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Consensus Recommendations for Implementing Amended Law 21

Based on
The First National Conference on Developing a Road Map for Implementing
Law 21 as Amended
Al Rasheed Hotel, January 12-13, 2014,
The Review Meeting of Officials
at Taqadum-GSP Headquarters January 30, 2014,
and
The Governors' Conference in Ninewa
February 1, 2014



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Executive Summary

Currently, the responsibility for delivering services to the citizens of Iraq is designated to eight central government line ministries. With the passage of the second amendment to Law 21 (Law 19, 2013), the responsibility for citizen services will be transferred to the Governorates. Such devolution is popular practice in nascent democracies because it is accepted by most experts in political science that a government entity closest to the people is the most likely to receive feedback from its citizens and therefore will best understand community conditions and citizen needs.

The amended Law 21 will transfer – with the necessary budget resources – eight ministry directorate units, with the necessary budget resources for the eight ministries, by August 2015. If prepared, Iraq's governorates have an excellent opportunity to embrace this authority and improve daily lives of the Iraqi people.

Having established, and profound ties with Governors and their staff, Provincial Council Chairs and members throughout the fifteen provinces, Taqadam is strategically positioned to assist the governorates in rapidly formulating a cooperative intergovernmental transition plan, with a timetable that gradually transitions service delivery units from the central government to the provinces.

There is, at this moment, unprecedented need – and support for – this initiative, as evidenced in the adoption and refinement of the USAID-funded Taqadam Road Map to Decentralization presented at the First National Conference on Developing a Road Map for Implementation of Law 21, as Amended, held on January 12 and 13, 2014 in Baghdad; and its follow-up meeting, held slightly later in the month. A Third Governors' Conference will be held in February in Baghdad, where governors are expected to report on their first steps in implementing the Road Map as it currently stands.

The first steps toward administrative decentralization proposed below are the work of a Taqadam-provided short-term international expert who proposed a way forward at the First Road Map Conference held in Baghdad on January 12-13, 2014. Those initial steps were subsequently amended by the attendees at a meeting of Governorate and Ministry of State for Provincial Affairs (MOSPA) officials at the Taqadam main project office in Baghdad on January 30, 2014, with more detailed recommendations made at the Second Conference, held on the Provinces with Governors and members of the Council of Representatives (COR) in Ninewa on February 1, 2014 (reports attached). This report herewith will inform the upcoming Third Conference on the Provinces to be held in Baghdad on February 28, 2014, with assistance from Taqadam.

Decentralization in the Iraqi Constitution

It is notable that administrative decentralization is the *only* form of decentralization mentioned in the Iraqi Constitution, and it is specifically mentioned in connection with the authorities granted to the Governorates by Article 122.

As an important step to enabling administrative decentralization, the amendment to Article 45 of Law 21 provides for the establishment of an expanded High Coordinating Commission for Provinces (expanded HCCP) and Governorate-level Coordinating Committees to advance the transfer of service delivery units to governorate administration. In the interim, between now and

when the expanded HCCP convenes to consider the implementation of the amended Law 21, it is recommended that each governorate create a Task Force to prepare for the transition, and to establish these coordinating committees.

It is proposed that the governorates begin the process by:

1. *Calling the HCCP to convene and/or Establishing Governorate Task Forces*

a.) Call the expanded HCCP with the PC Chairs and ministers of the eight service delivery ministries named in Article 45, in addition to the current members – governors and ministers – to convene. The expanded HCCP must be called by the Prime Minister (PM), but action by the Governorates should not be delayed awaiting this call.

b.) Establish a Task Force in each Governorate for the purpose of preparing governors and their staff; (GOs), Provincial Council members (PCs), representatives of the eight ministries to be devolved, and stakeholders from the private and social sectors, for the implementation of the amended Law 21. Organizational and management steps include: formalizing membership of the Task Force; establishing sector specific sub committees; and activating their roles. These Task Forces can and should be established in advance of the expanded HCCP meeting.

2. *Develop and Implement an Action Plan.* The key and immediate assignments that must be undertaken by the Task Force sub committees, in coordination with the affected directorates and departments are:

- Obtain a comprehensive understanding of the targeted directorates or departments: specifically; their structure, functions, responsibilities, and resources. Consider how they are now constituted and might be constituted in the future, in coordination and cooperation with the affected directorates and departments.
- Review the legal and regulatory documents, identify conflicts, and recommend necessary changes for eventual adoption by the Council Of Representatives, or the courts.
- Request that the COR transfer governorate investment allocations from specifically chosen ministries to the Governorates for administration.

3. *Build Consensus among all Stakeholders (Central and Local).* Key representatives from all the Governorate Task Forces convene to share their proposals and to develop agreement; specifically, on what tasks, services and competencies are to be devolved – and the associated timeline. It is anticipated this harmonization at the Governorate level will facilitate the decision-making process of the expanded HCCP, when it is convened. To this end, a request should be made to the Ministry of Finance to establish a fund or treasury for the provincial revenue described in the amended Law 21, so that each Governorate can support the existing and administratively devolved units under their purview.

4. *The Transitional Coordination Process engages the MOSPA.* The Task Forces, working in conjunction with the GOs, PCs and the local representatives of the eight central ministries, develop recommendations for the devolution of authority down to the Governorates. After a presentation to MOSPA as part of the final coordination process, these Governors and Council Chairs present their recommendations, as members, to the HCCP.

