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Decentralization in Iraq

A study on decentralization presented at the Iraq Decentralization Conference organized by The State Ministry of Provincial Affairs, 27 February 2012.

Tarabot Project

Developed by
Asseel Al Amair
Team Leader
Decentralization Advisory Unit

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CONTENTS

DECENTRALIZATION.....	7
MAIN FORMS OF DECENTRALIZATION THROUGHOUT THE WORLD	7
First: Administrative Decentralization	8
Local (Regional) Decentralization	9
Facility-Related Decentralization.....	9
Legal Basis	10
Permanent Constitution	10
Administrative Decentralization Properties or Characteristics	12
Forms of Administrative Decentralization.....	13
Second: Financial Decentralization	13
Third: Political Decentralization	14
The Iraqi Constitution	14
Fourth: Economic Decentralization.....	15
RECOMMENDATIONS FOR SUPPORTING ADMINISTRATIVE DECENTRALIZATION IN IRAQ.....	16
Article 105.....	17
Article 106.....	17
Article 107.....	17
Article 114.....	17
Article 115.....	17
CHALLENGES FACING ADMINISTRATIVE DECENTRALIZATION	19

DECENTRALIZATION

Today, this term garners much attention throughout Iraq, and is a common endeavor for countries moving along the trajectory towards democracy for several reasons. These reasons include on one hand easing the burden on the government, while providing better services to beneficiaries of public services on the other hand. In any country throughout the world, governments exercise two main functions:

- Governance and politics
- Administering and managing citizens

To address this issue, interested stakeholders must base their analyses on their own reality, contrasted with the globally-accepted theoretical aspects of decentralization. Essentially, this calls for adopting the scientific method, relying on successful methods adopted in other countries throughout the world.

In dealing with this topic, USAID-Tarabot conducted a number of surveys with GoI counterpart ministry offices in the provinces. These surveys, carried out by the Administrative Decentralization component's advisory team for decentralization, covered key several topics.

- 1- Identify to what extent beneficiaries understand the general meaning and specific types of decentralization.
- 2- Ascertain to what extent beneficiaries accept the concept of administrative decentralization before getting involved in any activities aimed at promoting the process.
- 3- Measure the recipient governmental departments' capacity to adopt administrative decentralization ideas.
- 4- Identify difficulties and obstacles within and around the organization which hinder the exercise of administrative decentralization.
- 5- Outline successful solutions and determine the appropriate steps to diagnose decentralization opportunities.
- 6- Prepare an operational document which identifies what authorities are required to initiate administrative decentralization.

Types of States are divided into two main sections:

- Complex State
- Simple State.

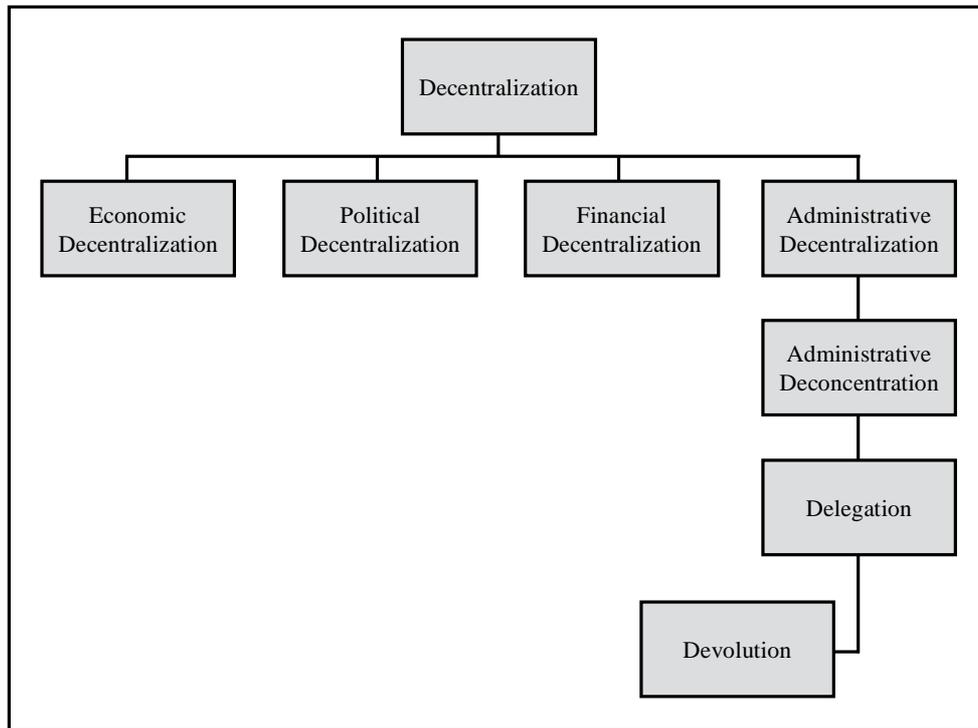
Complex State: A term given to the State which consists of a group of States that compose with each other a unity which may be personal, confederation or federal.

