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**INTERPRETING ARTICLE 56 OF THE  
IRAQI CONSTITUTION: THE TIMING OF  
THE NEXT PARLIAMENTARY ELECTIONS**

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## Introduction

Article 56 of the Iraqi Constitution provides as follows:

First: The electoral term of the Council of Representatives shall be four calendar years, starting with its first session and ending with the conclusion of the fourth year.

Second: The new Council of Representatives shall be elected forty-five days before the conclusion of the preceding electoral term.

Given that the current Parliament was elected in December 2005 and had their first session in March 2006, we have been asked to provide some basis or precedent for interpreting this Article in terms of the “fourth year” ending on 31 December 2009, or alternatively, on 28 February 2010.

The question hinges on the definition of “calendar year” as it applies in this context, and whether the “fourth year” refers to the calendar year or to a 365-day cycle based on the start of the first session in March.

## Rules of Procedure Applicable to the Council of Representatives

Article 22 of the Iraqi Council of Representatives Bylaws states in its first clause:

COR has one annual legislative period with two legislative sessions over eight months. The first session starts on 1st of March, and ends on the 30th of June. The second starts from 1st of September, and ends on the 31st of December.

(Rules of Procedure Manual for the Iraqi Council of Representatives, *National Democratic Institute for International Affairs* (NDI), 2007).

The Rules of Procedure Manual (“ROP”) provides the following definitions for key terms:

- **Legislative period:** The two legislative terms in one calendar year.
- **Legislative term:** One of the two four month terms that makes up the legislative period.
- **Legislative session:** A one-day CoR sitting that opens with a quorum.

An electoral term, thus, appears to include eight legislative terms, as well as the non-legislative (recess) periods between them, i.e. January-February and July-August. The

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following charts lay out the two options for understanding Article 56 in the context of Article 22 of the ROP.

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	One annual legislative period (= 2 legislative terms/ sessions)
	Interval between electoral terms (Option 1 only)

### **OPTION 1: Operative text is the first clause Art. 56 (1):**

First: *The electoral term of the Council of Representatives shall be four calendar years, starting with its first session and ending with the conclusion of the fourth year.*

Second: The new Council of Representatives shall be elected forty-five days before the conclusion of the preceding electoral term.

	Calendar year	Non-legislative (recess) period	Legislative term	Non-legislative (recess) period	Legislative term
Electoral Term #1	1		<b>Mar. 1- Jun 30 2006</b>	July 1 – Aug. 31 2006	<b>Sept. 1– Dec 31 2006</b>
	2	Jan. 1 – Feb. 28 2007	<b>Mar. 1- Jun 30 2007</b>	July 1 – Aug. 31 2007	<b>Sept. 1– Dec 31 2007</b>
	3	Jan. 1 – Feb. 28 2008	<b>Mar. 1- Jun 30 2008</b>	July 1 – Aug. 31 2008	<b>Sept. 1– Dec 31 2008</b>
	4	Jan. 1 – Feb. 28 2009	<b>Mar. 1- Jun 30 2009</b>	July 1 – Aug. 31 2009	<b>Sept. 1– Dec 31 2009</b>
<b>Election</b>					<b>Nov. 15 2009</b>
Electoral Term #2	1		<b>Mar. 1- Jun 30 2010</b>	July 1 – Aug. 31 2010	<b>Sept. 1– Dec 31 2010</b>

### **OPTION 2: Operative text is the second clause Art. 56 (1):**

First: *The electoral term of the Council of Representatives shall be four calendar years, starting with its first session and ending with the conclusion of the fourth year.*

Second: The new Council of Representatives shall be elected forty-five days before the conclusion of the preceding electoral term.

