



USAID
FROM THE AMERICAN PEOPLE

IRAQ GOVERNANCE STRENGTHENING PROJECT (GSP/ TAQADUM)

Annual Report on Lessons Learned and Best Practices (Study on Decentralization in Iraq)

Problems of overlapping of competences and authorities among the federal, regional, and provincial government in the framework of the 2005 Constitution and Law 21 of 2008 (as amended)

IRAQ GOVERNANCE STRENGTHENING PROJECT (GSP/TAQADUM)

Study on Decentralization in Iraq

Problems of overlapping of competences and authorities among the federal, regional, and provincial government in the framework of the 2005 Constitution and Law 21 of 2008 (as amended)

**SUBMITTED BY CHEMONICS INTERNATIONAL
2012**

Contract No. AID-267-C-11-00006

DISCLAIMER

This report is made possible by the support of the American People through the United States Agency for International Development (USAID). The contents of this report are the sole responsibility of Chemonics International, Inc. and do not necessarily reflect the views of USAID or the United States Government.

This document was produced for review by USAID. It was prepared by Chemonics International for the USAID Governance Strengthening Project (Contract No. AID-267-C-11-00006).



USAID | العراق
من الشعب الامريكي



Study on Decentralization in Iraq

**Problems of overlapping of competences and authorities among the federal, regional,
and provincial government**

(In the framework of the 2005 Constitution and Law 21 of 2008, as amended)

Prepared by:

Assistant Professor Hassan Ali Kathum

Member of the Iraqi Human Right Watch

Dr. Sa'ad Hussein Fath Allah

Member of the Iraqi Center for Human activities

Dr. Riad Al-zubaidi

Member of the Iraqi Center for Democracy and Human Rights

Mr. Kathum Al-Baithani

Head of Al-Munqith Organization for Human Rights

Assistant Professor AmruHusham

Member of Al-Ma'rifa Organization

2012

Table of Contents

introduction	5
Theme one: Conceptual framework	5
Topic one: Federalism in the Iraqi Constitution	5
Topic two: Confusion between the concepts of political decentralization and Administrative decentralization in the Iraq Constitution	10
Topic Three: the concepts of legislation, monitoring, planning, and budgeting under Law 21	14
First: Legislation	14
Second: Monitoring and Oversight	16
Third: Planning	19
Fourth: Budgeting	22
Theme Two: Competences of provincial councils of provinces not incorporated into a region	23
Topic one: Legislative competences	23
Topic two: Executive competences	28
Theme three: Governor's Competences	29
Topic one: Administrative authorities	30
Topic two: Financial authorities	31
Topic three: Monitoring authorities	32
Theme four: Monitoring of the three powers over the province, district, and sub-district	33
Topic one: Monitoring of the Council of Representatives	33
Topic two: Monitoring of the Federal government	35
Topic three: Monitoring of the provincial council over local councils	37

Conclusion

38

Findings

Recommendations

References

Tables

Table 1

Constitutional provisions

Table 2

Provisions of Law 21 of 2008

Table 3

Proposed amendments of governmental bodies

Table 4

Important proposed amendments to Law 21

Introduction

This study examines Law 21 of 2008, and amendments. This law, which is also called the Law of Provinces not Incorporated into a Region, is of special importance and sensitivity. It is considered advanced development in the manner in which the Iraqi government manages its provinces to achieve the principle of decentralization and opens the door to the growth of these provinces and implementing their local agendas that meet the needs and expectations of citizens.

The principle of decentralization lifts the heavy burdens of centralization, which is the result of decades of dictatorship and waste of resources and opportunities of development.

Theme one: Conceptual Framework (decentralization)

To understand the concepts of administrative and political decentralization, this study will tackle in this theme "federalism in the Iraqi Constitution" and attempt to remove the confusion between the two terms. It also reviews some of the concepts related to the exercise of authorities cited in Law 21 of 2008, as amended.

Topic one: Federalism in the Iraqi Constitution

States are divided into two groups: single nation-states and multinational states, each of which has its own system that organizes its internal and external affairs. The multinational state is composed of many states such as the United States of America. It can also be established as a result of incorporating single nation-states into one federal country, as is the case of Brails.

As for Iraq, it is considered a single nation-state since its formation in 1921 up to the radical changes that have happened after toppling of the past regime in 2003. Nowadays, there is a pressing need to change the government system and utility management in a manner that ensures its territory integrity and grants its provinces and regions wide powers that enable them to achieve autonomy in the management of their affairs and bring about development in all fields.

Political decentralization or federalism is a system that is related to the political governance in a federal country in which the internal aspects of the country's sovereignty are distributed between the federal government and state governments that enjoy autonomy in exercising their legislative, executive, and judicial powers. The federal government retains the external aspects of the country's sovereignty within the exclusive powers of the federal powers, with few exceptions.

Political decentralization is listed under the topics of constitutional law and political systems rather than administrative law or management science and is limited to federal political systems. Presumably, in systems where political decentralization is applied, there should be federal constitution and local

constitution for regions in place. Also, powers in a federal country should be coupled: federal legislative power and local legislative power for regions; federal executive power and regional executive power; and federal judicial power and regional judicial power. This coupling will only be embodied in a federal system ⁽¹⁾.

In this context, federalism is a type or form of contemporary political system which implies the unity of regions or states in the framework of linkage to federal centralization and granting a kind of autonomy to each region.

The federal system ensures the right of various ethnicities to take care of their own affairs within one sovereign state. The federal constitution, however, is applied to all the nationals of these regions regardless of the consent of the local authorities of the regions ⁽¹⁾.

Consequently, federalism can be defined as the political and social sharing of power through voluntary linkage among people of different nationalities, ethnicities, doctrines, languages, and cultures. These people retain their own identity in one political and federal system in terms of geography, language, culture, and religion. They can also actively participate in drafting and making the state's political decisions.

In this context, federalism is a type or form of contemporary political system which implies the unity of regions or states in the framework of linkage to federal centralization and granting a kind of autonomy to each region.

The federal system ensures the right of various ethnicities to take care of their own affairs within one sovereign state. The federal constitution, however, is applied to all the nationals of these regions regardless of the consent of the local authorities of the regions ⁽¹⁾.

Consequently, federalism can be defined as the political and social sharing of power through voluntary linkage among people of different nationalities, ethnicities, doctrines, languages, and cultures. These people retain their own identity in one political and federal system in terms of geography, language, culture, and religion. They can also actively participate in drafting and making the state's political decisions.

Federalism can also be defined as a system of governance, management, and legislation based on the concept of distribution of powers and authorities among federal agencies located in the capital of the state and those in regions, collectively constituting the state of federal union.

The word "constitution" means base or basis in Arabic; it also means permission or authorization. It is the equivalent of "constitutional law" in Arabic; it was used by the first Iraqi

(1) Dr. Ali Yousif Al-Shukry, *Principles of constitutional law and political systems*, Cario, 2004, P. 68)

Constitution issued in 1925. In French, the word “constitution” means establishment or formation. As a term, the work constitution means a set of rules related to stating sources, transfer, and exercise of authority, as well as the relation among those enjoying it. It is also related to rights and public liberties within a state, whether these rights are described in the constitution document or not ⁽²⁾.

The constitution can also be defined as a set of rules related to the organization of exercising an authority and its transfer to the state based on a specific political opinion. These rules can come into existence by two methods. If the rules are issued by a conditional legislator and written down in a formal document, it is called a “written constitution”; if the rules are developed by customs, habits, and historical or judicial precedents, it is called “unwritten constitution”.

It is worth noting that the 2005 Constitution of Iraq is composed of two chambers: the Council of Representative and the Federation Council. Article 49/1 stipulates that *"The Council of Representatives shall consist of a number of members, at a ratio of one seat per 100,000 Iraqi persons representing the entire Iraqi people. They shall be elected through a direct secret general ballot. The representation of all components of the people shall be upheld in it."*

Further, Article (65/1) states that “A legislative council shall be established named the “Federation Council,” *to include representatives from the regions and the governorates that are not organized in a region. A law, enacted by a two-thirds majority of the members of the Council of Representatives, shall regulate the formation of the Federation Council, its membership conditions, its competencies, and all that is connected with it.*”

Article 61, however, vests the legislation of federal laws in the Council of Representatives only. The fact that the Federation Council has not yet established is considered a violation to the Constitution on one hand and has deteriorated the situation between the federal government and provincial and regional governments on the other hand. While most federal constitution clearly states that the authority to legislative is vested in the federal government, other constitutions state that the authority of legislation is a right that both the federal and regional governments enjoy ⁽¹⁾.

To avoid problems caused by the overlap between the competences of the federal and regional authorities, federal constitutions have used one of the following methods:

(1) Dr. Ali Ghalib&NooriLatif, “The Constitutional Law”; Baghdad, P. 122-123)

(2) Ihsan Al-Mifraji&QatranNi'ma&Ra'adAljada, “General Theory of Constitutional Law and the Constitutional System in Iraq; Baghdad, Iraq, 1990, p. 161.

- 1- *Identifying the exclusive competences of the federal government and those of the region in the federal constitution. The downside of this method is that such identification of competences does not involve all areas no matter how far the constitution is detailed on this issue since life and conditions are constantly changing. New things may be developed that make it hard to determine which is the competent authority, is it the federal government or the regional one?*
- 2- *Exclusive powers of the federal government are determined by the constitution, leaving the remaining powers for the regions. This means the powers of the region will be open and tend to increase while those of the federal government remain the same. This method is mostly used in a federal country established by the incorporation of independent nations; the objective is to maintain autonomy over their internal affairs as a result of giving up independence for the federal government. Among the nations which followed this method the United States of American, the ex-Soviet Union, Argentina, Switzerland, Germany, and the Arab United Emirates⁽²⁾. This method can also be used by a single nation-state, but the diversity of its people make this state more ambitious to expand its authorities to manage its regions and provinces, as is the case in the Iraqi Constitution (Articles 110 and 115). In these articles the Constitution determines exclusive authorities to the federal government such as formulating foreign policy, national security, financial policy, nationality, distribution of water resources, as well as issues of interest to each region such as measurements, broadcast frequencies, and census.*
- 3- *The federal constitution determines the authorities of regions and leaves other authorities as exclusive to the federal government. This method is followed in India, Canada, and Venezuela⁽³⁾,*
- 4- *Some federal constitutions enumerate exclusive authorities to the federal government and regional government or to one of them. Then, they put a list of common authorities for the federal and regional authorities to organize for certain purposes. Among these authorities is the right of regions/states to work and dispose independently with some kind of monitoring from the federal government.*

Also, the federal government may have the authority of developing the general basis while the state can take care of drafting the details and implantation procedures. According to this approach the general authorities is not limited to the federal government; the states has also the right with the federal authority to exercise such authorities ⁽¹⁾. Whatever the approach adopted to distribute authorities, the priority is always to federal laws because they are always superior to those of the regions.

(1) *Hamilton, Madison, and Jay; "the Federalist Papers, Uman, 2005 P. 15*

(2) *Abdul GhaniBesuni; Political parties, Iskandria, 2002 P. 103*

(3) *Khalid Alqaban; Decentralization and the Issue of Labano, Beirut, 1981 p.12)*

In fact some believe that priority to shared authorities should be given to federal authorities rather than regional authorities, as the Iraqi Constitution stipulates in Article 115 *"With regard to other powers shared between the federal government and the regional government, priority shall be given to the law of the regions and governorates not organized in a region in case of dispute."* This is mostly related to

the management of oil and gas in case they are produced within the geographic borders of the province, management of customs, regulating the main sources of electric energy and its distribution, formulation of environmental and development policies, formulating public health and educational policies, and formulation of internal water resource policies. All these shared authorities should be organized in a law, as stated by Article 115.

It is important to review in some detail certain articles in the Iraqi Constitution related to the expansion of constitutional authorities, an issue which has made some confusion. Article (126/4) stipulates that “Articles of the Constitution may not be amended if such amendment takes away from the powers of the regions that are not within the exclusive powers of the federal authorities, except by the approval of the legislative authority of the concerned region and the approval of the majority of its citizens in a general referendum.” In this provision, the Iraqi legislator tries to stress the autonomy of regions in a way that leaves no room for doubt of the possibility of expanding constitutional authorities. Not only does the provision state that regions have priority in legislation in regard with shared authorities according to Article 115 and the possibility of amending the implementation of the law regarding these authorities according to Article 121/2. It also places many restrictions when amending a constitutional provision relating to remaining authorities of regions or shared authorities since it entails the approval of the legislature of the concerned region and being accepted by its citizens in a referendum. Here, a question may arise: does the legislator mean by the phrase “the concerned region” that the implementation of the constitutional amendment is left to the discretion of the region in consideration?

The Iraq legislator has confused things when drafting this provision. It is well known that any amendment to the federal constitution entails that the federal government and all regional governments should be committed to implement this amendment and not be limited to a specific region; otherwise, the amendment would be made for a region constitution rather than a national constitution. Further, the legislator is facing another challenge by using this phrase. For the first time, it can be construed that the constitution could be right but its implementation still depends on the approval of each region separately. The region that approves the amendment according to the procedures stipulated in Article (115) shall be subject to this amendment; but this Article explicitly states the necessity of the approval of the regions’ legislature and the citizens in a public referendum. Lastly, it can be said that the constitutional legislator was not right in drafting Article 115; thus, it should be amended.

(1) *Adil Tabatabaee, Autonomy of states in a federal country; Kuwait, 1980, P. 92*

■
Topic 2: Confusion between the administrative and political decentralization in the Iraqi Constitution

To begin with, decentralization is defined as the distribution of powers and competences between the central authority and other legally independent bodies. Decentralization can be examined through two types of decentralization: political and administrative ⁽¹⁾:

- 1- *Political decentralization: it is the distribution of different governmental functions-legislative, executive, and judicial- among the federal government in the capital and governments of states, republics, cantons and other political units. This kind of decentralization can be found in multinational states such as the United States of America, ex-Soviet Union, and Switzerland. This kind of decentralization goes well with large countries of different languages, ethnicities, and cultures*
- 2- *Administrative decentralization: it is the distribution of the administrative of function between the central administrative apparatus and other independent bodies. By this definition, it differs from the political decentralization in that it limited only to administrative function and it can be found equally in single nation-states and multinational states.*

Decentralization is based on the re-arrangement of the administrative structure of states from top to bottom followed by the distribution of administrative functions according to a hierarchy begins at the center and ends at the smallest administrative function in the state.

Administrative decentralization takes different forms such as the regional decentralization which distributes functions either by delegation from the central government, which is not a virtual authority and can be cancelled by the central government at any time, or by transfer of responsibilities from central authority employees to those in in regions; this called administrative de-concentration. Most third world countries have such kind of administrative decentralization ⁽²⁾. Iraq was one of the states that used this type of administrative decentralization and worked accordingly under the cancelled Law 159 of 1969, the cancelled Order of the Coalition Provisional Authority (CPA) No. 71 of 2004, and the effective Law of Provinces not Incorporated into a Region No. 21, as amended.

(1) A study published on the website www.darah.org.sa/bohos/Data/5/4-1.htm

(2) Adnan Mohammed Hassan, Authority crisis between the center and periphery: a study publish on the internet, 2012

(3) The term 'federal government' is not used much neither by politicians nor the media; rather, the term 'central government is used. It is not mentioned in the Iraqi constitution, but it is inherited and still in use.