Simple State: A term given to a group of individuals gathered by common bonds such as race, language, doctrine, or common interests and live on the territory particular to them and are subject to a higher authority that is internally and externally characterized by sovereignty.

In both cases, each one of them has a specific order regulating their both internal and external situations

MAIN FORMS OF DECENTRALIZATION THROUGHOUT THE WORLD

- 1- Administrative decentralization.
- 2- Financial decentralization.
- 3- Political decentralization.
- 4- Economic decentralization.



FIRST: ADMINISTRATIVE DECENTRALIZATION

This falls under the jurisdiction of administrative law. We shall address its definition and highlight its legal basis under the administrative system of Iraq.

Reason for discussing nowadays about administrative decentralization:

It is obvious that the issue of administrative decentralization has gained, at the present time, great attention by the majority of States, particularly those progressing in the footsteps of democratic process. It is a catalyst in reducing the burden of central government as well as the increasing requirements and demands arising due to technological and scientific progress of civilization. It requires broad participation of masses, civil society organizations in decision-making in all aspects with regard to economic, social, political and administrative development as well as all matters particular to development and well-being of individual and community.

Decentralization eliminates some administrative pressures, such as bureaucratic management of local affairs by national authorities, which in itself requires strengthening of the local administrative bodies. This requires them to be provided with the authorities necessary to be autonomous in order to make progress of their affairs so that they can directly be held accountable. They must be entrusted with the powers that support human and financial means, so that programs of these bodies will be progressing smoothly and efficiently.

Decentralized decision-making is a key aspect in the selection of priorities and appropriate investments that contribute to the effective usage of local resources. What prominently concerns us in this research is the administrative organization and distribution of functional competences within the framework of the single institution or ministry (between ministries of the center and their affiliated institutions)

Significance: Distribution of administrative competences between the central government in the capital and autonomous local bodies or agencies is key to ensure that these bodies operate in the exercise of their administrative function under supervision and control of central government. Consequently, it is a method of administration, i.e., the administrative function is solely distributed be-

tween the government and the regional administrative authorities, which have competences in this area, whether they were elected or appointed by the central authority, with what would be entailed thereof concerning legal consequences, particularly with regard to existence of financial patrimony independent from the State's public patrimony, and that the staff of bodies are subjected to ad-hoc systems other than system of government employees, unless the pertinent regulation stipulated the application of public order, or if the law provides for such stipulation.

It could be argued that it is a system of distributed administrative authority between the central government and elected local administrative units in provinces that are entrusted to administer their local affairs in coordination with the central authority and under its control. Local bodies exercise their powers according to the law and replace the central authority based on the principle of substitution in power, because the local administrative units derive their powers from election by citizens of administrative local unit as authorities original non-delegated to them by the central authority in the system of administrative de-concentration.

From its origin, administrative decentralization signifies that local administrative units enjoy autonomy with regard to administrative and financial affairs. Accordingly, the relationship between the center and the administrative units or bodies controls administrative decentralization's effectiveness and success. If the relationship with the center is good, the central authority may more actively sponsor this system through coordination and control, and thus this approach might be successful. On the other hand, a lack of coordination or weakness of control over work of local councils will cause friction between the parties.

Administrative decentralization has certain prominent patterns, as follows:

LOCAL (REGIONAL) DECENTRALIZATION

This is achieved by granting to a part of the State territory the legal personality and independence with regard to managing its local affairs under central authority control. It is necessary, to achieve this shape, to provide the following cornerstones:

- 1- Recognize the existence of independent local interests which require being recognized as legal entities.
- 2- Existence of elected local bodies entrusted with administering local units.
- 3- Local bodies should be subject to control.

FACILITY-RELATED DECENTRALIZATION

This is achieved when a given facility is granted legal status in order to manage its own affairs independently of the public authority whereto it is subordinated and remains subject to its control.

Other Patterns and Dimensions of Administrative Decentralization:

