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Iraq Local Governance Program – Phase III

**Quarterly Report
July–September 2009**

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Iraq Local Governance Program – Phase III (LGP III)

Quarterly Report, July–September 2009

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Contents

Contents	1
Abbreviations and Acronyms	2
I. Highlighted Activities at the Provincial Level.....	3
Babil: Emphasis on Education and Oversight.....	4
Baghdad: Pushing Performance Measures and a More Equitable Distribution of Resources.....	5
Basrah: Attempts to Generate Local Revenue.....	6
Ninawa: Asserting the PC's Monitoring Role.....	6
II. Progress of Work Element Activities	7
Work Element 1: Provincial Council and Governor Orientation	7
Work Element 2: Capital Investment Planning and Budgeting.....	8
Work Element 3: Oversight and Accountability of Services Delivery.....	10
Work Element 4: Organizational Development and Systems	11
Work Element 5: Supporting Sustainable National Institutions	12
III. Deliverables and Reports.....	15
IV. Implementation Plan for the Next Quarter	16
Three New Provinces.....	16
V. Financial Data.....	17
Cost by Month	17
Estimates for the Next Quarter	17
Annex A: Policy Briefs.....	18

Abbreviations and Acronyms

ARDP	Accelerated Reconstruction and Development Program
CAP	Community Action Program
FMIS	Financial Management Information System
GAPTIS	Governorate Accounting and Project Tracking Information System
GIS	Geographic Information Systems
GOI	Government of Iraq
HCCP	High Commission for Coordinating among Provinces
ILGA	Iraqi Local Government Association
LGP III	Local Governance Program – Phase III
PC	Provincial Council
PPA	Provincial Powers Act
PRT	Provincial Reconstruction Team

I. Highlighted Activities at the Provincial Level

In the first and second quarters of 2009, LGP III engaged Provincial Councils (PCs) and governors' offices through in-depth orientation sessions aimed at establishing a common baseline—the Provincial Powers Act (PPA)—for our work throughout the life of the program.

With actual deadlines looming over them this quarter, the provincial governments with which we work have now had an opportunity to test the central assumption of the PPA: that the authority to arrive at and implement decisions of consequence to Iraq's citizens would gradually be devolved to those closest to the citizens themselves.

Predictably, these elected local representatives, of whom those at the provincial level are our customers, have had to navigate the gap between an entrenched central government bureaucracy, developed over decades of dictatorial rule, and the letter of the law contained in the PPA.

It hasn't helped that the PPA itself is inconclusive and, on many critical issues, downright perplexing. What does one make, for example, of the law's specific insistence that decentralization be "administrative" only? Was this a deliberate omission of fiscal and political decentralization? If so, are the budget-making processes referenced elsewhere in the PPA moot?

Helping answer these questions has been a large part of our purpose this quarter, as the political calendar, with its planning and budgeting deadlines and fast-approaching national elections, has brought issues of effective governance to the fore. As important, this quarter signifies the first under complete Iraqi sovereignty. This assertion of power, felt most pronouncedly at the security level, has also laid bare the dangers of too much central authority.

At its most blunt, this authority has resulted in the detention of several PC members whose political affiliations were allegedly their only "crime." More subtly, however, the central government ministries flexed their muscles this quarter by restricting both the time and scope of planning and budgeting for the upcoming year, limiting what we had originally conceived of as a six-month process to six weeks of form-filling, informed by little more than the instincts of a province's governor and the scarce and often unreliable data at his staff's disposal.

Nevertheless, the budgeting process this quarter, discussed in depth in our monthly reports for July and August and summarized in this report, re-affirmed two fundamental truths about LGP III: 1) that our Iraqi advisors continue to be a reliable, trusted resource for governors and PC members and 2) that the insight our advisors have gained into the inadequacies of the law and the complexities of its implementation represents a body of expertise that is proving vital in shaping the dynamics of government and power in the new Iraq.

With this expertise comes a responsibility to engage in critical, facts-based inquiry, something the LGP III Policy Team has put front-and-center in the third quarter. From analyzing how various PPA articles complement or in some cases contradict the body of relevant Iraqi law to flagging potential disagreements over authority inherent in the law, the set of Policy Briefs contained in Annex A consolidate the intellectual capital earned by our advisors since the initiation of LGP III.