So, the administrative decentralization is an administrative method that is based on the distribution of administrative functions among the federal authorities in the capital and locally elected bodies in regions and provinces, performing their competencies under the supervision of the central authorities ⁽³⁾.

Administrative Decentralization must have three elements:

- 1- Recognition of independent local interests that requires the recognition of its the independent personality
- 2- Existence of elected local commissions that assume the responsibility of running the local units
- 3- Subjection of local commissions to federal authority monitoring.

We would also like to shed light on federal government's executive branch ⁽¹⁾, one of the three authorities in a state that is mostly concerned with the administrative decentralization. The main two functions of functions of the executive branch are:

- a- The governmental function. It is represented by its relation with the legislative and judicial branches on one side, and its relations with other states
- b- The Administrative function: it is represented by meeting of individual's needs through the public administration, and the organization of individual's activities. This function is shared by the executive and individuals working in the regional and public utilities (regions and provinces) which is an integral part of the state's region.

■

After this introduction about the two different kinds of decentralization, the political and administrative, let us review some of the confusion in some of the 2005 Iraqi Constitution articles. This confusion is shown in more than one article ⁽¹⁾:

- 1- Article (116) states that "The federal system in the Republic of Iraq is made up of a decentralized capital, regions, and governorates, as well as local administrations. "The form of decentralization is not identified in this Article (is it a federal or administrative decentralization?) until Article (122) grants provinces not incorporated in a region wide administrative and financial authorities to enable these provinces carry out its affairs on the basis of the principle of administrative decentralization. Article 122/5, however, stipulates that "The Governorate Council shall not be subject to the control or supervision of any ministry or any institution not linked to a ministry. The Governorate Council shall have independent finances." Here, the Constitution confuses between the concepts of federalism and the administrative decentralization since non-subjection of elected local administrations to federal authorities is one of the components of federalism. Further, in administrative decentralization, local administrations are subject to the monitoring of the federal authorities in the capital. This shows that there is confusion in two paragraphs in one constitutional article.
- 2- Article (115) grants provinces and regions not incorporated into a region the same authorities that the Constitution does not enumerate in the exclusive powers of the federal authorities. This means that the Constitution has exclusively identified the authorities of the federal government, leaving the authorities of regions and provinces open to receive more authorities over time. This implies that the Constitution has not only granted provinces and authorities very wide authorities, but also to expand these authorities as when it has granted priority to the Law of Provinces and Regions not Incorporated into a Region in case of any dispute over non-exclusive powers.

A careful reading to the authorities granted by this constitutional article to provinces not incorporated into a region clearly reveals that the Constitution has put provinces on the same footing with regions in regard with the right to legislate and enjoying all powers except those exclusively granted for federal authorities. This means that the Constitution has granted provinces all the requirements of federalism above mentioned despite the fact that Article 122 applies the principle of administrative decentralization. This implies that the Constitution has confused between federalism and administrative decentralization.

3- *Article 114 of the Constitution specifies seven authorities shared between the federal authorities and those of regions and provinces not incorporated into a region:*

- a- *manage customs*
- b- *regulate the main sources of electric energy and its distribution*
- c- *formulate environmental policy to ensure the protection of the environment from pollution and to preserve its cleanliness*
- d- *formulate development and general planning policies*
- e- *formulate public health policy*
- f- *formulate the public educational and instructional policy*
- g- *Formulate and regulate the internal water resources policy in a way that guarantees their just distribution, and this shall be regulated by a law.*

The question is: what if there are discrepancies between the federal government and that of the region and province in exercising these authorities and competences? Article 115 Above-mentioned grants priority to regions and provinces not incorporated into a region of shared authorities in the event of any divergence between the federal and regional and provinces laws. Practically, shared authorities are vested in regions and provinces since the Constitution has granted priority to the law of regions and provinces. The federal authorities have nothing but to submit, if regions and provinces insist, to laws enacted by the governments of regions and provinces. This implies that this authority is the highest authority granted by a federal system around the world. Again, this emphasizes the confusion between the concepts of federalism and administrative decentralization in Article 122/2.

(1) *Dr. Khalil Hussein, A study on Federalism and Decentralization in Iraq, Kurdistan region as a model; an article on the internet on 25March, 2011.*

4- *The distribution of public functions distinguishes between the administrative and political decentralization and federalism. This is described in Article 121/1 which stipulates that "The regional powers shall have the right to exercise executive, legislative, and judicial powers in accordance with this Constitution, except for those authorities stipulated in the exclusive authorities of the federal government" and Article 122/2 which stipulates "Provinces 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".

By comparing Article 121 to Article 122, we can see that the legislator distinguishes between the federal system and **administrative decentralization on the basis of the difference of legal nature of each of them.**

Thus, under federal system laws, administrative decisions, and judicial judgments are issued, whereas provinces not incorporated into a region issue regulatory administrative decisions because they apply the system of administrative decentralization; and according to the Constitution, the provinces have been granted wide administrative and financial authorities.

In summary, the Constitution has considerably confused between federalism and administrative decentralization. The reason behind that is that those who drafted the Constitution were not familiar enough with the administrative and political system being used around the world. What makes things even worse is that there are some provisions in the Law of Provinces not incorporated into a Region (Law 21) of 2008 which contradict provisions of the constitution and that Law 21 has overlooked the basics of the administrative work, which we will try to explain hereafter.

One may ask about the difference between federalism and administrative decentralization. We are trying to answer this question as follows:

- 1- *In the federal system, authorities of the federal state and provinces are enumerated in the federal constitution as stated above, whereas in the administrative decentralization authorities of provinces are identified in the common law. Based on this difference, authorities granted to provinces can be cancelled or amended according to a common law issued by a federal system which can be cancelled or amended by the federal state only by a constitutional amendment. Also based on this difference, the topics of the federal system are listed under the constitutional law and political systems, whereas the topics of administrative decentralization are listed under the topic of the administrative law.*
- 2- *In the federal system, regions have legislative, executive, and judicial bodies are independent from those of the federal state, whereas in the administrative decentralized system the legislative and judicial bodies are not independent of those of the federal state, and the executive bodies in provinces are subject to the federal government and derive its authorities under federal laws and delegation from the federal government.*
- 3- *In the federal system, independent bodies are not subject to the monitoring of the federal authorities and independently assume their works under the federal constitution and the local constitution of regions, whereas in the administrative decentralization local bodies in provinces are subject to the monitoring and guardianship of the federal government in assuming their works.*

- 4- *In the federal system, regions implement the laws issued by their legislative bodies in a manner that does not contradiction with the federal and regional constitutions, whereas in the administrative decentralization provinces implement the laws issued by the federal state legislative bodies which are implemented throughout the country. Furthermore, the federal system is implemented in federal states, whereas administrative decentralization is often implemented in the unified states and sometimes in federal states*

Theme three: the concepts of legislation, monitoring, planning, and budgeting under Law 21

The Law of provinces not Incorporated into a Region cites some authorities that provincial councils enjoy and which the federal government also exercises such as legislation, oversight, monitoring, planning, and budgeting.

To understand these authorities and the way they are exercised, we are going to tackle them in the following points:

First/ Legislation

Enacting laws at the regional level in a federal state is one of the fixed rights of regions. The parliament of the region assumes this authority provided that laws issued by the regional parliament should not contradict with the federal and regional constitutions ⁽¹⁾. Based on the conditions in which the Iraqi Constitution was drafted, the constitutional legislator grants provinces not incorporated into a region the right to enact laws ⁽²⁾. The Constitution also gives priority to a province law over the federal law in case of disputes involving shared powers enumerated in Article 14 of the Constitution. Giving the province the right to enact laws raises the question: who is the competent body or party that exercises the legislative process?

There is not any provision in the Constitution on this issue. We believe that the provincial council, being the highest elected body, be the competent body for enacting legislation within the province not incorporated into a region. It is to be noted that the Iraqi Constitution has granted regional authority the right to amend the implementation of the federal law within the region in the event of any contradiction with the federal and regional laws in matters not relating to the shared powers of the federal authorities; this authority has not granted this power to authorities of provinces not incorporated into a region.

Article 110 of the Constitution identifies in (9) articles the exclusive powers of the federal authorities, and Article 114 identifies shared powers between federal and regional powers in (7) articles. This article has shared provinces not incorporated into a region which is not accurate since provinces not incorporated into a region are functioning according to the principle of administrative decentralization and the authorities they are exercising are administrative identified by the law not by the Constitution.

The inclusion of provinces not incorporated into a region in exercising the same regional authorities is confusion between the federal system and administrative decentralization and obliteration to the features of provinces authorities. Additionally, most shared powers are related to formulating policies in many fields. Thus, prevalence should be given to the federal authorities that develop policies in coordination, coordination, and consultation with regions.

Accordingly, priority for shared authorities should be given to federal authorities rather than regions. The Constitution in Article 115, however, was illogical when it stipulates that "With regard to other powers shared between the federal government and the regional government, priority shall be given to the law of the regions and governorates not organized in a region in case of dispute."

The provincial council has the authority to issue legislation other than laws such as orders and instructions within its administrative boundaries. This is even enhanced by Article 7/3 that stipulates "Issue local laws, instructions, bylaws, and regulations to organize the administrative and financial affairs so that it can conduct its affairs based upon the principle of administrative decentralization in a manner that does not contradict the provisions of the Constitution and federal laws."

We draw the conclusion that enacting laws is not basically one of the provincial council competences. The provincial council may not collect taxes and fees in consistent with Article 28 of the 2005 Iraqi Constitution that stipulates "No taxes or fees shall be levied, amended, collected, or exempted, except by law." This constitutional provision restricts Article 44/3 of the Provincial Power Law (PPL) that stipulates "Proceeds from taxes, duties, and local fines in

(1) Abdul Ghani Basyooni, *Opinions about political systems and constitutional laws*, Cairo, 2004 P. 112-115.

(2) Article 115 of the 2005 Iraqi Constitution.

(3) Article 2/4 of the CPA's Order No. 71 of 2004.

(4) Article 121/1 of the 2005 Iraqi Constitution.

accordance with the Constitution and the applicable federal laws" and also restrict imposing the surcharge at a rate of 5% according to the State Shura Council decision No. 61/2005 dated 1 November, 2005 that stipulates "the Shura Council sees that no surcharge at a rate of 5% of relevant taxes shall be imposed by the provincial council, except by law".

Article 28 of the Constitution leaves idle Article 44/5 of the Provincial Power Act (Law 21); The latter stipulates that "Proceeds from the sale and lease of public movable and immovable assets in accordance with the Law on Sale and Lease of Public Properties and other applicable laws." The applicable law for the sale and lease of public assets is Law 32 of 1986, as amended. The provincial council shall have no authority over this law unless the Council of Representatives (CoR) enacts a new law for the sale and rental of public assets and involves provincial councils in its proceeds.

The provincial council shall only have the right to collect amounts of money for services delivered by the province but not in the form of taxes and fees. Commenting on Article 44/2 that stipulates

"Revenues generated from the governorate services and investment projects." Article I of the Investment Law 13 of 2006 defines 'investment' as "investing money in any activity or project that legally benefits the country".

Second: Oversight and Monitoring

It can be said that the Constitution has denied the functions of oversight and control of provincial councils but not the function of monitoring. This is based on the fact that the Constitution has not explicitly denied the monitoring function of the provincial council. Also, control and oversight is not the same as monitoring; 'control' means to direct and lead the council in a specific way; or it means the subjugation of PC members to the central administration with the possibility of the members being removed and the council being dissolved by the central administration. On the other hand, 'oversight' is a meaningful comprehensive technical process performed by the executive authority to achieve specific goals in the light of proposed plan designed to improving the development process with all its dimensions and implications, and following up the implementation of all related issues. We can conclude that what the Constitution has denied is 'control' and 'oversight' but not 'monitoring'.

Consequently, provincial councils are still subject to several forms of monitoring. Our perspective is based on ground that the independence sought by the Constitution and denial of monitoring is nothing but a means to achieve a specific end, which is improving the quality of public services in the province and providing services to citizens. If a provincial council deviates from this end, it shall subject to the monitoring of the judiciary, based on its general jurisdiction (Article 19/3 and 100 of the 2005 of the Iraqi Constitution), and to the monitoring of some independent agencies such as the Integrity Commission (Article 102) and the Supreme Audit Board (SAB) (Article 103/1), and the popular monitoring, considering that the people are the source of authorities and legitimacy.

The PPA (Law 21) of 2008, as amended, cited the following about 'monitoring'

Article 2 stipulates that "The provincial council is the highest legislative and oversight authority within the administrative boundaries of the province." The term 'monitoring' as cited in this Article is indefinite since it does not describe the type, range, and limits of the monitoring granted to the provincial council. Upon reviewing the Articles of this law, the types 'monitoring' exercised by the provincial council becomes clear. We can summarize it as follows:

- ***Monitoring the provincial council chair, deputy, and members (Article 6, Article 7, Article 15, and Article 50)***

Article 6

- 1- *Death of the member, or his permanent disability, or a disability or a serious disease that prevents him from carrying out his responsibilities as a member, based on a decision from a specialized medical committee.*

- 2- Resignation
 - a- The council member and the local member may submit his resignation from the respective councils in writing to the council head [chairman]; the latter shall present it at the next session so that the council may decide on it.
 - b- The resignation shall be considered accepted only if approved by the absolute majority of the council members or when he insists on his resignation even if the council rejects it by an absolute majority.
- 3- The member shall be considered removed if he fails to attend four successive sessions or a quarter of the total number of council sessions within a period of four months without legitimate reasons. In such cases, the council shall invite him to a hearing to be held at least seven days from the date of notification of the hearing. The council may consider him to be removed upon a decision taken by an absolute majority of the council members.
- 4- The council may terminate the membership by an absolute majority if any of the conditions stated in Article 7, "Eighth," of this Law is met.
- 5- If he ceases to possess any of the membership requirements.

▪
Article 7/2:

Remove, upon the request of one third of the members, the council head or the deputy by an absolute majority of the council members in cases where one of the conditions stipulated in Paragraph "Eighth" of this Article has been met.

Article 15

- 1- The members of the councils shall be free to express their opinions in the deliberations.
- 2- The councils may decide, by a majority of the members present, to deny a member from attending one or more sessions if his conduct in the council or his general conduct has brought discredit to the council in which he is a member.

▪
 ▪
Article 50;

The council and the local councils shall authenticate the membership in the respective councils by absolute majority of the members within 30 days of the date of the first session.

- **Monitoring over local councils (Article 20/1,3, Article 8/4,8, 9, and Article 12/4,5)**

Article 20

First: The council and local councils shall be dissolved by an absolute majority of the members based upon a request of one third of the members under the following conditions:

1. Gross dereliction of duties and functions assigned to them
2. Contradicting the Constitution and laws.

3. If one third of the members no longer meet the membership requirements.

Third:

1. The governorate council may dissolve a local council by an absolute majority of its members upon a request from the qada'a administrator, as regards the qada'a council, or the nahiya administrator, as regards the nahiya council, or one third of the local council members if one of the conditions stipulated above is met.

