



## Security Council

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### Letter dated 23 February 2004 from the Secretary-General to the President of the Security Council

Following a request from the Iraqi Governing Council and the Coalition Provisional Authority, I dispatched a fact-finding mission to Iraq from 6 to 13 February 2004. This mission was led by my Special Adviser, Mr. Lakhdar Brahimi.

I am pleased to attach herewith a copy of the report on the mission's findings and recommendations, which I fully endorse (see annex).

The terms of reference of the mission called for:

- An assessment of the feasibility of holding direct elections before 30 June 2004;
- A determination of the time frame and conditions required for conducting credible elections consistent with United Nations principles and practices;
- A determination of whether there were other options for representing the will of the Iraqi people within the time frame of the 15 November Agreement, acceptable to all parties and guaranteeing a transparent and inclusive mechanism.

I believe that the dispatch of the fact-finding mission facilitated the emergence among Iraqis of a wide measure of agreement on the need for direct national elections, to be prepared and held under optimal technical, security and political conditions. There remain, however, a number of important outstanding questions. These include the choice of a transitional mechanism that would enjoy the broadest support among Iraqi constituencies and how to implement such a mechanism.

It is clear that more work will be necessary to address fully all questions in a way that best serves the interests of the Iraqi people. I hope that we can build upon the groundwork that has been laid down and engage further with Iraqis on how best to move forward. The United Nations remains fully committed to assisting the Iraqi people in completing the process of recovery and democratization.

The report of the fact-finding mission speaks for itself. I would, however, like to take this opportunity to emphasize once again that a precondition for the United Nations to succeed in Iraq is the clear and unambiguous support of a united Security Council and the establishment of a secure environment. The restoration of Iraq's sovereignty to Iraqis provides an opportunity for the Council to forge such a consensus on both aspects.

*(Signed)* Kofi A. Annan

## Annex

### **The political transition in Iraq: report of the fact-finding mission**

#### Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction . . . . .	1–6	3
II. The current situation in Iraq . . . . .	7–10	4
III. The 15 November Agreement and the governance transition process. . . . .	11–20	5
IV. Key observations . . . . .	21–29	7
V. The electoral process. . . . .	30–40	8
VI. Conclusion . . . . .	41–49	10
VII. Recommendations . . . . .	50	12

#### Appendices

I. Composition of the fact-finding mission . . . . .	14
II. Technical report . . . . .	15

## I. Introduction

1. The Secretary-General deployed a fact-finding mission to Iraq from 6 to 13 February 2004. This initiative was in follow-up to the meeting he convened in New York on 19 January 2004 with the Governing Council of Iraq and the Coalition Provisional Authority and in response to requests from both parties as well as many Iraqi organizations and personalities, including Ayatollah Ali Sistani, a prominent Shi'a cleric.

2. The fact-finding mission was led by Under-Secretary-General Lakhdar Brahimi, the Secretary-General's Special Adviser, and comprised seven members, including electoral experts from the Department of Political Affairs (see appendix I).

3. During its visit to Iraq, the mission met with a very large number of Iraqis, including political leaders (both those who are represented in the Governing Council and those currently outside the political process), religious leaders, tribal leaders, non-governmental organizations, women's groups, professional associations, human rights organizations, journalists and academics. It also met with the Governing Council, Ambassador Paul Bremer, the Administrator of the Coalition Provisional Authority, and Sir Jeremy Greenstock, the United Kingdom Special Representative for Iraq. In Amman, the mission met with Special Representative of the Secretary-General a.i. Ross Mountain and some members of his team. A United Nations delegation comprising Ambassador Brahimi, Ross Mountain and Jamal Benomar also attended the meeting of Foreign Ministers of neighbouring countries of Iraq (Kuwait, 14 and 15 February 2004).

4. The United Nations fact-finding mission would like to express its appreciation for the warm welcome it received from all Iraqis, as well as their willingness to meet with the team and the time they took to discuss ideas and options about the best way forward in Iraq. The mission also wishes to thank the Governing Council and the Coalition Provisional Authority for their hospitality and the support provided for transport, accommodation and security.

5. Security constraints did not allow the mission to travel outside Baghdad as extensively as it would have liked. Indeed, even in the capital, contacting and organizing meetings with Iraqis was a challenge for the same security reasons. Nevertheless, the mission was able to ascertain the views of a wide spectrum of Iraqis. For its part, the technical component of the mission was able to hold extensive discussions with groups of Iraqi experts, academics and members of political parties who had carried out research on the feasibility of holding elections in the current circumstances.

6. On the basis of these wide-ranging discussions, the mission was able to develop an understanding of the political environment and recent political developments related to the ongoing debate on the governance transition and to form an opinion on the specific issues that the mission was asked to study. Across the political and social spectrum, there was near unanimous agreement that the United Nations should act as a facilitator of this process, providing technical assistance, when required, and also helping form a consensus on the various issues under discussion.

## II. The current situation in Iraq

7. The two devastating attacks on the Iraqi police and security forces, which coincided with our visit, illustrated that the insurgency continues to threaten the security of all Iraqis. Little is known about those who were behind these attacks, but they seem determined to disrupt any plans for rebuilding a stable and peaceful Iraq. Nevertheless, we are beginning to see the first stirrings of party political activity, leading to new dynamics among the political elites and communal groups. It is clear that the security situation is inextricably linked to political developments.

8. There are many indications of a growing fragmentation of the political class. Sectarianism is becoming entrenched and inter-communal politics more polarized, all within a context of a political process that remains limited to a few actors, with varying credibility. This competition among the elite is taking place against a backdrop of massive unemployment, particularly among a large young male population. Many interlocutors also speak of rising disillusionment and anger. Nevertheless, with so much at stake, Iraq is a dynamic place, full of ideas and political arguments. We received numerous proposals and ideas from Iraqis, ranging from restoring the monarchy as a solution to the crisis, holding a conference of tribal chiefs to form a government and organizing a national conference or round table to work out an agreement among the major actors to the setting up of a transitional government of technocrats with limited powers.

9. However, there is also a grave sense of history attached to the current situation. In the Sunni community and among the secular elite, there are perceptions that they are witnessing a decisive shift in the balance of power as a result of which they will lose in the new political arrangements that are being put in place. Many Shi'a feel a responsibility to avoid what happened in 1922, which they believe began their disempowerment and persecution. They are committed to correcting this and ensuring the political emancipation of the Shi'a community. Others in the Kurdish community realize that they have made numerous gains since the early 1980's and after the first Gulf War but fear that new arrangements will be at the expense of what they have now. Meanwhile, minority groups feel that a majoritarian system will put them at a huge disadvantage, while women's groups are concerned that the gains made under the secular regimes of the past are under threat from a new system dominated by religious-based parties. A case in point is the decision by the Iraqi Governing Council in December 2003 to repeal the civil code and place family law under the jurisdiction of religious doctrine. This decision has not been enacted into law but women see it as an ominous indication of what might be coming.

10. These developments are simultaneously creating expectations, fears, tensions and distrust. There is reason to hope that the political dynamics in Iraq could evolve into a momentum to build consensus on a new inclusive system of governance that satisfies the aspirations for political emancipation and empowerment but also safeguards against majoritarian politics and protects the rights of minorities and other identity groups within a national entity. But, unless all actors — Iraqis and non-Iraqis — urgently address the most pressing issues, including the security situation, the underlying tensions could fuel the existing potential for civil strife and violence. All must diligently work to prevent the escalation of inter-communal violence and contribute to the slow, arduous process of building trust and the momentum for continued cooperation.

### **III. The 15 November Agreement and the governance transition process**

11. The political situation in Iraq is at another crossroads. On 15 November 2003, the Coalition Provisional Authority and the Governing Council signed an Agreement on the political process to accelerate the transfer of sovereignty from the Coalition Provisional Authority to an Iraqi administration by the end of June 2004. The political developments arising from this Agreement provided the context in which the United Nations fact-finding mission took place.

12. The 15 November Agreement set out the conditions for the dissolution of the Coalition Provisional Authority, with a new transitional assembly and provisional government assuming power. However, key Iraqi figures, including many members of the Governing Council itself, and a number of political and religious groups opposed the caucus-style process suggested as the basis for choosing the transitional assembly. Many, including Ayatollah Sistani, demanded direct general elections and claimed that it was possible to organize a reasonably credible election before 30 June 2004.