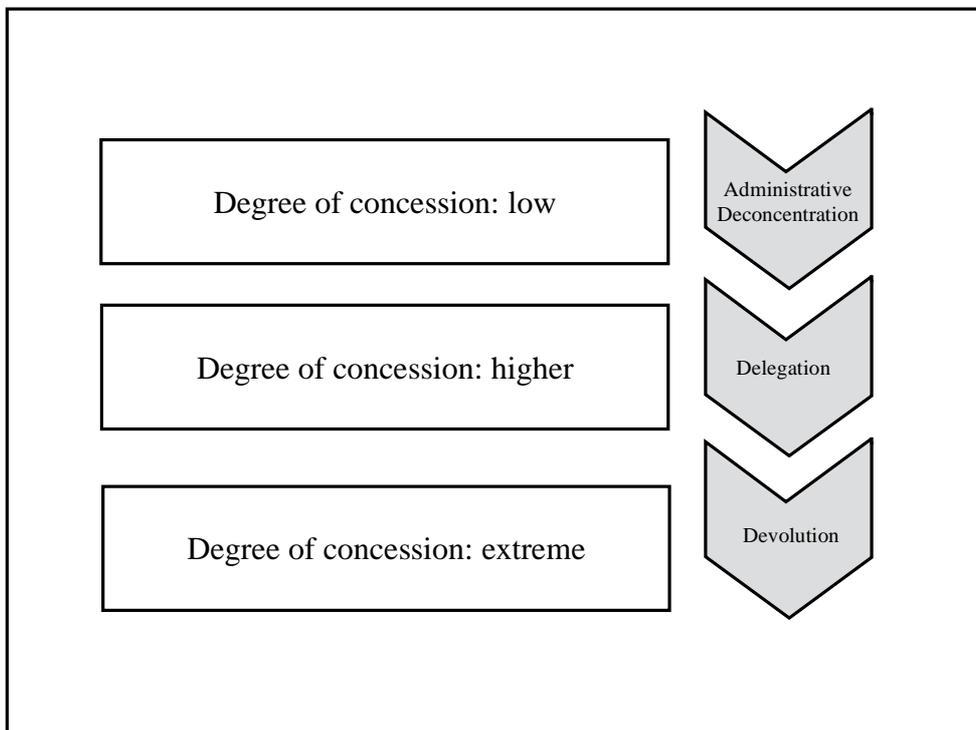
The term "decentralization" is directly linked to centralization, and both concepts (centralization and decentralization) show the degree of delegation. These two terms can be visualized as two opposite ends for the continuum of delegation.

This means that the benchmark is the delegation of authority (the amount of delegation). We must make it clear here that delegation of authority will be subject to the delegator's desire, as he can withdraw his delegation at any possible time. This is also the case in administrative de-concentration, which is different from delegation of authority or devolution of authority. Devolution of authority is known as the procedure issued by the authority that is entitled to definitively assign the competence from an authority to another.

It is a process carried out by the same legal instrument that is entitled to assign the competence by itself

or with its permission, and it often occurs in the scope of some competences from the central administration level to local administrations level in order to strengthen the policy of administrative decentralization and approximate the administration to the citizen.

Legislation or enactment of laws is a competence of the central government. However, through promulgating law of provinces not incorporated in a territory, which entitled provincial council to legislate laws in all areas except for those related to the exclusive powers of federal government set out in Articles 110, 111, 112 and 113, this decree represented devolution of competences from the center to the local governments.



In order to achieve the promising objectives of this study, we should point out the need to identify the legal basis for decentralization and for administrative decentralization in the new Iraq after April 2003. Thus, we discuss the legal basis of decentralization in the following:

LEGAL BASIS

First: The State's Temporary Administration Law - for the interim period in 2004.

Second: The Coalition Provisional Authority orders - No. 71 of 2004.

Third: The permanent Iraqi constitution in 2005.

Fourth: Law of operational procedures for formation of territories No. 13 of 2008.

Fifth: Decision of political reform for the next phase, No. 44 of 2008.

Sixth: Law of provinces not incorporated in the territory, No. 21 of 2008.

Due to the circumstances experienced by Iraq, i.e., political and legal instability, during the past years, the advisory team for decentralization unit found itself before the need to rely on the laws that are currently in force, and build on them, and start by the Iraqi constitution in force.

PERMANENT CONSTITUTION

(The federal system in the Republic of Iraq is composed of: capital, territory, decentralized provinces, and local administrations).

This was stipulated in Article 116, chapter one, in the permanent Iraqi constitution.

We find within the folds of this article many ramifications that ultimately do not amount to a significant degree of detail. Thus, the legislator pointed broadly to a set of terms that afford interpretation, explanation and contradiction at times. Attempting to follow the broader ideas beyond the words leads to one meaning or one line sought by the legislator, but it needs a thorough study and evidenced to indicate the approach which the legislator is trying to clarify. Here, there is a need to read the text of Article 122- f2 of the Constitution which stipulates explicitly that (the provinces that are not incorporated in a territory shall be granted the broad administrative and financial powers to enable them to manage their affairs in accordance with the principle of administrative decentralization and that shall be regulated by law).

Here we observe that the legislature turned explicitly to the concept of administrative decentralization and did not continue in his approach to leave the term loosely.

For entering into the stipulation of Article 122, it must be said that if local administrative bodies wanted to exercise such broad - administrative and financial – powers, they must be elected. This means that the competences which will be exercised are principal, not delegated competences which are recoverable by the central authority that granted them.

Examples of local administrative bodies include the following: (Provincial Council, Judicial Council, District Council, etc...).

The Iraqi legislation has identified the exclusive competences of federal government, which are prohibited to local governments, as well as shared competences between federal government and governments of regions and provinces, and left the remaining competences for local governments. This was stipulated by the Permanent Constitution in Articles 110 (representing the exclusive competences of federal government), 114 (shared competences between federal government, region and provinces not incorporated in a territory), 115 (representing the explicit stipulation for provinces not incorporated in a territory) to legislate.