2. The dissolved council or one third of its members may contest the dissolution decision before the Federal Supreme Court within 15 days from the date of its issuance. The court shall decide on the challenge within 30 days from the date of receiving it.

Article 8:

Fourth: Monitor the progress of the work of the local administration in the qada'a.

Eighth: Monitor and evaluate the educational activities within the boundaries of the qada'a and submit relevant recommendations through the governorate council.

Ninth: Monitor and organize the utilization of public lands within the geographic location of the qada'a and endeavor to develop agriculture and irrigation.

Article Twelfth:

Fourth: Monitor the work of the local administration in the nahiya.

Fifth: Monitor the local offices and forward the necessary recommendations in this regard to the qada's council.

- ***Monitoring over the Governor and deputies (Article 7/8 '1')***

▪

Article 7/8 (1):

Question the governor or one of his two deputies based upon a request from one third of the members. In case the simple majority is not satisfied with his answers, then his removal is put to vote at another session and he is deemed removed with the consent of the absolute majority of the council members.

- ***Monitoring over senior officials (Article 7/9 '2')***

▪

Article 79 (2):

Relieve, by the absolute majority of its members, senior officials in the governorate from their duties upon the request of one fifth of the council members or the governor in accordance with Paragraph "Eighth" of this Article. The Council of Ministers may also relieve the senior officials upon a proposal from the competent minister

- ***Monitoring over Executive Offices (Article 7/6)***

▪

Article 7/6: Monitor all the activities of the local executive authority excluding the courts, military units, colleges, and institutes.16

- ***Monitoring over the acceptance and rejection of gifts and donations (Article 7/16)***

Article 7/16: Approve by an absolute majority of the council members the acceptance or rejection of donations and gifts received by the province.

Third: Planning

Under the concept of administrative decentralization, planning involves promoting the participation of the public and target group in the processes of developing and implementing local development plans which is called bottom-up approach. This approach, as Emanuel Sun believes, achieves one of the major principles of successful development; it is reflected by promoting freedom in its comprehensive human concept, rather than its political concept, which enhances the ability of man to choose. The bottom-up approach also assists in identifying regional development goals that reflects the uniqueness of a region in planning.

There is a considerable difference between regional development goals developed regional planning institutions, and regional development goals set by central planning agencies, although the first should be complementary, consistent, and not contradicting the other.

The effective application of the decentralized administration in planning and local development assists in using development programs to meet the needs of local citizens. It allows citizens in different administrative units to participate in developing and implementing development plans in their respective areas and provides required support for resources mobilization.

Article 7/4 of Law 21 states that the provincial council, in the development of plans for the province, outlines the general policies in coordination with the competent ministries. Article 7/15 also states that the provincial council shall identify the province's priorities in all fields and outlines its policies and strategic development plans in a manner that does not contradict with the overall national development.

From the above-mentioned provision, the provincial council should outline its policies and local development plans in coordination with the federal government to ensure that these polices and plans are consistent with those outlined at the federal level.

This means that these councils should set their local plans and projects in a manner that does not contradict the federal plans and projects. It is worth noting that provincial projects implemented by ministerial departments are considered federal rather than local projects.

The relation between provincial councils and federal government with regard to planning

- *The planning authority of provincial council*

The provincial council outlines the general policies for provincial development in coordination with the competent ministries. The provincial council is responsible for identifying priorities for provincial development and should be familiar with all available means to communicate its decisions to relevant parties. It should also identify its relation with service departments in the province.

In identifying provincial priorities and development strategic plans, the Provincial council should put into consideration the exclusive powers of the federal government and that provincial development plans be consistent with the national development plan outlined by the Ministry of Planning (MoP).

- *Planning sources of the provincial council*

-

a- The 2005 Iraqi Constitution

Article 114 describes the shared authorities between the federal government, regional government, and provinces not incorporated into a region. Prominent among these authorities pertinent to planning are: customs management, regulation of main electrical energy, formulate environmental policy, formulate general planning and development policies, formulate public health policy, formulate the educational and instructional policy, and To formulate and regulate the internal water resources policy in a way that guarantees their just distribution. In addition, the Article 112 of the Constitution states that the federal government and producing provinces and regional governments shall undertake the management of oil and gas and together formulate the necessary strategic policies to develop the oil and gas wealth.

b- Provincial Powers Law (Law 21) of 2008

Article 7/4 of the PPA states that the provincial council outlines, in the development of the plans for the governorate, the general policies in coordination with the competent ministries. Paragraph 15 of the same Article states that the provincial council identifies province's priorities in all fields and outline its policies and strategic development plans in a manner that does not contradict with the overall national development.

In outlining its general policy and local development plans, the provincial council needs to coordinate with the federal government to ensure consistence with plans developed at the federal level. This implies that provincial councils should set their local plans and projects in a manner that does not contradict the federal plans and projects. It is worth noting that provincial projects implemented by ministerial departments are considered federal rather than local projects.

Conflict and contradiction of authorities

The problem of the contradiction between the authorities of the federal government and those of regions and provinces is attributed to legal and practical obstacles and challenges cited in the Constitution, Law 21, and other applicable laws and regulations. Below are some of these issues:

The Constitution contains contradicting provisions, leading to ambiguity and confusion in the application of Law 21 of 2008 that regulates responsibilities and authorities of provincial councils. While Article 122/2 of the Constitution states that "*Provinces 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*", Article 115 of the Constitution grants provinces all authorities, except for exclusive authorities; it stipulates that "*All powers not stipulated in the exclusive powers of the federal government belong to the authorities of the regions and governorates that are not organized in a region. With regard to other powers shared between the federal government and the regional government, priority shall be given to the law of the regions and governorates not organized in a region in case of dispute.*"

On the other hand, Article 114 of the constitution enumerates the shared authorities between the federal authorities and regions authorities. These include:

First: To manage customs, in coordination with the governments of the regions and governorates that are not organized in a region

Second: To regulate the main sources of electric energy and its distribution.

Third: To formulate environmental policy to ensure the protection of the environment from pollution and to preserve its cleanliness, in cooperation with the regions and governorates that are not organized in a region.

Fourth: To formulate development and general planning policies.

Fifth: To formulate public health policy, in cooperation with the regions and governorates that are not organized in a region.

Sixth: To formulate the public educational and instructional policy, in consultation with the regions and governorates that are not organized in a region.

Seventh: To formulate and regulate the internal water resources policy in a way that guarantees their just distribution and this shall be regulated by a law.

Fourth: Budgeting

Public budget is an "a document that describes estimates of state's revenues and expenditures during a specific period of time, usually one year. It is estimated in the light of the state's philosophy goals."

The concept of public budgeting involves two issues:

- 1- It is an **estimate**: it estimates projected revenues and expenditures during a certain future period. Thus, it is a projected estimate of the state's expenditures and revenues which are prone to increase and decrease.
- 2- It is **authorized by the legislative authority**: this means that the budget bill introduced by the government is approved by the legislative authority. With this approval by the legislative, the budget bill becomes a law, allowing the government to raise and expend funds; it also grants the legislative or the **constitutionally authorized authority the right to effectively monitor the work of the executive authority**.

■

The Iraqi public budget is governed by the Law of Financial Management and Public Debt No. 95 of 2004. The main question is: How effective are previous laws in the preparation of the public budget in the light of the political, economic, and social changes which Iraq witness? Other questions that may be raised are:

- 1- What are existing governmental levels?
- 2- What are authorities and responsibilities vested in these governmental levels?
- 3- What available sources of funding do these levels have (taxes, transfers, loans, etc.)?

The provincial council is vested with the authority to prepare the council budget (Article 7/5), transfer funds between its chapters, and grant the Governor the authority to prepare the budget and other authorities, prominent among which:

- The authority to expand in public functions, leading to expansion in public expenditures related to the province; this is based on authorities granted to the Governor to create universities, police stations, appoint local employees on permanent basis, and select the member so the provincial advisory board. All this is related to public expenditure (Article 31 and 24).
- It is noted that most revenues of a province comes from the federal budget (Article 44/1). It is of interest to mention that the word "taxes" is not used or referred to in this Article; instead, the words "fees, fines, rentals, donations, gifts" are used in Article 44/3, 4. Taxes have not referred to because they are exclusive authority of the federal government. Consequently, this type of revenues, while given a priority at the local level in other parts of the world, is not given due importance in Iraq at the local level and not included in the public revenues.
- Lastly, it is important to mention that Article 44/2 indicates that provincial revenues come from services delivered and investment projects implemented by the province. It is supposed that investment should be conducted by the private sector in order to reinvigorate and enhance the role of this sector, as stated in Article 25 of the 2005 Iraqi Constitution. Since most projects are covered by great tax exemptions in accordance with the Investment Law No. 13 of 2006, as an attempt to attract international and local investment, imposing taxes on such projects will not achieve required results and may have adverse consequences on the type of services delivered by the province.

Theme Two: competences of provincial councils not of provinces not incorporated into a region

Article 122 of the Constitution stipulates that “provinces 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. Based on this, Law 21 which is concerned of the provinces not incorporated into a region was issued. This Law recognized the principle of regional administrative decentralization to be applied to provinces not incorporated to the federal system.

This law states that a province consists of districts (qada), sub districts (nahiya), and villages, and has legal personality as a result of the implementation of administrative decentralization stipulated by the law in Article 2. Law 21 is implemented in 15 provinces out of 18, and the Constitution recognized that the three northern provinces of Dhok, Erbil, and Sulaymaniyah are incorporated in Kurdistan region; thus this Law is not functional in this region.

We are going to discuss these competences in three topics.

Topic one: Legislative competences

The drafter of the Law 21 does not deviate much from the constitutional provisions. Article 2 of the Law 21 states that the province shall manage its affairs according to the principle of administrative decentralization. The legislator, however, was not successful in the wording of this Article. The Article reads “The governorate council is the highest legislative and oversight authority within the administrative boundaries of the governorate and shall have the right to issue local legislation within the boundaries of the governorate so that it can carry out its affairs on the basis of the principle of administrative decentralization and in a manner that would not contradict the *Constitution* and federal laws.”

This text is also repeated in Article 7/3 which enumerates the competences of the provincial council; it stipulates that the provincial council shall “Issue local laws, instructions, bylaws, and regulations to organize the administrative and financial affairs so that it can conduct its affairs based upon the principle of administrative decentralization in a manner that does not contradict the provisions of the *Constitution* and federal laws.” These two articles initiated debates about the meaning of the phrase “local legislation”, and also the meaning of the phrase “legislative authority in Article 2. Does it mean legislative authority that issues laws, or administrative authority that issues general rules represented by regulatory administrative decisions?

We can assure, along with other experts in this field that the legislator has meant in these two provisions that the provincial council enjoys an administrative authority to issue regulatory administrative decisions, which are only general rules. Unfortunately, the legislator was not successful in the wording. There are evidence in the Constitution that can sustain our claim. The 2005 Iraqi

Constitution has distinguished between regions which can issue legislation in the federal system, and the provinces which are given wide financial and administrative authorities under the decentralization system according based on the principle of administrative decentralization.

We can cite here other controversial provisions in Law 21:

- 1- *The legislator said that provincial council issues 'local legislation' and not 'laws'. The term 'legislation' can include regulatory administrative decisions that contain abstract general rules; it can be called "sub-legislation".*
- 2- *In both provisions, the legislator included the phrase "so that it can carry out its affairs on the basis of the principle of administrative decentralization" after citing that the provincial council "issue local legislation".*
- 3- *The legislator mentioned that local legislation would not contradict the Constitution and federal laws; this means that local legislation issued by the provincial council ranks below the constitution and federal laws, which means that they are administrative decisions.*
- 4- *In Article 7/3 of Law 21, the legislator mentions that the provincial council would issue "local legislation, regulations, and instructions", and we know that regulations and instructions are regulatory administrative decisions. If we consider that local legislation is 'laws', then this means that the provincial council is a legislative and executive authority at the same time, which is contradictory to the principle of separation of powers cited in the Constitution. Consequently, this provision is unconstitutional and must be cancelled.*
 -
- 5- *Article 2/1 of Law 21 stipulates that "The governorate council is the highest legislative and oversight authority within the administrative boundaries of the governorate." So, in addition to the provincial council, there are also the councils of qada and nahiya. Can we consider that these council also issue laws? This is illogical. In the federal system there is only one legislative authority that issues laws. If so, is it logical that under administrative decentralization there is more than one authority issuing laws? This is also downright illogical.*
 -
- 6- *In Article 7/12 " Issue a gazette wherein the council's decisions and orders shall be published." Here we see that there is no mention to laws and legislation.*
- 7- *Article 31/2 states that the Governor competences "Execute the decisions of the governorate council as long as they are consistent with the applicable laws and the provisions of the Constitution." This implies that the Governor is committed to execute decisions issued by the provincial council. If we are talking about laws and legislation, meaning "law", the Governor is not committed to execute if the decision issued by the council is in violation to applicable laws and the Constitution. Thus, the provision reads "as long as it not contradictory to the Constitution and applicable laws. So, they are regulatory administrative decisions.*

We undoubtedly believe, based on the above-mentioned, that the provincial council is a local administrative authority that issues regulatory administrative decisions.

In principle, we support the amendment of the Law of Provinces not Incorporated into a Region in regard with Article 2. We, however, do not agree with draft amendments that describe the provincial council as having planning and monitoring authorities, such as (provincial council is the highest planning and monitoring authority within the province...) and (the provincial council is the highest monitoring authority within the administrative borders of the province..). We propose the following amendment to Article 2/1 of Law 21: "the provincial council is the highest administrative and monitoring authority within the administrative boundaries of the province".

In addition, we agree with the draft amendment of Article 7/2 "the councils shall enjoy legal personality and administrative and financial independence and represented by the council Chair or a representative"

We also support amendment to Article 7/3 related to competences of the provincial council to read as follows: "Issue **decisions**, regulations, and instruction to organize the administrative and financial affairs so that it can conduct its affairs based upon the principle of administrative decentralization in a manner that does not contradict the provisions of the *Constitution* and federal laws."

Law 21, however, grants province the authority to issue local legislation.

Types of legislation

- a- **Legislation organizing administrative affairs:** *examples of such legislation are creation of new administrative unit-qada, or nahiya, merging of two qadas or nahiyas, changing of nahiya or qada's name, etc. Such legislation can be issued as local decisions by the provincial council*
- b- **Legislation organizing financial affairs:** *such as those decisions related to collecting and expending of local taxes, fees, fines, and surcharges to enable the provincial council manage its affairs according to the principle of administrative decentralization granted by the Constitution (Article 115). Taxes and fees, however, may not be imposed without a federal law according to Article 28/1 of the 2005 Iraqi Constitution. So, provinces should only collect taxes but not impose them.*

In response to a question by the Najaf Provincial Council about how far does a province enjoy the right to impose taxes and fees, the Supreme Federal Court explained that a province may enact laws related to imposing and collecting and expending local taxes, fines, fees, and surcharges to manage its affairs according to the principle of administrative decentralization ⁽¹⁾.

A decision was issued by the Supreme Federal Court based on a request by the Council of Representative's Legal Office regarding authorities of councils of provinces not incorporated into a

region that the provincial council does not have the right to enact local laws, but it can exercise wide financial and administrative authorities based on Article 122/3 of the Constitution ⁽²⁾.