Much of this intellectual capital has been an outgrowth of our assistance with the planning and budgeting process, the development of models for delivering and monitoring services, as well as upgrading the skills of those charged with overseeing these services. A more important driver, perhaps, has been the quest for clarity from provincial officials themselves, who, despite the limited jurisdiction afforded them in practice, have repeatedly insisted on testing the limits of the PPA and, in turn, asserting the authorities—from monitoring to budget formulation—that they believe should rightly reside with them.

Our approach has been to acknowledge that the law is inadequate and to support our customers in challenging its ambiguities to the extent that they are willing and on key issues that fall within our program's Work Elements. As such and as summarized in this report, we have advised on a range of heretofore unexplored issues—from the legality of levying local taxes, to the mechanisms for disciplining province-based ministerial officials, to the need for developing an Operations and Maintenance (O&M) budget that is informed by the provinces' capital investment priorities.

Our advisory services have, in all cases, been grounded in the law, as evidenced by the significant research contained in the attached Policy Briefs. Beyond the fine points of the law, however, these efforts point to an emerging and, in our view, encouraging trend in Iraq: It is that the modalities of governance and, indeed, the fate of the governed are being defined at least as much by a new vanguard of dedicated provincial leaders as by the top-down diktats of the central government. Below, we present the most salient examples of this trend in the provinces where we work.²

Babil: Emphasis on Education and Oversight

After the PPA-prescribed budgeting process was changed by the Ministry of Finance (MOF)³, the governor of Babil, suspecting that his counterparts at the provincial-level central ministry departments were unaware of the PPA's provisions, invited them to attend a special session of the LGP III orientations—presided over by the governor himself.

This initiative has been a hallmark of the Babil government and has been supported by our Hillah-based team from the outset of LGP III. The support we have enjoyed from the governor has in large part made it possible for our Policy Team to operate from Hillah, where it has had direct access not only to the Babil governor, but to the governors and PC members from seven provinces in the south-central region of the country.

² For province-by-province activity summaries, please see our Monthly Reports, which contain regularly updated Provincial Profiles.

³ See discussion in Section II.

This interaction allowed our Hillah-based team to organize a regional workshop on August 17 for the PC legal committees in the seven provinces of Babil, Najaf, Karbala, Diwaniyah, Wasit, Muthanna, and Dhi Qar. The workshop set a work plan for the legal committees with a view toward researching key issues encountered during implementation of the PPA. More than 50 provincial officials attended, and the results were shared with our teams across the country in addition to informing many of the Policy Briefs contained in this report.

In another sign of Babil's leadership in the quest for more independent local governance, an August 19–20 workshop was also held at our Hillah offices for LGP III legal staff to discuss ways to assess and improve the PCs' monitoring capacity and educate governors' office staff on the importance of effective oversight. Workshop participants agreed on a unified template to be used in their work with the PCs and governors' offices. They also agreed to meet after two months to make any necessary updates to this template, based on feedback from our customers.

Baghdad: Pushing Performance Measures and a More Equitable Distribution of Resources

Our Baghdad team continues to work closely with both the provincial government and the Amanat to do what no other LGP III team can currently do: assist in monitoring the delivery of public services. Unique to Baghdad, this activity is possible because the Amanat, unlike provincial governments in the rest of Iraq, is charged with delivering services to the capital's citizens.

What this has meant, in practice, is that our technical advisors have continued to participate in site visits to municipal service centers. Rather than oversee work at these sites, however, LGP III advisors have been assisting their Amanat counterparts in developing performance measures which can be tracked and therefore managed against.

In this way, our Baghdad team continues to generate practical lessons for managing the oversight of public services, a function that may gradually accrue to other provincial governments as their roles and responsibilities evolve, especially vis-à-vis the central ministry directorates.

In August, our Baghdad team secured a landmark commitment within our Work Element 3 activities, with the PC assigning dedicated staff to develop, adopt, implement, monitor, and evaluate a pilot service-delivery improvement project that we envision will set the tone for similar efforts throughout Iraq. The LGP III team also secured a commitment from Amanat officials to enroll 14 engineers in a systematic capacity-building effort that would begin with weekly individual assessments, on-site training, and a final evaluation to include recommendations for further training and hiring.

