



A new constitution for Iraq – how federal?

BY JIM BEAULIEU

The concept that a constitution might include power sharing and protected revenue decentralization with local decisions made by local politicians is not being actively promoted in Iraq — yet.

To fulfill its agreement with the Iraqi Governing Council, the occupying Coalition Provisional Authority promised to hand over power to Iraqis by June 30, 2004. To do so, caucuses must be convened by May 31 in Iraq's 18 provinces to elect members of a Transitional National Assembly that will prepare a new constitution to govern the nation. In January, large demonstrations held by Iraqis demanded elections instead of the caucuses. A change in policy by the US then prompted UN Secretary-General Kofi Annan to send a team of UN experts to Iraq to investigate whether elections would be possible by the end of May.

After the question of elections has been sorted out, federalism could find a home in the new Iraqi constitution. But Iraq has experienced dictatorship for over 30 years and will not make the transition to democracy and to federalism easily. While the people of Iraq seem to want and will have to accept a democratic system, it is not certain that the people of Iraq will have the exposure to ideas nor the leadership to consider which form of federalism will serve the country best and which form will best avoid the political excesses of the past.

Iraq is a country of some 25 million persons divided by language differences, religious sects, tribal loyalties, and an uneven distribution of wealth. The use of force and fear has held this diversity in check. Political, military and economic power has been concentrated in one person, Saddam Hussein, and in the Ba'ath party that served him. This concentration of power suited the needs of a dictator who wanted to control rather than serve the people of Iraq.

Diversity within the population was accepted, even exploited, but seldom rewarded. Diversity in political action was not accepted and was punished severely. Saddam Hussein prohibited the sharing of political power because this was a threat to his centralist control.

(Under Saddam), diversity within the population was accepted, even exploited, but seldom rewarded.

Tight control of wealth

Aside from military power, control of the country's wealth was a strong mechanism to maintain control. In the recent past approximately 90 per cent of all public expenditures in Iraq were funded from national oil revenues. These revenues were controlled in Baghdad and distributed to the provinces (governorates) through national ministries. This was a decentralized delivery system but all decisions were made in Baghdad. These decisions reflected the priorities and influences of Baghdad participants, except for the provincial delegations that were successful in influencing these decisions.

The concentration of power in Baghdad opened the door for corruption on a national scale with no accountability to provincial leaders and none to the citizens in any province.

In looking to the future of Iraq, federalism is being encouraged by many as one democratic method of sharing power and preventing the return of any dictatorial powers or, at least, any dictatorial abuses of power. Specifically, a federal constitution with appropriate checks and balances on all those who wield power is seen to be the answer to the future democratic needs of Iraq. Power shared and protected under a constitution in a federal state will serve the people well. And no doubt a strong presidential system will be seen to be a part of the solution, similar to what is arising from the ashes of war in Afghanistan.

The presidency: checks and balances?

The option of a centralist and presidential federal system has its merits. Iraq needs a strong central government to restore law and order, to manage national oil revenues, to deliver national services like health and transportation, and to maintain a unified state. Saddam Hussein pursued all of these national goals although the best interests of the people were not his highest priority. Self-interest rather than public interest guided the dictator in his quest of these national goals.

The new Iraqi constitution will presumably build in checks and balances on the use of presidential powers similar to those found in other presidential federal systems. And the new constitution is expected to provide some constitutional role for the existing 18 provinces. Since these provinces have little or no experience with direct taxation and no system to support it, oil revenue is likely to be distributed by Baghdad as the main source of revenue for the provinces. Baghdad — not the constitution — will direct the flow of oil revenues into the provinces.

However, this system would not serve the Iraqi people well because it would maintain one of the weaknesses of the

Jim Beaulieu is a former Deputy Minister of Urban Affairs in the Province of Manitoba who has worked internationally in many countries as a development specialist in governance and public administration. He recently returned from a three-month work assignment with provincial and local councils in Najaf, Iraq.

outgoing system of governance: the centralization of power through money in Baghdad. While a presidential federal system with checks and balances will improve upon the old system, it will not make real progress unless the power of money is shared with the provinces – and through them with the municipalities – through the constitution.

