

Constitutional Battle Lies Ahead

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The debate over the new constitution could turn into the real “mother of all battles”.

The National Assembly this week made history more than once. Members chose a Kurd as the first ever democratically elected president of the country. Another first was the selection of a former president as one of two vice presidents. By choosing the head of state, the assembly came a step closer to engaging in the next, and in all probability, toughest stage in the country’s political development - drafting a permanent democratic constitution, to replace the interim Transitional Administrative Law, TAL.

The new president, Jalal Talabani, head of the Patriotic Union of Kurdistan, PUK, a veteran politician and a former guerrilla leader, has at the age of 73 realised his greatest achievement. His two deputies are the former interim president Ghazi Al-Yawar and the outgoing finance minister Adel Abdul Mahdi.

The presidency has collectively moved swiftly to appoint a prime minister, the Shia-dominated Iraqi National Alliance, INA, candidate for the post, Ibrahim Al-Ja’afari. The Islamist, Al-Da’awa party leader needs a small parliamentary majority to be confirmed, and will then be allowed four weeks to present his cabinet to the assembly.

After forming and approving the government, parliament will then start the process of drafting the constitution. A referendum on the draft will have to be held by August and, assuming the document is approved by popular vote, general elections should take place in December.

The process of creating a government is likely to be fraught with difficulties, since there are stark disagreements over how it should be composed between the main blocks in the assembly on the one hand, and within the INA - which consists of some 15 parties and groups - on the other.

Al-Ja’afari will have a tough time reconciling conflicting demands over the distribution of ministerial posts. The Kurds want a strong secular Arab representation in order not to feel isolated in a Shia-dominated cabinet headed by an Islamist premier - especially since the Shia insist on getting either the defence ministry, or else both the oil and interior ministries.

This is why the Kurds insist that the Iraqi List leader, the outgoing prime minister Ayad Allawi, must be persuaded to join the government and be given either the interior or the defence ministry. The Kurds, already guaranteed one of the three deputy prime minister posts and the foreign ministry, want six more cabinet posts.

They will trade hard to ensure that these include the important ministry of planning, which oversees the international reconstruction fund. They probably want this post for the outgoing deputy prime minister Barham Saleh, a senior PUK aide to Talabani. Most likely his current position will be occupied by the former vice president Rozh Shawais of the Kurdistan Democratic Party, KDP, headed by Masu’d Barzani.

One way or another, the cabinet will be formed within the next month. Despite the difficulties, this will be a minor battle compared to the fierce fight that’s envisaged over the formulation of the constitution.

There will be two areas of major difference in the constitutional debate. Top of the list comes the issue of state and religion. Article 7 (A) of TAL states that the country’s official faith is Islam and that it should be considered a source of legislation. During the debate on the interim constitution last year, there was great

deal of heated discussion about whether Islam should be the or a source of legislation.

A consensus was finally reached, although each side considered the wording favoured the other. The debate is expected to be even more acrimonious now, since this time it is about a permanent constitution that cannot be easily changed - with the secularists, headed by the Kurds, insisting that while the legislation must not contradict Islam it should not be at variance with other religions in Iraq.

The secularists will also point out that keeping Article 7 (A) the way it is means it's at odds with the bill of rights enshrined in Articles 10-23 of TAL.

Article 12, for example, states that all Iraqis have equal rights - without regard to gender, sect, opinion, belief, nationality, religion, or origin - and are equal before the law.

The issue of federalism will be another source of conflict in the drafting of the constitution - this despite the fact that all sides accept a federal system.

Article 4 of TAL stipulates that the system of government in Iraq shall be republican, federal, democratic and pluralistic, with powers shared between the federal and regional governments, governorates, municipalities and local administrations - based upon geographic and historical realities.

However, no one doubts that there will be serious differences between Kurds and Shia and Sunni Arabs when it comes to defining the concept of federalism.

The Kurds will insist on their own concept of a federal Kurdistan based on an ethnic-geographical principle, which must include Kirkuk. They will face strong opposition from the Arabs who prefer a federal system based on non-ethnic regional administrations.

It is only a matter of a few weeks before the next most important stage of the fight for the new Iraq. The drafting of the constitution could end up being the real "mother of all battles".

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