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Legislative Strengthening Program

CONCEPT PAPER ON IMPROVING AND STRENGTHENING RELATIONSHIPS BETWEEN THE EXECUTIVE AND LEGISLATIVE BRANCHES: APPLICATION FOR IRAQ

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Concept Paper on Improving and Strengthening Relationships Between the Executive and Legislative Branches: Application For Iraq

I. Introduction

The Legislative Strengthening Program (LSP), funded by the United States Agency for International Development (USAID) and implemented by AECOM, is promoting a new era of political stability in Iraq. LSP provides a range of support to strengthen Iraq's parliament, the Council of Representatives (COR). LSP is guiding the COR along a more sustainable democratic path, promoting greater transparency and accountability.

LSP's team of international and local specialists are building the capacity of the members and staff of parliament to debate laws in a formal constructive environment, form and run parliamentary committees, analyze and properly consider proposed legislation, improve the functioning of the COR's Presidency Council (PC), improve the ability of parliament to oversee the executive branch, review and analyze the national budget, and bring the national government closer to constituents in the provinces.

This paper reviews the challenges of legislative-executive relationships in emerging democracies and fragile states, with specific implications for Iraq. A comparison of other countries having faced similar problems is also outlined. Recommendations and possible programs for Iraq are proposed for strengthening and improving relationships between the executive and legislative branches in Iraq.

II. Current Situation in Iraq

Relationships between Iraqi COR Committees and Ministries vary widely between excellent and poor. Some committees have extremely good relationships while others are strained or non-existent. Poor relationships can be due to political blocs and party differences, suspicion about competing agendas or indifference on the part of ministries.

The COR's Rules of Procedure provide a mechanism for dialogue between COR Committees and ministries when legislation, introduced by the executive, is pending in Parliament. Clarifications may be requested from a ministry by a committee. A minister can attend a meeting if clarification is needed on particular points in question.¹ The minister must attend the committee's meeting within seven days from the date of the invitation.² Ministers, ministry deputies and other government officials can attend a committee meeting to receive information if invited by a majority of the committee. Relationships outside of this rigid structure vary widely between COR Committees and ministries.

III. Inherent Weaknesses in Fragile States

Despite democratic elections in emerging democracies, new multiparty legislatures in fragile states may have difficulty establishing strong democratic institutions. International and domestic pressures on new governments are extremely high. Quantitative studies have shown that a strong legislature is inherently correlated with a strong democracy and open society.³ Despite this, dominance by the executive branch can be the quickest solution to have new laws made that produce visible and tangible results during conflict and recovery. In many democratic legislatures, the executive branch introduces ninety percent of legislation.⁴ This may be due to legislatures requiring long periods of analysis and discussion before laws are created and passed thus decreasing their ability to produce laws more quickly than the executive. Also, a head of state typically balance interests into a "national interest" and implements this into a single national public policy for focused lawmaking whereas legislators deliberate over periods of time and receive public input for legislation that has a broad policy scope.⁵

¹ Rules of Procedure for the Iraqi Council of Representatives, art. 71, §1; art. 77, §2 (Meetings are permissible but only if there is agreement of a majority of Committee Members and after informing the Speaker of the COR and the Prime Minister).

² Rules of Procedure for the Iraqi Council of Representatives, art. 71, §1.

³ Nikhil Dutta et al., Strengthening Legislatures in Conflict Management in Fragile States, January (2007), citing Steven Fish, Stronger Legislatures: Stronger Democracies, 17 J. Democracy, 1, 5 (2006).

⁴ Prosper Vokuma, A Presentation of the Strategic Development Plan of the Parliament of Burkina Faso 2004-2014, <http://www.agora-parl.org/node/3458>.

⁵ Joel Barkan, Excerpt from LEGISLATIVE POWER IN EMERGING AFRICAN NATIONS 7, (2009).

