

The basis of Iraq's voter register was the Public Distribution System (PDS) database first used for the January election and subsequently updated during the registration exercise conducted prior to the referendum. Since the database was originally designed for the distribution of food, family registration was the organizing principle. However, all additions, corrections and deletions were made on an individual basis. Voter registration procedures required voter lists to be displayed for public inspection at voter registration centres as well as prominent places such as schools. The IECI was responsible for informing voters of the location of lists.

Challenges to the voter lists were to be adjudicated "no later than the day after the end of the exhibition and challenges period."³ If a challenge against a third person was approved, the person remained on the final voter list, but was marked as "challenged." On voting day, the presiding officer of the polling station requested proof of eligibility from the challenged voter. This approach ensured that no individual was unjustly removed from the voter list.

Registration rules and procedures clearly enhanced voter enfranchisement by facilitating registration and ensuring the transparency and efficacy of the process. The *Voter Registration Update Procedures* manual was a user-friendly document, and it left little room for improvised or arbitrary decisions by registration officials.

The *Code of Conduct for Political Entities and Coalitions* applied to both the referendum and the December elections, and all political entities were obliged to abide by it. The Code's overarching principles of legality, certainty, objectivity, independence and impartiality followed international standards. During the voter registration update period, political entity agents as well as electoral observers were permitted to enter voter registration centres to observe the registration process. During polling and counting, one agent per political entity was allowed into the polling station. Agents could witness all steps of polling and sign any polling station forms as witnesses.

All relevant media freedoms were legally guaranteed. A new regulation issued on campaign activities, *IECI Regulation 08-2005 – Electoral and Referendum Campaigns*, applied to electoral campaigns and referenda. Legal provisions still need to be put in place for regulating campaign finances and expenditure, a shortcoming identified in the IMIE report on the January 2005 election.

Voting and counting procedures generally followed standard democratic practice and included new procedures for advance polling for detainees and hospital patients. In addition, the voting and counting manual was well-structured, clear and user-friendly.

³Section 3.1, IECI Regulation 4-2005

However, as was the case in the January 2005 election, the fact that political entity agents were not entitled to a copy of the results tallies at the polling stations was an exception to standard democratic practice. Another problem was the absence of a deadline for the announcement of preliminary or final official results by the IECI. Finally, a minor problem identified was that no particular finger was specified for the application of indelible ink.

The TAL provision for the ratification of the constitutional referendum stated that the draft constitution would be ratified “if a majority of the voters in Iraq approve and if two-thirds of the voters in three or more governorates do not reject it.”⁴ This dual requirement was meant to ensure that all communities would have ownership of the constitution. The provision required allocation of votes to specific regions, making it inadvisable to allow for out-of-country registration and voting.

There was a question of legal interpretation of the phrases “a majority of the voters” and not rejected by “two-thirds of the voters in three or more governorates,” but these were eventually appropriately interpreted as referring to valid votes only, with blank and invalid votes excluded. IECI regulations were clear in this regard. The polling and counting procedures manual provided detail concerning counting and recording of “yes” and “no” votes as well as blank and invalid ballots; however, the presiding officer was instructed only to announce the “the number of ‘yes’ and number of ‘no’ votes to all those present.”⁵

New procedures for complaints adjudication were introduced after the January election. The first was the shortening of the deadline for submitting complaints from seven to three days after the alleged violation. Second, it was permissible to file a complaint by email. Third, the authority to adjudicate challenges to names on the voter list shifted from governorate electoral offices to the managers of the registration centres. Complaints related to counting at the polling station could also be resolved at the polling centre. A shortcoming identified during the January election, and which remained in place, was the absence of deadlines for the resolution of complaints by the Board or for complainants to respond to Board decisions.

Provisions regarding domestic and international electoral observers for the referendum did not vary substantially from those established for the January election, and they are in line with recognized international standards.

Recommendations to the IECI

1. Establish deadlines for resolving complaints, communicating a resolution to the complainant and allowing a response from the complainant.
2. Establish deadlines for the release of preliminary and final results by the IECI.
3. Display a copy of the results immediately after the completion of the count so

⁴Article 61.C, TAL.

⁵Article 9.18, IECI Polling and Counting Procedures for the Referendum, September 10, 2005.

that political entity agents and observers can copy them. Where infrastructure allows, the polling station presiding officer may photocopy the results sheet for any political entity agent or observer who requests it.