	Calendar year	Legislative term	Non-legislative (recess) period	Legislative term	Non-legislative (recess) period
Electoral Term	1	<b>Mar. 1- Jun 30 2006</b>	July 1– Aug. 31 2006	<b>Sept. 1– Dec 31 2006</b>	
	2	<b>Mar. 1- Jun 30 2007</b>	July 1– Aug. 31 2007	<b>Sept. 1– Dec 31 2007</b>	Jan. 1– Feb. 28 2007
	3	<b>Mar. 1- Jun 30 2008</b>	July 1– Aug. 31 2008	<b>Sept. 1– Dec 31 2008</b>	Jan. 1– Feb. 28 2008
	4	<b>Mar. 1- Jun 30 2009</b>	July 1– Aug. 31 2009	<b>Sept. 1– Dec 31 2009</b>	Jan. 1– Feb. 28 2009
<b>Election</b>					<b>Jan. 15 2010</b>

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Regardless of when elections should be held, Article 22 of the ROP makes clear that the first session of the new Parliament starts on 1 March 2010. We assume that this is also the date on which new parliamentarians will be sworn in, as is the common practice. Assuming this, inevitably there will be overlap between the current Parliament and the new Parliament, regardless of when the elections are held. (It is not unusual for elections to take place while the legislature is still in session. This is the case in the United States, where elections take place in November and the new government is sworn in in January. The United Kingdom also holds parliamentary elections while Parliament is still in session.)

## **OPTION 1: Electoral term corresponds to calendar year, ending 31 December 2009—COR election will be 15 November 2009.**

### **Textual interpretations**

According to Black's Law Dictionary, the term "calendar year" is defined as the 12 month period beginning 1 January and ending 31 December. According to this definition, the end of the electoral term would be on 31 December of the fourth year.

The United States Supreme Court takes this position in *U.S. v Dickson*, 40 U.S. 141, 154 (1841) ("the calendar year commenc(es) on the first of January, and end(s) on the 31st of December"). Similarly, the United Kingdom House of Lords has defined "calendar year" as "the period of 12 months beginning on 1st January in any year." (The Large Combustion Plants (National Emission Reduction Plan) Regulations 2007 (2007 No. 2325).)

### **Pragmatic issues**

This option leaves a two month void between the end of the calendar year, 31 December, and the beginning of the new electoral year, 1 March. Put differently, Option 1 creates an electoral term that is two months short of the constitutionally mandated "four calendar years".

## **OPTION 2: Electoral term corresponds with legislative term, beginning 1 March 2006 and ending 28 February 2010—COR election will be 15 January 2010.**

### **Textual interpretations**

The absence of the word "calendar" with reference to the conclusion of the electoral term in Article 56 suggests that it does not conclude on 31 December. Rather, the

electoral term may be understood as constituting four periods of 365 days after the first session of Parliament commences. Thus, the conclusion of the fourth year would be 28 February. Had the drafters intended a 31 December end date, they might have written "... and ending with the fourth *calendar* year," or "and ending with the conclusion of the second legislative session of the fourth year." In short, if the first clause modifies the second operative clause, it suggests that the electoral term is meant to include four 365-day periods rather than to have beginning and end dates of 1 January and 31 December, respectively.

Article 56 (2) uses the phrase "electoral term" in specifying how to calculate the date on which elections are to be held. This is notably different from the use of the terms "calendar year" and "session" in Article 56 (1), suggesting that it was intended to carry a different meaning. Therefore, the end of the electoral term need not necessarily coincide with the end of the calendar year or the end of the second annual legislative term (which are both 31 December).

### **Pragmatic Issues**

On a reading of Article 56 that would require the election to be held on 15 November 2009, the current legislature would be in session at the time of the election. However, if the elections were held on 15 January 2010, the current legislature would be in recess when new parliamentarians are elected, although the outgoing ones would officially remain in office until the newly elected parliamentarians are sworn in. There would thus be no overlap with the active legislative period. Furthermore, under this interpretation, the two month void created under the Option 1 interpretation would not arise.

There is also considerable support in comparative jurisdictions for elections not being tied to the end of the calendar year. There is no consistent pattern of elections being held just before 31 December of the relevant year.

- Article 68 of Jordan's Constitution provides that the term of the Chamber of Deputies shall be four calendar years starting from the date of the announcement of the results of the general elections in the official Gazette. The last two elections were held on 17 June 2003 and 20 November 2007.
- Lebanon's Election Act provides that the term of the Assembly of Representatives shall be four years. The last elections in Lebanon took place between 29 May and 20 June 2005.
- Article 51 of Syria's Constitution provides that the term of the People's Assembly is four calendar years, starting from the first session. The last election in Syria was held on 22 April 2007. The prior election was held on 5 March 2003.