Here, the Supreme Federal contradicts itself because the Constitution grants provinces not incorporated into a region wide financial and administrative authorities but not legislative authority because they work based on the administrative decentralization which is related to the administrative function only. Thus, the opinion of the Federal Supreme Court No. 6/2008 is in contradiction of its decision No. 9/2007.

The State Shura Council states that a provincial council may not issue legislation for any reason, and that it has not been granted legal personality by law, and its Chair is not a head of an administrative unit ⁽³⁾.

Article 115 of the Constitution should be taken as a basis for Wasit Provincial Council to enact a law on the organization of internet café work No. 4 of 2010 because provincial council authorities are based on law not the Constitution.

2- Validity of local legislations: local legislation shall be only valid within the administrative boundaries of the province.

3- Constitutionality of local legislation: the Supreme Federal Court considers the constitutionality of applicable laws and regulations and settlement of disputes that may occur between the federal government and local, provincial and regional governments. The decisions of the Supreme Federal Court are binding to all other authorities according to Article 94 of the Constitution.

4- Relations between local legislation and federal legislation: this relation has two features: superiority of the federal law and integration of laws. The first is reflected by Article 7/3 (in a manner that does not contradict the Constitution and federal law), whereas the second means that local legislation should be integrated with federal legislation in order to be implemented.

From this we can see that the Iraqi legislator of Law 21 of 2008 lacks the clear vision to the role of administrative decentralization and what local authorities need to do. Consequently, the legislator confused between the administrative decentralization and political decentralization in terms of competences.

(1) *Opinion of the Supreme Federal Court No 16/2008 dated 21 April 2008* , available on www.iraqja.iq

(2) *Opinion of the Supreme Federal Court No 9/2007 dated 2 February, 2007* , available on www.iraqja.iq

(3) *The decision of the Supreme Federal Court on 25 October, 2012*

Topic Two: Executive Competences

Law 21 has cited three types of executive competences for provincial councils: administrative, monitoring, and disciplinary.

First: Administrative competences

-
- 1- *The election of the PC Chair and deputy. With regard to lower local councils (qada and nahiya councils) the law states that these councils shall 'elect the head of the council by the absolute majority of the members of the council at the first session called for by the qada'a administrator within 15 days from the date of the certification of the elections results.' This provision does not stipulate the election of a deputy for the heads of these councils in accordance with Article 8/1, for the district, and Article 12/1 for the district.*
- 2- *Elect the Governor and his two deputies from within or outside the council, according to Article 7/7 (1, 2). The mechanism of election is conducted by an absolute majority of the members within 30 days from the date of its first session. The PC exercises the same competence when removing the Governor according to Article 7/8 (5). What we want to state here is that the Governor under the law has two deputies. But it has not determined the nature between them, or who is the first or second deputy!*
- 3- *Outline, in the development of the plans for the governorate, the general policies in coordination with the competent ministries (Article 7/4). The objective is to provide better services to citizens of the province within the framework of the national development strategy.*
-
- *This implies that the provincial council should implement decisions of the High Coordination Commission, as stated in the Supreme Federal Court decision that states "provinces not incorporated into a region is not incorporated into a ministry and subject to the monitoring of the Council of Representatives and follow all the decisions issued by the Commission described in Article 45/1 of Law 21 ⁽¹⁾.*
- 4- *Approve the nomination of three out of at least five candidates proposed by the governor for the senior positions in the governorate by the absolute majority of the council members and the competent minister shall appoint one of them. (Article 7/9 (1).*
- 5- *Issue a gazette wherein the council's decisions and orders shall be published. (Article 7/12)*
- 6- *Select a logo for the governorate embodying its cultural and historical heritage. (Article 7/13.*
- 7- *Approve by an absolute majority of the council members the acceptance or rejection of donations and gifts received by the governorate. (Article 7/16)*

Supreme Federal Court decision No. 38/2009 in 20 July, 2009 link: www.iraqja.iq

Second: Monitoring competences

- 1- *Monitor all the activities of the local executive authority excluding the courts, military units, colleges, and institutes in order to ensure its good performance with the exception of offices under federal jurisdiction.(Article 7/6)*
- 2- *Remove the council head or the deputy in cases where one of the conditions stipulated in Paragraph Eight is met. (Article 7/2)*

3- Question the governor or one of his two deputies. (Article 7/1 (8)).

Third: Disciplinary competences

Law 21 regulated the competences of the provincial council in the area of public and private administrative discipline. Regarding public administrative discipline, the PC competence is to maintain public security by approving local security plans prepared by provincial security agencies, in coordination with federal security agencies (Article 7/10). It is noted that the law has made the Governor responsible for coordinating with all provincial security agencies having the federal nature (1).

With regard to the private administrative discipline, Article 7/11 grants the PC the right to “Approve by absolute majority, upon the proposal of the governor, administrative changes to the qada’as, nahiyas, and villages in terms of merger, creation and renaming, including the name of the center, and the consequential administrative formations within the boundaries of the governorate upon the request of the governor or one third of the council members.

Theme Three: Governor’s authorities

The province consists of qadas, nahiyas and villages, and the Governor is the highest executive in the province (Article 24).

In order for the Governor to assume his responsibilities in the right way, he should enjoy administrative, financial, and monitoring authorities (2). Needless to say, the Governor faces many challenges and problems that need proper solutions.

The authorities of the governor differ in terms of its strength and effect from one constitutional system to another. Here, we shall discuss the authorities of governors under Law 21 of 2008.

Topic one:

Administrative Authorities

Prominent among governor’s administrative authorities under Law 21, as amended, are (1):

(1) Article 31/9, 10 of Law 21

(2) Ali Hadi Hameedi Al-Shakrawi: *Governors’ authorities under the 2005 Iraqi Constitution and Law of Provinces not Incorporated into a Region, as amended, a study presented at the first national conference for law colleges of Karbala, Babil, Kufa, Tikrit, and Al-qadisiyah, Date 28 April, 2012, P. 1*

- 1- Appoint local employee from grade 5 and below according to a personnel plan approved by the PC. Article 31/7 (1) of Law 2.
- 2- Appoint local employees in the governorate on a permanent basis from grade 4 upward in the employment scale stated in the Federal Civil Service Law except for the senior positions. Article 31/7 (2)
- 3- Take legal and administrative measures against the directors general and employees in the governorate with the approval of the council by a simple majority. (Article 31/8
- 4- The governor shall issue an official letter of appointment to the qada’a and nahiya administrators, (Article 39/3)

- 5- *In the absence of the qada'a administrator, the governor shall assign the administrator of a nahiya affiliated to the qada'a to function in his place. (Article 40/1)*
- 6- *Among most important authorities to be undertaken by the governor in relation to local governance:*
 - a- *Execute the decisions of the governorate council within the administrative boundaries of the province (Article 31/2)*
 - b- *Execute federal general policy within the boundaries of the governorate.(Article 31/1)*
 - c- *Establish universities, colleges, and institutes after the following is met:*
 - I. *Prepare the budget for the creation of a facility*
 - II. *Coordinate with the Ministry of Higher Education and Scientific Research*
 - III. *Approval of the PC by simple majority on creation the facility*
 - d- *Establish or cancel police stations (Article 32/9 (2), after the following is met:*
 - I. *The PC should approve the establishment or cancellation by simple majority*
 - II. *The requirements cited in laws related to the Ministry of Interior should be observed.*

If we review these administrative authorities of the Governor, we can see that they are conventional authority's limited to appointing and punishing employees and appointing a replacement. The governor is at the head of an executive authority in the province, which is part of a region and has legal personality and local interests. For all these, the governor should be granted a bigger role to manage provincial public utilities, especially water, electricity, communications, transportation, and other service utilities.

Topic two

▪ **Financial authorities**

- One of the most important tasks falling under the governor responsibility , in accordance with Law 21 of 2008 ,amended are :
- I-Develop the general budget of the province in accordance Article 31/First of the law, the governor shall take into consideration the following when developing the budget:
 - A) The exclusive competencies of the federal government cited in the constitution Article 110/ first, related borrowing policy Article 110/Third, related to the development of the State general budget and Article 110/seventh related to the development of the General investment budget. On the basis of the above the province general budget shall include the budget of the Provincial , district and sub-district councils Governor's office , district and sub-district administrators ,excluding the budget of the Institutions, directorate generals, Federal judicial departments , Military , educational health and communication departs ,etc.
 - B) The content of Article 111 of the constitution, which emphasizes that Oil and Gas are owned by the Iraqi citizens in all regions and provinces.
 - C) Define the financial funds resulted from the shared administration of customs ,in accordance with Article 114/ First
 - D) Coordinate with the Provincial council in respect to its budget, includes it in the general budget of the province .Article 7/ Fifth of law 21 of 2008 amended.
- 2) Refer the general budget of the province to the provincial council by for approval by an absolute majority .then submits it to the Ministry of finance to ensure its uniformity with the federal budget. Article 7/Fifth /2 of the law.
- The PC has the right to transfer funds between its chapters with a limited ratio. It is noticed that the law does not stipulates that the PC shall refer the budget back to the governor , as if the law left the budget to the PC to submit it to the Ministry of Finance approved by the PC must be submitted back to the governor to submit it to the Ministry of Finance, this issued must be handled in the amendment proposed , as the governor is the highest –ranking executive officer in the province and he shall exclusively deals with the federal executive authority ,which is represented by the Minister of finance , not the PC which is a legislative agency (Administrative) .
- After what we have cited above, we would like to discuss the financial particle aspect related to the regions and provinces as follows:
 - A) Failure of the CoR to pass the Sate general budget in its due time resulted in not transferring the budget of the province in due time, which will hinder and delay its works, developmental projects and meets its citizen needs.

B) The existence of differences in visions between the local governments and the Ministry of finance as regards to the relevant instructions. It is notable that the Ministry of finance can object the budget and transfer funds between its chapters and refer back the budget to the concerned provincial council to conduct amendments required.

- *Due to the absence of huge investment projects and other reasons, the funds allocated within the general federal budget to the province is currently considered as the main funding source for the province, and the federal budget is based only upon one source which is oil, and its prices are not stable and always varies from time to time, which negatively affect the province budget portion from the federal budget. There is a dire need to develop a coordination mechanism between the provinces and the federal government to avoid the negative impacts resulted from oil prices fluctuation on their budgets*

Topic three

Monitoring authorities

- *One of the most important authorities falling under the Governor , in accordance with the Law 21 of 2008, amended are as follows :*
 - 1) *Oversee and inspect public facilities in the Province except for Courts, military units, universities, colleges and institutes, for these are Federal authorities (Article 31 / Fourth).*
 - 2) *Order the police to investigate the crimes that take place within the administrative boundaries of the province according to the law and to present the investigation reports to the concerned judge, provided that the Governor has been informed of the investigation outcome. (Article 31 / Fourth)*
 - 3) *The Governor shall have direct authority over the local security agencies and all authorities tasked with protection duties relating to peace and order within the province, except for the armed forces (army units) , If the Governor is convinced that the Security Agencies in the province are unable to fulfill their duties in maintaining peace and order on account of insufficient numbers, he shall promptly inform the Minister of Interior with a recommendation as to the size of numbers required to fulfill their responsibilities.(Article 31 / Tenth 1 and 2)*
 - 4) *The Governor shall have the right to object to the decisions of the Provincial Council or the Local Council in the following cases: (Article 31 / Eleventh*
 - A. *If they contradict the constitution or applicable laws.*
 - B. *If they are not within the competence of the Council.*
 - C. *If they contradict the general plan of the federal government or the budget, or its policy.*

Article 5 of the law, stipulates that the Ministries and offices not affiliated with Ministries shall notify the Governor of their correspondence with their offices and public utilities within the Province so that the governor may monitor the implementation of the instructions in such correspondence. The heads of the offices and public utilities in the Province shall abide by the following:

- A) Notify the Governor of the official correspondence with their respective offices.
- B) File reports to the Governor on matters that he has referred to them.
- C) Notify the Governor of their activity on matters that relate to security and important issues as well as on matters that relate to more than one office within the Province or the conduct of their personnel.
- D) Notify the Governor when they commence and end their work.
- E) Fulfill the

functions that the governor assigns and the work of the committees that the governor requires to be informed.

Theme Four

Monitoring of the three authorities over the Provincial, District and sub-district councils.

Law 21 of 2008 , has tried to organizes the issue of the central agencies monitoring over the decentralized local agencies , but this organization was lacking accuracy and some of its respects , therefore we will try to clarify the aspects of this monitoring by three topics:

First topic will be specifies to discuss the Council of Representatives monitoring. Second topic will be specifies to discuss the federal government. Third topic will be specified to discuss the Provincial councils over the local councils.

First topic

Council of Representative monitoring

Since the approval of 2005 constitution and in spite of the existence of the two CoR electoral terms and tow PCs electoral term , the local councils elections have not been held yet, although the election of the provincial councils was separated in accordance with Article 6 of the provincial and local councils electoral law dated on July 24, 2008. (In the first phase hold the provincial councils election, then hold the local councils elections as a second phase within six months starting from the end of the first phase). Since the PCs election was held on Dec/ 2009, it was assumed to hold the LCs and CoR elections during Aug 2009, but those election were not held, which weakened the legitimacy of these councils, it is hoped to hold the LCs elections in the upcoming period. Generally, we will try to clarify the nature of the CoR monitoring over these councils.

1-The legislator in Article 2/second of law 21 of 2008, amended, stipulates that:

- *(The Provincial council and the local councils are subject to monitoring by the council of Representatives) .The legislator has interpreted this monitoring by granting the CoR the authority to dissolve the PC , Article 20 / second , but it does not grant the CoR any authority over the local councils (district and sub-district councils)*
- *2- The legislator has granted the CoR the authority to remove the governor by an absolute majority upon the proposal of the Prime Minister based upon one of the exclusive causes cited in Article 7/Eighth ,2) of the law as follows:*
 - A - Lack of integrity or abuse of position
 - B - Causing waste of public funds.
 - C - Loss of one of the membership requirements.
 - D - Willful negligence and dereliction of his duties.

The PC may remove the governor upon the above cite causes, after questioning him based upon a request from one-third of its members. In case the simple majority is not satisfied with his answers, then his removal is put to vote at another session and he is deemed removed with the consent of

the absolute majority of the council members , in accordance with Article 7/ Eighth , 10. In this event the governor will be dually responsible once before the PC and one before the CoR.

3- In accordance with Article 20/ Second /A, the CoR has the authority to object to the decisions issued by the PC and according to article 1, if these decisions contradict the constitution and federal laws. If the violation is not removed, the CoR may cancel the decision by a simple majority vote, in accordance with Article 20/First.

4- In accordance with Article 20/ Second /B, and according to Paragraph First of the same article , the Council of Representatives may dissolve the Provincial council by an absolute majority of its members based upon the request of the Governor or one-third of the Provincial Council members if one of the conditions stipulated in Article 1 / First, is met:

A) Gross dereliction of duties and functions assigned to them. B) Contradicting the constitution and laws. C) If one third of the members no longer meet the membership requirements.

It clearly appears that this dissolution is not legal unless the governor or one-third of the PC council members request dissolving the council, in this event where is the CoR authority in requesting the dissolution?