4. After a new electoral law has been developed under provisions of the new constitution and the regulations derived from this law have been finalized, consolidate the regulations into a single regulatory body.

Recommendations to the Council of Representatives

1. Develop a legal and regulatory framework on campaign financing as well as capacity to enforce it.

Voter registration

From August 3 to 31, 2005, the IECI updated the voter register that had previously been used for the January 2005 election. In the governorate of Anbar, the update process was extended by a week, to September 7, to compensate for initial difficulties in the installation and operation of the voter registration centres. The registration process successfully added 1.2 million new voters, including automatically adding voters who had reached voting age during 2005 (according to the PDS database). Between January and October 2005, the register grew from 14.3 to more 15.5 million voters – an increase of more than 8 percent.

The absence of reliable demographic data made it difficult to assess the accuracy of the voter register; however the number of registered voters is consistent with current population estimates of between 26 and 27 million Iraqis.

The legal regulations adopted by the IECI with regard to the updating process were clear and precise. Eligible voters could register, check their status on the voter list, correct errors, change their assigned polling centre and challenge the eligibility of anyone on the list. Deceased persons could be deleted from the list with supporting documents. If death could not be proven the name was kept on the list with a notation to indicate that a deletion had been requested. This procedure protected individuals from arbitrary removal from the list. However, procedures for producing and distributing both preliminary and final voter lists were unclear.

Given the time required for voter registration, the updating process would have been more effective had it been initiated earlier. In addition, preliminary voter lists were not exhibited until the last week of the registration update period. Also, it was unclear whether the October 2005 lists contained additions and corrections made in November and December of 2004, which it appears were not included in the final voter lists used for the January election. Duplicates and inconsistent final numbers have plagued the evolution of the voter register since its inception. Irregularities detected by IECI audits in some governorates raised further concerns about the voter registration update

process. As noted by the IMIE in January, there is a need to clean the voter register and in particular, to remove deceased and duplicate registrations.

Registration procedures were simple, clear and precise. Voters who registered or requested a change of polling centre were given documentation to present on referendum day so that they could vote even if they did not appear on the final voter list. Such procedures prevented the disenfranchisement of voters on the basis of administrative or technical errors by the IECI. A form was attached to the voter lists at all polling stations for polling officers to record names of individuals who were not included in the lists but who were allowed to vote.

Approximately 86 of the 158 complaints submitted concerned the voter lists. It was important to resolve all complaints about the register and to apply sanctions as appropriate in order to avoid any perception that the IECI tolerated abuses.

To ensure the credibility and legitimacy of future elections, it is recommended that four aspects of the voter registration update period be addressed:

First, the IECI decided to nullify 81,297 entries made during the last two days of voter registration in Tameem governorate because of serious irregularities detected in many of the registration forms. This decision acknowledged that irregularities took place during the updating process and sent a clear signal to political entities and the public that the IECI is committed to investigating and correcting any breach of the rules. In the future, the timely investigation of irregularities during the registration period would prevent accusations of fraud or manipulation and would ensure the integrity of the register.

Second, the accuracy of the voter register is important for the allocation of seats to governorates. According to the election law passed for the December 2005 elections to the Council of Representatives, 230 out of 275 seats were to be distributed among the 18 governorates based on the number of voters registered for the January 2005 election. Any redistribution of these seats for future elections will have to rely on an accurately updated voter register.

Third, while the relatively small number of formal complaints filed during the voter register update is good news, it would be advisable to review all complaints and, if necessary, impose sanctions and adopt pertinent corrective measures.

Finally, changes in the format and appearance of the voter lists resulted in confusion and complaints. Instead of listing the names of voters alphabetically, as was done in January, names were listed numerically, resulting in confusion for polling staff and voters. The change probably resulted from the lists having been produced out of the country and therefore not under full supervision of the IECI. Another problem was the small font size used in the lists, which made them difficult to read in the poor light of some polling centres. It is recommended that there be on-site monitoring of the printing of the voter lists and that adequate training be provided to facilitate their use.

Recommendations to the IECI

1. Continue to maintain and clean the voter register on an ongoing basis as well as conducting an updating exercise prior to each electoral event
2. Provide on-site monitoring of the production and printing of the voter lists.
3. Ensure that training programs include the correct use of voter lists to ensure that there is no delay at that stage of the polling process.