Also in August, the Baghdad governor's office staff and several PC members engaged in an intensive three-day discussion, facilitated by LGP III advisors, on the need to more fairly allocate resources beyond the municipal boundaries of the capital. In fact, a preliminary agreement was reached that would see 70 percent of the province's

capital budget benefitting projects outside the capital, with the remaining 30 percent going to projects within the Amanat, or Baghdad mayoralty.

Basrah: Attempts to Generate Local Revenue

Open lines of communication between the PC and the governor's office in Basrah have led to more effective coordination with the central government; for example, the provincial government succeeded last quarter in securing half a dollar of revenue for Basrah city from each barrel of oil that is exported from its port. Given its importance to the oil industry and its record of successful cooperation with the central government, Basrah is now playing a lead role in defining the parameters of provincial power.

In the most striking example this quarter, the governor of Basrah attempted to set a new precedent by formally requesting that the MOF establish a "local" account within the standard chart of accounts given to each province. The idea was to allow Basrah to levy local taxes *and* retain the proceeds for use at the PC's and governor's discretion. Although the request has not been granted, the initiative has raised questions about Iraq's generic chart of accounts, prompting discussion at the national level.

Ninawa: Asserting the PC's Monitoring Role

Although Ninawa and its capital Mosul remain volatile, our advisory services have been in high demand, both by the PC and the governor's office. The LGP III Mosul team was the first to complete all eight orientation sessions for the PC and, by the end of this quarter, had completed those sessions for governor's office staff as well. The well-attended sessions allowed our Iraqi advisors to engage the council members and governor's staff in in-depth support for the activities that fall under Work Element 2—namely, planning and budgeting.

But it was our guidance on the PC's monitoring role that yielded the most surprising and significant results this quarter. In August, the Mosul PC voted to recommend the removal of the Ministry of Education's provincial representative due to what the PC deemed poor performance. That this conclusion resulted from a deliberative process, which included the PC questioning the ministry representative, was in line with the recommendations made in our orientation sessions. Moreover, our legal guidance prompted the PC to forward its decision to the Ministry of Education, citing the authority granted to the PC under PPA Article 7, 9.2. Should the action be upheld, it would indicate that PCs do indeed have leverage over local departments of the ministries.

II. Progress of Work Element Activities

This section brings together the work of LGP III throughout the 14 provinces covered by the PPA, identifying issues and trends that affect the larger goal of building a decentralized but unified Iraq. Although progress in each province is inevitably linked to the unique political context there, our five Work Elements are designed to cut across these differences. The five Work Elements are:

1. Provincial Council and Governor Orientation
2. Capital Investment Planning and Budgeting
3. Oversight and Accountability of Services Delivery
4. Organizational Development and Systems
5. Supporting Sustainable National Institutions

The first four Work Elements apply to LGP III activities in the program's 14 focus provinces as well as the Baghdad Amanat. Given their national scope, activities under Work Element 5 are currently taking place in Baghdad only. Taken together, the five Work Elements guide LGP III efforts *and* reflect the progress of the elected provincial bodies we serve.

This quarter, there were three key differences from our Quarter 2 implementation plan:

1. Under Work Element 2, we added a greater emphasis on leveraging existing resources and transitioning GIS-related activities to our Iraqi customers.
2. For the Baghdad Amanat, we developed a distinct implementation plan, incorporating themes from Work Elements 2, 3, and 4 with a view toward creating a demonstration effect for other provinces.
3. Under Work Element 5, we re-prioritized tasks to allow for further development of the capacity and sustainability of the Iraqi Local Government Association (ILGA) as well as support for the establishment of the High Commission for Coordinating between Provinces (HCCP).

Work Element I: Provincial Council and Governor Orientation

This Work Element has been driven by two sub-activities: 1) an introduction to LGP III and its services, which was delivered in all focus provinces in the first quarter of 2009 by our Iraqi team leaders; and 2) a series of eight PowerPoint presentations⁴ which, as of this report, have been delivered by Iraqi technical staff to council members, governors, and their staffs in all LGP III focus provinces. *Activities under this Work Element are therefore now complete.*

⁴ In addition to one presentation that introduces the Provincial Power Act, the series includes four sessions on the legislative, planning, budgeting, and monitoring functions of Provincial Councils and governors and three sessions on the resources at their disposal—legitimacy, funding, and organizational tools.