Since this request is based on legal causes, there is no other way but to answer it, as if the request is based on the conditions of losing the membership, but it may base on political causes as cited on paragraph A, in this event what is the CoR authority towards this request?

We believe that with greater reason the CoR should take into consideration is the general welfare which is the purpose of every decision.

Finally we deem that the monitoring of the legislative authority is dominated by political considerations at the expense of good performance in running the local public utilities. These political considerations strongly intervene in this monitoring and weaken the monitoring activity of the legislative authority.

Second topic

Federal government

The government comprises from the Republic president and the councils of Ministers (Article 66) of the constitution. Monitoring means legally and technically monitoring the local agencies, senior positions and functions by the central administrative authorities , whereas the constitution in Article 122/ Fifth ,stipulated that (The provincial council shall not be subject to the control or supervision of any Ministry or any institution not affiliated to a Ministry. The Governorate Council shall have independent finances. This means does the Council of Ministers can monitor the provincial council or not?

Of course this does not involve the governor, who is the highest –ranking executive officer, for the Prime Minister has no direct authority over him, but he can request the CoR to remove the

governor if he deems necessary. This matter is subject to the CoR, which is governed by consideration different than those of the Prime Minister, for the executive authority does not have the right to appoint or remove any member of the local agencies.

We believe that this provision does not prevent the Prime Ministers to monitor the provincial council and does not contradict with the board financial and administrative authorities granted to the provincial council by the constitutional legislator in Article 122, paragraph second, therefore it may be a limited monitoring. It is worthy to mention that the Iraqi legislator in the Law 21 of 2008, amended in Article 47, stipulated that (The province offices and the Councils shall together be subject to oversight and auditing of the Supreme Audit Board and branches of the independent commissions formed in accordance the Constitutional provisions. In accordance with the constitution, the Supreme Audit Board and the independent commissions, excluding the (Endowment boards), are assumed to be affiliated with the CoR, or subjects to its monitoring. The Federal Supreme Court has issued a decision requires that the independent agencies must be subject to the oversight and monitoring of the Council of Ministers in performing their functions and they are independent within the law creating them.

The other issue related to the authority in participating in appointing heads of local public utilities and the authority to remove them.

- 1) *The competent Minister shall appoint one out of the three candidates proposed by the PC for the senior positions. (Article 71 Ninth 1*
- 2) *The competent Minister shall have the right to relieve senior positions from their duties upon a proposal submitted to the Council of Ministers, in accordance with one of the causes stipulated in Article 71 Eighth / 1, and in accordance with Article 71/Ninth 2.*
- 3) *If the governor is convinced that the security agencies in the province are unable to fulfill their duties in maintaining peace and order on account of insufficient numbers, he shall promptly inform the Minister of Interior with a recommendation as to the size of the numbers required to fulfill their responsibilities. Article 31/Tenth 2.*
- 4) *The appointment of the Governor shall be under a republican decree, after being elected by the PC.) Article 26/First. It appears that the issuance of a Presidential decree for the appointment of a Governor is just a formal matter. What if the President of the Republic reject to this decree? We deem that this decision is just an administrative decision which can be challenged like other decisions. The elected governor can challenge the President decision not to issue a decree before the administrative Causes court, within 60 days following the end of the grievance period (which is 30 days), in accordance with Shura council decision cited in (Article 1/Eighth/paragraph 4)*
- 5) *The competent ministries appoint employees in the province within the fourth grade and upward, except for senior positions, provided that their permanent appointment is sole authority of the governor.*
- 6) *In accordance with Article 45 of the law. Form high commission for coordination between the provinces headed by the Prime Minister shall be formed and shall include as members the*

Governors. This Commission shall specialize in reviewing the affairs of the provinces, their local administrations and means of coordination between them, and shall address problems, obstacles that it faces, and common issues between the provinces, and shall be chaired by the Prime minister, and include as members the governors.

Topic Three Provincial council monitoring over the local councils

In law 21 of 2008, amended, the legislator stipulated in Article 20 / Third, that (The provincial council may dissolve a local council by an absolute majority of its members, upon a request from the district administrator, as regards the district council, or the sub-district administrator, as regards the sub- district council, or one third of the local council members if one of the conditions stipulated above is met.

2) The dissolved council or one third of its may contest the dissolution decision before the federal Supreme court within 15 days from the date of its issuance. The court shall decide on the challenge within 30 days of receiving it.

The PC may delegate some of its competencies to the district council and district council may delegate some of its competencies to the sub-district council, as delegation shall be delegated from a higher authority to a lower one. The legislator in Article 39 /paragraph third, stipulated that both the district and sub-district shall be under the supervision and guidance of the governor. In Article 31/ paragraph eleventh of the law ,the legislator granted the governor the right to challenge the decisions of the PC or the LC ,if these decision contradict the constitution , federal laws , or does not fall within the PC competencies , general plan or the budget. If the PC insists on its decision, and the Governor does not remove his challenge then the Governor must refer the matter to the Federal Supreme Court for a final decision.

This is an effective monitoring towards both the district and sub-district councils, but this matter is an object of doubt in facing the PC, which elects and removes the governor, accordingly the governor is not independent in confronting the PC.

Conclusion

We have arrived to a map of the most important elements and issues that constitute a bone of contention and currently become more intense, concerning the willingness of number of provinces to turn into a region. We will disclose them by the following conclusions and recommendations.

First: Conclusions

- 1) *There is a clear confusion in the 2005 constitution and law 21 of 2008, amended, with respect to the administrative and political decentralization.*
- 2) *Existence of overlap in the legislative and executive competences between the federal government and the provincial councils, or in practicing these function on the ground.*

- 3) *The provincial powers law No 21 of 2008, amended granted the provincial councils legislative authorities, and in that the provincial law has exceeded the administrative and financial authorities granted by the constitution to the provincial councils.*
- 4) *There are legal and constitutional problems, represented by the contradiction between the provisions or non-activation of some of them, or the need for a new legislation or amendment by a deletion or an addition or repeal.*
- 5) *There are financial problems resulted from the lack of warranties for equity distribution of financial allocations to the provinces, and the need to establish systems for budgeting, monitoring and transparency to follow up the revenues and expenditures.*
 -
- 6) *Absence of balancing the provinces needs and the financial allocations within the budget transferred to the provinces by the federal government.*
 -
- 7) *The constitutional legislator did not focus on the governor's authorities ,while drafting 2005 constitution , but he treated this issue in the law 21 of 2008 amended .*
- 8) *The existence of political and financial obstacles hindering the governor to effectively exercise his divers functions and in an acceptable manner that insures sound application of administrative and financial decentralization in new Iraq.*
- 9) *There are problems related to the mutual relationship, communication and engagement mechanism between the federal government and the provinces and the expanded administrative and financial concept, which led to the inability or failure of the provincial councils to meet most of the citizens needs within their provinces.*
- 10) *Weakness of planning and development tasks that are given first priority by Law No. 21 of 2008, related to the provincial councils.*

Second: Recommendations:

- 1) *The constitution and the law both shall adopt a regional administrative decentralization approach concerning the provinces, as well as adopting a political decentralization system for the regions, in order that they can issue legislations in accordance with federal constitution within the region borders, thus avoiding overlap between the two authorities.*
- 2) *The need to remove the overlap by conducting quick constitutional and legal amendments, in order to determine the responsibility of the federal or local authority before the monitoring and judiciary agencies for their actions and behavior.*
- 3) *We propose to speed up the amendment of the constitution by adding the following*

▪ Provisions:

A) (Iraq comprises of administrative and economic regions and provinces that are free of political nature).

B) (The provisions of this constitution shall prevail over the constitutions of newly formed regions. Federal laws issued in accordance with the provisions thereof shall have the power over the legislation, regulations and decisions issued by the authorities of the regions and provinces, and in the event of divergence the higher legislation will cancel the lower legislation, in the extent that removes the conflict, and in the event of dispute they shall be referred to the federal Supreme court for a decision).

4) Pass the draft law of the federation council stipulated in Article (65) of the constitution, which consists of representatives of the regions, provinces and experts, who have experience in all specialties.

5) Pass the draft law of the public board of monitoring federal allocations stipulated in Article (106) of the constitution, in order to insure fair distribution of federal revenues in the provinces, taking into account inhabitants density and the degree of deprivation suffered by the poor provinces during the former regime.

6) Cancel provision no. (Fifth) of Article (122), because keeping it will not make the provincial council subject to any control by the central administrative authority, and this may negatively affect the standard of services delivered to citizens in the provinces, in addition to the administrative and organizational lagging, which afflicts the performance of these councils in the absence of monitoring over their works.

7) Amend the provision of Article (121) paragraph fourth, in order to limit the competencies that have diplomatic nature of embassies and official diplomatic missions representing the Republic of Iraq.

8) Amend law No. 21 of 2008, amended, according to the projects discussed in the study, and form a joint committee between the Council of Representatives "CoR" and the Council of Ministers to pass the project in its final form and refer it to a vote and approval.

9) In accordance with the constitution grant the provincial councils "PCs" the authority only to issue administrative regulations and decisions, but not issuing laws, this requires amendment of Law 21 of 2008, amended.

10) Expand the authorities of governors in the administrative and financial aspects; in order to achieve a balance between the principle of independency and participation, and strengthen public utilities, such actions will help in enhancing security, order and National unity.

11) Establish of a Supreme board for coordination between the provinces chaired by the Prime Minister, to resolve the provinces political, administrative and financial problems, through coordination and teamwork, as well as setting common denominators that help achieving progress.

12) An accurate constitutional and legal organization should be achieved to the regional decentralized regional administration approach ,develop a mechanism to hold free and fair elections for the provincial and local councils , organize financial and administrative independency, organize political and judicial monitoring .

13) Precisely, identify the financial needs of the provinces. Financial allocations within the federal budget should be delivered in the early periods, in order to enable the provinces to deliberately use and spend these funds, especially in relation to the reconstruction and service projects.

14) Expand the provinces authorities by granting them a permission to meet the needs of the ration card and electricity sector, for example, grant them financial allocations to cover these sectors, and at the same time alleviate the burden on the federal government and the Ministry of Commerce.

15) Determine the ownership of the rest of the national wealth (excluding oil and gas), and who shall manage it, to avoid disputes that could arise in the future. (It is possible to identify these resources, otherwise not).

16) Joint Coordination between the federal government and local governments (regions and provinces) in planning and implementing projects, especially infrastructure projects, adopt inhabitants density and deprivation when distributing public budget and address the situation of the provinces that have no resources, similar to the provinces that have the privilege of petro-dollars.

17) Obligate the Ministry of Planning to update the national development strategy in accordance with the provinces participation, consider the provincial development strategies as a basis for updating. Charge of the competent committees in the Council to coordinate with the Ministry of Planning, provide a specialized study within a period not exceeding two months.

18) In order to promote the financial independency principle, which is considered as a corner base for decentralization and confirmation of transparency principle. Thus the old criteria should be replace by new ones, which are based on (the principle which says that rate of expenditures paid by the provinces for their planned projects shall determine the achievement and thus better performance) for provincial councils among its peers. It is not necessarily that the higher rate of expenditures will lead to a higher rate of completion, but it may lead to waste of public funds, or great corruption through sharing quotas businesses between a class or a party or a specific body. In the public finance, it is well known that there is a public expenditure efficiency principle. The province conditions in a specific year may not allow it, due to security disorder or other reasons, to use its federal allocations, so it is much better to carry over unused allocations to the next year or deposit them in the province bank account (i.e., accept the principle of carry over unused allocations to the next year), thus the province budget achieves a surplus for that year and it can start implementing its projects, against the right of imposing taxes by the federal authority.

Articles included within the Study			
Constitutional provision	Comments	General remarks	Amendments proposed
<p>The Council of Representatives shall comprise a number of members, at a ratio of one seat per 100,000 Iraqi person representing the entire Iraqi inhabitants. They shall be elected through a direct secret general ballot. The representation of all components of the inhabitants shall be upheld in it.</p> <p>The legislative Council shall be established named "Federal Council", involve representatives from the regions and provinces that are not incorporated in a region. A law, enacted by a two-thirds majority of the members of the council of Representatives, shall regulate the formation of the Federal Council, its membership conditions, its competencies, and all is connected with it.</p>	<p>Article 61/first granted the CoR the authority to enact federal laws, but because the Federal Council is not established yet, this represents a violation of the Constitution on one hand, and aggravation of the problems relating to both the provinces and regions and between the federal government, which has no Representative as per the geographic areas on the other hand.</p>	<p>There is a dire need to identify the CoR competencies, establish a Federal Council, identify its competencies and balance the competencies of both councils for the welfare of citizens</p>	<p>Speed up passing a law which identifies the competencies of both Councils</p>
<p>Article 93: The Federal Supreme Court shall have jurisdiction over the following:</p> <p>First: Oversee the constitutionality of applicable laws and regulations.</p> <p>Second: Interpret the provisions of the Constitution.</p> <p>Third: Settle matters that arise from the application of the federal laws, decisions, regulations, instructions, and procedures issued by the federal authority.</p> <p>Fourth: The law shall guarantee the right of direct appeal to the Court to the Council of Ministers, those concerned individuals, and others.</p> <p>Fifth: Settle disputes that arise between the federal government and the governments of the regions and provinces, municipalities, and local administrations.</p> <p>Sixth: Settle disputes that arise between the governments of the regions and governments of the provinces.</p> <p>Seventh: Settling accusations directed against the President, the Prime Minister and the Ministers, and this shall be regulated by law.</p> <p>Eighth: Certify the final results of the general elections for membership in the Council of Representatives.</p> <p>Ninth: A. Settle competency disputes between the federal judiciary and the judicial institutions of the regions and provinces that are not incorporated in a region.</p> <p>B. Settle competency disputes between judicial institutions of the regions or provinces that are not incorporated in a region.</p>	<p>According to Article 93, the Supreme federal court shall only have the jurisdiction on deciding on the constitutionality of local legislations, monitors the constitutionality of applicable laws, settle disputes arise among the federal government, regions governments, provinces, municipalities and local administrations. According to articles 94, its decisions shall be binding for all authorities.</p>	<p>Since the application of the regional administrative decentralization related to the administrative service in the State, thus the nature of decisions issued by the provincial council are considered as administrative decisions, so the administrative Causes court shall be the competent court to decide on the validity of those decisions not the Supreme federal court.</p>	<p>1) Nullify paragraph five and eighth /B of Article 93 of the constitution.</p> <p>2) Add an article in the constitution that organizes the relation if a dispute arises between the provinces. The administrative Causes court shall be the competent court.</p>
<p>Article 94: Decisions of Federal Supreme Court are final and binding for all authorities</p>			
<p>Article 115: With regard to other powers shared between the federal government and regions, priority shall be given to the provincial law of provinces not incorporated in a region in case of dispute.</p>	<p>These powers relate to the management of oil and gas if they are produced within the geographical boundaries of the province, management of remains, and customs,</p>	<p>We believe that in regard to the shared competencies, the federal government priority shall be given to the federal government</p>	<p>The provision shall be amended as follow: Powers shared between the federal government a</p>