Recommendation to the Council of Representatives

1. Ensure that any future distribution of seats to governorates is based on an updated voter register.

Voter information and education

The legal framework for voter information and education was somewhat clearer for the referendum than for the January 2005 election. The TAL spelled out the role of the National Assembly as one of “encourag[ing] debate on the Constitution through regular general meetings in all parts of Iraq and through the media, and receiving proposals from the citizens of Iraq as it writes the Constitution.”⁶ The TAL also stated that “in the period leading up to the referendum, the Draft Constitution shall be published and widely distributed to encourage a public debate about it among the people.”⁷ In the international context, the UN’s Special Representative of the Secretary General (SRSG) and the United Nations Assistance Mission to Iraq (UNAMI) were mandated to “promote national dialogue and consensus building on the drafting of a national constitution by the people of Iraq.”⁸ However, the National Assembly’s public information lacked a clear and simple presentation of the main features of the constitution, and UN surveys confirmed that the general population did not have a good understanding of the constitution.

There was no legal provision that clearly defined the voter information and education responsibilities of the IECI. According to the Coalition Provisional Authority (CPA) Orders, the IECI’s role in voter information was to “help build societal support for and confidence in the electoral process throughout Iraq.”⁹ It may be appropriate to take advantage of the new legal framework, required under the constitution, to provide a clear and specific mandate to the IECI for voter information and education, and specifically for the development of broader civic education programs and material.

⁶Article 60, TAL.

⁷Article 61.B, TAL.

⁸Security Council Resolution 1546, paragraph 7(a)(iii), June 8, 2004.

⁹CPA Order 92, section 3, paragraph 3b.

Despite the absence of a clear mandate, there was acceptance of the IECI's *de facto* role in conducting voter information and education through its Public Outreach Department. The department contained four units: media, public information, external relations and contestants. All 542 district electoral offices throughout the country were staffed with a Public Information Officer. As was the case in January, the IECI's emphasis was on voter information rather than broader voter/civic education activities, the latter being left largely to NGOs. It is recommended that the Public Outreach Department establish a separate unit to explicitly address voter education.

The IECI made significant progress in voter information and education in a very short period of time. In particular, field offices were given greater flexibility to run diverse voter information and education campaigns for each region, as suggested in the IMIE Final Report for the January election. The tools utilized included TV, radio and press, printed materials (including posters, billboards and leaflets).¹⁰ The IECI Web site and the call centres established to help voters check for their names on the voter list also proved to be very useful. While the use of multiple media for voter information and education activities was effective, there could have been more face-to-face outreach. It is important that future voter information and education activities pay greater attention to this interactive method, which is well-suited to electorates in developing democracies.

It would also have been useful to provide voter education material that combined information on the constitution and the voting process.

International organizations, including the UN Electoral Assistance Division (UNEAD), the UN Office for Project Services (UNOPS), IFES and the European Union advised IECI staff and trained media and observers with the assistance of local NGOs. Groups receiving special attention included women, ethnic minorities, youth, disabled persons, detainees and hospitalized persons as well as vulnerable groups in areas with low voter turnout in the preceding election. The Iraqi Centre for Women's Rehabilitation and Employment and the Civil Alliance for Free Elections held a series of workshops for female employees of Iraqi ministries.

As suggested by the IMIE in its Final Report on the January election, collaboration with Iraqi political entities, civil society groups and NGOs in voter information and education efforts should be strengthened. These actors must be engaged in the process and should have greater involvement in the development and dissemination of material.

Recommendations to the IECI

1. Develop broader civic education material related to the electoral process, in addition to voter information.

¹⁰The IECI did not consider newspapers to be very effective, as daily readership was relatively low.

2. Strengthen the collaboration with Iraqi civil society groups to develop and disseminate material, particularly at the regional level.
3. It is recommended that the Public Outreach Department establish a separate unit to explicitly address voter education.

Recommendation to the Council of Representatives

1. Clarify the legal framework defining the role of the IECI in voter and civic education.

Access to media

As was the case in January, there was no comprehensive media monitoring conducted in Iraq by either domestic or international observers. The only visible media exercise was the press clipping service and broadcasting review provided by UNAMI, which was not conducted every day and was therefore not a reliable basis from which to assess the media's coverage of the referendum.

This report based its assessment of the media on the UNAMI service, on the British Broadcasting Corporation (BBC) Monitoring daily lists and details of news stories and reports, and on consultation with a range of credible contacts.