Governors, PC and COR members are motivated to move directly forward toward administrative decentralization. The next Governors Conference for the Provinces is planned for February 28,

2014, in Baghdad, with the support of Taqadum and at the request of the Baghdad Governorate. Taqadum will support this conference by providing technical and other preparatory services based on its knowledge of the Governorates, the requirements of the amended Law 21, and the organization, systems, and procedures for improved governance – all of which have been gleaned by working so closely with these individual local governments during the past two years.

Given the many pressing issues faced by the Prime Minister (PM), the immediate commencement and rapid completion of this Road Map consensus is recommended and should be supported in anticipation of the expanded HCCP's final confirmation of the administrative decentralization process. The contemplated Task Forces in each Governorate will greatly contribute to building the capacity necessary for the implementation of administrative decentralization. This transition is expected to be planned, gradual and phased, with units transitioning from federal ministry to Governorate-level administration. The consensus-building process initiated by these Task Forces would be greatly strengthened by continued support from a neutral consultative group similar to the USAID-funded Taqadum.

Introduction

This Final Report reflects a consensus on the development of a Road Map to transfer authorities from the central government to the Governorates. This consensus – and the steps advocated herein – is the product of a meeting of provincial and ministry officials held on January 30, 2014. The officials, from local governments and ministries, reviewed the recommendations presented during the First Road Map Conference held in Baghdad on January 12-13, 2014. The participants of a Second Governors' Conference in Ninawa on February 1, 2014, also reviewed and revised these recommendations.

In the second amendment to Law 21, Article 45 is amended to transfer service delivery authority from directorate to Governorate administration. It provides a framework by which the Governorates can allow national and local-level officials to share in the planning, design, management, monitoring, and evaluation of ministry-specific programs and projects in the service delivery ministries – including the Ministries of Education, Health, Agriculture, Housing, Public Works, Sports and Youth, Municipalities and Labor and the Ministry of Trade. It also expands the HCCP to include Provincial Council Chairs and ministers affected by administrative decentralization.

The most pressing question in today's situation is how this transfer of authority should be addressed. The consensus recommendation is for a process of intergovernmental coordination that allows government decision-makers to carefully assess those tasks, services and competencies, deciding which should remain at the central government level or be devolved to the governorates. The advantage of intergovernmental coordination as the basis for this period of transition from centralized system to democratic system is the ability of such a process to reflect the interests of both the central ministries and those of the Governorates, districts and sub-districts.

One important lesson to be learned from the proceedings of the First Road Map Conference and its subsequent review by government officials is that intergovernmental coordination is not about who “wins” and who “loses” in the devolution of responsibilities between central ministries and Governorates. It is about ensuring that both ministries and local authorities are winners, by improving the quality of their service delivery to the people of Iraq in a timely, effective, relevant and impactful manner.

As of today, the government has less than eighteen months to provide the structures, rules, regulations, preparations, funding, administrative procedures, and political support necessary for the implementation of Article 45 - Moving quickly to establish a meaningful decentralized form of local government in Iraq faces a number of challenges:

- a.) A central bureaucracy inured to top down, centralist orientations, accustomed to assuming that all, or at least nearly all, decisions should be made and managed in Baghdad;
- b.) The belief held by some politicians that a more centralized system of government is better able to maintain unity and solidarity in Iraq;
- c.) The belief of some central government officials that local government executive and legislative officials, employees and council members are generally not qualified, or trained, to perform the duties, roles and responsibilities needed to accomplish the work of local government; and
- d.) A legalistic approach to administration and government operations that emphasizes laws, rules, and regulations, thus often ignoring the importance of problem solving that requires

citizen input; management and organizational processes that emphasize open dialogue; creative conflict management; thoughtful compromise; and some risk taking among competing interests.

Consensus Recommendations for Developing the Road Map

As noted above, administrative decentralization is the only form of decentralization mentioned in the Iraqi Constitution, and specifically in connection with the authorities granted to governorates by Article 122, second item:

Governorates that are not incorporated in a region shall be granted broad administrative and financial authorities to enable them to manage their affairs in accordance with the principle of decentralized administration, and this shall be regulated by law.

Due to the challenges described in the introduction, the recommended actions will take Governorates from the immediate establishment of Task Forces, to the well-considered presentations they will make to the expanded HCCP on recommendations for units to be transferred to Governorate administration. The Task Force is envisioned to be the platform that drives implementation of tasks, services, and competencies. Their work builds the capacity necessary to support the eventual formation of both the expanded HCCP and Governorate Coordinating Committees, which may fail in attempts to select appropriate units for transfer unless the capacity of Governorate leaders, who will become members of the expanded HCCP and Coordinating Committees, is built.

The guiding principle of the Task Force is to develop consensus solutions at the individual Governorate level and to harmonize these solutions among individual Governorates, with the MOSPA and with the affected central ministries. In order to facilitate consensus among the Governorates, a neutral consultative group similar to the USAID-funded Taqadum project will be required. Below are the consensus recommendations on the primary interventions to realize this mission:

1. Convene the Expanded HCCP and Establish a Task Force in each Governorate.

a.) The Government of Iraq (GOI) should, as soon as possible, convene the expanded HCCP. This is made up of the PM, ministers from the eight mentioned ministries and MOSPA, and all fifteen governors and the PC chairs, to determine how the amended Law 21 is to be implemented, what specific tasks, services and competencies are to be devolved down to the Governorates, and to develop processes for the administration of the joint powers. Additionally, the Council of Ministers Secretariat (COMSEC) should be charged with the responsibility of providing the necessary rules and regulations for the implementation of amended Law 21.

b.) Create a Task Force in each Governorate for the purpose of preparing governors and their staff, council members and representatives of the eight ministries in each Governorate, for the implementation of the amended Law 21. Specific organizational and management issues include formalizing membership of the Task Force and activating its role.