13. Although the legitimacy and legality of the 15 November Agreement has been questioned by many Iraqis, it should nevertheless be noted that most Iraqis consulted by the mission emphasized that the Agreement meets the wishes of the Iraqi people for a quick transition that will lead to a provisional government, the restoration of Iraq's sovereignty and the dissolution of the Coalition Provisional Authority. Strong reservations have been expressed about some of the provisions of the Agreement. But the debate has been polarized around the election issue, creating serious tensions that need to be resolved before any meaningful debate can take place on the very important substantive issues still pending.

14. These include such questions as: What should the Fundamental Law currently being drafted contain? What institutions should be put in place during the interim period? What kind of federalism should be adopted and when? What powers should the provisional government after 30 June 2004 possess? What kinds of relations should exist between the national assembly envisaged in the Agreement and the constitutional assembly to be elected in March 2005? What would be the status of the Coalition forces after 30 June 2004? These are but a few of the scores of questions which can properly be addressed only after a decision is taken concerning elections.

15. Nevertheless, the Agreement includes specific details that stipulate key provisions of the Fundamental Law and commit future lawmakers. Specifically, the Governing Council is to draft the Fundamental Law in "close consultation" with the Coalition Provisional Authority. According to the 15 November Agreement, the Fundamental Law should include "the scope and structure of the sovereign Iraqi transitional administration" and what is agreed to by the Governing Council and the Coalition Provisional Authority "cannot be amended". The Fundamental Law is also to specify "the bodies of the national structure", "the process by which individuals will be selected for these bodies" and "the criteria set out for candidates", which can include members of the Governing Council. In effect, a draft interim constitution is to be designed, as well as approved, by the Governing Council with the Coalition Provisional Authority. Some Iraqis noted that the Governing Council will have the power to determine the structure of national political bodies and that there would be

a clear conflict of interest if Governing Council members were to set the criteria for their own participation in these future institutions.

16. In addition, the Agreement refers to a federal Iraqi state, the separation and specification of powers exercised by central and local entities, a bill of rights that also refers to the legislature, a mechanism for judicial review and an expiration date; these are issues that have not been discussed and agreed to by the Iraqi people or their elected representatives. Despite the fact that the Agreement says that the timetable will be set in the Fundamental Law, the Agreement already fixes key dates in the process, with the Fundamental Law to be approved by 28 February 2004, elections for the transitional assembly by 31 May 2004, recognition of this assembly and the dissolution of the Coalition Provisional Authority by 30 June 2004, elections for the constitutional convention by 15 March 2005 and a deadline of 31 December 2005 for elections for a national government.

17. The Agreement also has a section on unspecified security arrangements that gives “wide latitude” for the Coalition forces to provide security. Most importantly, it commits a future provisional government to as yet unknown agreements made between the Coalition Provisional Authority and the Governing Council. During the mission, many Iraqis stressed that only a legitimate transitional or elected government should agree to any bilateral security arrangements with the Coalition. They consider that anything else would be illegitimate and would offer the impression that the process by which security agreements were reached was neither transparent nor accountable.

18. The Agreement devotes considerable attention to a transitional national assembly, a legislature, to which Iraq’s sovereignty would be transferred. As to the provisional government, members of the national assembly would elect an executive branch as well as appoint ministers. There are no details about the process for selecting the head of this executive authority or its mandate. There is to be no direct election to this transitional national assembly. Members would be elected by a “governorate selection caucus” to represent the governorate based on its percentage of the Iraqi population. The selection of candidates to the caucus would be organized and approved by organizing committees, composed of individuals appointed by the Governing Council and by provincial and local councils.

19. Iraqis opposed to this plan objected that the provincial and local councils were all created and supported by Coalition military commanders and that although the Governing Council was supposed to disband, its members would be eligible to be elected to the assembly while themselves having set the election criteria. Many Iraqi interlocutors also warned that on the basis of the Agreement, two assemblies would be in place by March 2005: a “selected” national legislative assembly and an elected constitutional assembly, both running concurrently, which might create the potential for political strife.

20. It should be recalled that the current political impasse originated in June 2003 with the controversy over the process through which the country’s constitution would be drafted by a constitutional convention “selected” by the Coalition Provisional Authority: this led to Ayatollah Sistani issuing a “fatwa” calling for an elected constituent assembly to draft the country’s constitution.

#### IV. Key observations

21. As mentioned earlier, there is a deadlock over the issue of direct elections versus the caucus-style process prescribed by the Agreement. At the end of the long discussion held by the mission at both the political and technical levels, a consensus was forming in Iraq that it would be extremely difficult and perhaps even hazardous to try to organize general elections before 30 June 2004. There was equally a consensus that the caucus system as currently conceived is not a viable option. The Coalition Provisional Authority itself accepts that it would be impractical to try and implement this system, which is totally alien to Iraqis. Other options need to be developed and pursued. But they can only come from the Iraqis themselves through dialogue and consensus-building.

22. It goes without saying that no one denies the importance of elections. First, the right to take part in the governance of one's country is a basic human right. This right is proclaimed and guaranteed in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, and is recognized in many other treaties and declarations. Countries and peoples around the world have recognized that free and fair elections are an important milestone in the continuum of democratization and an important means of giving voice to the will of the people, which is the basis of governmental authority itself.

23. Second, there is consensus among all Iraqis that elections are an important step in the long road towards establishing democratic governance based on the rule of law. Elections in themselves do not constitute democracy. They are not an end but a step, although an important and essential one, in the path towards a peaceful, stable and united Iraq. Much debate has been devoted to the establishment of a provisional legislative assembly. In fact, many Iraqis have queried whether a legislative assembly would even be necessary during a short transition period. Would it not be simpler and more effective to develop consensus on establishing a provisional, caretaker government, with clear and limited powers to prepare the country for free and fair elections and manage the country during the transitional period and the process that establishes it?

24. As indicated in the detailed technical report contained in appendix II to the present report, elections will need a minimum preparation time of about eight months **after** the legal framework has been completed. If work was started immediately and the required political consensus was reached fairly rapidly, it would be possible to hold elections by the end of 2004. In the light of this, would it be necessary to elect, two or three months later, a constitutional assembly? Most Iraqis the mission met were of the firm view that a single assembly might very well act as both a legislative and a constitutional assembly. The time frame set for the completion of the constitution would not be affected.

25. Numerous interlocutors expressed the need to develop new ideas for a more inclusive and transparent transitional process to establish a national unity provisional government. In this context, many Iraqis further stressed that what is needed is a broad-based government that is not based on quotas, one that ideally would be primarily composed of competent technocrats.

26. There were many other ideas on the ground. Some suggestions have been made that the life of the existing Governing Council be extended so that it could act as the interim administration between 30 June 2004 and the national elections, or that it

should be enlarged (150 to 200 members) to act as a transitional legislative body that would elect the provisional government. Some Iraqis urged the United Nations to give serious consideration to the idea of a national conference that is emerging within Iraq from respected Iraqi figures. They believe that by inviting delegates from across Iraqi society, a national conference would offer a more legitimate means of establishing a transitional government. They recognized that it would not be fully democratic but argued that it would nevertheless be inclusive and participatory. Criteria and rules of procedure would need to be elaborated on who would participate, but a national conference typically invites every type of political and social constituency and operates on the basis of democratic transparency. From the conference, a set of principles governing the transition period would be produced (**not** a constitution) and an agreement on a provisional national unity government reached.

27. Others felt that a national conference could be a forum to amend and approve the draft Fundamental Law. Depending on its rules of procedure and how it functioned, some stated that it is conceivable that this conference could be transformed into a provisional national assembly at a later date. A number of Iraqis suggested that the United Nations could facilitate the process of building consensus leading to an agreement on a national conference and could then convene the conference.

28. Others favoured a smaller forum or round table, consisting of the main political, professional, religious and other identity groups representing the full diversity of Iraqi society to develop consensus on the setting up of a caretaker authority to manage the transitional process after 30 June 2004, with a particular focus on the electoral and constitutional processes. According to this view, a round table could produce credible interim arrangements affirming the protection of human rights and a participatory constitution-making process.

29. Many Iraqis stressed that new initiatives are urgently needed to rebuild trust, promote inclusion and explore new options. Other Iraqis affirmed that the way out of this impasse is for the United Nations, working in partnership with the Iraqis, the Coalition Provisional Authority and Iraq's neighbours, to assist the Iraqis in building consensus on a political framework that will produce a "road map" for the governance transition and assist in the establishment of a transitional government to bring this to fruition.