As in January, democratic norms for the media were not always fully respected. Iraqi state media made sporadic attempts to provide balanced coverage of the referendum; there were many examples of reports and interviews rejecting the draft constitution or the referendum process as a whole, but these were outnumbered by programs supporting the government. Polling day coverage by state TV (*Al Iraqiya*) was exclusively pro-government, or pro "yes". The government's advantage in accessing state media outlets allowed electioneering and was not balanced by the campaigns of opposition parties. Increased training for the media in this regard would be beneficial.

Generally, coverage by Iraqi private media was not balanced either, although there were exceptions. For example, the popular Iraqi private TV channel, *Al Sharqiya*, maintained a reasonable balance in the weeks prior to polling day. Most local private stations and channels in Iraq, however, appeared not to overcome their political or ethnic bias.

In Iraqi cities, many homes (perhaps 60 percent) and some public places have satellite TV; thus, the influence of foreign TV channels had a significant impact on the constitutional debate. Popular regional channels such as *Al Arabiya* and *Al Jazeera* were relatively balanced in tone although not always in their selection of interviewees. Other media both within and outside Iraq showed sufficient examples of balance for the future to look encouraging.

Newspapers are so abundant in Iraq that they cannot all survive. As in many countries, they are all politically owned and motivated; it was therefore unusual to find a balanced presentation of opposing opinions in any newspaper.

Substantial contributions to Iraqi domestic media were provided by international agencies such as USAID, NDI, IRI, British Council, etc. These organizations assisted Iraqi NGOs in preparing radio and TV programs – discussions, debates, interviews, voter education “spots” and so on – that added credibility to the media debate over the pros and cons of the Constitution and that also emphasized the need to participate in the democratic process. Political posters had a large impact throughout the country, many urging voters to vote “yes” or “no”. Others called for a boycott, while posters funded by international agencies urged participation in the referendum process. USAID, Freidrich Ebert Stiftung, IWPR and other international agencies actively encouraged Iraqis from all walks of life to take part in the debate through the media.

The *Code for Media during Elections*, issued by the National Communications and Media Commission (NCMC) before the January 2005 election, had little impact on the editorial policy of Iraqi state radio and TV. Furthermore, there was no obvious plan in place for the NCMC or IECI to enforce the Code. As the IMIE noted in its Final Report on the January 2005 election, enforcement of media regulations is important for maintaining the integrity of the IECI and the electoral process as a whole. Ownership of the Code is a vital element of its implementation: There must be no doubt as to the legal status of the Code and of the NCMC’s ability to enforce it.

As with media codes and guidelines everywhere, the *Code for Media during Elections* will need to be amended and elaborated on an ongoing basis, in addition to being made legally binding. The Code should be redrawn with input from the NCMC, the IECI, political parties, representatives of civil society, and senior management and news editors from the media.

Finally, it must be noted that the principles of balanced coverage, fairness and equitable access, while crucial at election time, are also the basis for a democratic media. A national commitment to democratic broadcasting cannot be limited to the few weeks of the official campaign period.

Recommendations to the IECI and the NCMC

1. Encourage every radio and TV station, through training, to keep a running tally of the coverage given to each party during the campaign period.
2. Encourage civil society organizations to establish a completely independent media monitoring organization to work together with the NCMC.

Recommendations to the Council of Representatives

1. Clarify the roles of the NCMC and the IECI with respect to the *Code for Media during Elections*, particularly in terms of its enforcement; it is

recommended that this role be devolved entirely to the NCMC and that its capacity for enforcement be increased.

Electoral preparations

Despite the extremely difficult security, political and logistical conditions prevailing in Iraq, the pre-polling preparations for the referendum were professionally organized and executed. As mentioned earlier, the legal framework for the referendum generally met international standards and struck an appropriate balance between maintaining the integrity of the voting process and ensuring its transparency. The logistical operations leading up to the referendum were professionally carried out and no serious problems were reported. In both the legal framework and operations, the IECI seems to have benefited from its earlier experience of the January election.

In order to accommodate the increased number of voters, the IECI planned to open 6,230 polling centres housing 31,794 polling stations, with an average of five polling stations in each polling centre and approximately 500 voters in each polling station. Unlike the January 2005 elections, there was no out-of-country voting (OCV) for the referendum.

The IECI used a lottery system to recruit a polling staff of 140,000 from an applicant pool of 400,000. An additional 5,000 staff were recruited for Anbar governorate because of serious security problems there. Staff were trained in polling procedures through several cascade training stages in Amman, Baghdad and governorate and district electoral offices. It was not possible directly to assess the training, other than through observer reports on the performance of staff on referendum day, but local observer groups reported a lack of knowledge of polling procedures among some staff.