It is recommended that the Governor and PC Chair jointly chair the Task Force, as they will become members of the expanded HCCP and must present the Governorate's transition plan and timetable to that body. Other members should include the heads of the eight targeted directorates or departments as well as representatives from Civil Service Organizations, Non-

Governmental Organizations, communities, academics, and the private sector. Additionally, to better manage their work, it is recommended that eight Task Force sub committees be created (one for each of the specified directorates or departments) and staffed with the appropriate subject matter experts drawn from directorates or departments, PC, GO, and representatives from the private and social sectors.

Governorates should act now to organize themselves. In August of 2015, if the expanded HCCP has not determined which of the tasks, services and competencies specified in the amended Law 21, article 45, are to be devolved to the Governorate level, they will be: “considered transferred by law.” A common concern is the difficulty the central government will have in convening the expanded HCCP in timely manner, both because the PM is extremely busy with national issues of security, defense, international affairs, and other very important responsibilities – including the upcoming general election – and the general difficulty of scheduling the involved ministers, governors and PC chairs to participate in a collective decision-making body.

Ministry directorates and departments may require guidance and approval from their minister to participate in the Task Forces. The involvement of the MOSPA in engaging each of the eight ministries to obtain commitment on what roles, responsibilities, authorities, personnel and budget should remain at the federal level and what might be devolved is recommended. Another possibility is for governors to organize themselves into small groups to contact the specific ministers to discuss the topic.

2. Develop an Action Plan for Administrative Decentralization: based on a Comprehensive Review of Directorates, with Recommendations on Legal and Regulatory Reform and Funding for Transferred Investment Allocations.

a.) *Obtain a comprehensive understanding of devolving ministry directorates.* Following its formation, the Task Force will prepare an action plan consistent with its mission. A key and immediate task is to name the members of eight Task Force sub committees to gather information and obtain a comprehensive understanding of the targeted directorate or department; specifically, its structure, functions, responsibilities and resources. However, ahead of this data collection phase, a common toolkit should be developed for use by all the Governorate Task Forces, identifying the data that needs to be collected, how it is to be recorded and analyzed, and a reporting format. Defining this coordinated data collection tool kit will require independent coordination and advice. To the extent possible, the information collected should include job descriptions, organizational structures, reporting, and sectoral coordination arrangements that currently exist. An organizational self-assessment initiative, involving the appropriate staff of the departments, will be helpful to identify opportunities for improvement, as the agreed upon roles, authorities, competencies, personnel and budgets of the organization are transferred to Governorate control. The tools of organizational self-assessment that have been taught in eight Governorates by the Taqadum Organizational Self-assessment and Transformation Program (OSTP) team and can provide valuable insight into the changes necessary for the transition. After these reports are prepared, each subcommittee submits the report to the Governor and PC Chair, who convene a meeting of the full body of the Task Force to listen to presentations on the “what-is” state of each directorate or department.

After the “what-is” data is collected and summarized, key representatives of all the Governorate Task Forces come together to share their findings and develop a set of guiding principles to devolve tasks, services and competencies that will form the basis for proposing a jurisdictional

framework and strategy for devolution. Thereafter, each Governorate Task Force begins analyzing each directorate or department and proposes answers to the following questions using the tools developed through working with Taqadum:

- What tasks, services and competencies get devolved and what is the timeline for completing the administrative decentralization?
- What types of organizational and procedural reforms are needed?
- How will devolved functions be managed and integrated into existing local administration structures?

Governorates must answer these questions, cooperatively develop a plan for expanded HCCP consideration, and develop a management structure that can administer and improve the delivery of critical services, responsive to citizen demands. Fortunately, considerable administrative infrastructure and systems have been built with Taqadum assistance that significantly expands Governorate capacity in organizational development, planning and budgeting, service delivery improvement, obtaining citizen feedback, and monitoring capital project implementation. But, there remains a need for ongoing support from neutral technical advisors like those of the USAID-funded Taqadum, which has, in the past two years, expanded capacity in the areas described below and provided a linked system for management, monitoring and oversight.

With administrative decentralization there is an imperative for Governorate staff to adopt the changes necessary to provide quality services to citizens. For the past two years, Taqadum OSTP-trained teams were developed in eight provinces (Babil, Baghdad, Basrah, Erbil, Karbala, Kirkuk, Najaf and Ninewa) and are primed to assume greater importance in the emerging structural reforms that will now become necessary. OSTP moves organizations – such as GOs and PCs – towards an achieving efficiencies and streamlined processes. OSTP teams are made up of approximately fifteen well-trained team members who diagnose organizational deficiencies and identify solutions. Selected from different organizational layers, membership is consistent with the OSTP-focused competencies in finance, human resources, process, knowledge, and leadership. The Governor endorses the membership and is the de facto leader of the team, championing their cause. The team works as a collective, and operates on the principle of Iraqis identifying and solving Iraqi problems through “learning by doing.” The three OSTP pillars underscore all solutions proposed by the team: they must be citizen-centered, results focused, and transparent. Ultimately, the team uses a bottom-up approach to identifying and solving problems as empowered agents of change. These provincial consulting teams draw strength from each other through a common network of practitioners. Sharing best practices and solutions is fundamental to their belief system. In the Governorates where they have been formed, the internal organizational development consulting teams and their agents of change should be appended to the Task Force for their ability to assess, identify, and perform organizational improvements. In the Governorates that have not yet developed OSTP teams, support and advisory services from existing teams and the OSTP network should be requested.