An effective, fiscally decentralized federal system in Iraq might include:

- a national elected government with national responsibilities such as health, defense, oil production, transportation, etc. with various checks and balances, especially civilian control of the armed forces;
- 18 democratically elected provincial governments to replace the 18 governorates used by the Saddam dictatorship under a centrally controlled and financed system; and
- a constitution that unconditionally allocates shares of national oil revenues to the provinces.

Money and authority to the provinces

Power sharing under a federal constitution will help distribute influence among a diverse population. Local power brokers already exist in religious groups and ethnic minorities. For decades most of these minorities and the populations they represented have been alienated from the power and finances of Baghdad, which were controlled by Saddam Hussein, the military and members of the Sunni minority.

An effective, decentralized federal system requires that powers and finances flow to provinces as a matter of right under the constitution rather than as a result of negotiations with the national government in Baghdad. Provinces would not only have the right to legislate in their area of responsibility but also to spend their constitutional share of national oil revenues on provincial priorities.

Local elections in the provinces will ensure a far greater degree of accountability for the expenditure of distributed shares of the national oil revenues. Local accountability increases the likelihood that local expenditure priorities will be the major consideration in all provincial programming. But local expenditures cannot depend on the whims of Baghdad.

Constitutional revenue sharing would create 18 power centres in Iraq that, in their limited provincial jurisdiction, would be beyond the power and influence of Baghdad and the national parliament. This would undoubtedly create 18 separate political power bases that reflect the diversity of peoples in Iraq. This could act as a counterweight to the dictatorial abuses of the past and it may lessen the current fears that those excluded from the power cabal in Baghdad might not be well served by government.

Empowering ethnic and religious communities

Kurds in the north could have provincial administrations that reflect Kurdish values and be governed by Kurdish leaders. The same could be provided to Sunnis in central Iraq and the Shiites in southern Iraq. The lines of delineation among the 18 provinces are not perfect but the presence of empowered provincial governments that reflect local ethnic and religious majorities holds the promise of lessening the tensions among these groups when they must collaborate at the national level on national problems.

Currently in Iraq, contractors being funded by Coalition Provisional Authority are attempting to assist provincial councils to acquire the governance skills for effective local administration. This assistance includes training, spending funds on essential infrastructure, job creation and establishing the electoral basis for democratic local government. Such assistance is provided under direction of the Coalition Provisional Authority and without any legal or constitutional authority other than the authority of the occupying forces.

The interim Provincial Governing Councils are appointed by the Coalition Provisional Authority and have no legislative, spending or taxing authority. They are essentially advisory in nature and must plead for resources and decisions by others.

There is no democratic accountability of the actions taken by either the Coalition Provisional Authority or the councils appointed by them. That accountability is promised in the future after the conduct of elections sometime in 2005.

The experiences being gained now by these governing (advisory) bodies are more frustrating than enlightening. The governing bodies are local and so are many of the daily problems. Complaints are received about daily interruptions in water and electricity supply, or the lack of jobs. Only Baghdad has the power to fix these problems.

But local citizens are becoming more comfortable with the notion of demanding improvements.

Caught in the middle are the appointed provincial “politicians” who are local, who want to perform and are expected to perform but who lack the tools of a province to act in a federal state. One way to make these “councils-in-waiting” more effective is to promise explicitly that decentralized power and constitutional revenue sharing will accompany provincial elections in 2005.

Lack of provincial capacity and continued central control?

One of the more frightening claims surfacing in Iraq is that provinces might not have the capability to carry out their full responsibilities under a decentralized federal system and that Baghdad must retain the centralist powers of the purse to accommodate an orderly transition. But this would be raising false hope insofar as central ministries and powerbrokers are likely to use this argument repeatedly to resist effective decentralization for years.

The only hope is that the 2005 elections and the new constitution recognize the power of decentralized finance in local governance. Provinces may make mistakes but these will be local, much smaller than the national mistakes, and more easily corrected by local leaders. Any weakness in provincial capabilities can be handled by transitional provisions in the constitution and continued support from Western nations in capacity building.

It is the sharing of money as well as electoral power within a decentralized federal constitution that can help create a democratic culture, which recognizes and draws upon the diversity within Iraqi communities. It is this distribution of power and money that will lessen any prospect of future abuses under a centralized national power in Baghdad.

This option needs to be presented to members of the Transitional National Assembly and, if accepted there, to the people of Iraq. ☠