James Madison warned in the Federalist Papers of the danger of “assembling all power in the same hands, must lead to the same tyranny as is threatened by executive usurpations.”⁶ There are fundamental aspects in the legislative process that have “an impact on building sound democracy”⁷ and improve the electorate’s confidence in their elected officials. An imbalance in executive and legislative powers can decrease the effectiveness of a government if institutional mechanisms are not implemented or are at an insufficient level to function properly.⁸ If legislators’ staffs are unable to draft legislation and provide quality technical research and pertinent analysis and advice, a legislator and the parliament are weakened. In comparison, ministries have highly specialized individuals and services to perform the above services. A legislature may have difficulty receiving quality and accurate information from the executive branch and ministries in a timely manner. A legislature must have the needed resources and correct information to analyze and pass legislation. This can include legal resources, the ability to hold hearings and information from the executive branch and ministers. Quality law making requires solid and verified research and adequate time to study legislation. Allowing the legislature time to hold hearings and receive information from experts, civil society and the public can improve policy decisions. The ability to receive and examine documents from the ministries and other sources promotes good governance and relationships between the executive and legislative branches.

A weak legislative executive balance may be because opposition parties are weak, ineffective and/or cannot provide a sufficient level of scrutiny and response to executive activities.⁹ Multiparty legislatures may “lack the organization, financial resources, equipment, experienced parliament members and staff as a mature and autonomous point of deliberation in the policy process.”¹⁰ Opposition parties may not understand their role in oversight and government inquiry, and perhaps most importantly not have other policy options to offer.¹¹

International Examples

Cambodia

A study of the Cambodian Parliament in 2009 found it to be weakest in its oversight function as a result of the executive branch dominance and absence of an opposition to make any positive contribution. The executive branch had been slow to respond to parliamentary questions, and ministers had been reluctant to come to the parliament to answer questions. The Cambodian Parliament had never seriously challenged the government, and members of parliament lacked the technical capacity and knowledge to effectively engage and challenge the government in program design and implementation.¹² The Parliament had not taken steps to reject or significantly amend the budget, and it had not been effectively engaged in the budget process nor had the skills to do so.

Macau

Susanna Chou, before stepping down as President of Macau’s Legislative Assembly, issued a report on how legislative executive relations can be improved. Legislators should be consulted and communicated with sufficiently on legislative proposals. Budget and finance committees are extremely important and there must be constant dialogue with the executive. This dialogue and exchange is important to provide budget review, revision and implementation. This ultimately aids in the oversight strength of the legislative branch for budget

⁶ James Madison, Federalist No. 48, These Departments Should Not Be So Far Separated as to Have No Constitutional Control Over Each Other, from the New York Packet, Feb. 1, 1788.

⁷Magdy Martinez-Soliman, Executive Head of the United Nations Democracy Fund, Statement at the International Conference on Effective Legislative-Executive Relationships, Kabul, Afghanistan April 15-17, (2006).

⁸ Nikha Duttal supra note 3, 15.

⁹ Nikha Duttal supra note 3, 16.

¹⁰ Strengthening Legislative Capacity in Legislative-Executive Relations, Legislative Research Series Paper #6, National Democratic Institute for International Affairs, 4 (2000), citing Larry Diamond, DEVELOPING DEMOCRACY: TOWARD CONSOLIDATION, 98 (1999).

¹¹ Nikha Duttal supra note 3, 20 (discussing Bosnian opposition party difficulties).

¹² Anthony Tsekp and Alan Hudson, Parliamentary Strengthening and the Paris Principles: Cambodia Case Study 4, January 12 Overseas Development Institute and Parliamentary Centre Publication (2009).

expenditures, transparency and responsiveness to the public. Laws must be enacted, revised and adapted as legal, social, economic and political changes occur in a country and not by a static executive branch.¹³

Nigeria

Nigeria's National Assembly oversees law making, oversight, budgeting, investigations and confirmations, although these responsibilities have been controversial. Friction in the legislative and executive relationship have been driven by personal and political conflicts. The Senate changed its president twice before 2003 and the House had two speakers in the first term. In 2001, the House of Representatives attempted to impeach the president. The presidency blocked the release of funds to the House which in turn responded with the attempt for impeachment. Critics have advised that the Nigerian executive branch needs to accept that the Nigerian Constitution provides for the Nigerian legislature's responsibilities, and that elected officials are not to serve the executive in whatever manner they want – essentially not as a “rubber stamp”. In turn, elected officials in the legislature have been encouraged not to push the interest of the executive in whatever is wanted and simply an “agent of the Executive.”¹⁴ It has been suggested that the Nigerian executive branch must understand that the legislature oversees money and the executive is in charge of the approved budget.¹⁵ Critics of the Nigerian system stated that expenditures outside of the approved budget must be voted upon by legislature and that the legislature must have first oversight of the budget. Critics of the problems in the Nigerian system have stressed that the legislature's committee system is key and that committees must be acknowledged and strengthened for key reform of the system.