Work Element 2: Capital Investment Planning and Budgeting

The provincial planning and budgeting process was to build upon each province's existing Provincial Development Strategy (PDS) and Provincial Development Plan (PDP), both of which were submitted to and formally accepted by the central Ministry of Planning and Development Cooperation (MOPDC) in 2008. Consistent with the overall design and intent of LGP III, our role in building upon these documents is that of capacity building, enabling Iraqis to set their own priorities for improving provincial institutions and services—and to do so within the parameters established by the PPA.

In the third quarter, our advisory role became all the more important, as instructions received in July effectively delinked each province's PDP from its ARDP budget entitlement. What this meant, in effect, was that the MOPDC, which issued the instructions, would make final recommendations on priorities for each province based on Provincial Project Lists (PPLs).

According to the instructions, governors were to submit their PPLs to the MOPDC by August 15. The MOPDC, in turn, was to review these lists, presumably to lend weight to the provincial priorities they reflect, and submit them by August 31 to the MOF, which was understood to have final say on the price tag for each project.

By August 15, however, only three provinces had submitted their PPLs. This was predictable. Given the six-week turnaround time between issuance of the MOF instructions and the deadline for submitting the PPLs, the governors' offices had little time to pull together the lists, much less invite a transparent review process by the PCs.

In September, the widely missed deadline prompted the Minister of Planning to announce a six-month extension for submission of the PPLs, a move that further calls into question the relevance of the PPLs, since they are now to be submitted *after* the 2010 budget cycle begins. Despite the many legitimate doubts about the process, much of our energy in this quarter was spent preparing the PPLs according to the guidance provided by the PPA.

According to the language of the PPA, the governor is to prepare the budget for the province and submit it to the PC for approval. The language in that article led us to conclude that a deliberative process of bottom-up budgeting would take place, and working backwards from the published deadline for submission of the provincial budgets to the MOF, August 31, we developed a Budget Formulation Manual consisting of nine sequential steps that we proposed governors and councils should follow.

As it turned out, the MOF published additional "final" instructions in early July which changed the date for submission of budgets from August 31 to July 10, leaving little more than a week to prepare what we surmised would take 7 months to do competently. The budgets in question, however, were not the ones we or our customers anticipated formulating. In fact, the budget in question was to include only projected Operations and Maintenance (O&M) expenditures. A different procedure—

and indeed a different ministry (the MOPDC)—would determine how the councils submitted their capital budgets.

The sudden shortening of time created enough anxiety that the MOF saw fit to extend the deadline by another 10 days (although, to our knowledge, no official document extending the period was published). Nevertheless, the date came and went, and the departments at least followed what they had done previously, which was to take the prior year's expenses and add a percentage for inflation (reportedly 3 percent this year).

Regardless, there was no time for a serious attempt at participatory budgeting and evidently little if any cooperation between councils and departments in setting their amounts. Considering, however, that the majority of expenses in the O&M category is for salaries, the budgets would have been easy to prepare, if, of course, the council was interested in maintaining the status quo.

On the other hand, if a council or governor needed to build a cadre of specialists (the subject of Work Element 4) different from what they have now, they were hindered by being compelled to project staff expenses before they had defined the positions. Similarly, since PCs were required to submit their O&M budgets before their capital budget (i.e. before knowing which capital projects would be funded), they could not plan for the maintenance of those projects (nor the staff necessary for them).

As for the capital budgets, despite the tight deadline, our advisors worked closely with governors' offices to complete the forms required by the MOPDC. The upshot is that LGP III can now point to increased planning and budgeting capacity among the accounting staff of governors' offices (and among governors themselves), but the impact of our Iraqi counterparts' work may well be gauged in the coming weeks and months by the success of their efforts to advocate, within the bounds of the PPA, for greater autonomy in the development of provincial budgets.

To the extent that controlling the "purse strings" of provincial government is perhaps the clearest barometer of decentralization, this advocacy effort is commendable. But change will require a concerted and perhaps protracted effort to educate, first, the ministry employees responsible for each province and, by extension, the Baghdad-based employees and officials of these ministries. This effort will be bolstered by stronger national institutions advocating on behalf of provincial governments (see discussion under Work Element 5).