The IECI accredited an impressive total of 170,531 election observers, which included 53,052 domestic and international observers and 117,479 party agents. Polling and counting procedures were adequate; however, as noted earlier, there was no provision for entity agents and observers to obtain a copy of the results at the polling station. While recognizing that many places did not have power or photocopiers, this internationally accepted practice is important for the transparency of the count and the overall legitimacy of the election. On a more practical level, it transfers responsibility for monitoring the count to the political entities, thus pre-empting potential challenges from them in case of unfavourable results.

As with the polling and counting procedures for the January election, the presiding officer of the polling station retained a tamper-evident bag containing a copy of the forms on which all ballots (valid, invalid and blank) and the results of the referendum are recorded. However, there were no instructions as to what the presiding officer was to do with the bag thereafter.

A new feature in the referendum was voting by Iraqi detainees in detention centres¹¹ and by patients in selected hospitals. The procedures included adequate provisions for ensuring proof of voter eligibility, voting, counting and reporting of results. They also enabled monitoring by accredited observers and political entity agents. Accredited media were allowed to report on the voting, but were prohibited from using cameras in order to protect the privacy of the detainees and patients.

Security preparations were carefully considered and polling centres were secured by a three-ring security perimeter. The police provided security in the immediate vicinity of the polling centres, with the Ministry of Interior in the next perimeter and the Ministry of Defence in the outermost perimeter. In addition, male and female searchers, who were members of the polling centre staff, were responsible for ensuring that voters did not carry any weapons or dangerous items.

Recommendations to the IECI

1. Ensure that polling and counting procedures are comprehensive and are completed well in advance of staff training.
2. Improve communication with electoral observers; in particular, make information available to observers regarding format, content and delivery of staff training programs.

Polling

In the prevailing context of a highly charged political atmosphere, continued insurgency, violence and heightened insecurity, the IECI organized and carried out a referendum in a professionally competent manner that ensured the overall integrity and legitimacy of the voting process. Despite being tasked with managing three electoral events in one year, the IECI demonstrated a strong and impressive learning curve, reflected by its quick and pragmatic responses to numerous unforeseen problems that emerged. The overall turnout rate of 63 percent represented a significant increase over the 58 percent turnout in the January election.¹² Official results showed that 79 percent of voters approved, and 21 percent rejected the constitution. Only in two governorates, Anbar (97 percent) and Salahddin (82 percent), did the results meet the two-thirds rule for rejection.

As in the January election, most polling centres were located in schools. 5,879 (94 percent) of polling centres opened as planned. This was a decline of 5 percent from

¹¹Detention centres with voting included those under the control of Coalition Forces (Abu Ghraib and Bucca – Umm Qasr) and some under the control of the Iraqi government.

¹²The 58 percent rate of turnout includes the out-of-country vote. If OCV is excluded, the rate of turnout in January was 54 percent.

the January election, but was still impressive given the heightened level of violence. Most polling centres opened on time and remained open until the close of voting.

Procedures governing voting in selected detention centres and hospitals were, on the whole, properly executed. However, it appeared that some prison and hospital staff were not informed of the voting process. In some cases, ballots were housed overnight without appropriate security arrangements. At least one domestic NGO was initially denied access to observe voting in prisons and detention centres; the IECI reportedly used a lottery to determine which observer group would be permitted to observe voting in detention centres but failed to inform the observer groups. Finally, one polling staff member was reportedly attacked in the Abu Ghraib prison. These issues point to technical flaws that can be corrected through improved training, coordination and communication.

No serious problems were encountered in the delivery of the voting material, although domestic monitors noted a lack of logistical preparations. For example, there were no ballot boxes or ballot stamps in several polling stations in Abu Ghraib.

Polling locations were adequately protected by security forces. Voters generally reported that they felt safe going to the polls. The three-ring perimeter security structure undoubtedly contributed to a secure environment for the referendum. Despite the increased levels of violence in Iraq, the number of reports of direct attacks against polling centres was lower during the referendum than in the January election.

The military and the police generally did not interfere with polling, although there were scattered reports that the police encouraged voters to vote in favour of the new constitution. Compared to the January election, fewer polling places were unable to open due to poor security. Polling staff were generally able to perform their work safely.