Legislation signified: laws, resolutions and instructions. However, the Iraqi legislature did not leave the door open for the provinces with regards to enacting legislation, but rather restricted them in financial and administrative matters. This falls within the limits of province based on the stipulation of Article 2 of law for provinces not incorporated in a territory. The Federal Court has confirmed in its decision No. 16 of 2008, providing the provinces with the right to legislate laws with respect to imposition of fees, charges and taxes.

We would like to point out to identification of powers granted to local authorities through which we know the strength and weakness of the decentralized system.

Identification of powers: If local administrative units' powers were identified under the Constitution, decentralization should be strong, and if they were identified by law, decentralization should be moderate, but if such identification was based on an administrative decision, decentralization is should be weak.

- Power of legislation: If the local administrative units enjoyed full power of legislation in certain aspects, decentralization should be strong. If the power of legislation were, in certain aspects, distributed between the local administration and the central authority, decentralization should be moderate. In case of depriving local administrative units of any power of legislation, decentralization shall be weak.
- Imposition and collection of taxes: If local administrative units had the power to collect different State taxes in regions where they exercise their powers, decentralization should be strong, but if their powers were limited in this area to collecting local taxes, decentralization should be moderate, and if these units had no powers in collecting taxes, decentralization should be weak.
- Power of spending : If the local administrative units enjoyed unconditional autonomy in spending, decentralization should be strong. If spending was made in accordance with conditions de-

terminated by the central authority, decentralization should be moderate, but if spending was made with the consent of the central authority, decentralization should be weak.

- Representation of local interests at the national level: If local & regional interests were represented by institutions at the national level, e.g., in parliamentary assemblies, decentralization should be strong. If representation of local interests at the national level was confined to one or more persons, decentralization should be moderate, and if the above-mentioned two conditions disappeared, decentralization should be weak.

Law on provinces not incorporated in a territory No. 21 of 2008

This law was enacted so as to confirm the presence of the principles of administrative decentralization in the stipulation of Article 7 – the third, which provided for the following:

“Promulgation of local legislation, regulations and instructions for organization of administrative and financial affairs in order to enable them to manage their affairs in accordance with administrative decentralization principle, without contradiction to the Constitution and federal laws.”

Moreover, the legislature clearly paid particular attention to administrative decentralization.

ADMINISTRATIVE DECENTRALIZATION PROPERTIES OR CHARACTERISTICS

- Achievement of democracy in administrative systems: Real pluralism and active participation in a democratic and fair manner achieve equilibrium between central authority and local authorities of each province or territory.
- They lead to good performance management, for the following reasons:
 - 1- Requirements of province will be accurately covered, which signifies reflecting the real need and reducing many of procedural episodes which directly precede implementation of requirements.
 - 2- Entities that are charged for implementation will often have more loyalty and devotion than other people who do not belong to the province.
 - 3- Rapidity in performance, particularly in the face of emergencies.
 - 4- Courage to work more than citizens in the central system.
 - 5- Creating more opportunities for citizen participation and contribution in the service of his region.
 - 6- Relieving burdens bore by the central government departments, facilitating coordination between the government and the regions, and increasing experience gained by heads of departments in the regions through delegation of powers granted to them.

At the same time, decentralization has disadvantages or barriers thereto, which can be summarized as follows:

- Decentralized bodies are often less experienced.
 - 1- More wasteful (with regard to time, money and effort) than the central administration bodies.
 - 2- Tendency to prefer local interest than public interest.
- Financial problems and constraints.
- Overlapping and contradiction between the powers and procedures.

FORMS OF ADMINISTRATIVE DECENTRALIZATION

1- Administrative de-concentration is a form of centralization also known as administrative decentralization, non-ministerial or moderate centralization which aims at reducing administrative burden imposed on the central government through delegating decision making authority to a local level by assigning some provincial officials to act as required without referring to the federal ministry.

However, de-concentration differs from administrative decentralization in terms of multiple authorities of the latter due to multiple moral personalities. Each authority is assigned to a particular administrative occupation in the state, thus, occupations are redistributed accordingly. Therefore, it's clear that de-concentration is a transition toward administrative decentralization and some scholars consider it the weakest form of administrative decentralization because its authorities are subordinate rather than original. De-concentration should be understood as a corner stone to revolute authorities from the center, Baghdad, down to subordinate directorates in provinces.

2- Delegation: It signifies that the central government shall delegate or entrust responsibility for decision-making and management of public functions to semi-independent entities, but they are accountable before the central government. For achieving delegation, the responsibility should be identified. Here, it is noteworthy to mention that delegation of authority means abandonment or waiver of such authority. Thus the delegator is entitled to raise the accountability for the delegated with regard to satisfying the responsibilities and duties that must be achieved. Hence, there is a difference between responsibility and accountability.