## **V. The electoral process**

30. The analysis of the electoral process and the details involved is fully developed in the technical analysis prepared by the electoral assistance members of the United Nations mission (see appendix II).

31. In consolidated democracies, the time frame of an electoral process can be readily estimated, given that most legal and institutional frameworks already exist. Since the machinery is already in place, with the rules of the game well defined and agreed upon by all stakeholders, it is only necessary to provide some modest support to fine-tune what already exists before engaging in the implementation of an electoral process that includes fairly precise deadlines.



32. However, in transitional situations, an electoral process often needs to be developed from nothing, building up from scratch all the elements required to enable the preparation and the conduct of the process. The time required for meeting the necessary preconditions is not easy to estimate, in particular those involving political consensus. Consequently, the approximate time frame for organizing transitional elections can only be estimated from the moment that three major conditions have been met. Those conditions are: (a) a legal framework in place; (b) an institutional framework in place; and (c) availability of the required resources.

33. In Iraq, none of these conditions exist and there is considerable disagreement over the most fundamental aspects. In fact, the mission found that most of the debate centred on operational aspects, such as voter lists, while overlooking the legal, political and security framework without which an election cannot take place.

34. An electoral timetable necessarily depends on the modalities chosen for the election: an election on a single (national) constituency under a proportional representation system using party lists will be easier (and quicker) to organize than an election using a first-past-the-post system with a great number of single-member districts. The issue of an electoral register is sensitive, and the option chosen for the establishment of a credible electoral roll will affect the length of the process.

35. In terms of establishing a credible electoral roll, a number of different options can be tried; historically in Iraq, the electoral rolls have been derived from a population census. This option is not feasible, as it is estimated that a fully fledged census would take up to five years, including preparation time. Moreover, the polling allocation under this modality presents serious problems. Two other options are available: a dedicated voter registration exercise (probably the preferred option) or deriving the electoral roll from existing databases (such as the public distribution —“ration cards” — database). Nevertheless, it is important to note that in both cases, but particularly the latter one, a social validation period is indispensable — that is to say, a period during which the initial data is exhibited to the public and corrected as required.

36. As mentioned, a generic estimation can be made based on previous experience and the standard tasks required for the election of a representative body. The necessary stages for the preparation of the process would include, among others, the definition of all electoral procedures and the preparation of the necessary procedural manuals; the registration of political parties and/or candidates; a regulation defining political financing; a regulation concerning electoral campaigning; the accreditation of electoral observers; the launching of public information and voter education initiatives; the procurement and assembly of electoral material (for the various electoral operations); the mapping and choice of polling locations and assignments; and the logistic preparation for polling, counting and tallying results. In addition, should it be decided to allow for registration and voting for Iraqis abroad, it will be necessary to determine the regulatory framework and establish a full operational plan for out-of-country voting.

37. In countries with conditions and characteristics similar to those of Iraq, it is possible to say that the minimum time required for preparing a credible transitional election would be no less than eight months from the time the three conditions described above are met, that is to say, once the political agreements have been formalized in a legal framework and once the basis of a functional electoral

management body have been established and the necessary resources are made available. If it is anticipated that an election should take place by January 2005, it would be necessary to reach the basic agreements that would form the backbone of an electoral law by May 2004.

38. An improved security environment is a precondition for the conduct of free and fair elections in Iraq. Lack of security could lead to major disturbances, undermining the administration of the election, altering the established timetable and compromising the overall credibility of the process. Just as important is to have an environment that permits respect for the civil and political rights of candidates, parties and voters, ensures free campaigning and a free choice, and guarantees free speech, opinion, information, assembly, movement and association during elections. While transitional contexts are not always the most conducive for credible elections, minimum conditions should be ensured to allow for the process to be a successful one, whose results are accepted by all parties. Security is therefore a major conditioning factor in ensuring the legitimacy of the process. The current circumstances, resulting in widespread fear and anxiety among the population, are a major obstacle to the success of an election. The existence of militias (especially if connected with political movements) could also be the source of coercion and intimidation that would undermine the political credibility of the exercise.

39. It is important that the electoral campaign and the election itself be monitored by independent observers. Rules regulating the media as well as efforts by the international community to offer unbiased information might prove crucial. In addition, these first elections will provide an opportunity for democratic empowerment, in which local groups can be trained to act as media and polling monitors.

40. There is an assumption that elections mark the beginning of an irreversible process leading to democracy, and that after democratic elections it is difficult to return to authoritarian rule. Another assumption is that leaders who benefit from the demise of an authoritarian regime also benefit from the eventual consolidation of democracy. Both assumptions are inaccurate. Elections that are not properly prepared and that are held without the best possible conditions first being established often lead to “token” democracies and radicalized politics, and undermine compromise among stakeholders and coalition-building. This is particularly relevant in situations where rule-of-law institutions are weak and incapable of managing political debate and conflict.

## **VI. Conclusion**

41. Iraq faces the difficult task of finding institutions capable of channelling political contestation into legitimate directions. During this process, decisions will be made as to the limits and practices of the new political system; the rights and duties of its citizens; how to represent the will of the people; how to achieve a consensus on the future of the state; and how to ensure respect for universal principles, such as respect for human rights and democratic governance.

42. Given more than three decades of despotic rule without the basic elements of the rule of law, a ruined economy, a devastated country, the collapse of state institutions, the low level of political will for reconciliation, and distrust among some Iraqis, conditions in Iraq are daunting. Iraq suffers from the standard ills of

countries that have not succeeded in developing democratic governance: poverty, little if any experience of democracy, and a history of maintaining domestic stability through oppression and violence. We need to be realistic about the prospects and speed of reform; time is needed to allow wide-ranging consultation and consensus-building on challenging issues. A thorough, unrushed and consultative process is essential. Nevertheless, the mission notes with appreciation that after decades of authoritarianism Iraqis are very eager to move to a new chapter in their history by finding political solutions to their problems through consensus-building. It was significant that the term “tawafuq” (i.e., consensus-building) was repeated again and again throughout our consultations.

43. The challenges of working out a legitimate political process that will lead to a democratically elected government are enormous. Establishing security throughout the country, building trust with the Iraqi people, drafting a constitution and building consensus among different Iraqi factions are formidable problems. These problems will confront the United Nations when it assumes the “vital role” that both the people of Iraq and the international community tell us that they want the United Nations to undertake. The international legitimacy of the United Nations is not enough by itself to ensure the success of the process. Much will depend on the role of the Iraqis and their willingness to compromise in the interests of their nation rather than for sectoral or individual interests. Much will also depend on what mandate the United Nations has from the Security Council, what the United Nations does and is seen to be doing by Iraqis, regional actors and the international community at large, and how well it performs this role.

44. Iraqis wholeheartedly believe that the sooner an Iraqi government is in place, the better, so as to restore to the people of Iraq their sense of dignity and control over their destiny. To that end, they do not wish to see any delay in the restoration of Iraqi sovereignty. Virtually every Iraqi with whom the mission met stressed that the date of 30 June 2004 is a deadline that must be respected.

45. That having been said, they recognized that they find themselves in a very serious dilemma. Iraqis inside and outside the Governing Council appear to agree that, ideally, Iraqi sovereignty should be restored to a democratically elected government. But many acknowledged the risks pointed out to them by our mission about prematurely conducting elections; in the mission’s view, at least eight months are required to prepare a credible election in Iraq, once the legal framework is agreed upon.

46. Thus, it is not possible to maintain the 30 June 2004 deadline while concurrently ensuring that sovereignty is restored at the outset to a democratically elected government.

47. In that context, there appears to be an emerging consensus that a provisional government will need to be formed by 30 June 2004 through some mechanism other than direct elections. While the caucus-style system envisaged in the 15 November Agreement is one such mechanism, it does not appear to enjoy sufficient support among Iraqis to be a viable option any longer. A consensus will need to be forged on another mechanism, building on discussions that have taken place to date.

48. Irrespective of what mechanism is decided upon for the formation of a provisional government, it must be understood that it will be short-lived and will need to give way, as soon as possible, to a democratically elected and fully fledged

government. In order for that fully fledged government to be established as quickly as possible, preparations for elections need to begin now, starting with genuine agreement on the legal framework for them.