	organizing main recourse for electrical power, environment and development, health, education and internal water resources policies. These shared competencies shall be organized by a law as cited in Article 115.	over these competencies, not the regions, as cited in Article 115.	regions , priority shall given to the federal law , the event of dispute
Fourth: Articles of the Constitution shall not be amended if such amendment abrogates the powers of the regions that are not associated into the exclusive powers of the federal authorities, except by approval of the legislative authority of the concerned region and approval of the majority of its inhabitants by a public referendum.	It is clearly noticed that the Iraqi constitutional legislator is attempted to stress on the autonomy of regions, in a clear manner regarding the expansion of the constitutional competencies. He does not use only the provision that according to Article 155, regions have the priority in drafting legislations on shared competencies, and the possibility of amending the application of the law in respect to these competencies according to Article 121, paragraph second. In addition to that we find that Article 115, lays down many restrictions over any amendment on any constitutional provision related to the provinces competencies or shared competencies. An approval by the legislative authority in the concerned region and majority of its inhabitants by public referendum shall be obtained for any amendment. In this regard a question is posed on the exact meaning of the phrase "Concerned Region". Does the constitutional legislator attempt to part the issue of application of the constitutional amendment?	The Iraqi constitutional legislator caused a big confusion when he enacted this provision. It is well known that any amendment on the federal constitution imposes an obligation over the federal government and the regions governments to abide to this amendment, for this amendment is not only limited to a specific region.	Nullify this provision for it represent a serious antecedent in giving priority to the interest and supremacy of the region over the interest and supremacy of the federal government and the region replaces the federal government ,so no amendment shall be conducted without the approval of full Iraqi citizens for this amendment will be applied across all provinces .
Second: Provinces that are not incorporated into 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 a law.	According to this article of law 21 of 2008, amended was issued, concerning province not incorporated into a region. This law has approved the regional decentralization administrative principle in Iraq, which is applied to the provinces that are not associated with the Federal system.	The provision is very clear in adopting the administrative decentralization approach in managing Provinces that not incorporated into a region	
The federal government shall have exclusive authorities in the following matters: - First: Formulate foreign policy and diplomatic representation; negotiating, signing, and certifying international treaties and agreements; negotiating, signing, and ratifying debt policies and formulating foreign sovereign economic and trade policy. Third: Formulate fiscal and customs policy, issuing currency, regulate commercial policy across regional and province boundaries in Iraq, draw up the National budget of the State, formulate monetary policy, establish and administrate the central bank. Seventh: develop the general and investment budget bill.	The exclusive authorities of the federal government included in the constitution in Article 110/first , related to the loan policy and Article 110/Third , related to the development of the State general and investment budget bill.	Certainly, these sovereign issues shall be exclusively exercised by the federal government.	

<p>oil and gas are owned by all the inhabitants of Iraq in all the regions and provinces.</p>	<p>Since Oil is the main source for the country, it must be sold and exported by the federal government in cooperation with provinces and regions.</p>		
<p>First: The federal government, with the producing provinces and regional governments, shall undertake the management of oil and gas extracted from present fields, provided that it distributes its revenues in a fair manner in proportion to the inhabitants distribution in all parts of the country, specifying an allotment for a specified period for the damaged regions which were unjustly deprived of them by the former regime, and the regions that were damaged afterwards in a way that ensures balanced development in different areas of the country, and this shall be regulated by a law</p>	<p>Define the financial revenues arising from shared management (Federal government, governments, regions and provinces) producing oil and gas, and we must take into consideration deprived provinces during the former regime to secure them a balanced development with other provinces that receive better opportunities.</p>	<p>The delay of passing the law on oil and gas leads to continuity of problems and non-compatibility between the political blocs over the most important resource in the country. This defect must be avoided.</p>	<p>Law of oil and gas must be reviewed and passed by the CoR in a very short time to insure the right of all concerned bodies.</p>
<p>The following competencies must be shared by both authorities of the federal government and regions. First: To manage customs, in coordination with the governments of the regions and provinces that are not incorporated into a region, and this shall be regulated by a law.</p>	<p>Define the financial revenues arising from shared management of customs.</p>	<p>There is an ambiguity in managing and coordinating customs with the regions and provinces .The federal government should settle this issue.</p>	<p>Draft a legislation that entitles the federal government the power to decide on this issue to remove this confusion.</p>
<p>The provincial Council shall not be subject to the control or oversight of any ministry or any institution not affiliated with a Ministry. The provincial Council shall have independent finances.</p>	<p>We pose the question whether the council of Ministers can monitor the provincial council or not? And of course this does not include the governor ,who is considered as the highest – ranking executive officer in the province, for the Prime Minister has no factual authority over him , but he can forward a proposal to the CoR to remove the governor if necessary, this matter is subject to the CoR , which is governed by</p>	<p>We have said that in the administrative approach the provincial councils have necessary authorities to manage their affairs, but they must be subjected to monitoring and oversight of both the federal government and the CoR as well.</p>	
	<p>Consideration different than those of the Prime Minister, for the executive authority does not have the right to appoint or remove any member of the local agencies. We believe that this provision does not prevent the Prime Ministers to monitor the provincial council and does not contradict with the board financial and administrative authorities granted to the provincial council by the constitutional legislator in Article 122, paragraph second , therefore it may be a limited monitoring .</p>		

Table two: Articles of law 21 of 2008 included within the study

Serial No. of law 21 article	The law provision	Comments	General remarks	Amendments proposed
Article 2/ first	The province Council is the highest legislative and monitoring authority within the administrative boundaries of the Province, and shall have the right to issue local legislations within the boundaries of the governorate so that it can carry out its own affairs on the basis of the principle of administrative decentralization and in a manner that would not	It means that the province manages its affairs according to the administrative decentralization; however the legislator does not properly succeed in enacting this provision properly.	The necessity to amend the provision of Article 2, whereas the bills proposed stipulated that the (provincial council is the highest planning and monitoring authority within the Province). Also another amendment (The provincial council is the highest planning and monitoring authority within the administrative boundaries of the Province).	We propose the following amendment : A) The Provincial Council is the highest administrative and monitoring authority operating within the administrative boundaries of the Province. We

	contradict the Constitution and Federal laws.		We strongly support the amendment, in principle, but disagree with those bills proposed in describing the provincial council as a planning and monitoring authority.	also agree with amendment which is included in the second paragraph. B) The councils enjoy a legal personality and financial and administrative indecency. The council is represented by the PC Chair or his representative.
Article 7/third	Issue local laws, instructions, by-laws and regulations to organize the administrative and financial affairs so that it can conduct its affairs in based on the principle of Administrative Decentralization and in a manner that does not contradict the provisions of the Constitution and federal laws.	The PC competencies involve the authority to issue legislations and normally these legislations are issued by the legislative power in the State, and regulations and instructions are issued by the executive power. If we consider that local legislations mean (Laws), this means that the PC is at the same time is a legislative and executive authority, which is against the principle of power separation, stipulated in Article 47. So this unconstitutional provision and must be nullified.	There is a clear overlap in exercising the legislative and executive authorities at the same time, by the PC. This defect must be avoided.	Amend the provision of Article 7 / paragraph three , related to the PC competencies and shall be read as follows (To issue, regulations, systems and instructions in a manner enables it to run its administrative and financial affairs , in Accordance to the principle of Administrative Decentralization and in a manner that does not contradict the provisions of the Constitution and federal laws.

Article 7 /fourth	Outline, in the development of plans, the general policies in coordination with the competent Ministries.	Outline and determine the province's general policy in coordination with the competent Ministries in the field of developing plans for the province ,stipulated in the law in order to deliver best services to the citizens within the frame of the National development plans .	As included in the Supreme federal court, the provincial council shall apply the decisions of the Supreme coordination board, which stipulated that: - Provinces not incorporated into a region are not incorporated into a Ministry, currently, and subject to the oversight of the CoR, and shall comply with the decisions issued by the board, as stated in the provinces law, Article 45 /first. It is noted that the one who attends the coordination board meetings is the governor, who instructs the PC Chair on the decisions of this board, which must be complied and implemented by the PC. This is a defect, for the PC has higher authority than the governor, so the province shall be represented by both the governor and the PC Chair.	Amend the provision to be read as follows (Fourth : Outline the Province general policies in coordination with the competent Ministries in accordance with the decisions of the Supreme coordination board in the field of developing plans for the province.
Article 7/ fifth (1)	Prepare the council budget to be included in the general budget of the province.	The PC only develops the operational budget ,which involves the PC members, administrative staff , employees stipends , fuel , cell phones pre-paid cards , stationeries , publications expenses and odds and ends	We notice that the funds represent the revenues earned outside the PC budget are not included within Article 44, Articles 7 and Article 31 , both do not state the expending mechanism for these earned - funds	A provision should be enacted to show the expending mechanism for the funds earned outside the PC budget , appropriated by the federal government

<p>Article 7/ fifth (2)</p>	<p>Approve the Province general budget plan referred to the council by the governor ,and transfer funds between its chapters with the approval of the absolute majority of the council members , provided that the constitutional criteria shall be observed , and submit it to the Ministry of Finance of the federal government to ensure its uniformity with the federal budget .</p>	<p>This paragraph pointed out the competencies of the PC in approving the province general budget referred to it by the governor and transfer funds between its chapters with approval of the absolute majority of the Council members, provided that the constitutional criteria shall be taken in the distribution to province's center, districts and sub-districts and submit it to the Ministry of Finance in the Federal government to ensure its uniformity with the federal budget. The province general budget bill shall include the provincial council, local council, governor office, district administrator and Sub-district administrator.</p>	<p>It is noticed that the budget approved by the PC must be submitted back to the governor to submit it to the Ministry of Finance. PC has no authority to submit it to the Ministry of Finance, directly.</p>	<p>Re-enact the provision As follows: Fifth 2- Approval The constitutional standards shall be observed in the distribution to province's center, districts and sub-districts in order to be referred to the Ministry of Finance.</p>
-----------------------------	--	---	--	--

<p>Article 7/ seventh ,paragraph 1 and 2</p>	<p>1- Elect the Governor and his two deputies by an absolute majority of members of the Council within a maximum of 30 days from the date of its first session</p> <p>2- If any of the candidates to these offices fails to win the absolute majority of Council members, the candidates with the highest number of votes then shall be elected to the office.</p>	<p>Elect the governor and his two deputies from inside or outside the Council. They should be elected by absolute majority of the PC members within a period not exceeding (30) days from the date of holding its first session. In accordance with Article 7/ Eighth / paragraph 5, the PC shall follow the same competency in removing the governor, and the decision must be final.</p>	<p>The law has defined that the governor should have two deputies, but it does not define the nature of the relation between them, or who is the first and the second deputy. Such manner will create a crisis whenever there is a need to appoint any one of them as the first, or who deputizes the governor during his absence or disability .Solving this issue by political means will be for the favor of the bloc which has more representation inside the PC, instead of taking a specific legal procedures, previously specified by a law. We propose that the governor should have only one deputy.</p>	<p>Amend the provision as follows: Seventh /1. Elect the governor and his two deputies by..... Majority.</p>
<p>Article 7/ twelfth</p>	<p>Issue a gazette wherein the council's decisions and orders shall be published.</p>	<p>This paragraph did not mention the laws or legislations</p>	<p>It is noted that the local legislations cited in this articles are the organizational decisions and by the jurisprudence deemed to be as secondary legislations, not legislation in the intent of law.</p>	
<p>Article 31/ second</p>	<p>Second: Execute the decisions of the Provincial Council as long as they are consistent with the Constitution and the applicable laws.</p>	<p>We are speaking about the governor authorities, who is committed to implement whatever issued by the PC. If we are speaking about laws or legislations in the intent of law, then the governor is not</p>	<p>It is noted that laws and federal laws are of the same meaning. These laws must fall into the exclusive or shared competencies, and the regions, provinces and executive agencies shall abide to them. If the law does not fall into these competencies, priority shall be given to the law of the regions</p>	<p>Amend the provision as follows: Implement the decisions taken by the PC, in a manner that does not contradict the provisions of the Constitution and federal laws.</p>

<p>Article 40 /first</p>	<p>majority of the number of members in accordance with the relevant laws and guidelines of the Ministry of interior.</p> <p>Article 39/ third. The Governor shall issue an administrative order of the appointment to the district and Sub-district administrators, who both shall be under his supervision and guidance.</p> <p>First. In the absence of the district administrator, the governor shall assign one of the administrators of the sub- districts affiliated to the district to function of his place.</p> <p>Second. In the absence of the sub-district administrator, the district administrator shall assign one of the administrator of a district affiliated to the district to function of his place.</p> <p>Third. The district administrator shall notify the Governor and the sub-district administrator shall notify the district administrator of their absence sufficiently in advance so that the governor may appoint a replacement for the duration of their absence.</p>			
<p>Article 31/ paragraph first</p>	<p>The Governor shall exercise the following authorities :</p>	<p>- According to article /31/fifth /develops the</p>	<p>It is noticed that the law does not state that the general budget of</p>	

<p>Article 7/ fifth / paragraph 1 and 2</p>	<p>First: Draft the general budget of the province in accordance with the constitutional standards, except for those which fall within the jurisdiction of the federal government, and submit the budget to the provincial council.</p> <p>Fifth: 1. Prepare the Council budget to be included in the general budget for the province. 2. Approve the Province draft general budget plan referred to the council by the governor, and transfer funds between its chapters with the approval of the absolute majority of the council members, provided that the constitutional criteria shall be observed, and submit to the Ministry of Finance of the federal government to ensure its uniformity with the federal budget.</p>	<p>general budget of the province. -According to Article 7 /Fifth/1, coordinates with the PC in respect to his budget and include it within the general budget of the province. -According to article 7/ Fifth/2, Refers the general budget of the province bill to the PC for approval by absolute majority of the PC members, then refer it to the Ministry of Finance. The PC has the right to transfer funds between its chapters of the general budget of the province in a limited rate.</p>	<p>the province to be referred to the governor after being approved by the PC. It seems that the law authorizes the PC to refer it to the MoF, which is considered as a defect that must be amended in the amendment proposed, considering that the governor is the highest –ranking executive officer, who must deal with the federal executive power represented by the Minister of finance, not by PC which is considered as a legislative authority. And all these paragraphs are financial authorities.</p>	
<p>Article 31 /fourth / Ninth</p>	<p>Fourth: Oversee and inspect public facilities in the Province except for Courts, military units, universities, colleges and institutes.</p> <p>Ninth: The Governor may: 1. Order the police to investigate the crimes that take place within</p>	<p>These are governor's monitoring authorities</p>		