3- Devolution: Through devolution, there will be transfer of powers of decision-making, financing and management to administrative units. Therefore, it is a direct transfer of powers which is the highest degree concerning enjoyment of local administrative units by autonomy in administrative and financial affairs. Consequently, beside the State or the Central Administration, local or utility-related legal personalities that are called decentralized administration or decentralized administrative authorities, shall appear.

If they were granted the legal personality, this should signify: financial patrimony independent of the State budget, legal capacity, guarantee of right to litigate, separate residence, capacity to exercise a portion of State power which is determined by law. However, this does not mean full independence, as they are subjected to administrative control exercised by the central authority.

In these cases, control is a touchstone that replaces from a situation to another.

Here, it is noteworthy to mention that the meaning of financial decentralization because it overlaps with administrative decentralization:

SECOND: FINANCIAL DECENTRALIZATION

This matter is related to the ability of local authorities or agencies that provide public services to receive the public revenue arising from these services, or from their specific appropriations from the central government.

If we dealt with financial decentralization, we must address the powers of spending, the power of generating revenue, elected local councils, powers to recruit at senior positions, decentralized granting system.

Some researchers consider that there is a need for caution in dealing with this term, for fear of subsequent control over the macroeconomic policies, equilibrium policies, directing investment in public spending, potential corruption in local governments, and administrative efficiency.

The following matters will be raised: what level of government will develop policies? Who will finance? Who will manage?

Here, the necessary mechanisms to achieve this kind of decentralization should be arranged.

Standards that should be met in order to achieve financial decentralization:

- 1- Elected councils, which signify that local officials are elected.
- 2- Local ratification of budget.
- 3- Absence of delegation with regard to local government employees and salaries.
- 4- Local governments have some control over some sources of local resources.
- 5- Transparent system of granting and local governments understand their obligations.
- 6- Obvious powers of spending.
- 7- Local governments have the ability to collect taxes and provide services more efficiently.
- 8- Local governments have approved accounting systems.
- 9- The central government has the ability to monitor effective progress of financial decentralization.

THIRD: POLITICAL DECENTRALIZATION

Political decentralization (federalism) system falls within the topics of constitutional law and political systems, not within the topics of administrative law or management science. Such system existence is limited to the federal political system. Political decentralization system assumes that there are a federal constitution and a local constitution for the state, and it also assumes duplication of authorities in the Federal State: federal legislative authority and local legislative authority for the state, federal executive authority and executive authority of the state, and federal judicial authority, and judicial authority of the state, and such duplication is not incorporated except at the federal union.

It is necessary to distinguish between federalism (or political decentralization), and administrative decentralization

- 1- In the federal system, competences of the State of the Union and the states are determined in the Federal Constitution, while in administrative decentralization system, competences of the states are determined by the common law.
- 2- In the federal system, there are legislative, executive and judiciary bodies in the states independent of the federal judiciary, legislative and executive bodies, while in the administrative decentralization system, there are not local legislative or judiciary bodies, whereas the executive bodies in the states or provinces enjoy extensive administrative and financial powers under control of the central government, and derive their powers under central laws or according to delegation of the central government.
- 3- In the federal system, the three independent bodies are not subjected to control of federal authorities and proceed independently with their operations under the Federal Constitution and the local constitution of the state, while in administrative decentralization system, the local bodies are subjected to control and custody of central government when exercising their operations.

THE IRAQI CONSTITUTION

Between Concepts of Political Decentralization and Administrative Decentralization

- Article (116) described the federal system in the Republic of Iraq as being composed of the following: capital, territories, decentralized provinces and local administrations. This article did not specify the form of decentralization: whether it is federalism or administrative decentralization. Article (122), paragraph II, of the Constitution granted the provinces not incorporated in a territory, the extensive administrative and financial authorities so as to enable them to manage their

affairs in accordance with the principle of administrative decentralization.

- Article (122) itself stipulated that “the Provincial Council is not subjected to the control or supervision of any ministry or any entity not linked to a Ministry and shall have independent finance.” Thus, it supports administrative decentralization system, because it confirms non-subordination of the local legislative council (provincial council) to any control of the executive authority.
- Article (115) concerning the regions and provinces not incorporated in a territory, mandated to these regions and provinces all matters not stipulated in the exclusive competences of federal authorities. This signifies that the Constitution inclusively identified the federal authorities, while maintaining the competences of regions and provinces not incorporated in a territory open to receive more competences over time.

FOURTH: ECONOMIC DECENTRALIZATION

The scope of privatization can range from entirely leaving the supply of services and goods to the free market, or public/private partnership where both the government and the private sector cooperate in the supply of services and infrastructure. Privatization can include the following:

- 1- Permitting private enterprise to perform functions that were previously monopolized by government.
- 2- Contracting to supply or manage public services or facilities.
- 3- Financing public sector programs, through capital market and permitting private organizations' participation.
- 4- Transfer of responsibility for supply of public services from the public sector to the private sector.