49. It is ultimately up to the people of Iraq to take the decisions required on these issues and to then implement them. They are more than capable of doing so. The United Nations is ready to play a supporting role — in helping to facilitate political consensus, as well as in offering technical advice on elections — if the people of Iraq so request it, the Security Council mandates the Organization to play that role, and appropriate arrangements are made to provide security for our personnel.

## VII. Recommendations

50. The following are the recommendations of the present report:

1. As outlined above, a consensus exists in Iraq that elections are a necessary step in the process of building democratic governance and reconstruction. No one doubts the importance of holding elections. The caucus-style system as it now stands is not practical and is not a substitute for elections.
2. Credible elections cannot take place by 30 June 2004. Substantial preparations are needed. Elections should be prepared well and should take place in the best possible conditions. Discussions held by the mission at both the political and technical levels have established that preparations will need at least eight months **after** a legal and institutional framework has been established.
3. This implies that an agreement among Iraqi stakeholders on the electoral legal framework should be reached as soon as possible so that preparations can begin for the various operational modalities necessary for the conduct of elections.
4. The mission was told that political agreement on the legal framework may be secured by May 2004. In that case and provided that other conditions are met, elections could be held by the end of 2004 or shortly thereafter. Immediately after reaching the basic agreements, a precise polling date that takes into account the specified time frame should be established and officially announced.
5. The United Nations recommends that in order to start working immediately towards a well organized electoral process that would result in polling at the earliest possible date, an autonomous and independent Iraqi Electoral Commission be established without further delay. Both financial and human resources should be made available to this Commission so that it can begin planning and preparing the process in a timely manner.
6. Many Iraqis already agree that a single elected assembly should be chosen through elections held by the end of 2004 or shortly thereafter, with the dual functions of drafting the country's constitution and at the same time acting as the principal law-making body or legislature. This

course of action has many advantages and would be less of a financial burden on the country.

7. There is also consensus among Iraqis that the 30 June 2004 deadline for the transfer of sovereignty to a provisional government should be maintained, and all parties should cooperate to meet that deadline.
8. The resolution of the timing of the election provides opportunity and space for Iraqis (both those on the Governing Council and those outside the political process) and the Coalition Provisional Authority to engage in a more focused dialogue on the mechanism to which sovereignty will be transferred on 30 June 2004.
9. The United Nations would be willing to offer its assistance to help build consensus among Iraqis on the specific powers, structure and composition of such a provisional governance body and the process through which it could be established.
10. The United Nations would be willing to provide advisory services and technical assistance to support Iraqis in their efforts to establish an electoral legal framework and design and implement the various aspects of the electoral process.
11. Security is of paramount importance, both for the success of these processes and for United Nations participation. Discussions are already under way with the Governing Council and the Coalition Provisional Authority; those discussions need to be intensified to complete arrangements for expanding United Nations activities in Iraq.

## **Appendix I**

### **Composition of the fact-finding mission**

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## Appendix II

### Technical report

#### I. Introduction

##### Background

1. The 15 November Agreement (hereinafter referred to as the Agreement) signed by the Coalition Provisional Authority and the Iraqi Governing Council outlines a transition plan to achieve sovereignty in Iraq. It provides for a transfer of power to a provisional government on 30 June 2004, following the selection of a transitional national assembly by 31 May 2004. The Agreement calls for the members of the transitional national assembly to be selected through a system of regional caucuses.

2. However, following the signing and announcement of the Agreement, many Iraqis opposed the caucus model, calling for the transitional national assembly to be chosen through direct elections. Opposition to the caucus system was based on the perception that it was open to manipulation and that the members of the transitional national assembly would lack representative legitimacy. On the other hand, other Iraqis expressed their deep mistrust of early elections, claiming that conditions were not ready for a free and fair process. Consequently, a stalemate ensued that critically undermined the acceptability of an Iraqi provisional government formed pursuant to the approach outlined in the Agreement.

##### Fact-finding mission

3. Following a request from the Iraqi Governing Council and the Coalition Provisional Authority to assist in resolving the stalemate, the Secretary-General agreed to deploy an electoral fact-finding mission (hereinafter referred to as the mission). The terms of reference of the mission called for an assessment on the feasibility of holding direct elections and the determination of the time frame and conditions required for conducting credible elections consistent with United Nations principles and practices. The mission was further mandated to determine whether there were other options within the time frame of the Agreement, acceptable to all parties and guaranteeing a transparent and inclusive mechanism for representing the will of the Iraqi people.

4. The mission was led by Lakhdar Brahimi, Special Adviser to the Secretary-General, and was composed of seven members, including the Director of the Electoral Assistance Division of the Department of Political Affairs as well as two of its Senior Electoral Officers. The mission was deployed to Iraq from 7 February to 16 February 2004. Over this period, the mission met with a range of interlocutors, including Iraqi political, religious and social representatives, academics and experts, as well as pertinent representatives of the Coalition Provisional Authority, ministries and other foreign representatives.

##### Presentation of the report

5. While the general issue of the transition of power in Iraq is a political one, the study and appraisal of the various modalities for a genuine and credible election is conditioned by technical limitations. The present technical report constitutes the contribution of the technical team to the general report to be presented by the

Secretary-General to the Iraqi Governing Council and the Coalition Provisional Authority, outlining the mission's findings and recommendations.

6. Section II of the technical report studies in some detail the caucus model delineated in the Agreement and the different options presented to revise it. Section III analyses the possibility of direct elections being held before the 30 June 2004 deadline for the scheduled transfer of power. The final assessment in both section II and section III points to the unfeasibility of either modality being implemented successfully within the time frame. Nevertheless, the team noted that there was broad agreement on the need to hold elections as the best way to guarantee the representation of all Iraqi people in the new government and to ensure its necessary legitimacy. Therefore, section IV examines the preconditions for credible transitional elections and highlights the criteria for establishing an approximate time frame for the preparations and conduct of such a process.

## **II. The caucus model**

### **A. Regional caucus selection**

#### **The caucus as presented in the 15 November Agreement**

7. The Agreement states that the members of the transitional national assembly are to be chosen by regional caucuses. The plan was formulated in the belief that direct elections before the 30 June 2004 deadline were not possible and that the first democratic government in Iraq should be elected according to a new constitution drafted by Iraqis. The proposed caucus model was also not without precedent in the recent administration of Iraq. The caucus proposal built upon similar processes employed at the provincial and local governance levels and was therefore viewed as an approach with which Iraqis had gained some familiarity. In this light, the selection of the transitional national assembly members through the caucus system was seen as a preferred alternative to direct appointment by the Iraqi Governing Council.

8. The regional caucus model was designed in four phases: (a) the appointment of a 15-member organizing committee in each of the 18 governorates, using the following ratio: five members selected by the Iraqi Governing Council, five by the provincial council and five by the local councils of the five major cities of the governorate; (b) soliciting nominations for candidates to the caucus; (c) selection of the members of each caucus by the organizing committee, through a supra-majority vote of 11/15 for a candidate to be accepted; and (d) the election of representatives to the transitional national assembly by each caucus, using the ratio of one representative per 100,000 citizens. All the regulations of the process were to be included in the Transitional Administrative Law (previously entitled the Fundamental Law).

#### **Caucus model assessment**

9. The caucus plan met with widespread opposition from numerous sectors of Iraqi society following the announcement of the Agreement. The mission can attest to the widespread resistance expressed by most people consulted during the mission to the transitional national assembly caucus selection process. Also, it was clear that



the initial assumption concerning the use of the caucus system at the local level did not translate into its acceptance at the national level. Further, views about the caucus model expressed to the mission consistently cited a lack of transparency and simplicity, which in a context of overall mistrust compounded the general Iraqi perception that the process was being manipulated. Fundamentally, by their very composition the organizing committees were perceived as creatures of the Coalition Provisional Authority.

10. The perception of the regional caucus process was in contrast to the explicit policy of the Coalition Provisional Authority that it did not want to have a visible role in the caucus selection or its internal workings. Nonetheless, the absence of oversight bodies that might hear appeals and reinforce the perceived fairness of the process created a situation in which the Coalition Provisional Authority might have been forced to intervene. As each organizing committee was left free to “work to achieve balance between the various groups” in setting its standards and criteria for selection, and given that the term “various groups” was loosely defined, the organizing committees could freely determine the relevant groups in their own communities. This also opened the organizing committee to pressures from different elites to be included in the list of the various groups that needed to be represented, and compounded a widespread fear that the members of Iraqi councils (both at the national and provincial levels) might exert undue influence over the organizing committee and use it as an instrument for the exclusion of individuals and groups.