As Governorates define functional reforms necessary to better serve citizens, the service delivery requirements must be defined. The Taqadum Essential Service Delivery Oversight (ESDO) effort has built the capacity of eleven Governorates to establish water, sewer and solid waste standards (except Basrah, Dhi Qar and Ninewa). Nine Governorates have additionally established storm water standards. Using the standards, Governorates with provincial ministry partners conduct field visits in which they interview citizens to better understand their needs and quantify existing gaps in service delivery. Based on the data collected, an intervention is cooperatively designed by the province and directorate and promptly executed. Once complete,

the target area is surveyed, again to verify that the intervention has closed the service delivery gap. In the past year, this effort resulted in significant improvement in the distribution of waste receptacles, removal of waste from roadways, expansion of the potable water system, water quality improvement, repair of sewer networks, etc. This approach can be used as a model to for other reforms to efficiently improve any direct public service. Additionally, other performance measurement systems can be added, such as service delivery planning and benchmarking.

Governorates will need to select both units to be transferred, and improvements, with input from citizens on what services they need and want, so they can provide the right services in the right way. Citizen information can guide better planning, budgeting, management and policy making to produce improved citizen services. Obtaining feedback is critical. Taqadum's activities, including Citizen Satisfaction Surveys (CSS), the Public Meetings initiative, and COMSEC's Citizen Service Desks (CSDs) built the capacity of the Governorates to solicit citizen feedback. Over the past two years, Taqadum has helped to establish four routine means of gathering citizen feedback for Governorate decision makers:

- i. The CSS was conducted in 2012 and 2013, when PC and GO staff were trained on administering the national survey, recording data, analysis and reporting results using Statistical Package for the Social Sciences (SPSS) software. Small surveys are also conducted as part of the ESDO effort described above. As a result, Governorates now have the fundamental training to allow them to conduct their own surveys or oversee a contracted survey effort.
- ii. Public meetings are the time-tested tool to connect citizens. With the support of Taqadum, all Governorates have held a total of 82 public meetings with Taqadum financial support. Independent of that support another 26 meetings were held.
- iii. Through the efforts of COMSEC, Governorates established Citizen Service Desks (CSDs). Currently, fourteen Governorate GOs (except Baghdad) and thirteen PCs have established CSDs (except Babil and Salah ad Din) and use the Taqadum developed and trained Issue Tracking and Reporting System (ITRS) to record and analyze the data and generate summary reports for decision makers on the issues important to citizens.

Governorate Provincial Planning and Development Councils (PPDCs), established by order of the Ministry of Planning (MOP) and the PM with the support of Taqadum, are the hub of the provincial resource planning and budgeting system for projects and services. Integrating approaches and data from other areas like CSS, ESDOs, CSDs, and public meetings, to develop a data-driven and results-oriented plan and annual budget for PC consideration, the thirteen PPDCs currently operating are chaired by Governors, with members from directorates, universities, NGOs and private sector. The Governor's Office must develop a process for formulating and implementing the operating budget, including maintenance and hopefully improvement of the existing system, whether through a zero-based, performance, or other approach to budgeting. Lastly, the Governorates have expanded their technical ability to manage capital projects through the application of standards and quality assurance and quality control. Taqadum is working intensively with engineering and project staff members in six provinces, teaching internationally-accepted project management principles to build the capacity of PC and GO units to deliver quality projects on time and within budget.

b.) Review the legal and regulatory documents, identify conflicts and recommend necessary changes. The Iraqi courts are unable to find the time or staff to conduct a thorough analysis of laws and regulations as they affect governorates. The administrative decentralization process is an opportunity to conduct a methodical review, at least in the eight affected ministries. Once conflicts in law and regulation are discovered, governorates can suggest changes for eventual

court or COR action, including COMSEC regulatory drafting and adoption. With the COR election scheduled for April 2014, a collective effort by provinces to identify current applicable laws that are in conflict with Law 21 and which are hampering its implementation is needed so that the Governorates are ready to present them for the new COR to consider once convened.

c) Request the COR to transfer governorate investment allocations from the specified ministries to the Governorates for administration. The amended article 44 of Law 21 requires “Federal budget allocations for the province in a manner sufficient to fulfill its duties and carry out its responsibilities...” and that “Local authorities shall allocate a fair share for administrative units under their jurisdiction sufficient to fulfill their tasks and responsibilities...” This portion of the amendment, combined with the new language in article 45 requiring the transfer of sub-directorates, departments, tasks, services and competencies... along with their funds allocated by the General Budget...” makes it clear that governorates can expect to receive a reasonable allocation to responsibly manage the units administratively transferred to their authority.

3. Build Consensus among all Stakeholders (Central and Local)

The DGs and department heads within a Governorate should seek consensus on the distribution of tasks and services performed at the central and local levels. It is expected that these local officials will be communicating and coordinating with their central ministry counterparts. Accordingly, the next key step involves harmonizing the selection of units to be transferred. Once again, key representatives from all the Governorate Task Forces should convene to share their proposals and to develop agreement specifically, on what tasks and services are to be decentralized and the timeline associated for each transferred unit. It is anticipated this harmonizing process at the Governorate level will facilitate the decision making process of the expanded HCCP when it is convened. Separately, insights on what types of functional reforms each province has identified and how transferred functions will be managed and integrated into local administrative structures should be shared with other Governorates, MOSPA, ministries and the citizenry.

The Ministry of Finance should establish a fund or treasury for the financial revenue of each province as outlined in the amended Law 21, so that each Governorate can support the exiting and administratively devolved units under their authority. Governors, PC and COR members suggested the establishment of a fund to assure that adequate financial resources will be available for the nascent governorate service delivery initiatives. Seamless funding is critical to transitioning service with minimal disruption and making rapid improvements. If funds are blocked, administrative decentralization will fail and the establishment of a fund greatly reduces provincial financial risk and uncertainty.