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Section 49(1) of South Africa's Constitution provides that the National Assembly is elected for a term of five years. The first democratic election was held on 27 April 1994. The subsequent elections in 1999, 2004 and 2009 have all been held towards the end of April.

Discussions in the House of Commons in the United Kingdom point to an expectation that the elections in Iraq will take place in January 2010.<sup>1</sup> Additionally, there is evidence that members of the international press expect that elections will be held in January 2010.<sup>2</sup>

Finally, an argument in favor of interpreting Article 56 in this manner is simply the pragmatic issue of having two additional months for the country to prepare for elections. The importance of this issue is underscored by international treaties and documents which detail the requirements for efficient, free, and democratic elections.<sup>3</sup> Election officials must ensure at least four critical components of the election process – first, voters must have equal access to public services; second, voters must have the opportunity to be properly informed; third, voting rights must be clearly established by procedural law; fourth, logistical arrangements for the elections must be made. Ensuring that these requirements are met requires significant time and effort. Important considerations include establishing procedures for the registration of voters that meet international human rights standards; ensuring that procedural and candidate information is properly disseminated to the public; ensuring that all voters have physical and legal access to vote, including, where applicable, accommodations for the physically handicapped, the illiterate, and those speaking minority languages; and ensuring the

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<sup>1</sup> From *Hansard* (Daily Debates in the House of Commons, 8 October, 2007, column 254W) (available at: <http://www.parliament.the-stationery-office.co.uk/pa/cm200607/cmhansrd/cm071008/text/71008w0053.htm>):

**Harry Cohen:** To ask the Secretary of State for Foreign and Commonwealth Affairs when he expects there to be new elections in Iraq. [156083]

**Dr. Howells:** Article 56 of the Iraqi constitution allows for elections for the Council of Representatives to be held 45 days preceding the conclusion of the Council of Representatives' four-calendar-year electoral term. The current electoral term began on 16 March 2006, the date of the first session of the present Council of Representatives. **Elections should therefore be held on 30 January 2010.**

<sup>2</sup> Kagan, Frederick and Kimberly Kagan, "The Promise, and Peril, Ahead for Iraq." American Enterprise Institute, April 10, 2009 (available at [http://www.aei.org/publications/filter.,pubID.29689/pub\\_detail.asp](http://www.aei.org/publications/filter.,pubID.29689/pub_detail.asp)); Joose Hilternamnn, "The U.S. Exit from Iraq: How to Steer Clear of Danger." *Christian Science Monitor*, March 27, 2009 (available at: <http://www.csmonitor.com/2009/0328/p09s02-coop.html>).

<sup>3</sup> For international sources directly related to voting and voting rights, see the Universal Declaration of Human Rights, Art. 21; the International Covenant on Civil and Political Rights, Art. 25; the American Convention on Human Rights, Art. 23; the African Charter on Human and Peoples' Rights, Art. 13; the European Convention on Human Rights and Fundamental Freedoms, Art. 3, Protocol 1; and the Copenhagen Document, paras. 7.1 & 7.2.

security and secrecy of the voting process.<sup>4</sup> The need for an appropriate period of time to address these issues bolsters the pragmatic arguments for holding elections in January rather than in November.

## Conclusion and Recommendations

It would also be useful for regulations to be promulgated, or the Rules of Procedure to be amended to provide clarity on this issue for the incoming Parliamentarians. While it is probable that the issue will become clearer over time as a more definite practice develops, guidance for the near future would be helpful to facilitate the development of a consistent practice and to prevent the question from being raised every four years.

We recommend that Article 56 be interpreted so as to support holding parliamentary elections in January 2010 rather than in November 2009. On the balance, the strength of the textual interpretation for this option, the relative abundance of comparative findings supporting this option, and the persuasive nature of Parliament's many pragmatic considerations appear to favor this interpretation.

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<sup>4</sup> For more information, see, UN Committee on Human Rights, General Comment 25, "The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service" (U.N. Doc. CCPR/C/21/Rev.1/Add.7, July 1996); see also, United Nations Center for Human Rights, *Human Rights Elections – A Handbook on the Legal, Technical, and Human Rights Aspects of Elections*, Professional Training Series No. 2, UN Doc. HR/P/PT/2 (1994), para. 72 & 75.