The most serious incidents occurred in Anbar, including the kidnapping of several polling staff and mortar and rocket attacks on polling stations. As a result, only 118 of 207 polling centres (57 percent) opened there. At 32 percent, the turnout in Anbar was the lowest in the country, although it was still a dramatic improvement over the 2 percent turnout for the January election. The IECI responded appropriately to the security situation by allowing voters to vote, with proper identification, at the nearest polling centre that they could reach safely. Similarly, if a polling centre in Ninewa closed for any reason, the voter list would be transferred to another polling centre and the voters informed of the change.

The accredited observers and political entity agents were able to monitor the referendum in most centres without interference. However, there were a few reports that some polling staff did not fully understand the role of these monitors and observers, and prevented them from entering the polling centres and stations.

Most polling stations openly displayed their empty ballot boxes prior to the start of voting and then correctly sealed them with the plastic seals provided. Many of the polling staff participated in the January election and were able to build on that experience to do their jobs effectively; overall their performance reflected an increased professionalism and ensured a smooth and transparent polling process. The polling stations were, for the most part, adequately organized to ensure the privacy of voters when casting their ballots. Available reports indicate that special assistance was generally provided to voters when necessary.

Despite the generally successful organization and administration of the referendum, domestic observer groups reported a number of problems and irregularities, including cases of voting without proper identification; multiple voting in Anbar, Baghdad, Basra, Diyala, Missan, Muthanna, and Thi Qar; and widespread “family voting” in Babil, Diyala, Erbil and Hilla.

In the most serious irregularity reported, polling staff, on instructions from accredited party agents, checked the “yes” box on unused ballots and crossed off the remaining names on the voter lists before dropping the ballots in the ballot box after the official close of polling. In Erbil, which voted overwhelmingly in favour of the constitution, one domestic observer group recorded this irregularity in 24 different polling centres.

These irregularities may be symptomatic of the wider problems uncovered by the audit in Erbil, which the IECI believed were “indicative of systematic attempts to defraud the referendum process... by inflating the yes vote.”¹³ The IECI concluded however, that these irregularities were “not of sufficient magnitude to impact the outcome of the referendum vote within these polling centres.”¹⁴ The audit results also revealed that, except for minor errors and technical problems, no systematic irregularity occurred in Babil, Basra or Ninewa that would cast doubt on the results in those governorates.¹⁵

The widespread problem of the quality of the voter lists, as discussed earlier, was compounded by the very small font used and the frequently poor lighting conditions that made reading the lists very difficult. Although the IECI responded quickly by allowing voters to use their ration cards to establish identity, the resulting frustration may have caused many voters to leave without voting. Furthermore, the solution itself may have allowed voting by non-registered voters.

Recommendations to the IECI

1. Ensure that all security and polling staff understand and respect the rights of observers and agents.

¹³Page 8 of the “Final Report of the IECI on the Referendum Audit Process.” www.ieciraq.org.

¹⁴Ibid.

¹⁵The methodology of the verification process is briefly explained on pages 3-5 and 6 of the “Final Report of the IECI on the Referendum Audit Process.”

2. Ensure that staff involved in systematic irregularities or offences, such as those noted by observers and detected by the IECI audit, are appropriately sanctioned according to applicable laws and regulations.

Vote counting and compilation of results

The results process started inauspiciously 13 days before the referendum, when the Transitional National Assembly reinterpreted the second criterion for ratification of the constitution¹⁶ by stating that two-thirds of all registered voters would have to vote “no” in three or more governorates for the draft constitution to be rejected. This change would have meant that all null, blank and invalid ballots effectively would have been counted as “yes” ballots, as would the “votes” of registered voters who did not vote. This episode could be viewed as an attempt at political manipulation, but within a couple of days, domestic and international pressure forced a return to the original interpretation of the criterion.

Vote counting for the referendum was generally in keeping with international standards, with polling staff clearly benefiting from the detailed procedures as well as from the expertise gained during the January election. The presence of security officials in counting stations was less of a problem than it had been in January. Violations and irregularities were noted, but most of these involved only a small percentage of polling stations. Overall, the “yes” vote of the Iraqi people is not in doubt.

Following the count, results forms from the counting centres were transferred to the national Tally Centre in the IECI Headquarters in Baghdad, where the results were entered into a database. As was the case in January, evidence suggests that the operation of the national Tally Centre was highly professional and competent. The compilation of results generally met international standards, but the failure to report invalid and blank ballots in the final results was troubling.