Uganda

A common problem in developing countries is that legislatures are usually much weaker than the executive. Uganda has been considered an “emerging legislature” in a model proposed by the World Bank. In this model, Uganda is seen as in the process of significant change where expanding this model's powers, as in Uganda, typically requires major legislative changes including amending rules and procedures, building stronger committees, expanding professional staff and developing improved information systems.¹⁶ The Ugandan Constitution allows its parliament to design its own committees for oversight and law-making functions. Legislative committees have the right to call ministers or public officials to give oral and/or written statements. Minority reports on decisions made by committees are part of the recognized discussion for dissent.¹⁷ Opposition parties have not always provided balanced and critical challenge for the work of the executive. Opposition parties can sometimes simply be anti-government. Opposition parties, no matter what country, should actively participate in legislative activities and balance the executive and legislature to address conflicts.

In 2011, Ugandan President Yoweri Museveni's hold on power has been challenged by parliamentary inquiries into corruption against his ministers and by motions submitted in parliament to investigate questionable government deals.¹⁸ This has been seen as a challenge to Museveni's personalized rule and Parliament's prior role as a rubber stamp for Museveni. In the past, MPs “instead of representing their constituents or standing up for their national interest, they mainly worked hard to impress the President in the hope of getting ministerial posts...” “Whatever the Executive decided became the decision of the NRM parliamentary caucus, and ... the

¹³ See generally Sonny Lo, *Improving Executive-Legislative Relations in Macau*, Macau Closer September 2009, http://www.macaucloser.com/older_issues/MacauCLOSER_Site_september_2009/opinion.html (overview of Susanna Chou, former resident of Macau's Legislative Assembly).

¹⁴ Jibril Aminu, *Improving Executive/Legislative Relationship*, NEWSWATCH 4, June 12, 2006.

¹⁵ Id.

¹⁶ John Johnson, *The Role of Parliament in Government*, World Bank Institute, 5, 2005. In this paper, four models of parliamentary power are presented. Rubber stamp legislatures that have little independence and power and simply endorse decisions made elsewhere in the political system; arena legislatures have policy initiatives from outside the legislature – typically from executive or political parties. A useful analogy is a thermometer that takes accurate temperatures but does not change the temperature and only reflect the political temperature. Transformative legislatures represent diverse societal interests and shape budgets and policies. Here it is a thermostat where they change the room temperature by changing policies and budgets proposed by the government and initiate policies of their own.

¹⁷ Nikha Duttal *supra* note 3, 17.

¹⁸ Arthur Chatora and Emmanuel Kisiangani, *Uganda: Ministers Resign Amid Allegations of Multi-Billion Corruption Deals*, African Conflict Prevention Programme Daily Briefings, 13 October 2011.

members of the floor of the House. In effect, Uganda has joined the notoriety of those countries where Parliament is a rubber-stamping façade.”¹⁹ As noted in Joel Barkin’s book on African democracies, different parliament Speakers also advanced and retarded the development of the legislature.²⁰

Iraq Application

Budget

The COR has received significant training in financial and budgetary issues. Members of Parliament continue to need intensive training on financial and legislative analysis to critically examine executive-proposed budget legislation, and not to rubber stamp legislation due to inexperience. COR staff and MPs are receiving training in strategic planning but this must be applied on a wider scale with more time devoted and more in-depth analysis. LSP is currently developing a guide on budget and legislative analysis for MPs. Members of parliament need targeted training sessions and mentoring on the submission of written oversight questions and inquiries to ministries. This training should include the submission of questions to the Minister of Finance in advance of the Annual Budget debate. Training should include a short and long term plan for training in consultation with the parliament for parliamentary development that includes a sense of ownership. A focus on specific thematic schemes is helpful, such as budget monitoring, various initiatives or oversight committees.