Mechanisms for Administrative Decentralization

Given the international attitude, in general, towards decentralization to change governments systems as part of development and reform and the pursuit of executive and legislative authorities in Iraq, this topic has been discussed in more than one forum trying to highlight the importance of confirming the role of administrative decentralization in the institutional reform. Accordingly, the USAID-Tarabot Decentralization Advisory Unit observed the need to draw attention to the following:

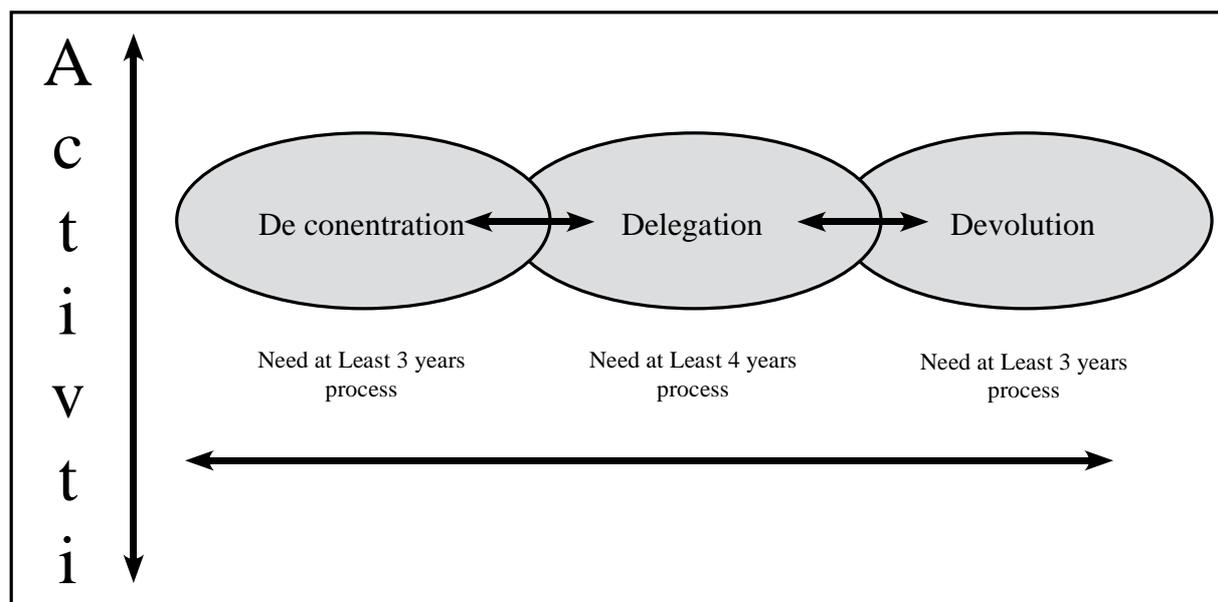
- 1- How does administrative decentralization operate towards increase of employees' efficiency?
- 2- How does service reach the highest levels of quality and efficiency to beneficiaries through development of organizational framework or structure of the institution?

The answer to these questions revolves around the quantity and quality of service. The answer is governed by the science of management, being extracted from sociology, economics and politics, and combined to manage economic development. These take into consideration the latest political and economic developments, understanding community awareness, types of relationship between State institutions and the local authority, community involvement, understanding of the controlling role of central government and local governments or authorities, and other factors that help to answer these questions. Therefore, the team finds that most prominent mechanisms and the methods available to implement the principle of administrative decentralization in Iraq come through relying on service quality development and improvement through the auto-management of this service by those responsible for implementation, and this requires the following:

- Legal description or legal recognition (delegation or devolution of competences) officially for (regional) or facility-related administrative units. (Delegation or devolution of competences requires identification of these competences, the effect of granting them on the type of rendered service, and studying the possibility of managing these competences granted by authorities, depending on gender, experience and scientific competence).

- Subordination of these local or Facility-related units to center control through the controlling institutions stipulated by the Constitution of Iraq. Activation of controlling role requires identification and clarification of the roles of controlling institutions set forth in the Constitution and laws of Iraq.
- Activating civil community role in support of the principle of administrative decentralization.
- The role of media (awareness and control).

The unit also considers that it is necessary to take the criterion of time and the current situation within the important criteria that should be relied upon in this stage. The below-mentioned chart reflects the team perspective as follows:



In order to realize an appropriate environment for administrative decentralization in Iraq, we should:

- 1- Review organizational and administrative structure of the State, regions and districts.
- 2- Review legal basis for the State construction (e.g., amendments to Law 21, to clarify overlapping or ambiguities with regard to clarifying the concept of administrative decentralization in the Iraqi constitution, etc ...).
- 3- Re-authorize and delegate competences from top to bottom or devolution of competences to the provinces.
- 4- Strengthen the lower bodies of power, develop their civil servant cadres and managerial skills in order to be able to manage the institution according to a decentralized system.
- 5- Provide a broad base of data and information at different levels.
- 6- Provide legal and financial guarantees and pay particular attention to the pillars of democracy, e.g., principle of separation of powers, human rights, and focusing on the role of free media.
- 7- Review of the legal system in Iraq, as most currently in force laws, are subjected to prescription and are not harmonized with the Iraqi Constitution and the law of provinces and some laws passed recently that adopted principle of decentralized administrative system.