4. Develop a Transitional Coordination Process between the Governorates and the MOSPA, Ministries and MOF.

Per the recommendation of officials reviewing the Road Map, a pre-coordination meeting of Governorates, local and central stakeholders, and the appropriate representatives from the MOSPA and concerned ministries, must occur before the recommended plan for the administrative transfer of units to Governorates is presented to the expanded HCCP for discussion. After incorporating the comments from the MOSPA meeting, Governors and PC Chairs will present their recommendations, as members, to the expanded HCCP. As this final coordination process is completed, the Governor should convene a meeting of the Governorate Coordinating Committees to review and approve the Governorate’s plan for administrative decentralization. The expanded HCCP gathers recommendations on regulatory change and

directs COMSEC to draft and approve new regulations to formalize the plan for administrative decentralization. It is additionally recommended that the membership of the Governorate Coordinating Committees, chaired by the Governors with members from the heads of administrative units, and chairs of the district and sub district councils, be expanded to include the PC Chairs.

Once ready, the Governorate Coordinating Committees will cooperatively oversee the transition of the tasks and services to Governorate control according to the adopted timetable. The effort is expected to be gradual and phased, with units and departments transitioning, rather than all ministry operations at one time. The Coordinating Committees will require the support of the central ministry, Task Force and Task Force sub committees and independent advisors in the early transition rounds.

Task Force members will learn from experience, as units are transitioned and sustainability is built, to support independent selection of units, transitioning them to Governorate control and undertaking service delivery improvement in subsequent rounds, as the Coordinating Committees, supported by the Task Force, become increasingly competent.

Success in the implementation of Article 45 through the Coordinating Committees and the expanded HCCP, relies on the solid foundation laid by the Task Force and its sub committees, having collected and analyzed relevant rules and regulations, service delivery unit organization, service delivery standards, indicators data on current conditions, public opinion surveys, citizen service desk information and feedback from public meetings. The on-the-job training that Task Force members received will build their capacity to act when they become members of the Coordinating Committees and expanded HCCP, where they must select appropriate units to be transitioned.

It is not sufficient for the service delivery unit to simply transition to the Governorate for reporting purposes. The effort is only worthwhile if citizen service delivery is, in fact, improved. Therefore, it is strongly recommended that the Task Force and their sub-committees identify areas likely to produce short-term gains recognizable to the public. If the citizenry experiences improved water services, cleaner streets and shorter waiting times at local clinics, more attentive teachers, etc., the credibility of local government is improved and both the ministries and the Governorates are benefitted. This result is only possible with high levels of constructive participation by the PC, GO, directorates, social and private sectors, and only if the Task Force has well prepared their members for the expanded HCCP and Coordinating Committees.

Assistance from a neutral and respected provincial government advisory team, such as Taqadum, should be considered. Financial support from various international donors could be used to secure the engagement of ministries and Governorates regarding the roles and responsibilities, authorities, personnel and budget for transferring units. If resources are not sufficient for the support of all provinces, donors should consider funding activities for a smaller group of “pilot provinces,” – those that are most supportive of the concept and most likely to develop a common dialogue.

Issues Beyond Article 45:

Resolution of the Current Supreme Court Challenge

The current challenge to the second amendment to Law 21 is at the Supreme Court and could delay administrative decentralization if not resolved. Timely resolution will require national and sub-national leaders to work cooperatively toward a common goal of improving citizen services by transferring the responsibility for service delivery to the level of government nearest the citizen in a thoughtful manner, supported with the requisite resources.

Revenue and Budget

Numerous Governorate revenue and budget issues were raised, by both federal and Governorate officials attending the First National Conference:

- (a) Governorates need clearly-defined independent fiscal capacity that can be reliably implemented. Some Governorates have successfully raised own-source revenue, only to find that it is offset in the annual budget allocations. Amended Article 44 of Law 21 also provides Governorates with the power to generate revenue from various taxes, fees, fines, selling and renting property, and donations. Most helpful is the Federal Supreme Court's interpretation of Article 115 of the Constitution that states that powers not stipulated as exclusive powers of the federal government belong to regions and Governorates. The court pointed to the authority of the PCs in the imposition of local revenues, including taxes and fines.
- (b) The Constitution provides that Governorates shall be allocated an equitable share of the national revenues sufficient to discharge their responsibilities, similar to the language in Article 44 of amended Law 21 that states that federal budget allocations will be fair and sufficient for the Governorate to fulfill its duties and responsibilities, based on their population rate.
- (c) Nepotism and other employment abuses must be eliminated and hiring limited to qualified professionals.
- (d) Elected officials must recognize their duty to plan and take action in the best interest of their citizens.
- (e) PPDC is a mechanism for stakeholders to identify Governorate priorities, but some perceive that it results in the PC being just a "rubber stamp" institution and question how the PC can know that the Governor is presenting the actual PPDC recommendations. To avoid this perception, a neutral organization, such as Taqadum that helped set up the PPDCs, is needed to develop the capacity and institutionalize the PPDC process.
- (f) Governorates need to establish a vision to define needs and identify priorities to guide the budget.
- (g) Article 106 of the constitution should be activated by enacting a law to establish a general commission per the constitution, Article 106, which provides:

"A public commission shall be established by law, to audit and appropriate federal revenues. The commission shall be comprised of experts from the federal government, the regions, the governorates, and representatives, and shall assume the following responsibilities:

First: To verify the fair distribution of grants, aid, and international loans pursuant the entitlement of the regions and governorates...

Second: To verify the ideal use and division of the federal financial resources.