<p>Tenth/paragraph 1 and 2.</p>	<p>the administrative boundaries of the province according to the law and to present the investigation reports to the concerned judge, provided that the Governor has been informed of the investigation outcome.</p> <p>2. Establish or abolish police stations with the approval of the Council by the absolute majority of the council members in accordance with the relevant laws and guidelines of the Ministry of Interior.</p> <p>Tenth:</p> <p>1. The Governor shall have direct authority over the local security agencies and all authorities tasked with protection duties relating to peace and order within the province, except for the armed forces (army units)</p> <p>2. If the Governor is convinced that the Security Agencies in the province are unable to fulfill their duties in maintaining peace and order on account of insufficient numbers, he shall promptly inform the Minister of Interior with a recommendation as to the size of numbers required to fulfill their responsibilities.</p>	<p>In respect to paragraph tenth, It is assumed that the army shall be charged to maintain protection, security and order inside the province only when the emergency law is imposed and this fall into the content of this paragraph, otherwise It is not legal to charge the army to maintain security and order during stable situations, an advantage from Article 31/Tenth /2 can be used in this regard. There is a clear confusion in paragraph eleventh/ 1, and must be clarified.</p>	<p>There is a necessity to amend paragraph second, in order to grant the PC a role in approving the nature of the duties performed by these additional forces proposed by the governor.</p> <p>It is supposed to point out whether this decision falls into the exclusive and shared competencies of the federal authorities.</p> <p>It is here noticed that the governor shall implement the decision and if he challenges it ,he shall present his objection to the administrative Causes court</p>	<p>Amend the provision as follows: If the Governor decides that the Security Agencies in the province are not enough to fulfill the duties of maintaining security and order, he shall promptly refer the matter to the Minister of Interior, after the approval of the PC, stating the tasks of these additional forces, deployment locations, needed period and their security plan.</p>
---------------------------------	---	--	---	--

<p>Eleventh/paragraph 1 and 2</p>	<p>Eleventh: 1. The Governor shall have the right to object to the decisions of the Provincial Council or the Local Council in the following cases: A. If they contradict the constitution or applicable laws. B. If they are not within the competence of the Council C. If they contradict the general plan of the federal government or the budget 2. The Governor shall communicate to the council concerning the causes for his objection together with the decision of the council within 15 days of the notification of the decision.</p>	<p>Paragraph two does not clarify if the PC insists on his decision. In that event, what is the governor decision?</p>		<p>Amend paragraph two as follow: In the event of dispute the decision shall be effective and the governor is committed to implement it pending his challenge before the administrative Causes court.</p>
<p>Article 32</p>	<p>The Ministries and offices not affiliated with Ministries shall notify the Governor of their correspondence with their offices and public utilities within the Province so that the governor may monitor the implementation of the instructions in such correspondence. The heads of the offices and public utilities in the Province shall abide by the following First: Notify the Governor of the official correspondence with their respective offices.</p>	<p>Grant the governor monitoring authorities</p>	<p>We believe that there is a necessity to notify the PC to enable it to exercise his monitoring role over the executive agencies including the governor.</p>	<p>Amend the provision as follows: (..... shall notify both the governor and the PC of their official correspondences), as well as adding the PC to paragraphs first/ second, third and fourth.</p>

	<p>Second: File reports to the Governor on matters that he has referred to them.</p> <p>Third: Notify the Governor of their activity on matters that relate to security and important issues as well as on matters that relate to more than one office within the Province or the conduct of their personnel.</p> <p>Fourth: Notify the Governor when they commence and end their work.</p> <p>Fifth: Fulfill the functions that the governor assigns and the work of the committees that the governor requires to be informed.</p>			
Article 2/ paragraph second	Second: The Provincial and Local Councils are subject to the oversight of the Council of Representatives.	In article 20 / paragraph second , the legislator has interpreted this oversight by giving the CoR the authority to dissolve the PC, but he does not entitle any authority to the CoR over the local councils (District and sub-district councils)	Grant monitoring authorities to the CoR.	Amend the provision to clarify the nature mechanism of monitoring by the CoR
Article 7/ eighth / paragraph I	Question the Governor or one of his two deputies based upon a request from one-third members in case the simple majority is not satisfied with his answers, then his removal is put to vote at another session and he is deemed removed with the consent of the	The legislator has given the authority to the CoR to remove the governor upon a proposal from the Prime minister and absolute majority based on one of the following exclusive causes cited in	In this case the governor will be accountable once before the PC and once before the CoR.	Amend the provision as follows : The governor shall be accountable before the CoR, upon a removal proposal by the PC.

	<p>absolute majority of the council members. the request to remove or recommend his removal shall be based on one of the following exclusive causes:</p> <p>A - Lack of integrity or abuse of position B - Causing waste of public funds. C - Loss of one of the membership requirements. D - Willful negligence and dereliction of his duties.</p>	<p>Article 7 / eighth /2. If the simple majority were not convinced with the answers provided by the official being questioned, removal shall be put to a vote in another session. If the absolute majority supports the removal, then the governor considered removed, according to article 7/eighth /1</p>		
<p>Article 20/ paragraph second / A</p>	<p>The Council of representatives may object to a decision issued by the provincial council if it contradicts the Constitution or applicable laws. If the violation is not removed, the council of representatives may cancel the decision by a simple majority vote.</p>	<p>It is notice that there no role for the judicial authorities if the PC issues a decision contradicts the constitution or applicable laws.</p>		
<p>Article 20/ paragraph second /B</p>	<p>The Council of Representatives may dissolve the Council by an absolute majority of its members based upon the request of the Governor or one-third of the Provincial Council members if one of the conditions stipulated above is met.</p>	<p>According to Article 20/ second / B ,the CoR has the authority to dissolve the PC , by an absolute majority of his members based on a request from the Governor or one-third of the Provincial Council members if one of the following exclusive causes is fulfilled : A - Lack of integrity or</p>	<p>We here pose a question on the authority of the CoR towards the dissolution request? , Since this request is based on legal causes , there is no other way but to answer it ,as if the request is based on the conditions of losing the membership , but it may base on political causes as cited on paragraph second /A, in this event what is the CoR authority towards this request?</p>	

		<p>exploitation of the position</p> <p>B - Wasting public money</p> <p>C - Loss of one of the membership conditions</p> <p>D - Deliberate negligence and carelessness in performing duty and Responsibility.</p>	<p>We believe that with greater reason the CoR should take into consideration is the general welfare which is the purpose of every decision. Finally we deem that the monitoring of the legislative authority is dominated by political considerations at the expense of good performance in running the local public utilities. These political considerations strongly intervene in this monitoring and weaken the monitoring activity of the legislative authority.</p>	
Article 47	<p>The province offices and the Councils shall together be subject to oversight and auditing of the Supreme Audit Board and branches of the independent commissions formed in accordance the Constitutional provisions.</p>	<p>In accordance with the constitution, the Board of Supreme Audit and the independent agencies, except the Endowment boards are assumed to be affiliated with the CoR, or subjects to its monitoring. The Federal Supreme Court has issued a decision requires that the independent agencies must be subject to the oversight and monitoring of the Council of Ministers in performing their functions and they are independent within the law creating them .</p>		

<p>Article 7/ ninth/paragraph 1</p> <p>Article 7/ ninth/paragraph 2</p>	<p>1) The competent Minister shall appoint one out of the three candidates proposed by the PC for the senior positions.</p> <p>2- The competent Minister shall have the right to relieve senior positions from their duties upon a proposal submitted to the Council of Ministers , in accordance with one of the causes stipulated in Article 7/ Eighth / I</p> <p>Attention should draw when drafting the above paragraph and to refer to the legal provision.</p>		<p>These paragraphs are related to the authority in participating in appointing and removing heads of local public utilities.</p>	
<p>Article 7/ tenth</p>	<p>Approve the local security plans submitted by security agencies in the Province through the Governor in coordination with the federal security agencies with due consideration of their security plans.</p>	<p>Coordination between the federal security services and the local security services to develop security plans, if the security services are unable to maintain security and order, promptly refer the matter to the Minister of Interior, stating the number of this force to achieve the tasks required.</p>		
<p>Article 26/ first</p>	<p>(The appointment of the Governor shall be under a republican decree, after being elected by the PC.)</p>	<p>It appears that the issuance of a Presidential decree for the appointment of a Governor is just a</p>		

	<p>First: The appointment of the Governor shall be under a republican decree issued within (15) days from the date of his election. And he shall commence his duties from the moment of his appointment.</p>	<p>formal matter. What if the President of the Republic reject to this decree? , We deem that this decision is just an administrative decision which can be challenged like other decisions. The elected governor can challenge the President decision not to issue a decree before the administrative Causes court , within 60 days following the end of the grievance period (which is 30 days), in accordance with Shura council decision cited in (Article /Eighth/paragraph 4) .</p>		
<p>Article 31/ Seventh / paragraph 2</p>	<p>Appoint local employees in the province on a permanent basis from grade 4 upward in the employment scale stated in the Federal civil service law except for the senior positions upon the recommendations of the offices concerned in accordance with the guidelines prepared by the Council.</p>	<p>The competent ministries appoint employees in the province within the fourth grade and upward, except for senior positions, provided that their permanent appointment is sole authority of the governor.</p>		
<p>Article 45</p>	<p>First: A high commission for coordination between the</p>	<p>Form high commission for coordination between the</p>	<p>It is noted that the governor attended the meetings and instructs</p>	<p>Amend the provision and adding,</p>

	<p>provinces headed by the Prime Minister shall be formed and shall include as members the Governors. This Commission shall specialize in reviewing the affairs of the provinces, their local administrations and means of coordination between them, and shall address problems, obstacles that it faces, and common issues between the provinces.</p> <p>Second. The Commission shall meet at the invitation of its head every sixty days, when necessary.</p> <p>Third. The head may invite whose presence is required and necessary for the commission meeting.</p>	<p>provinces headed by the Prime Minister shall be formed and shall include as members the Governors. This Commission shall specialize in reviewing the affairs of the provinces, their local administrations and means of coordination between them, and shall address problems, obstacles that it faces, and common issues between the provinces, and shall be chaired by the Prime minister, and include as members the governors.</p>	<p>the PC on the commission decisions, which are bounded to the PC, it is necessary to engage the local council in attending the sessions of the coordination commission.</p>	<p>include as members the governors and PC Chairmen</p>
<p>Article 20 ,paragraph third</p>	<p>1: The provincial council may dissolve a local council by an absolute majority of its members, upon a request from the district administrator, as regards the district council, or the sub-district administrator, as regards the sub-district council, or one third of the local council members if one of the conditions stipulated above is met.</p> <p>2. The dissolved council or one third of its members may</p>	<p>The PC may delegate some of its competencies to the district council and district council may delegate some of its competencies to the sub-district council, as delegation shall be delegated form a higher authority to a lower one. The legislator in Article 39 /paragraph third ,stipulated that both the</p>	<p>This is an effective monitoring towards both the district and sub-district councils, but this matter is an object of doubt in facing the PC, which elects and removes the governor, accordingly the governor is not independent in confronting the PC.</p>	

	<p>challenge the dissolution decision before the Federal Supreme Court within 15 days from the date of its issuance. The Court shall decide on the challenge within 30 days from the date of receiving it.</p>	<p>district and sub-district shall be shall be under the supervision and Guidance of the governor. In Article 31/ paragraph eleventh of the law ,the legislator granted the governor the right to challenge the decisions of the PC or the LC ,if these decision contradict the constitution , federal laws , or does not fall within the PC competencies , general plan or the budget</p> <p>If the PC insists on its decision, and the Governor does not remove his challenge then the Governor must refer the matter to the Federal Supreme Court for a final decision.</p>		
--	--	--	--	--

Table 3 Amendments proposed by Official Agencies

Article	Provision	Amendment proposed	Remarks
Article 3	<p>In respect to the formation of the councils, Article 3 of the law stated the following:</p> <p>1-The Provincial Council shall comprise (25) seats, with the addition of one seat per every (200,000) inhabitants, if the number of the province's inhabitants exceeds 500,000.</p> <p>2- The District Council shall comprise 10 seats with the addition of one seat for every 50,000 inhabitants.</p> <p>3-The Sub-district Council shall comprise 7 seats with the addition of one seat for every 25,000 inhabitants.</p>	<p>The amendment proposed as regards this paragraph is as follows:</p> <p>(The Provincial Council shall comprise (5) seats, with the addition of one seat per every (150,000) inhabitants). In principle we do support this amendment, but the number proposed for the council members in the province shall be not less than (10), with the addition of one seat per every (100,000) inhabitants) if the number of the province's inhabitants exceeds 500,000. This amendment does not at least take into consideration the number of inhabitants.</p> <p>The amendment proposed as regards this paragraph is as follows :</p> <p>(The District Council shall comprise 07 seats with the addition of one seat for every 50,000 inhabitants). This amendment does not at least take into consideration the number of inhabitants.</p> <p>The amendment proposed as regards this paragraph is as follows :</p> <p>The Sub-district Council shall comprise 5 seats with the addition of one seat for every 25,000 inhabitants. We do support this amendment, but the number proposed shall be 5 seats with the addition of one seat per every (50,000) inhabitants if the number of the province's inhabitants exceeds 15,000 inhabitants. This amendment does not at least take into consideration the number of inhabitants.</p>	<p>We would like to point out that it is supposed to hold a census on Oct 24, 2010, but this census was postponed for an indefinite period and as a result of that the elections are carried out according to last census held by the former regime and the ration cards issued by the Ministry of Trade. In all cases there is a dire need to hold a census, especially are very close of the end of the current parliamentary term.</p>

Article	Provision	Amendment proposed	Remarks
Article 5	In respect to the conditions related to the membership stipulated in Article 5 of the law. Second paragraph stipulated that candidate must hold, at a minimum, a secondary school certificate or its equivalent.	We do support this amendment which stipulated that the candidate for the provincial council membership must hold at least a university degree or its equivalent, and it doesn't matter if the candidate for the district or sub-districts council membership shall hold at least a secondary school certificate or its equivalent.	The PC draws out the policies and plans within the province boundaries, so the local council members shall be competence and well qualified in order to effectively perform these tasks and duties.
Article 6	In respect to the termination of the membership stipulated in Article 6 of the law and replacement procedures. Which is as follows: (Replacing members shall take place upon expiration of membership and under the fulfillment of one of the conditions stipulated in this Article from the same list, provided that the elections took place in accordance with the Election Lists system, or for the member with the highest number of votes in accordance with the applicable electoral system.	(In fact an amendment proposal has been submitted to amend this paragraph to be as follow: (If a member loses his seat for any reason, he shall be replaced by the second candidate who possesses the highest number of votes in his list , if he was in a single list his seat shall be granted to the electoral list, which has the highest remaining votes.	We do support this amendment, but if the member to be replaced is from a single list, the person replacing him shall possess the largest votes of those candidates in a single list, and not as the amendment mention to be replaced from the electoral list.