RECOMMENDATIONS FOR SUPPORTING ADMINISTRATIVE DECENTRALIZATION IN IRAQ

- Development of good governance indicators (transparency, equal opportunities, access to services, efficiency).
- Capacity Building (re-training and re-distribution of employees) should start in parallel with administrative decentralization (administrative decentralization process should be an integral part

of reform for the State administrative system).

- “Political action” and “political will” would become the driving force to transformation to administrative decentralization or any other type of decentralization.
- Decision-making decentralization should signify authority devolution, not delegation, to local administration.
- Activating disengagement law so as to grant more power to provinces for providing more services in the province.
- Activating the following constitutional articles:

ARTICLE 105

A public body should be established in order to ensure the rights of regions and provinces not incorporated in a territory in the equitable participation in managing various federal State institutions, missions, fellowships, delegations, regional and international conferences, composed of representatives of federal government, regions and provinces not incorporated in a territory, and should be regulated by law.

ARTICLE 106

A public body should be established by law in order to monitor allocation of federal revenues, and should be composed of experts from federal government, regions, provinces and representatives thereof, and should assume the following responsibilities:

First: Verify the fair distribution of international grants, assistance and loans, pursuant to entitlement of regions and provinces not incorporated in a territory.

Second: Ascertain the optimal use of federal financial resources and their sharing.

Third: Ensure transparency and fairness in allocation of funds to regional governments, provinces not incorporated in a territory, or in accordance with the determined rates.

ARTICLE 107

A council, called the Federal Public Service Council, should be established to be entrusted with organizing the federal public service affairs, including recruitment and promotion, and its composition and competences shall be regulated by law.

ARTICLE 114

The following competences are common between the federal authorities and the regional authorities:

First: Customs Administration in coordination with governments of regions and provinces not incorporated in a territory shall be regulated by law.

Second: Regulation of principal sources of electrical power and their distribution.

Third: Formulation of environmental policy to ensure environmental protection against pollution, maintain cleanliness of environment, in cooperation with regions and provinces not incorporated in a territory.

Fourth: Formulation of policies for development and general planning.

Fifth: Formulation of public health policy, in cooperation with regions and provinces not incorporated in a territory.

Sixth: Formulation of public educational policy in consultation with regions and provinces not incorporated in a territory.

Seventh: Formulation of internal water resources policy, and their regulation to ensure their fair distribution, as regulated by law.