Third: To guarantee transparency and justice in appropriating funds... in accordance with the established percentages.”

- (h) The public budget law doesn't give Governorates the authority to participate in mutual development projects, reserving that to federal authority. Since such projects are delivered to the relevant ministry, the implementation of amended Law 21 will be a good opportunity for Governorates to benefit from the re-allocation of ministry funds that expand Governorate project allocation.

Governorate Authority to Legislate

Governorates need clear legislative authority and adopted legislative procedures in PC bylaws so that they can write regulations to guide their own administrative and financial affairs, and overcome challenges – as granted in Article 122 of the Constitution. Law 21, Article 7, Twelfth, directs that council decisions and orders be published in the gazette, but does not mention legislation. The amendments do not change this sub section, leaving an opening for those who cite the passage as evidence of the PC's inability to enact legislation, despite the provisions of Article 2, First, which confirms that the Governorate council “is the legislative and regulatory authority in the Governorate with the right to issue local legislations...”

Many recommend that Law 21 should outline the executive powers granted to Governorates in order to avoid any disputes or conflicts with other laws. The clear ability to legislate is especially important when service delivery units, with their staffs and budgets, are transferred to Governorate authority. In the past two years, the Taqadum Sub Legislation Implementation Tracking activity has built the capacity of Governorates to draft, pass and archive, and track the implementation of legislation.

Ministry of Finance (MOF) Issues

The MOF controls and can prohibit Governorates from opening bank accounts to manage Governorate revenue from fees, taxes and penalties. Article 44 of the second amendment to Law 21 gives the Governorates the right to certain taxes, fees, rents and proceeds from the sale of property. The local government could go to the Federal Court if the Ministry of Finance officially refuses a request to open an account for deposit of these revenues.

MOF currently prohibits governorates from opening a bank account because there is no local revenue collection system, which makes monitoring both the revenues and expenditures extremely difficult. Governorates need assistance in developing a local revenue collection system and assistance to monitor the expenditure of these revenues. This revenue system will also help with budget estimations.

Currently governorates are included in the national budget at the “type” level that limits spending authority based on specific line items. Ministries enjoy more latitude in their “chapter level” budgets to direct expenditures within policy boundaries. With administrative decentralization, the “type” level budgeting should be replaced with “chapter” level budgeting for the units transferred to governorate administration, to allow policy development capability.

The GOI should establish a local government code to include all rules and regulations applied to local government. Rules and regulations applied by the MOF should be redefined and amended to ensure consistency between federal and local regulation.

Establishment of a Commission to Guarantee the Rights of Regions and Governorates

Per Article 105 of the Constitution:

“A public commission shall be established to guarantee the rights of the regions and governorates that are not organized in a region, to ensure their fair participation in managing the various state federal institutions, missions, fellowships, delegations, and regional and international conferences. The commission shall be comprised of representatives of the federal government and representatives of the regions and governorates that are not organized in a region, and shall be regulated by a law.”

To date, no law has been enacted and no commission has been named.

Capital Law for Baghdad

Article 124 of the 2005 Constitution of Iraq declares Baghdad to be the national capital and directs that it be regulated by a capital law. No capital law has been introduced and Baghdad continues to function as the capital. The failure to draft a capital law is due in part to a conflict between the Constitution and the powers granted to Governorates in Law 21 of 2008.

Private Sector Development

One of the major policy challenges of the next decade in Iraq will be the strengthening and expanding of the private sector. A strengthened local government system can play an important role in creating a vibrant, expanding, private sector. Some of the key policy issues related to private sector development include:

- (a) Rewriting and/or eliminating all former-regime laws, rules and regulations (Baathist/Socialist policies) that presently discourage, prevent, harm and destroy economic growth at all levels in Iraqi society.
- (b) Introduce modern private sector banking and finance systems structured to support and strengthen innovative and profitable enterprises, investment credit for private companies and corporations.
- (c) Utilize Iraq's oil and gas resources in ways that encourage new industries, expanded agriculture, and other income generating activities that are sustainable over the long term.
- (d) Strengthen university curriculums to introduce modern business practices, stimulate economic investment programs and new technologies.
- (e) Create a Ministry of Local Economic Development that encourages networking, leveraging, and partnerships between the public sector (especially at the Governorate, district and sub-district levels), the private sector and the social sector. Such a ministry should generate business enterprise opportunities, employment expansion opportunities and seek to alleviate and/or eliminate extreme poverty in the districts and sub districts of Ira

Relationship Between GO and the PC

The relationship between the GO and PC has been a source of misunderstanding and at times conflict. This relationship is outlined in Law 21, which describes the competencies of each, but lacks a detailed description. Confusion over the difference between the monitoring and

oversight duties of the PC and GO are often misunderstood, resulting in duplication and confusion. The separation of duties and powers can strengthen the institution.

With the transfer of service delivery authority to Governorates, the need for clarity on roles and responsibilities is increased. Successful management of service directorates requires a clear management structure with defined duties for the PC and GO. Exercises, such as the intensive 5-day workshops for PC committee chairs, GO officials and directorate unit heads, held for each province by Taqadum, will need to be repeated to reinforce a common understanding of what PCs can and cannot do. This common understanding must include the Prime Minister's Office. Provincial leaders report frustration in working with central government offices that appear not to fully understand the relationships outlined in Law 21.

Relationship Between Governorates, Districts and Sub districts

Despite the provision of requirements in the 2008 law of provincial elections, requiring district and sub-district elections six months after provincial council elections, no such elections have been held, calling into question the legitimacy of the existing district and sub-district council members. It is recommended that these elections be conducted. Additionally, just as there is a need to clarify the various authorities, services and competencies between federal government and governorates, there is a need to do the same between the governorates, districts and sub districts.