Article	Provision	Amendment proposed	Remarks
Article 7	<p>In respect to the PC competencies stipulated in Article seven of the law ,which is as follows : Paragraph First stipulated: Elect the Council Chairman and his Deputy by an absolute majority of the Council members at the first session of the Council called for by the Governor within 15 days from the date of the certification of the election results. The session shall be chaired by the oldest member.</p> <p>Paragraph three stipulated: - Issue local legislation, regulations, instructions, etc.</p> <p>Paragraph fourth:</p>	<p>In fact there is an amendment proposal aiming at an unjustified focus on making the election of Council Chairman and his Deputy by one-third of the council members. We don't support this approach as proposed. We do support the absolute majority of the Council members stipulated in paragraph second of the same Article.</p> <p>We do support this proposal aiming at amending this paragraph as follows: - (Issue local decision, instructions and regulations)</p> <p>We do support the amendment proposed for this paragraph which stipulated : (To outline the Province general policies, identify its priority in all fields, in coordination with the competent ministries and concerned agencies, and case of dispute priority shall be given to the PC.</p>	<p>This is illogic, and we strongly do not support this amendment. Amending this paragraph is aiming at making the prescribed period (15) days after the certification of the election results to hold the first session as a credit for the elected council to assume his duties in the day sixteenth ,if not called by the governor .</p> <p>This proposal is in line with the administrative decentralization and the decisions of organizational nature and not with legislative nature under federalism.</p> <p>This amendment is aiming at ending the confusion between the local councils and the Ministries in issues related to the provinces affairs , because in all cases priory is given to the provinces in case of any dispute .</p>

Article	Provision	Amendment proposed	Remarks
	In respect to eleventh paragraph	<p>accordance to the reasons stipulated in paragraph (8) of this Article.</p> <p>We do support the amendment proposed on this paragraph which stipulates that (Approve by absolute majority of the council members and approval of the Council of Ministers and a presidential decree in the following conditions</p> <ol style="list-style-type: none"> 1-Change the province center, districts and sub-districts, or changing their names. 2) <i>Conduct administrative changes over the names of the districts or sub-districts and villages by emerging or creation and any resulting administrative formation within the boundaries of the province, based on a proposal by the Governor or one-third of the Council members.</i> 3) Create a new province and fixing its boundaries by a proposal from the PC or the LC. <p>We advise to add another paragraph to the amendment related to granting the PC the right by the absolute majority of its members and approval of the Council of Ministers to appropriate lands owned by the State or belongs to the Ministries, or agencies not incorporated into a region inside the province , in order to establish service or constructional projects over them within the province boundaries , excluding lands fallen outside the province boundaries, arable lands , orchards and lands appropriated to foundations of martyrs, political prisoners and detainees, and lands appropriated to the endowments. Another amendment proposal also was submitted to grant the PC the authority to approve the basic designs of the cities within the province boundaries, in coordination with the municipal departments, in a manner does not</p>	<p>-These are issues are in the core of remaining competencies left to the province.</p> <p>- We deem that it is supposed that these competencies shall be exercised upon a proposal by the governor, as he represents the highest –ranking executive officer in the province and this issue shall not be fully entrusted to the PC without a proposal by the governor.</p>

Article	Provision	Amendment proposed	Remarks
		educational, health and agricultural and social activities and all activities relevant to the district, improving them, in coordination with the concerned bodies.	existing provision of the law, such as health, agriculture and social affairs, although we support such expansion, but we were looking forward to add the municipal works and services within the district council competencies in order to improve delivered services and engage citizens in this regard and to avoid citizens accountability under excuse of not having the authorities required.
Article 12	<p>In respect to the amendment of article 12 related to the competencies of the sub-district which as follows: First paragraph</p> <p>Fourth paragraph</p>	<p>In relation the amendment of paragraph first, concerning the sub-district administrator call to the elected sub-district council, after certification of the elections results, to hold its first session within 15 days. If the sub-district administrator deliberately or unintentionally he did not call the sub-district council , the amendment proposal suggests that the sub-district council shall spontaneously meet on the day sixteen after the certification of the elections results, the session shall be chaired by the oldest member.</p> <p>In respect to the amendment of paragraph fourth, the amendment stipulated that (Monitoring the activities of the State departments in the sub-district to ensure their good performance.</p>	<p>This is an important issue in order not to leave the issue within the whims or political and partisan bargains. These periods are decisive and must be respected and implemented in due time, without any discretion.</p> <p>This amendment and the existing provision, when they mention monitoring the work of the local administration in the sub-district, they do indicate the procedure to be taken by sub-district council if it discovers a deficiency, shall it take the procedures required or shall it notify the sub-district, or it refers the issue to the district council?</p>

Article	Provision	Amendment proposed	Remarks
Article 13	Amendment related to Article 13 of the law	Concerning the right of the district administrator to attend the sub-district ordinary meetings at the invitation by the later, as a nonvoting member.	We do support this amendment, and the omission of the existing provision which limits the attendance only for the district administrator. We advise to engage the sub-district administrator, for some times it is very necessary for organizational issues they both attend these meetings.
Article 15	The amendment proposed related to Article 15, concerning the rights and privileges	The amendment proposed is as follows (The councils may decide, by an absolute majority of its members present , to deny a member from attending one or more sessions , provided that this deny does not exceed three sessions , if he conducts in the council or his general conduct has brought discredit to the council he is a member.	In fact this amendment does not add much to the existing provision, except adding not more than three sessions. This addition can be included within the OC bylaw.
Article 20	Second: adding a paragraph	The amendment proposed on Article 20, to add the following item paragraph second , given serial C, the amendment is as follows : The Council of Representatives shall have the right to question and remove a council member or heads of administrative units if one of the conditions stipulated in paragraph one of this article is met.	This proposal will clear the confusion related to the existing legal provision included in article 20, which does not sufficiently clarify the method of holding the members of district and sub-district members and head of administrative units accountable before the , especially district and sub-district administrators . This proposal necessitates the questioning before the removal of any the positions cited above.
	Paragraph third /2	To amend paragraph third / 2 from the same article. Omit the existing item and replace it with (The dissolved	In fact, this is an equitable issue for it grants the right to all aforementioned

Article	Provision	Amendment proposed	Remarks
		provision represents an exception. And if the governor deems that these security forces are unable to fulfill their duties, he shall promptly inform the supreme commander with a recommendation as to the size of the numbers required to full their responsibilities .The existing provision stipulated to inform the Minister of Interior. Also the amendment proposes to add a third item to paragraph ten of the law, as follows (The federal authority shall coordinate in advance with the governor before the execution of any security tasks in the province.	facilitate their duties especially in combating terror arrest warrants, combat operations with neighborhood countries on the borders. This issue has raised number of problems between the province's local police units and the federal police units.
Article 33		Amendment proposed : First: Grants the governor the authority to appoint three assistants instead of five as stipulated in the existing provision. Third: The assistant receives a salary and allowances of a deputy director general.	
Article 34		Amendment proposed : A governor shall form an advisory board consisting of not more than five advisors, while the existing provision mentioned seven advisors. The advisors shall hold a university degree and shall have 10 years' experience in the areas of their specialization. Each of them shall hold the rank of assistant director general.	
Article 35		Amendment proposed : Adding head of administrative units to this paragraph (The governor may delegate some of his authorities to his deputies and assistants. The amendment proposal added Head of administrative units, which refers to district and sub-district administrators.	
Article 37		The amendment proposed related to article 37, of the law It was amended considering that the governor, his two deputies and head of administrative units may submit their resignation to the councils that elected them. The	

Article	Provision	Amendment proposed	Remarks
		<p>resignation is deemed accepted after 30 days starting from the date of its submission. While the existing provision deems the resignation accepted as the date of its submission.</p> <p>The period stated in the amendment is a decisive period, whether the council concerned does not decide on the acceptance or rejection of the resignation, provided that the applicant does not withdraw his resignation during the set period.</p>	
Article 41		<p>In respect to amendment related to paragraph first of the law concerning the district administrator authorities. In fact the amendment pointed out that the district administrator may recommend punishment legally decided against the violators. In return the district council shall approve or disapprove the punishment. The existing provision as well as the amendment pointed out that he supervises and inspects of public offices employees in the district excluding the army ,courts , universities and institutions</p>	<p>We do not support mentioning this exclusion within the district administrator's authorities for this exclusion was previously mentioned within the governor authorities, who also has no right to supervise and inspect those facilities, in accordance with article 31, paragraph fourth, accordingly there is no sense in granting the district or the sub-district administrators such authority. The same intricacy has occurred in the amendment of article 43 related to the sub-district administrator authorities.</p>
Article 44	Paragraph first	<p>The amendment proposed on paragraph first of article 44, related to the water resources. The amendment stipulated the omission of the existing provision for it does not present an equitable budget between the provinces, in accordance with the need of each province and the resources it contains. We do support the amendment which is as follow:</p>	<p>There is an opinion which deems the right of provinces producing oil and gas to be granted a return per each oil barrel produced, or for any mineral resources, for it incurs environmental burdens, thus the inhabitants of the province or the</p>

Article	Provision	Amendment proposed	Remarks
		<p>(The budget transferred by the Ministry of finance and approved by the CoR, enough to assume its responsibilities, taking into consideration the province resources, number of its inhabitants, the damages it incurred due to the wrong policies of the former regime and terror actions, in a manner that ensures balanced development of the provinces across the country.</p> <p>The proposal also suggested adding a sixth paragraph to the same article, related to the revenues levied from the succession of a deceased due to default of heirs. Adding another paragraph related to (Grant the province half of the revenues of the boundaries ports. In fact this proposal raises problems between the province which has disputes with neighborhood provinces on their administrative boundaries, such as Karbala and Al-Anbar, (Al-Nukhaib and Arar land port) for both provinces claim the property of this port. We believe it is much better if these revenues received by the central government and distributed in equity between the provinces in accordance with their needs.</p> <p>The proposal has added a paragraph to the same article by granting one USD per each crude oil barrel produced and one USD per each (150) cubic meter natural gas produced in the province.</p>	<p>region deserve a return for such damages.</p> <p>In fact this also raises problems because some provinces are non-oil or gas producers, thus other provinces will possess alone a great deal of funds at the expense of other province remaining poor ones, which become impossible for them to achieve any development for their inhabitants and their council will be judged as unsuccessful councils or their inhabitants will seek better income opportunities in those rich provinces or best services. Such issue can't be solved by this law.</p> <p>It is a must to speed up passing oil and gas law which is included within the constitution. This law is not yet passed due to disputes between the federal government and Kurdistan region.</p>

Table 4 Important amendments proposed on the articles of law 21 of 2008 amended

Article	Provision	Amendment proposed	Ground reasons
Article 5/ second	Hold, at the minimum a secondary school certificate, or equivalent.	Hold ,at the minimum a diploma (Institute) ,or its equivalent	The tasks conferred to PC members require an advance qualification and knowledge that enable them to use the

Article	Provision	Amendment proposed	Ground reasons
			computer and good awareness on the applicable laws.
Article 7/ sixth	Monitor all activities of the local executive authorities excluding the courts, military units, colleges, and institutes in order to ensure its good performance with the exception of offices under federal jurisdiction .	Monitor all activities of the local executive authorities in order to ensure their good performance and federal competent agencies in coordination with the Ministries, concerned bodies, and provincial council, excluding the courts, military units, colleges, and institutes .	The main problems facing the application of monitoring authorities by the provincial councils, is that most of the executive offices are affiliated with Ministries and have federal competencies. This may devoid the provision from its effectual content because the councils are incapable to monitor or hold the employees of these departments accountable.
Article 7/ paragraph eight	<p>4) The governor may object to his removal decision before the administrative Causes court within 15 days from the notification of his removal .The court shall decide on his objection within one month from the date of its filing with court, he shall continue to conduct the daily affairs of the province until his objection is decided.</p> <p>Paragraph 5) The provincial council shall, at the end of the challenge period referred to in paragraph "Fourth" of this article or when the removal decision is upheld by the supreme federal court, elect a new governor in accordance with the provisions of clause 7 of this article within a period not exceeding 30 days from the date of the removal uphold or the expiration of the challenge period.</p>	<p>Amendment proposed : Omit 4 and 5 from / paragraph 8/ article 7, of the law and replace them by:</p> <p>4) The governor may object to his removal decision before the administrative Causes court within 15 days from the notification of his removal .The court shall decide on his objection within 30 days from the date of its filing with court, he shall continue to conduct the daily affairs of the province during this period.</p> <p>Paragraph 5) The provincial council shall, at the end of the challenge period referred to in paragraph "Fourth" of this article or when the removal decision is upheld by the competent court, elect a new governor within a period not exceeding 15 days.</p>	Because it is not included within the Supreme federal court competencies stipulated in article 93 of the constitution.
Article 8/ eighth	Monitor and evaluate the educational activities within the geographic boundaries of the district and submit relevant recommendations through the provincial council.	Amendment proposed: Monitor the educational, health, agricultural and social activities within the geographic boundaries of the district and submit relevant recommendations through the provincial council.	
Article 12/ Fourth	Monitor the work of the local administration in the sub-district.	Amendment proposed : Monitor the work of the local administration in the sub-district, with the	The phrase local administration is not clear.

Article	Provision	Amendment proposed	Ground reasons
		exception of the courts, universities and army.	
Article 12/ Fifth	Monitor the local offices and submit relevant recommendations to the district council.	To be omitted because it is mentioned in paragraph 4	
Article 20/third paragraph	The dissolved council or one third of its may contest the dissolution decision before the federal Supreme court within 15 days from the date of its issuance. The court shall decide on the challenge within 30 days of receiving it.	Amendment proposed : The dissolved council or one third of its may contest the dissolution decision before the administrative Causes court within 15 days from the date of its issuance. The court shall decide on the challenge within 30 days of receiving it	Because it is not included within the supreme federal court competencies stipulated in article 93 of the constitution
Article 31/ Sixth	Establish universities, colleges and institutes in the province in coordination with the Ministry of Higher education and scientific research within the province budget and with the approval of the council by an absolute majority of the council members.	Amendment proposed : This paragraph contradicts with is what is cited in paragraph fourth preceding it, how can the governor have the right establish universities ,colleges and institutes in the province and allocate funds for their expenditures ,however he has no right to oversee them ,he shall only have the right to oversee the curriculums , teaching methods and the educational policy .	
Article 31/ eighth	Take legal and administrative measures against the directors general and employees in the province with approval of the council by simple majority.	Proposed amendment : Take legal and administrative measures against the directors general and employees in the province, in accordance with the relevant law, and shall be authorized with the competencies of the competent Minister.	
Article 31/Tenth	Adding a third paragraph.	Amendment proposed : The federal authority shall coordinate in advance with the governor when implementing and security tasks in the province.	The governor has direct responsibility for the province security, thus the federal authority must coordinate with him when implementing and security tasks in the province.
Article 41/ Second	Directly supervise and inspect the public offices in the district and their employees excluding the army, courts, and initiations and to impose legally sanctioned punishments on the violators with the approval of the district council.	Amendment proposed : Directly supervise and inspect the public offices in the district and their employees excluding the army, courts, and initiations and recommend legally sanctioned punishments on the violators with the approval of the district council.	Because this authority concerns the principal executive at the district (district administrator) level, as is the case of the governor authority in taking administrative measure against the directors general and employees at the province level, an issue requiring coordination with the federal authorities affiliated with the Ministries and activating the district role, submitting a recommendation to the council on the

Article	Provision	Amendment proposed	Ground reasons
			violation and legally sanctioned punishments.
Article (43) First (1)	Directly supervise and inspect the public offices within the sub-district excluding the army , courts , and initiations	Proposed amendment : Directly supervise and inspect the public offices within the sub-district excluding the army, courts, and initiations, recommend to impose legally sanctioned punishments on the violators with the approval of the sub-district council.	The phrase "public offices " is not clear enough , inconsistent with the hierarchy in granting oversight and punishment authorities to the chief executive in the sub-district " Sub-district administrator "
Article 44/Fourth	Donations and gifts that may be received by the province in a manner that would not contradict the constitution and the applicable laws.	Proposed amendment: Adding the phrase "Local" Whereas the enactment of a legislation on receiving donations , gifts and grants are not within the exclusive competencies of the federal authorities	