ARTICLE 115

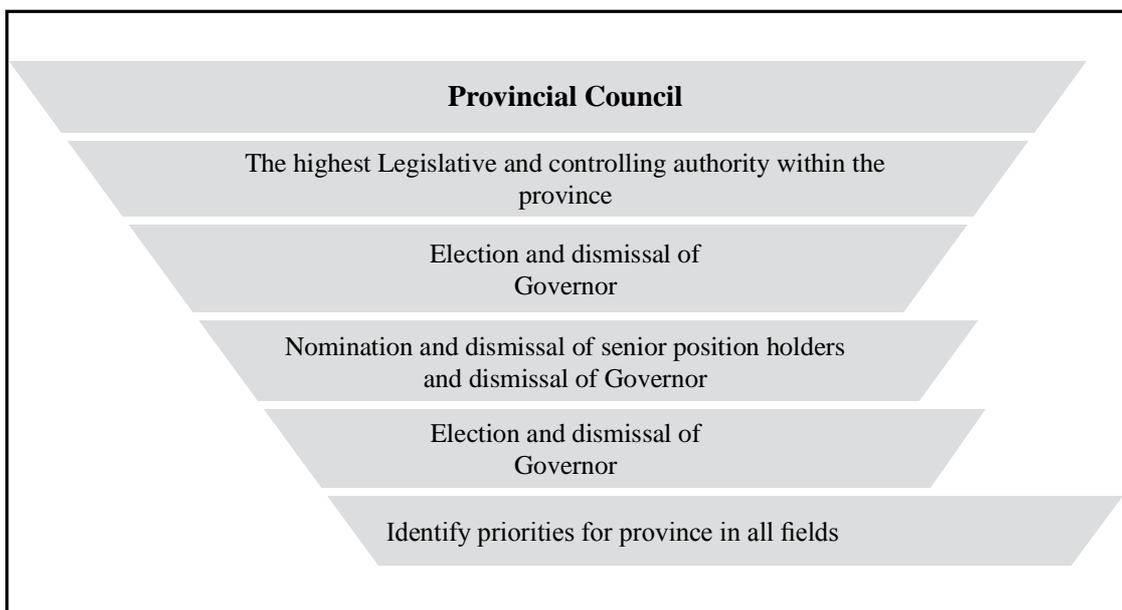
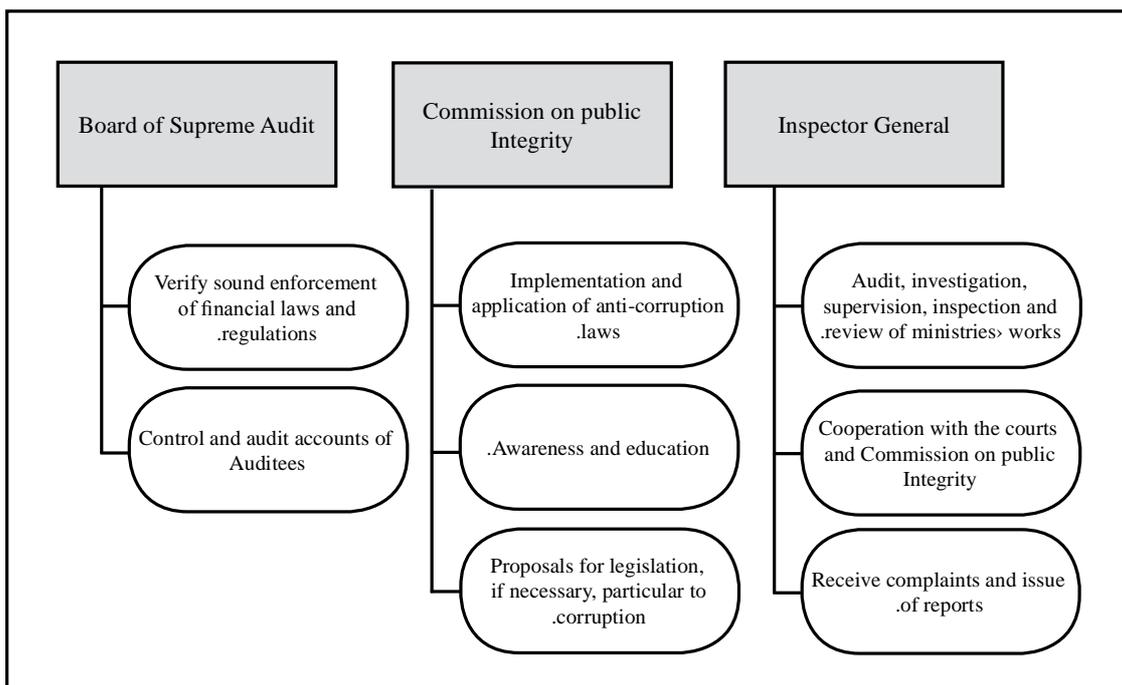
All matters not stipulated in the exclusive competences of federal authorities, shall enter in the compe-

tences of regions and provinces not incorporated in a territory. With regard to the other competences which are common between the federal government and the regions, the law of regions and provinces not incorporated in a territory shall prevail, in the event of disagreement between them.

Conclusion:

In conclusion, it became necessary to look for control as a cornerstone for ensuring application of administrative decentralization in Iraq. Decentralized bodies enjoy extensive administrative and financial autonomy as guaranteed by Iraqi constitution. But at the same time, and in line with the international systems, the States that adopt or apply administrative decentralization system are subjected to control of center. Consequently, there is a need to enact explicit legal stipulations that obviously identify the form of control in order that they would neither be absolute and drive us to centralization nor be driving away from the principal pillar of administrative decentralization, i.e., control.

The controlling system in accordance with Iraqi constitution and Iraqi laws in force:



CHALLENGES FACING ADMINISTRATIVE DECENTRALIZATION

1- The instructions issued from some ministries that indicate not allowing local governments to exercise their controlling role, taking into consideration that the law of provinces not incorporated in a territory has explicitly indicated a stipulation about Council control of all departments except for courts, universities and military units. A good example thereof happened in the province of Wasit, when the committee of energy visited the Department of Directorate Energy for electric power production and faced objection by the guards who referred to the existence of a ministerial circular in this regard, among other concerns.

2- Conflict of jurisdiction between the State Council and the Federal Court. Iraqi constitution has indicated by obvious stipulation in Article 94 that the decisions of the Federal Court are final and binding. A good example thereof happened when the Federal Court issued its decision numbered 38 in 2009, which considered that the Council of provinces enjoys a legal status, has financial and administrative independence and has the right to litigate. Thereafter, a decision was taken by the Council of State indicating that the Council does not have the legal personality as the governor is a chairman of an entity unrelated to a Ministry in accordance with the Federal Court decision No. 90 of 2009, and a decision was issued by the Council of State contrary to the court's decision.

3- The Federal budget law eliminates all financial competences of provinces, even with regard to donations and grants indicated by law of provinces in Article 7, paragraph 13. Here, we must reconsider budget law, financial management and public debt law No. 95 because the funds and revenues that are local return, in accordance with to the two above-mentioned laws to the public treasury, this is contrary to the stipulation of Article 44 of provinces law.