11. Moreover, a formula for proportional representation at the national level cannot be worked out from the bottom up in an uncoordinated manner. This approach might lead to overrepresentation of smaller groups and factions, potential underrepresentation of citizens who define themselves as just citizens and the consolidation of traditional and extremist groups’ power plays over the more moderate ones. It might also lead to violence during the process, as the most vocal will win at the local level, thus enhancing the volatility of the process and increasing the perception that arbitrary decisions are being taken.

#### **Lack of standardized approach**

12. From a procedural point of view, the main flaw of the caucus model resides in its lack of standardization, resulting in extreme decentralization and fragmentation. There is no clear definition regarding the procedures to be used; therefore, there are no nationally consistent procedures and the interpretation and application of intent could vary widely from governorate to governorate. In this manner, the model cannot guarantee its overall consistency and coherence. Since the model relies on the total decentralization of criteria and delegating absolute decision-making powers to the organizing committees in the 18 governorates, with no common criteria or shared regulatory framework, it seems inevitable that the process would be perceived as arbitrary and non-transparent.

13. The only formally shared criterion for the Agreement’s regional caucus was the number of representatives in that “... each member represents 100,000 citizens according to the general census”. This, in itself, also posed a problem, as the figures of the last census (1997) are widely contested. Politically, it is to be expected that local elites and by extension the organizing committee of each governorate would push for an overestimation of their population. As noted above, there was no central

organ or procedure to adjudicate disputes between the different organizing committees in the “war of numbers” that would follow.

**Caucus model: final assessment**

14. Based on the prevalent concerns regarding its complexity and apparent arbitrariness, the caucus model generated such widespread opposition that it seems politically unviable at this stage. As it stands, it also appears that the caucus model is no longer practicable within the stipulated deadlines. The time frame is already very tight, barely allowing enough time for its implementation without any room for unforeseen circumstances that could delay the process. The complexity of the selection mechanisms would have required that preparation be well advanced at the present time. The exercises on “refreshing” provincial caucuses have shown that these are time-consuming processes that are often difficult to manage and implement on a tight timetable. It follows that the selection of a transitional national assembly through the caucus system is neither politically nor technically viable at this stage.

**B. Caucus model revisions**

15. In order to improve the caucus model, many possible modifications were envisaged. Those revisions, which ranged from introducing modifications regarding the role and make-up of the organizing committees to encouraging broader participation, centred on resolving some of the major stumbling blocks of the original proposal, in particular the lack of standardized approach, perceptions of non-transparency and the vulnerability to manipulation.

16. However, the various administrative “revisions” of the caucus model in order to make it more inclusive and participatory cannot completely alleviate its inherent deficiencies. They would necessarily complicate its implementation, making it less transparent to the public and requiring additional time to implement. The only manner of substantially making the caucus model more inclusive and participatory would involve turning the process into an indirect election mechanism, organized by a non-partisan administrative structure with standard procedures defined at the national level and applied universally throughout the country. Such a thorough restructuring of the process would imply almost all the requirements of an electoral system, falling short of a universal election. Under the circumstances, there is clearly no time for such an endeavour.

17. Significantly, a number of options have been advanced that promote partial elections to increase the legitimacy and credibility of the caucus. These proposals fall short of direct elections, demanding almost as much preparation without the virtues of a popular vote, and are also impossible to put into practice given the current time frame. Among the options advanced are the holding of a referendum on a slate of candidates at the governorate level; conducting elections for caucus delegates; organizing direct elections from among slates of candidates; or finally, implementing a system of cascading caucuses, a three-tiered elections model from the bottom-up to the selection of regional delegates.

18. Another category of proposals are defined as “hybrid” plans, combining caucuses and direct elections. One such plan, for example, called for elections in Baghdad and other urban areas and caucuses in other parts of the country; a different one called for elections in the “safer” areas (south and north of the country) and the

use of caucuses in the “unsafe” areas (mostly the Sunni triangle). Not only are these options detrimental to a perceived national unity but they also combine the disadvantages of both modalities without resolving the major issues. In particular, they do not address the major obstacles in preparing and organizing direct elections, assuming that security concerns constitute the only consideration when deciding whether early elections are practicable or not. In fact, as will be made clear below, a number of additional elements are essential in considering the feasibility of a transitional election, ranging from political agreements to technical and operational considerations.

19. In conclusion, it is clear that there are no feasible options for substantially revising the caucus model under the time frame adopted by the Agreement in a manner that would respond to the political objections to the initial model or that would be technically viable before the proposed deadlines.

### **III. Direct elections by 30 June 2004**

#### **A. Election versus appointment**

20. Direct elections are widely perceived as the best means to elect an assembly that is genuinely representative and has the legitimacy to appoint an Iraqi government. The sensitivity of the current transition period stems from the presence of an occupying power and the legacy of the previous regime, which have intensified the demand for transparent and inclusive representation. As such, Iraqis have expressed their desire to see a legitimate and sovereign Iraqi government as soon as possible, which would be best achieved through elections.

21. There was broad acknowledgement by Iraqi interlocutors to the mission that direct elections were indeed the best source of legitimacy for a representative body; differences arose on the issue of timing, specifically on whether elections before the deadline of 30 June 2004 were possible. The main supporters of elections before 30 June 2004 made the case that elections before the scheduled transfer of power were not only desirable but technically and administratively feasible. A number of documents were presented to the United Nations fact-finding mission in support of this position.

22. The opponents of early elections claimed that early elections would be too divisive and might ignite a civil conflict. They also claimed, however, that from an administrative and technical perspective there was simply no time to organize credible elections before 30 June 2004. Their argument is based on three main considerations: the lack of an electoral law, the lack of a credible electoral register and a security situation which does not allow for free and fair elections.

#### **Electoral roll**

23. The main supporters of early elections provided the mission with specific answers to the concerns raised by Iraqis against elections by 30 June 2004. These answers were reinforced by papers presented to the mission, prepared by a number of scholars and officers of the Ministry of Trade, discussing the technical side of the elections and highlighting possible means to produce a voter’s list. Their proposal relied on the use of the “public distribution” (or ration card) database, used for the

oil-for-food programme as the basis for deriving an electoral register. The eligible Iraqi voters were classified into three categories: (a) those who have ration cards and are included in the databases managed by the Ministry of Trade and the World Food Programme (WFP) (with regard to inhabitants of the northern governorates); (b) those outside Iraq; and (c) those that have no ration card and are not included in the database. The proposal sought to manage these three broad cases in the following manner:

(a) Of the first group (Iraqis registered in the programme) the proposal estimated that the existing database managed by the Ministry of Trade contains about 23.5 million registrations for the inhabitants in the south and centre of Iraq. It was also asserted that WFP has records of 3.5 million registrations for the northern governorates. The plan assumes that with the information on each registration it is possible to derive accurate voters' lists for those who are 18 years old and above (about 13 million persons), even at the level of small administrative divisions that could serve as electoral districts. Ministry personnel claimed that the rate of accuracy of this database is very high, exceeding 98 per cent in the central and southern provinces, while a similar accuracy could also be achieved in the northern governorates. Ministry of Trade personnel further claimed that by using customized database programmes, they would be able to further correct the records and remove multiple registrations at the provincial and national levels;

(b) For the second classification (Iraqis abroad), the proposal calls for registration and polling abroad. The registration of the Iraqi voters at designated centres will be computerized and the data sent to the computer centre at the Ministry of Trade, where checks against multiple registrations would be conducted. It was claimed that if this system were applied the period of registration would require only one month, while the subsequent process of checking multiple entries would last two weeks;

(c) Finally, for the third classification (unregistered Iraqis), it was proposed that a partial registration exercise for those excluded from the database would be undertaken. This partial registration exercise was estimated as requiring one month.

24. Overall, the proposal offered a time frame for the establishment of the voters' lists of about two months, including a one-month registration period (abroad and within Iraq), two weeks for final checks on multiple registrations and two weeks for the printing of the lists. It was assumed that the amalgamation of the different databases (ration cards, northern governorate records and new registrations) would be carried out during this period. Thus, according to the proposal, it would be possible to have an electoral roll ready for elections before the proposed 30 June 2004 deadline.