The sooner this advocacy effort can yield results the better. In some provinces, elected officials have demonstrated that they are inclined to take budgetary matters (and specifically methods of generating revenue) into their own hands. In Basrah, for example, the PC is reportedly developing a draft ordinance requiring Shi'a pilgrims from Iran to lodge in the city on their way to the holy shrines in Najaf and Karbala. For its part, Karbala is studying ways to levy a "tourist tax," while Babil officials are looking into the possibility of a "diesel tax" on trucks using the province's supply route.

All of this points to an underlying complication in how provincial budgets are conceived and expended, one that owes to Iraq's singular chart of accounts.

Even if Basrah, for example, were able to extract revenue from pilgrims passing through the city, the province would be at a loss to classify that “income” on its balance sheet. The reason is simple: There is only one chart of accounts in Iraq, and its line items are defined by the central ministries. The revenues in question, for example, may be generated locally, but they would need to be accounted for under a national budget category controlled by the Ministry of Tourism.

Aware of this limitation, and as noted in Section I, the governor of Basrah attempted in August to set a new precedent by formally requesting that the MOF establish a “local” account within the standard chart of accounts. LGP III advisors are monitoring this development closely and offering guidance as requested from the governor’s office.

As these initiatives—indeed innovations—multiply and either succeed or fail, our job will be to inform the process through our cadre of subject matter experts, who arguably represent the largest body of expertise on the PPA and its implementation. As we learn with our Iraqi customers what works and what doesn’t, we are capturing these lessons in our Policy Brief series.

Work Element 3: Oversight and Accountability of Services Delivery

Work Element 3 is about assisting provincial officials’ efforts to make good on the goals of their Capital Investment Plan and Budget. It is therefore only in its preliminary stages, with LGP III advisors consulting with provincial officials and developing materials that will assist them with monitoring and oversight once planning and budgeting for the coming year is finalized.

Already, however, LGP III has gone a long way toward building the capacity of provincial government institutions to improve service delivery to its citizens by: 1) aiding in the development of performance measures for public servants; and 2) continuing to facilitate implementation, at the provincial level, of GAPTIS, a tool for monitoring and oversight. This quarter, we achieved a significant milestone by completing installation of GAPTIS equipment and training of GAPTIS staff in all 14 provinces where we work.

By standardizing the mechanisms of monitoring and oversight, Work Element 3 also further improves coordination between each province and the national government. GAPTIS, for example, uses the national government’s chart of accounts. This parallel will give provincial governments the ability to merge their accounting systems with the national Financial Management Information System, or FMIS.

To date, most of the work of developing performance measures has been focused on assessing provincial governments’ current capacity to track ongoing projects and generate actionable information on their progress. In addition, this quarter, our teams have been focused on securing agreement from their counterparts in provincial government on the scope of pilot projects for performance measurement. These projects, though not yet implemented, are now identified as being primarily with the sewer and water departments in each province. Consistent with our work plan, these

departments have been selected to demonstrate the importance of performance measurement to improving vital public services.

The political incentives are clear. In Ninawa, where security fears have kept the situation volatile, the governor has enthusiastically embraced our team's efforts, establishing a supervision committee to liaise with the ministerial directorates there. Our team was called upon in August to establish benchmarks for overseeing the work of the sewer and water departments. Thanks to technical assistance from LGP III, the governor's office has approached these departments with a formal request for financial data to substantiate their work and help in the preliminary assessment of performance and outstanding needs. Ideally, this process will inform next year's budgeting process.

Indeed, our efforts with the budgeting process this year have energized provincial officials, who are looking for ways to better realize the potential of the PPA. In the coming quarter, we foresee these efforts focusing more and more on Work Element 3-related activities. As such, we invested significant energy toward the end of the current quarter in building the capacity of our own Iraqi staff in understanding the role of provincial governments in monitoring and oversight.

Accordingly, on August 19–20, we held a two-day workshop at our Hillah offices for LGP III legal staff to discuss ways to assess and improve the PCs' monitoring capacity and educate governors' office staff on the importance of effective oversight. Workshop participants agreed on a unified template to be used in their work with the PCs and governors' offices. They also agreed to meet after two months to make any necessary updates to this template, based on feedback from our customers.

Work Element 4: Organizational Development and Systems

LGP III has worked with PCs and governors' offices to: 1) assist in the development of bylaws, which contain the standard rules and procedures to upgrade PC members' capacity to implement the PPA; and 2) ensure that the same standards are applied among staff of each provincial governor.