A Parliament should have control over their budget and understand the budgetary process. This budget expertise could be gained through formal institutional and training programs. Fellowship programs could be utilized. Budgetary training for the executive branch should be partnered with parallel training in the COR and the COR’s budget office.²¹ Relevant COR Committees and ministry offices should hold joint planning budgetary sessions. In general, establishing mechanisms to stop corruption enhances legislative executive relationships.

Legislative Skills

Legislative drafting expertise and skills are crucial. Unfortunately there have been difficulties working with the COR at some stages on legislative drafting seminars and drafting a uniform legislative drafting manual for the COR. Legislative drafting for the Juridical Council, Attorney General’s office and other legal entities should include the COR’s budget office and legal advisors. A strong legislative research office within the COR is essential. A non-partisan legislative research office is important to provide information to legislators and their staff. This office should be free of executive and political motives. Paired legislative executive legislative drafting skills training should be increased. Numerous legislative drafting manuals have been given to COR legal advisors and the Research Directorate. Outside legislative drafting experts to provide high level training is crucial.

Opposition Parties

Caucuses provide a powerful oversight tool, but have not emerged strongly in the COR due largely to political tensions. Currently there is some movement toward the establishment of a women’s caucus in the COR. A women’s caucus could assist in increasing the effectiveness of coalition blocs and active participation with the executive branch. The COR Committees are beginning to hold public hearings and forums that include civil society member participation. By strengthening the capacity of opposition parties to participate in legislative activities effectively, alternative and minority views present in the legislative branch may be heard and incorporated into legislative debates and policies. Teaching programs on the importance, rights and responsibilities of opposition parties and the proactive role and responsibilities of the opposition can be highly effective. Legislative exchanges through study tours, mentoring and international partnerships can help legislators observe directly how opposition parties can negotiate with majority parties. Media capacity building should include training on the role of opposition parties and blocs to balance executive branch and ruling coalition parties.²²

¹⁹ Isaac Imaka, Five Painful Years Of Parliament, DAILY MONITOR, Jan. 17, 2011, <http://mobile.monitor.co.ug/-/1039766/1090658/-/format/xhtml/-/sve2y9/-/index.html>.

²⁰ Joel Barkin, *supra* note 5, 20.

²¹ Nikha Duttal *supra* note 3, 23.

²² *Id.*

Structure

Legislative committees can provide a tremendous amount of legislative analysis and oversight. Capacity building for the Poverty Reduction Strategy Papers or implementation of the Millennium Development Goals can be targeted to relevant legislative committees as their structure can provide personnel to not only provide relevant research, but also legislation and legislative analysis on proposals. Strengthening committees can improve the balance of the legislative and executive branches and the critical analysis of legislative and policy proposals. The executive must be convinced (as in any fragile-state reform) that there is an increased legitimacy of the state and overall effectiveness if the legislative branch is strengthened. Anti-corruption measures are extremely important to assure that there can be abuse of power. Focused workshops, best-practice models and safeguards are necessary to ensure this.

IV. Promoting Positive Change in Post-Conflict and Fragile Nations

Paris Principles and Parliamentary Strengthening

The Paris Declaration on Aid Effectiveness is an international agreement between donors and recipients of aid to make aid more effective. It has five inter-locking principles with the goal of making aid more effective. The principles include ownership, alignment, harmonization, managing for results and mutual accountability.²³ Ownership requires that parliament plans be demand led and responsive to the short and long-term needs of the parliament. Donor's support must be in alignment with a parliament's development strategy. Harmonization is reached when each donor contributes its area of expertise rather than duplicating efforts. Increasing parliamentary effectiveness must be a component for managing programs for results. This requires the use of frameworks for monitoring and evaluation progress and making planning decisions for the future based on monitoring and evaluation, which also assures mutual accountability. Parliaments must share information with stakeholders and donors about their activities through joint progress assessments.²⁴

Iraq Application

Donor Coordination

A multi-lateral approach and coordination with all in-country donors can reassure a government that donors are not seeking to impose particular models of democracy or policy agendas.²⁵ Local organizations and opposition parties and MPs need to be included in the planning for strengthening measures. Parliamentary plans should be demand led and responsive to local needs rather than externally decided. Plans should address the causes of poor parliamentary performance and not just the symptoms. Planning and strengthening needs to take into account the local and political context.