#### **Legal and institutional framework**

25. In order to gain time, the proposal calls for the use of an old electoral law, subjected to amendments as deemed necessary. The lack of political party regulation is also considered a minor obstacle, as the proposed option is one of allowing "individual candidates" (and not political parties) to compete in the election. However, during subsequent discussions it was proposed that the 1960 Law of Committees would be a suitable framework for political parties. In terms of an electoral management body, the plan proposes a hierarchical structure as follows: (a) a high election supervising committee (at the national level); (b) a main

committee in each governorate (18 committees); (c) an organizing committee in each district (104 committees); (d) a subcommittee at the village level (285 committees); and (e) electoral centres for registration and polling (30,000).

26. The proposal outlined that the membership of the various committees would be in accordance with criteria set by the high committee that would be responsible for supervising the election. The committees would then assign responsibilities within their localities, select and train staff according to a plan approved by the high committee, in cooperation with the Ministries of Planning, Trade and Interior. The electoral centre (or polling centre) would be the smallest administrative unit in charge of conducting the polling, counting the votes and transmitting the results up the hierarchical structure. All the organizing activities would be subject to direct field supervision on the pyramidal basis proposed for the electoral institutional structure. Finally, the proposal calls for United Nations approval and supervision of the process.

### **Security**

27. The proposal also deals with security concerns, outlining the steps that would guarantee a safe environment and the security forces necessary for successful elections. The argument presented is that security does exist in most parts of Iraq, and it could be brought to other places through specific measures on polling day, using both Iraqi and Coalition security forces. Among the elements mitigating the security concerns, the following issues were highlighted: (a) the patriotic feelings of most Iraqis towards elections as a means for national independence and the withdrawal of foreign troops; (b) the presence of new Iraqi security forces (army, police, civil defence forces and site security forces) whose establishment and training has begun under the supervision of the Coalition; (c) the presence of more than 160,000 Coalition force personnel in most of the country's provinces; (d) the fact that a number of political forces and movements present in the political arena have a popular base; (e) the influence of tribes that could be used to provide security and make the elections a success; and (f) the influence of religious and secular leaders.

28. The proposal also highlighted that a national high security committee would need to be created to be headed by one of the members of the Iraqi Governing Council or the Minister of Interior. The committee would include, among others, representatives of the military, the police, the civil defence force, the force for the protection of institutions, the security apparatus, the new intelligence apparatus and the council of tribal leaders, and religious leaders and leaders of political movements and forces or their representatives. Equally, a security committee would be established for every electoral centre, including the local council, police, "imams", chief or chiefs of tribes in the area, women's leagues and notables from the area. A number of specific measures are proposed for polling day, including the closing of all borders 72 hours prior to voting, the restriction of movement on polling day etc. The possibility of having partial elections has also been raised, to concentrate on "safer" areas, or of adopting a "staggered" approach instead of having all-country elections in one day.

## **B. Assessment: the electoral roll issue**

29. One of the most delicate and sensitive issues connected with the direct election refers to the need for a credible and updated electoral register. Not surprisingly, the proposal seeking to justify the feasibility of elections before 30 June 2004 is based strongly on the plan to establish an electoral register in time for early elections.

### **Census and public information database**

30. Historically, Iraqis have relied on an electoral register developed from the population census. The last census conducted in Iraq was in 1997 but its credibility has been fatally undermined due to the perceptions that it was actively manipulated by the previous regime. Further, significant movements of population have occurred in the past several years due to the previous regime and the effects of war. Currently, there is no electoral register derived from the census that could be updated for a direct election in the time period envisaged.

31. Because the 30 June 2004 deadline does not allow for a dedicated voter registration exercise, other options have been contemplated. The proposal of using the public distribution database to derive the electoral rolls, presented by a group of Iraqi scholars and experts, has commanded careful consideration. However, the ration card system is not widely acknowledged as being credible, especially in the south, where it was abused by the previous regime as a means of community and social victimization. Also, anecdotal accounts were provided that fraud against the system was a primary concern. While the public distribution system may be the basis of a derived electoral roll in the future, the mission assessed that the required process of amalgamating, cleaning and verifying the electoral roll could not be technically or credibly undertaken before the 30 June 2004 deadline.

### **No electoral register**

32. One possible option that has not been widely considered is that of *not* using a pre-established electoral register. An electoral roll is a very useful tool for electoral planning but it is not always a required one. In fact, faced with the option of using an imperfect electoral roll, it is often recommended to go to the polls without an electoral roll. If there were to be elections in the time period before the 30 June 2004 transfer of power, this would be the preferred option. Eligible Iraqis would be able to vote anywhere in the country, with one of several documents that would serve as proof of identity and eligibility, without the need for a previously established electoral register. This option offers the possibility of registering voters as they come to vote — in this manner, you could establish a roll to use post facto controls and actually use them as a basis for future elections. But the polling day would undergo substantial complications.

33. The choice of having an election without an electoral roll would, however, condition some of the electoral modalities: for it to work, the representatives of the transitional national assembly would need to be elected from a single national constituency, along political party lists. From the discussions with the political actors, this is a modality that does not seem to be a feasible one. Thus, the political viability of this model is very low. Moreover, the no-roll model would probably create a number of problems concerning credibility, as Iraqis are accustomed to the electoral register and would consider elections without a register as “lower quality”

elections. It therefore appears that this is neither a realistic nor a practical option for the election of a representative body in Iraq at this stage.

### **C. Assessment: other considerations**

34. The main technical aspect of the proposal deals with the establishment of the electoral roll. Nevertheless, this is only one (albeit very important) step in the preparation of the elections. A number of additional operations are necessary in order to prepare credible elections. The proposal presented by the Iraqi academics and public officers does touch (although marginally) on other operational aspects of the electoral preparations: they mention the ballot design and printing, the allocation of voters and an estimate of the cost per voter.

35. None of these issues are satisfactorily handled, however. In order to design a ballot, many questions regarding the modalities of the election will need to have been answered. In fact, it is necessary for the internal procedures, reflecting on the modalities of nomination of parties/candidates, to be able to complete ballot design. The allocation of voters is also a problematic issue, one of the most important ones for any electoral administration; but again the matter is solved by “common sense” instead of a rigorous allocation method, which is likely to create immense problems on polling day. An approximate cost of the election per voter was offered as US\$ 5 per voter, without specifying the basis of the estimation. However, this estimated cost (of US\$ 5/voter) appears to be heavily underestimated for a first transitional election that includes infrastructure development, recruitment, training and a brand new electoral management body.

36. More fundamentally, the proposal does not recognize the sequential nature of the operational preparations for a credible election: it explicitly states that most operations can be conducted in a parallel manner in order to save time. For these reasons, while presenting interesting proposals, the document cannot be considered conclusive as to the feasibility of holding credible elections in Iraq before 30 June 2004. In fact, based on the experience of the United Nations and the analysis of the situation, it is clear that elections before the 30 June 2004 transfer of power are not a viable option. In order to be able to directly elect the members of a representative body in a credible process the date of the election would need to be delayed beyond the specified deadlines and the process would be required to fulfil a number of conditions, regarding both critical path benchmarks (legal and institutional framework) and the nature and modalities of the elections.

## **IV. Credible elections: preconditions and time frame**

### **A. Introduction**

37. The 30 June 2004 deadline under the Agreement is universally supported by national and international actors as the date for Iraqi sovereignty to be transferred. However, neither the caucus approach (including several proposed “revisions”) nor direct elections are considered feasible mechanisms to elect a transitional national assembly within the time frame. In this context, a preferred plan involves the establishment of a transitional government that would serve as a bridging mechanism until elections could be held.

38. Under this plan, a structure would be established with a limited mandate as a “caretaker” government on 30 June 2004. The limitation on the period of office for this provisional government would require the establishment of a clear time frame for conducting elections as early as possible. The ensuing electoral process would serve to establish a popularly elected Iraqi assembly, mandated to draft a constitution and to legislate during the interim period.

39. An early definition of the electoral modalities and timetable would be essential for this plan to work. As such, it is of the utmost importance to establish the minimum time frame required to organize credible elections as early as possible. In consolidated democracies, the time frame of an electoral operation can be readily estimated, given existing legal and institutional frameworks. Similarly, as the electoral institution is already in place and experienced, it is only necessary to make minor revisions before implementing the electoral plan in accordance with fairly precise time frames. In transitional situations, an electoral process usually needs to start from nothing, defining and preparing the elements required to enable the preparation and conduct of the process.