Land Allocation

Article 7 of Law 21 was amended to "allocate the ownership of lands belonging to ministries... to the province... with the approval of the Council of Ministers." The language raises concern, as the transfer of lands appears to require Council of Ministers review, which can block transfers due to inaction. Careful review is needed of laws, rules and regulations, to develop of a process that can be uniformly applied across Governorates.

Basic Conflict between the Federal and the Sub National Executive

Law 21 provides that Governors and two deputies are elected by an absolute majority of the PC, and further, that the Governor is considered to be the "highest-ranking executive officer in the governorate at the rank of deputy minister as regards rights and service." In practice, Governors must respond to the wishes of the PC and the desires of the central government, including the Prime Minister. The real or perceived reporting requirements on the part of the Governor, PM and PC result in confusion over the powers of the Governorates and should be studied and clarified.

Attachments:

1. Annex 1 - Meeting Minutes: Officials Meet to Review Conference Recommendations for a Road Map to Implement the amended Law 21
 2. Annex 2 - Recommendations from the Second Conference on the Provinces, Ninewa, Regarding the Activation of the Second Amendment to the Provincial Law No. 21 of 2008, No. 19 of 2013
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Annex 1

Officials Meet to Review Conference Recommendations for a Road Map to Implement the Amended Law 21



Taqdum Headquarters, Baghdad, 30 January 2014: Twelve PC and GO officials, representing the provinces of **Babil, Baghdad, Diyala, Karbala, and Wasit**, and the **Ministry of State for Provincial Affairs (MOSPA)** attended a Review Conference to make recommendations for a Road Map to implement the amended Law 21.

The participants from the GOI were:

Mr. Adil Hamza, Wasit First Deputy Governor
Mrs. Ala'a Ismaeel, Wasit PC Member
Mrs. Girgana Qahtan, Wasit PC Member
Mr. Thu Al-Fikar Murtatha, Wasit Governor
Assistant for Service Affairs
Mr. Mahdi Wadi, Governor Advisor for
Financial Affairs
Mr. Mohammed Makki, MOSPA Advisor
Mr. Mohammed Al-Sha'lan, Baghdad PC
Member
Mr. Shua'a Abdul Nabi, PC Chair Advisor for
Legal Issues
Mr. Shamil Abdul Rahman, Baghdad PC Advisor
Mr. Sa'ad Challoub, Diyala Deputy Governor
for Technical Affairs
Mr. Khalid Al-Raes, Babil GO Legal Advisor

Mr. Ban Mahdi Al-Ma'muri, Babil PC Member

The officials came together to review and discuss the recommendations made at the First National Conference on Developing a Road Map for Implementing Law 21 as Amended, which was held at the Al-Rasheed Hotel on January 12, and 13, 2014.

Taqadum Chief of Party, Mr. Cameron Berkuti, welcomed the officials and told them that the Road Map's success will be determined by two pertinent pre-requisites: the level of cooperation between provincial governments and ministries, and the ability of provincial governments to cope with devolved responsibilities and authorities.

This prompted intense discussions.

Mr. Mohammed Makki, a MOSPA Advisor, said that the Ministry of Finance is still very tied to pre-amendment thinking, and that this problem remains unaddressed. "It still operates in a very centralized manner," he said. "I hope the provinces will take the first step. Laws are inherited from the past and we haven't started to seriously enact laws that promote decentralization," he said.

Mr. Khalid Al-Raes, Babil Governor Legal Advisor agreed. "The implementation of the Law should start with provinces putting more pressure on the federal government," she insisted, "We have authorities granted by the Council of Representatives. We need to make the necessary arrangements to form coordination committees as soon as possible."

Mrs. Ala'a Ismaeel, Wasit PC member asked: "Who is mainly concerned with the implementation of this law? It is the province; so we don't have to wait for the central government to start," (formation of committees.)

Mr. Mahdi Wadi, the Wasit Governor's Assistant for Financial Affairs; said, "In my opinion, coordination between provinces and ministries is crucial. Governments cannot implement a successful devolution without this coordination, which will ensure smooth devolution of responsibilities and authorities."

Mrs. Girgana Qahtan Abdul-Hameed, Wasit PC member agreed, saying: "We want everything to be devolved, even the school curricula."

Mr. Mohammed Makki disagreed. "That is not needed," he said. "It is better that curricula stay centralized; they are a symbol of a unified Iraq."

Mr. Mohammed Al-Sha'lan, Baghdad PC member, expressed the opinion that "provinces must shoulder their responsibilities for devolving line ministries because sooner or later this will be done," (after two years.)

"We in the province must have a strong desire and be fully prepared for the devolution process. Nobody will lend a hand if we don't cooperate and coordinate with each other. One of the main factors in our failure is a lack of assistance from the federal government," Mr. Shua'a Abdul Nabi, Advisor to the Baghdad PC Chair, warned.



Mr. Mohammed Makki, MoSPA Advisor



Mr. Khalid Al-Raes, Babil GO Legal Advisor



Mrs. Ala'a Ismaeel, Wasit PC Member

Mr. Kasim Kathum, GSP advisor suggested that the issuance of regulations for the implementation of Law 21, and review of the laws issued before 2003, could be very important and solve many problems.

Taqadum Chief of Party, Mr. Berkuti, briefed the participants on the steps of the Road Map to implement Law 21 Amendment 2. He reminded participants that six months had passed, and nothing been done.

Attendees debated the Road Map's suggested steps forward, which were to be incorporated in the final report.