Joint legislative-executive strategy meetings or joint conferences that address the Millennium Development Goals should be held. This will create greater ownership on the part of both branches and more effective work plans. Iraq should begin to consider the required capacity building to write and contribute a Poverty Reduction Strategy Paper (PRSPs). Iraq has not developed one.²⁶ PRSPs establish a multi-year framework important for the use of resources and a requirement for certain IMF and World Bank assistance programs.

²³ Tsekp and Hudson supra note 11, 12.

²⁴ See generally, The Paris Declaration on Aid Effectiveness 2005 Accra Agenda for Action, 13-18 (2008) Publication of Organization for Economic Co-operation and Development (OECD); see generally also http://en.wikipedia.org/wiki/Aid_effectiveness (describing the historical background of aid development since WWII theories of aid and the Paris Principles on Aid Effectiveness).

²⁵ Alan Hudson and Claire Wren, Parliamentary Strengthening in Developing Countries, 33, Final Report for DFID Feb. 12 (2007).

²⁶ See generally International Monetary Fund Poverty Reduction Strategy Papers, <http://www.imf.org/external/np/prsp/prsp.aspx>, last updated August 31, 2011. (Poverty Reduction Strategy Papers are prepared by member countries in a participatory process involving domestic stakeholders and development partners, including the World Bank and International Monetary Fund and are updated every three years with annual progress reports. Iraq has not prepared one).

V. Promoting Coalitions of Change in Legislatures and the Executive

Coalitions for change are typically an informal group of legislators that have become dissatisfied with the status quo. All of the group may not agree on what must be changed to increase legislative functioning. A group(s) typically includes reformers and opportunists and distinguished by the extent to which they support, oppose or are neutral in the transformation of the legislative institution into one that changes it so it performs well. Reformers are members that want to change the institution from a “rubber stamp” of the executive branch into a modern autonomously functioning legislature. Opportunists are those interested in improving their own terms of service but the changes will be instrumental for improved performance. Opportunists can be opposed by the executive because the measures they may call for can be budget-related. Reformists and their coalitions are typically the largest and enjoy the greatest participation at the beginning of reform efforts. Opportunists join for improvements in service, but over time typically drop out. A coalition for change is typically reduced to a dedicated and hard core group of committed reformers. Reformers may lose their elected seats through targeted campaigns as they are seen as wanting to reduce executive authority and/or being “difficult.” Head of states and senior strategists may seek to defeat reformers in elections by financing their opponents or denying them the party’s ticket nomination.²⁷

Iraq Application

Creating and Fostering Change Agents

Providing training and mentoring programs to both legislative and executive branches on identifying and fostering change agents can be extremely beneficial in long-term planning for structured change to improve legislative-executive relationships and changes in community responses to government. Change agents should be identified and mentored with support for five-year mutually agreed upon goals. A program started in Afghanistan called “Breakfast with the Speaker” could be piloted in Iraq. A minister would be invited to informally discuss general policy matters with parliamentary leaders from various political parties over breakfast or lunch.²⁸ Change agents from specific offices could be identified, supported and mentored.

International and Domestic Exchange and Partnerships

Programs that offer and develop partnerships with legislative staff in other countries should be supported so expertise and best practices can be shared with both branches of government. Information sharing on effective programs that addressed similar problems in other countries could lay a ground work for legislative and policy proposals in partnership with both the Iraqi executive and legislative branches. Partnership programs with other countries for legislative and research staff information exchange could allow greater access for best practices and what is most useful in post-conflict countries. Video conferencing with other legislators and parliamentarians could be utilized with outreach to legislators in other countries. A memorandum of understanding could be established with a country or countries for exchange partnerships and mentoring with Iraqi MPs and ministerial staff and ministers. These exchanges could focus on best practices, information sharing and solution-based programs on thematic problems occurring in Iraq.

²⁷ Joel Barkin supra note 5, 19.

²⁸ Martinez-Soliman supra note 6.