40. The approximate time frame for organizing transitional elections can only be reliably estimated after three major conditions have been met: (a) a legal framework is in place; (b) an institutional framework is in place; and (c) the required resources are made available. Moreover, the time required for the establishment of these preconditions is not easy to estimate, in particular because they involve generating the political consensus necessary for the election to be credible. These preconditions, as well as the elements of a possible time frame to conduct elections as early as possible, are detailed below.

## **B. Political agreements and the electoral framework**

41. An electoral framework defines the rules of the electoral race, reflecting the fundamental political agreements reached among all concerned players. In consolidated democracies, these agreements are generally enshrined in the legal framework (constitution, laws and regulations) regulating the electoral process. In a transitional context, characterized by the absence of a valid electoral framework, those agreements have to be made anew. The modalities agreed then need to be formalized, binding all actors to what will constitute the electoral framework for the election. Without these basic political agreements, the electoral time frame cannot be estimated or preparations for an election started in earnest.

42. Notable in transitional circumstances is a tendency for national actors to refer to past laws which may or may not be applicable. The important issue is to determine whether there is general agreement on the electoral modalities based on negotiation and consensus, and if not how these agreements may be otherwise brokered. It is essential that these early agreements are sufficiently broad and principled so as not to create an impasse for the electoral institution. In this sense, the electoral framework establishes the policy questions of the process but should empower the electoral institution to determine how to implement these decisions. In this manner, the electoral framework may be formalized through several means but is elaborated through the regulations and procedures of the electoral institution.

43. The minimum electoral framework would include basic agreements on the basis and form of representation (electoral system), voter eligibility criteria,



electoral law and political party law. These fundamental agreements must address four main questions defining the electoral modalities: What is to be elected? How is it going to be elected? Who will be able to take part in the process? And who will organize and manage the process?

#### **What is to be elected?**

44. If an elected body is to be representative, the basis of that representation must be defined. The mission's discussions revealed that there is a general consensus that representation will be based on geographically defined areas. However, there was no discernible consensus on the level at which that territorial representation would occur, otherwise known as the "unit of representation" that defines the smallest electoral district. In this regard, Iraqi actors offered a range of responses that varied from expectations of national through sub-governorate levels of representation.

45. In terms of facilitating early elections, the bigger the unit of representation the easier and therefore the faster it would be to organize an election. Conversely, the smaller the unit of representation the more complicated the logistics of the election and the more time required to prepare and conduct the process. In the Iraqi context, the fact that the division of the governorates does not fully correspond to the administrative structures (the Kurdish region being the obvious example) will complicate matters and argues for a smaller unit of representation. As a final consideration, should the choice for using electoral districts **not** correspond to existing administrative divisions, an electoral redistricting exercise would be required, which is likely to take considerable time and raise other political complications in connection with credible population estimates.

46. Directly linked to the unit of representation issue is the size of the assembly and the corresponding number of representatives to be elected. Through the various interviews, the fact-finding mission ascertained that there is widespread consensus that there should be a ratio of one representative for every 100,000 Iraqis. With an estimated population of 27 million residing in Iraq, this would mean that the future assembly would be composed of approximately 270 members. The associated question is: How would the number of representatives correlate to the unit of representation? If the choice is of a larger electoral unit (such as the governorates) there is no question that each electoral district would have several representatives. Alternatively, if single member districts are chosen (as several actors advised the mission is the historical case in Iraq) it would be necessary to define new electoral districts, which would necessitate redistricting as noted above.

47. In summary, one of the most sensitive issues requiring agreement among the various parties is the unit of representation. In terms of electoral practicality, using the larger established administrative units would be the most expedient option. Nevertheless, the main issue is whether this option is politically acceptable and the degree to which it would meet the expectations of the different Iraqi parties.

#### **How will votes be counted for seats?**

48. A principal concern for any election is the form of representation, translating the votes cast into seats for representatives. Will a majority system or proportional representation be used? If proportional representation is chosen, what will be the formula used for the distribution of seats? Will there be a system of compensatory

seats (favouring representation of minorities)? Will there be any quotas for guaranteeing the representation of minorities?

49. The questions concerning the form of representation are intimately related to the basis of representation discussed above. Historically, Iraq has used the uncommon formula of the “block” vote, that is, a multi-member majority system. Discussions with the various groups revealed a wide divergence between Iraqis on the recommended formula of representation. On the one hand, several Iraqis recommended the historical practice of using a majority system (although it is not clear whether they were referring to a block system or a first-past-the-post system); on the other hand, several insisted that a proportional representation system would be preferable for the sake of reconciliation and inclusiveness.

50. If a proportional representation system were to be favoured, the basic unit of territorial representation would need to be bigger rather than smaller. However, if such a system were to be chosen, there would need to be further consensus to define the formula to be used, as well as agreement in such matters such as thresholds, quotas for minority groups and other related issues. Moreover, a proportional representation system will naturally promote the role of political parties, while a majoritarian system would give preference to individual candidates (the historical modality in Iraq). As such, these considerations lead to the issue of who can take part in the electoral process.

#### **Who can take part in the process?**

51. In any transitional election, a fundamental negotiation is to define the eligibility criteria of the participants, underpinned by universal and direct suffrage. For voters, it is important to agree on the basic criteria for the entitlement to vote. International standards generally recognize citizenship, age and location as appropriate criteria to assist in determining the enfranchisement. Despite the seeming simplicity of these criteria, discussions revealed that the enfranchisement definition was contentious among most of the mission’s interlocutors, with the exception of age, which was generally agreed as 18 years.

52. The nationality laws in Iraq have historically been relatively restrictive, especially with regard to the case of Iraqis who have adopted a second nationality. The current status of the nationality law is not quite clear, with the Iraqi Governing Council (many of whose members would not be considered Iraqi under existing laws) having approved a new citizenship statute; nevertheless, the Coalition Provisional Authority cannot sign the measure into law as it is bound by the Geneva accords in these matters. In any case, if an electoral agreement is forged it will not be necessary to legally resolve the issue of citizenship but political consensus will be required so that the entitlement to vote can be clarified.

53. The location/residency criterion was also a sensitive issue in the mission’s technical discussions. Primarily, the situation of Iraqis outside the territory, both exiles and refugees, met with a range of reactions. Most of the mission’s interlocutors insisted that Iraqis abroad should be entitled to vote, yet there was little consideration as to the practical implications of such an option. Where and how should they vote? And, more importantly, for which constituency should they vote? This also introduced the issue of who is entitled to vote in which electoral district? Should the whole of Iraq be considered a single electoral constituency, there would be no problems in this regard; yet this is not the majority position, which, as

explained earlier, expects some kind of territorial representation at a lower level. With regard to Iraqis abroad, there would need to be a decision as to which constituency they would be allowed to vote for: their place of origin (which would create immense practical problems) or should a new specific constituency be created to accommodate the representation of exiled Iraqis?

54. During the mission's discussions, it was clear that there was no consensus as to who is considered eligible to vote in a particular electoral district. A major theme was that eligibility would depend on the place of birth of the voter, rather than on the residence of the voter. This scheme raises a number of serious concerns, many of them practical, but in some cases of sensitive political nature. Some Sunni representatives were demanding that the population census of 1957 should be used as the basis for eligibility since, after that date many people from the provinces moved to Baghdad and should therefore not be allowed to vote for the capital's representatives. The more sensitive issue seems to be around the eligibility to vote in Kirkuk and other areas, where forced Arabization took place under the former regime. Some of the Kurdish representatives expect that before elections can take place, exiles from Kirkuk should be allowed to return so they can vote in their area and "new" Arab residents should not be allowed to vote in Kirkuk as they were settled there under the regime. On the other hand, it should be noted that Arab and Turkmen inhabitants of Kirkuk complain of persecution by Kurds.

55. In counterpoint to enfranchisement are the criteria that may permit legal or administrative disenfranchisement. Under international standards, these are normally persons deemed to have been found mentally incompetent, found guilty of certain types of serious criminal offence or, in some countries, a serving member of the national security forces. In general, discussions revealed that mental incompetence was readily agreed upon; however, views differed with regard to criminal histories and the status of security forces personnel.