"It is important to set a timeline for the establishment of this Task Force," said Mr. Mahdi Wadi.

Mr. Khalid Al-Raes agreed and said "We in Babil will request the Governor to issue an order to create this Task Force next week."

Mr. Mohammed Makki said: "I think we should recommend that the HCCP be convened to discuss making amendments on existing, related laws." Mr. Raheem Hussein, a GSP Advisor, reminded everyone present that the law stipulates that the HCCP should immediately start to issue regulations related to the devolution of provincial authorities."

Mrs. Girgana Qahtan Abdul-Hameed wanted to know what information she could expect from a line ministry.

Mr. Raheem Hussein told her: "You should request information about the annual budget, human resources, authorities, and current projects."

"Provincial failures are mostly due to a lack of qualified staff," said Mr. Shua'a Abdul Nabi. "We should make use of the skills and experience of line ministry staff. PC and GO staff still lack experience in this area," he warned.

Mr. Raheem Hussein suggested that consensus building should begin with the MOSPA. But Mr. Berkuti disagreed. "Provinces should work together first," he suggested. "They should see how far they can move forward together, establishing ties before MOSPA comes on line."

Mr. Mohammed Makki said that provinces *will* probably be confronted by central laws. "I recommend that the first thing provinces do is to examine these laws and make use of them in the devolution process; then, discussions with ministries will ensue."

Mrs. Girgana Qahtan Abdul-Hameed expressed concern regarding potential disputes with individual ministries. She wondered who would intervene. Mr. Hussein suggested that the disputes should be filed with the HCCP.

Mrs. Girgana Qahtan Abdul-Hameed admitted her main concern was regarding the Ministry of Finance. Mr. Mahdi Wadi supported her: "What we should do to put pressure on the Ministry of Finance to change its laws to more decentralized laws?"

Ahmed Al-Sinjari, Taqadum Advisor added that the Ministry of Finance should devolve the funding for



Mr. Mohammed Al-Sha'lan, Baghdad
PC Member

provinces “but the formulation of a national financial policy cannot be devolved,” he reminded everyone.

Participants then reviewed the role of the private sector, local resources, the provincial legislative authorities, the relations between the PC and GO, and land allocation.

At the end of the meeting, with few additional changes proposed by participants, the Road Map was endorsed. The Road Map was then scheduled for review by provincial governors to be convened in Ninewa on February 1st, 2014.

Annex 2

The Second Governors Conference held on the Provinces Ninawa, February 1, 2014

A Discussion of How to Implement the Second Amendment to the Provincial Law No. 21 of 2008, No. 19 of 2013

Introduction:

Administrative decentralization is the only form of decentralization set forth in the Iraqi Constitution that is related to authorities granted to governments according to Article 122. As a first important step towards the implementation of the administrative decentralization and to enhance the First Governors' meeting that was held in Basra, and to enable local governments to manage their affairs according to the principle of administrative decentralization and provide better services to citizens, governors at the second meeting in Ninawa agreed on the following recommendations:

- 1- Activate the role of the HCCP, set forth in Article 45 of the Law 21 as amended, headed by the Prime Minister, and hold a series of meetings with ministers of the eight devolved ministries, minister of MOSPA, governors, and PC chairs as soon as possible.
- 2- Establish a task force in each province to prepare governors and their staff, PC members, representatives of the eight devolved ministries in each province to implement the Law 21 second amendment. Membership of the task force is to be formalized and their work should be activated. It is recommended that the Governor and PC Chair jointly head this task force. The provincial coordination committee should be activated too.
- 3- The Council of Ministers is requested not to approve the budget until the eight ministries investment allocations of 2014 are devolved to the provinces
- 4- All provinces and committees tasked with the implementation of this law should identify laws that conflict with this amendment and the principle of decentralization to be reviewed by the Council of Ministers in order to be cancelled or amended.
- 5- The eight devolved ministries are requested to establish joint committees with provinces to develop mechanisms and ways to devolve authorities to provinces in August 2015
- 6- Heads of political blocs are requested to ask their ministers in the federal government (Council of Ministers) to withdraw the challenge they filed with the federal court for smooth implementation of the Law 21 second amendment, since it is consistent with the Constitution.

Participants at the Second Governors' meeting extend their thanks to the Iraqi COR for passing the Law 21 second 19 and for their efforts to move towards decentralization. They also thanked the federal government for the quick positive response to the recommendations made

at the first governor's meeting related to the petrodollar issue. We hope that the federal government would also respond positively to the Second Governors' meeting held in Ninawa in order to meet the demands of the citizens of provinces.

These resolutions were signed by the following GOI officials from the Council of Representatives and Governorates:

Dr. Adnan al-Janabi, COR Member
Mr. Ali Fayadh, COR Member
Mr. Salem Dali, COR Member
Mr. Furat al-Sharah, COR Member
Mr. Fares Al Sinjari, COR member
Mr. Jassin Al Sinjari, COR Member
Mr. Hasan Ali Al Wahib, COR Member
Mrs. Entisar Al Jabouri, COR Member
Mrs. Wissal Saleem, COR Member
Dr. Janamaldin Kareem, Kirkuk Governor
Mr. Atheel Abdul Aziz Alnujayfi, Ninawa Governor
Mr. Jassim Mohan Al Beghati, Baghdad First Deputy Governor
Mr. Arab Al Jaza'ry, Basraha Assisat Governor
Mr. Mahmoud Abdul Hasan, Maysan Governor's Technical Advisor
Mr. Maythan Ramadan Al Jabouri, Babil Governor's Assistant
Mr. Khalid Al Maamouri, Babil Governor's Legal Advisor