This quarter, we are pleased to report that all 14 PCs with which we work have completed and passed their bylaws, with several having completed similar procedures for a variety of committees. With this effort complete, and consistent with our workplan, we began to turn our attention late this quarter to the development of organizational systems within the governors' offices.

From preparing budgets to monitoring public services, the work of governors' offices is highly technical. By extension, developing the staff and systems of these offices requires a long-term approach that is coordinated with each province's chief executive, his deputies, and the ministerial directorates that deliver public services.

Given their excellent relationships with governors in each province that is assisted by LGP III, our team leaders have been consulting closely with these chief executives and their staffs to streamline individual departments and align them with their responsibilities as outlined in the PPA.

In August, our teams helped the governors' offices in Basrah, Maysan, and Ninawa formalize organizational charts and further develop job descriptions, salary scales, and performance review protocols. This consultative process is ongoing in all provinces and builds upon the good faith we have earned with governors, especially during the difficult budgeting process this year.

Governors are not only personally participating in the workshops and on-the-job consultancies we have led; they are instructing their staff to cooperate fully with our advisors in revising job descriptions and openly critiquing job performance.

In Basrah and Maysan, for example, this process included a questionnaire and interviews with more than two dozen managers in the governors' offices, as well as with the governors' deputies and assistants. The data collected from these questionnaires and interviews indicated consensus on the need for greater organizational structure and more clearly delineated roles and responsibilities, a first step toward aiding in the implementation of more transparent, efficient systems. This effort will be a key priority in the coming quarter.

Work Element 5: Supporting Sustainable National Institutions

Under this Work Element, LGP III is: 1) supporting the Iraq Local Government Association (ILGA) by advising on its organizational development and by developing the capacity of its Secretariat and members; and 2) on an as-needed basis and in close coordination with the Prime Minister's office, supporting the creation of the High Commission for Coordinating between Provinces (HCCP) and its coordination with the ILGA.

The ILGA and HCCP will represent the interests of PCs and governors, respectively, to the central government. The ILGA is an existing, provisionally registered entity; the HCCP, which had not been formally constituted during this reporting period, is described in Article 45 of the PPA and, per the Act, shall be "headed by the Prime Minister."

As an association of PC members, the ILGA was responsible for drafting the PPA and engaging with the Council of Representatives (COR) in numerous revisions of the draft, leading to its enactment in 2008. With the January 2009 PC elections, many of the original participants in the ILGA were replaced. Under LGP III, the new composition of the ILGA represents an opportunity to assist the association in: 1) acquiring legal status and 2) further building its capacity to represent provincial interests to the central government.

During this reporting period, LGP III advisors brought together the newly selected Board of the ILGA for a high-profile meeting in Baghdad. The meeting followed an important milestone, also achieved this quarter: by the third week of July, all provinces covered by the PPA had appointed their representatives to the ILGA, thus signaling their participation and active support of the body.

Most of these representatives were present at a July 28-29 ILGA board meeting held at the Mansour Melia hotel in Baghdad. The transition from the outgoing membership

was smooth, leading to the election of the new Executive Committee, which includes a chair, vice-chair, and committee chairs. The board approved new draft bylaws developed with assistance by LGP III and adopted a calendar of activities. Key ILGA partners USAID, VNG International, and UN-Habitat attended, made presentations, and held side discussions with members. Two members of the COR were also in attendance.

Also this quarter, the ILGA, with support from LGP III, sponsored a September 7 conference with PC legal advisors to discuss proposed amendments to the PPA. The conference was co-chaired by an LGP III committee headed by our legal advisors in Baghdad and Hillah and included active participation by the Muthanna-based female chair of the newly elected ILGA board. The committee is compiling the proposals discussed at the conference for dissemination to participating PCs. Once consensus is reached on a set of proposed amendments, they will be forwarded to the COR for consideration.

For its part, the HCCP also took important steps toward institutional sustainability this quarter. Although the HCCP has not yet been formally announced, the governors who are to become its members and the Prime Minister, who will be its head, made significant progress this quarter toward formally announcing the commission when they convened at an LGP III-supported meeting in Baghdad.