56. Equally important as defining the rules for voter eligibility is to determine who will be eligible to run for office. Before even considering the requirements for nomination of candidates, it is important to look at the issue of participation of political parties and their role in the nomination process. Some of the Iraqis interviewed during the mission believed that historically the Iraqi electoral system favoured independent candidates, without political party nomination. These Iraqis posited that future elections should also reflect this approach, implying the adoption of a majoritarian system and a diminished role for political parties. The proponents of proportional representation were at odds with this position and asserted that political parties should be the backbone of the process. In any case, the status of political parties needs to be resolved, and the absence of a political party regulation needs to be addressed. Moreover, these decisions will influence whether individuals, political parties and/or non-political party organizations may nominate candidates. Similarly, this will influence the formation of coalitions and independent candidates leading to defining steps in the evolution of Iraq's political spectrum.

#### **Who manages the electoral process?**

57. A major element in the credibility of an election is the quality of the electoral authority, its perceived impartiality and its efficiency in managing the process. The decision as to who will manage and supervise the process is a crucial influence on the successful preparation and conduct of the elections. The definition of the

electoral authority includes not only the electoral administration (responsible for organizing and conducting the process) but also the electoral judiciary (in charge of settling electoral disputes).

58. Formerly, the Iraqi elections were organized by the Ministry of Interior and supervised by the judiciary. Again, many Iraqis point to this model as a historical reference, but it is necessary for all actors to agree on this arrangement, and to be satisfied that it will be an effective means to manage the process credibly, impartially and efficiently. In many transitional elections, the issue of trust is of primary importance, and therefore a model of a completely independent electoral authority is preferred. While defining which of the different models for an electoral management body is the appropriate one for Iraq, it is important that the electoral authority should enjoy the trust of the actors and be a credible one.

### **C. Institutional build-up**

59. In order to organize any election in Iraq in the near future, a credible, independent electoral authority would need to be set up as soon as possible. While it may not be necessary to have a full-fledged electoral administration up and running before the beginning of the electoral process, it is of the utmost importance that the basis of the electoral authority be in place and functioning in order to conduct basic pre-planning, the elaboration of the electoral framework into operational procedures and regulations, and to spearhead the implementation of the operational plan.

60. Not only is it necessary to set up the electoral authority but, it is equally important to establish a functional electoral administration. This element is often disregarded in the prerequisites for a transitional election, although it is a fundamental one. To guarantee the success of an electoral process, the electoral authority needs to be neutral and impartial; just as important, however, it also needs to be effective. Elections constitute a complicated logistical and administrative challenge, possibly the biggest logistical challenge a country can undertake in peacetime. Setting up an electoral administration capable of conducting the process implies massive recruitment and training of electoral personnel at both central and decentralized levels. This is a task that needs to be advanced before engaging in the implementation of an operational plan. It should be stated that having competent people in an electoral administration is not enough; they must also be trained in new procedures and modalities of elections. Further, the time to insert them in the administrative structure needs to be adequately evaluated and taken into account.

61. Before the electoral process unfolds, it is also necessary to act in setting up the structure that will assume the tasks of responding to electoral complaints and settling electoral disputes. The resolution of electoral complaints may be vested in either the judiciary, the electoral institution or in a quasi-judicial tribunal. Several issues are considered essential in the design of this process, especially for national elections, including (a) that there is equitable nationwide access to the electoral resolution mechanism; (b) that the complaints are resolved in a nationally consistent manner; and (c) that the body responsible is perceived as trustworthy and insulated from undue political influence. Previous experience in Iraq highlighted that the judiciary was responsible for overseeing the electoral process. A decision whether this practice should be continued will consider the state of the judiciary during the interim period, whether a new institutional design emerges for the organization and

management of elections, and ultimately the political acceptability by the Iraqi political actors.

62. To allow for the rapid implementation of an electoral operational plan there is a fundamental need for the identified resources to be readily available. While several aspects of an election may be conducted in parallel, there are also choke points in the process which must be cleared before the process can proceed. To allow for smooth transitions between the stages of an election early procurement, recruitment, training and infrastructure development needs to be undertaken so the operation can be carried out with a minimum of disturbance. This is extremely important in transitional circumstances where logistical difficulties can be misinterpreted as political manoeuvres, which undermines the credibility of the electoral institution. Moreover, the cost of the first transitional election normally requires a sizeable investment, which is especially the case if infrastructure costs, security costs and a new electoral register are required. However, the cost of subsequent elections is significantly reduced after the first process.

## **D. Electoral time frame**

### **Operational requirements**

63. An electoral timetable will of course depend on the modalities chosen for the election: an election on a single (national) circumscription under a proportional representation system using party lists will be easier (and quicker) to organize than an election using a first-past-the-post system with a great number of single-member districts. The issue of an electoral register is a sensitive one, and the option chosen for the establishment of a credible electoral roll will affect the length of the process.

64. In terms of establishing a credible electoral roll, a number of different options can be tried — historically in Iraq the electoral rolls have been derived from a population census. This option is not feasible at this stage as a full census is estimated to take up to five years, including preparation time. Moreover, the polling allocation under this modality presents serious problems. Two other options are available: either a dedicated voter registration exercise (the most credible) or deriving the electoral roll from existing databases (such as the public distribution — “ration cards” — database). Nevertheless, it is important to note that in both cases, but particularly the latter one, a social validation period is indispensable — that is to say, a period during which the initial data is exhibited to the public and corrected as required.

65. But as mentioned above, the establishment of an electoral register is only one of the necessary operations to prepare a credible election. Other required stages for the preparation of the process include, among others, the definition of all electoral procedures and the preparation of the necessary procedural manuals, the registration of political parties and/or candidates, a regulation defining political financing, a regulation concerning electoral campaigning, the accreditation of electoral observers, the launching of a public information and voter education initiatives, the procurement and assembling of electoral material (for the various electoral operations), the mapping and choice of polling locations and assignments, and the logistic preparation for polling, counting and tallying of the results. Furthermore, should it be agreed to allow for out-of-country registration and voting for Iraqis

abroad, a full operational plan will need to be designed and carried out for this modality.

66. To a great extent, the technical requirements determine the time frame required for elections to be prepared and conducted. In terms of time frame and from a strictly administrative and logistical perspective, it is possible to estimate a generic timetable for the elections. Nevertheless, the need for preparation time is conditioned not only by the administrative and logistical requirements of preparing the poll but also by the political imperatives to make the process a meaningful one (such as allowing for the institutional development of political movements and channelling of political will).

#### **Security and other social factors**

67. As elections are not exclusively technical processes, several sociopolitical conditions are required in order to have credible elections with acceptable results. The sociopolitical context will therefore also have a substantial impact on the electoral time frame. In the current Iraqi context, a fundamental element hampering the establishment of an atmosphere conducive to credible elections is the unstable security situation. There is a need to have a secure environment to allow for the necessary preparations to take place and ensure the integrity of voters, candidates, parties, electoral staff and electoral materials.

68. Lack of security could lead to major disturbances undermining the administration of the election, altering the established timetable and compromising the overall credibility of the process. Just as important, however, is to have an environment that allows for the respect of political rights of candidates, parties and voters, ensuring free campaigning and a free choice. While transitional contexts are not always the most conducive for credible elections, minimum conditions should be ensured to allow for the process to be a successful one whose results are accepted by all parties. Security is therefore a major conditioning factor in ensuring the legitimacy of the process. The current circumstances, resulting in widespread fear and anxiety among the population, are at present a major obstacle to the success of an election. The existence of militias (especially if connected with political movements) will also be a source of coercion and intimidation that would undermine the political credibility of the exercise.

#### **Minimum time frame**

69. In countries with conditions and characteristics similar to those of Iraq, it is possible to say that a minimum time for preparing a **credible** transitional election, including a dedicated voter registration exercise, would take no less than eight months **from the time the three conditions presented above are met**. That is to say, by that time the political agreements need to have been formalized into an electoral framework. Also, the basis of a functional electoral management body will need to have been established and the necessary resources made available. Of course, it is assumed that during that period the security conditions would have substantially improved in a manner that would guarantee the integrity of the electoral operations and the political credibility of the process.

## **E. Conclusion**

70. The timing of credible elections in Iraq will be principally influenced by political, technical and security conditions. In the current circumstances and anticipating continuing positive developments, elections in Iraq may be scheduled eight months from the date that the necessary basic agreements, a functioning electoral institution and resources are available. For example, a target date for elections in January 2005 would necessitate these conditions having been met by the end of May 2004. In the assessment of the mission, this would permit credible and unifying elections in Iraq.

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