Results were expected the week following the vote but were not issued until ten days after. The delay raised suspicions as to what was happening to the ballots during this time, a problem exacerbated by the “leaking” of unofficial – and often inaccurate – results by both local and national election officials.

In fact, the delay was due to field audits carried out between October 19 and 24 in four governorates (Babil, Basrah, Erbil and Ninewa). During the audits, the IECI reviewed voting procedures, ballot boxes and ballot papers for problems that could have affected the overall outcome. Observers complained about the lack of transparency of the IECI audits; however, the IECI did produce a detailed report on

¹⁶See section on Legal Framework in this report.

November 8, in which it made it clear that the audits focussed on problems that could have affected the overall outcome of the referendum.

Babil, Basrah, and Erbil were chosen as representative of those governorates where the “yes” vote was exceedingly high. The IECI stressed that these three governorates “were not chosen because of suspected systematic irregularities or because of the existence of actual complaints,” but rather because they “were typical of a category and deemed representative of it.”¹⁷ In Ninewa, an audit was conducted because of problems during registration, public allegations of fraud, and the early results showing a 55 percent “no” result.¹⁸

Personnel from IECI headquarters conducted the audits with technical support from international staff. The audits involved a full inspection of randomly chosen polling centres and stations. Auditors opened all the ballot boxes, checked the seal numbers against the information on Forms 97, recounted every ballot and compared these figures against those that had been submitted to the Tally Centre. They also crosschecked all the polling centres and stations opened with the official list to make sure they were legitimate. In northeast Ninewa, a “ghost” polling centre was found; however, the results from this centre were never entered into the central totals and the suspect ballots were subsequently quarantined.

No other major problems were found in Ninewa, and only minor problems were found in Babil and Basrah. However, as mentioned previously, the six polling centres audited in Erbil showed a systematic attempt to inflate the “yes” vote by a variety of methods, and 10 percent of the ballots at these centres were suspect. Nonetheless, even if this result were extrapolated for all of Erbil governorate, the combined irregularities would not have affected the overall result of the vote.¹⁹

There was a lack of transparency regarding the rationale for conducting the audits in the four chosen governorates. Since the regulations for the referendum do not speak specifically of field audits, this appears to have been a grey area in need of specific regulations. The proceedings also suffered from a lack of transparency, as observers reportedly were not allowed to observe the field audits.

The willingness of over 63 percent of eligible Iraqis to participate in the vote was a positive sign and the IECI should be praised for facilitating such a turnout. However, three interrelated problems can be identified with regard to turnout figures. First, excluding Anbar, turnout ranged from under 54 percent in the Theqar and Wasit governorates to 55 and 60 percent in many others to over 90 percent in Erbil. This turnout spread is quite atypical, and suggests that the problems and fraud detected in

¹⁷Final Report of the IECI on the Referendum Audit Process, p. 5

¹⁸The result was considered close to the 10 percent difference with a 2/3 result (or 66.67 percent) established by the IECI as the threshold for triggering an audit.

¹⁹Final Report of the IECI on the Referendum Audit Process, p. 8.

Erbil were widespread throughout the governorate. However, as noted above, this would still have been insufficient to affect the outcome of the referendum.

Second, an analysis of the numbers of total valid votes, registered voters and turnout figures suggests that a number of unregistered voters cast ballots. Some of these additional voters may have been registered on polling day and added to the annex of the voters list, however, this cannot be verified without official figures for same-day registrations.

Third, in Ninewa, some 4.4 percent of votes cast (or 60,000 votes) appear to have gone “missing.” However, even if all these missing ballots were “no” votes, the proportion of “no” voters would have reached 58.54 percent, still far below the required 66.67 percent to affect the outcome of the referendum.

Recommendations to the IECI

1. Work towards improving the communication channels from polling centres to district and governorate offices and ultimately to the IECI headquarters.
2. Ensure that, within the security limitations observers have full access to the national Tally Centre, and any place where ballots are stored.
3. Improve the transparency of any audit through full and timely disclosure of information.
4. Ensure that results are only issued with the approval of the Board of Commissioners, and that any staff making unofficial announcements of results are appropriately penalized.
5. Include the numbers of blank, invalid and valid ballots in the official results.
6. Produce an official written report of the electoral event, including the final results.
7. In any future referendum process, clarify with the government the legal criteria and procedures.

Complaints process

The IECI can be commended for implementing several constructive changes to the complaints process for the October referendum. Among the most notable improvements were:

- A decision to allow complaints to be submitted at polling stations on referendum day;
- More effective training of Complaints Office staff;
- Better adherence of the Complaints Office to its own procedures for handling complaints;
- Clearer regulations with regard to the submission of complaints by email.

There did not appear to be undue limitations on the kinds of complaints that could be filed. According to IECI Regulation 5-2005, section 4.4, any kind of complaint could be filed as long as it pertained to the violation of a law or regulation.

Regulations provided the IECI with adequately wide powers, although it was unclear whether political entities could be sanctioned for violations committed by junior members. Regulations also delineated clear lines of jurisdiction over complaints, with the exception of the handling of those against the electoral administration. For example, regulations were unclear whether complaints against the IECI were to be submitted to the Chief Electoral Officer or to the Board. In practice, complaints against the IECI were received by the Complaints Office, copied to the Chief Electoral Officer and then adjudicated by the Board. It would have been preferable for the Board to receive the complaints directly from the Complaints Office prior to the involvement of the Chief Electoral Officer.

The number of official complaints (158) was surprisingly low, relative to the number of complaints received during the January election and the number of election violations reported by observers. The unexpectedly low number of complaints appears to have resulted in part from restrictive procedures that probably deterred many people from filing complaints.

These restrictions included who could submit a complaint; tight deadlines; burdensome requirements for the content of a complaint; meagre and inaccurate information about how to submit a complaint; and insufficient information on the protection complainants could expect. There was also often a gap between the information disseminated to the public and the procedures actually adopted by the IECI, which exercised maximum flexibility in accepting complaints that did not satisfy all substantive requirements. It appears that this flexibility was not communicated to the public and that, in general, the public education campaign about the complaints process was not effective.

The procedures for handling and investigating complaints were adequate, with the exception of those relating to notification, right to information, and storage and transmission; however, some of these procedures were not followed. The IECI did not have enough staff to adequately investigate and process the complaints it received and, as such, did not handle complaints in a timely manner. The procedures for the appeal of authorities' decisions were mostly adequate, although no appeals were in fact filed.

The IECI did not follow its own procedures for making complaint files available for public scrutiny. This was understandable, given the security situation, and this procedure should be reconsidered for the future. However, there also appears to have been reluctance on the part of many IECI officials, staff members, and advisors to provide general information on complaints to accredited observers. This lack of

cooperation did not allow concerns about mishandling, manipulation and political interference to be put to rest.

Finally, actions taken by the IECI Board of Commissioners in response to the most serious complaints raised questions about its impartiality. Investigations by the Board into alleged pre-polling registration fraud in the governorate of Kirkuk determined that these complaints were valid; however, the Board did not impose sanctions against alleged violators. The IMIE was not provided with the log of complaints pertaining to media violations and, hence, is not in a position to assess whether sanctions were enforced accordingly.

Recommendations to the IECI

1. Widely publicize clear, consistent and accurate information about the complaints procedure.
2. Increase the transparency of the complaints process by making non-personal information about complaints accessible to observers and other stakeholders.
3. Reconcile inconsistencies between regulations and procedures, especially with regard to complaints against the electoral administration.
4. Investigate, on the Board's own initiative, possible violations discovered through anonymous complaints or complaints which do not include the name and contact information of the alleged violator.
5. Ensure complaints are handled in a timely fashion once received.

Conclusion

The IECI is to be praised for its professional and competent conduct of the referendum, especially in light of the extreme security and logistical challenges it faced. The experience gained from the previous election was also evident in the considerable operational, procedural and legal improvements made since the January election.

Areas for improvement in future electoral events that could be addressed in the short term include:

- establishing deadlines for adjudicating complaints and announcing official results;
- reviewing complaints filed during the registration update in a timely manner and adopting corrective measures where appropriate;
- developing broader civic education material, in addition to voter information;
- ensuring that independent media monitoring capacity is in place;
- improving the training of electoral staff to facilitate access of observers; and
- enhancing communication between IECI headquarters and the field.

For the longer term, areas for improvement include:

- developing a legal and regulatory framework on campaign financing and expenditures as well as the means to enforce it; and
- institutionalizing long term strategic planning to enhance the professionalism of the IECI.

The IMIE has found that the IECI has conducted a referendum that generally meets recognized international standards. The recommendations in this report are intended to assist the IECI by strengthening its capacity.