At the July 25-26 conference of governors, representatives from 14 of Iraq's 15 non-Kurdish provinces discussed the design of the commission, governance issues in the provinces, and a schedule of upcoming meetings and activities. The Minister of State for Provincial Affairs delivered the keynote address, and a number of key recommendations were agreed upon, setting the stage for the commission's formal launch. Among these recommendations were:

- The formation of the HCCP on an expedited basis;
- The preparation of a paper setting forth the roles, responsibilities, and jurisdiction of the HCCP and the role of the governors;
- The preparation of a detailed study about the organizational, administrative, and financial needs of the HCCP and identifying the mechanisms by which the HCCP will seek to meet those needs.

Eager to move forward with these recommendations, attendees asked that the first biweekly and bimonthly meetings of the HCCP be scheduled as soon as possible, as the problems requiring executive-side coordination (everything from border disputes, to service delivery issues, to personnel and staffing issues, to planning and finance issues) abound and require urgent attention.

In a sign of high-level support for our program activities, the Head of the Commission of Advisors to the Prime Minister thanked LGP III profusely for its contributions to the conference and reiterated the Prime Minister's commitment to partnering with us in further developing the HCCP.

Such support follows from a key principle to which all LGP III activities adhere: an insistence that our program be demand-driven and Iraqi-led. Indeed, no non-Iraqi

voices were heard at the HCCP meeting, and all LGP III inputs were communicated entirely through our Iraqi staff, whose substantive knowledge and diplomacy skills were extremely well-received.

Much of our work in the coming quarter will involve supporting the implementation of the HCCP's recommendations and ensuring that the work of the HCCP ultimately contributes to greater coordination among the commission's membership. This coordination will be a vital component to addressing issues like the budget formulation process discussed under Work Element 2 of this report.

LGP III continues to be well-placed to support these positive developments at the national level, given our ongoing work with governors' offices in the provinces, our ongoing assistance to the ILGA, and our overall familiarity with local government development in Iraq. Through our work with the HCCP, we will continue to support the coordination of this development at the national level, and we will do so in close coordination with the Prime Minister's office and with our advisors in the provinces.

III. Deliverables and Reports

The following deliverables and reports were submitted to USAID between July 1 and September 30, 2009.

Name of Deliverable	Date Submitted
Monthly Report – June	July 5, 2009
Assessment and Evaluation Quarter 2 Report	July 30, 2009
Employee nationality Data 2	July 30, 2009
Quarterly Financial Report- Qtr 2	July 30, 2009
Security Provider data 2	July 30, 2009
Sub-activity Report 2	July 30, 2009
Monthly report - July	August 5, 2009
Monthly report - August	September 5, 2009
Quarterly Implementation Plan- Qtr 4	September 16, 2009
Evaluation of LGP III Expatriate Advisors	September 18, 2009
Quarterly Report - Qtr 3	September 24, 2009
Accrual Report 3	September 30, 2009*

*Although this deliverable will be submitted after completion of this Quarterly Report, we anticipate no delays in meeting their deadline.

IV. Implementation Plan for the Next Quarter

The upcoming quarterly implementation plan is entirely based on the Quarter 3, 2009 LGP III Work Plan that was approved by USAID on June 30, 2009. Minor adjustments of a few dates were introduced so that the current version reflects a realistic projection.

Three New Provinces

In the third quarter LGP III extended its full range of services to Diwaniyah, Muthanna and Dhi Qar. LGP III had already started its services in these provinces in May 2009.

Early activities that took place were the orientation of PCs and governors' offices on their roles and responsibilities under the PPA. Those orientation sessions were completed by July 31. They were mainly conducted by the LGP III team based in the Hillah office.

In addition, those provinces were assisted in other areas that included but were not limited to: development of PC bylaws, budget formulation, and assessment of various PC and GO functions.

LGP III has nearly completed recruitment of the staff who will execute project activities in the provinces of Diwaniyah and Muthanna. Moreover, office space will be available to accommodate the staff as of October 1, 2009. Staff of these two provinces are currently receiving basic orientation and training.

Dhi Qar key staff members are already selected. They are scheduled to receive their basic orientation and training in the first ten days of October 2009. Office space in Dhi Qar is being selected among three available options. The selection and lease process is estimated for completion before mid-October.

Gantt charts for the three new provinces are included in the LGP III fourth quarter workplan, submitted to USAID on September 16. The new Gantt charts are presented according to their alphabetical order. Most of the activities are planned for implementation during the months of October, November and December, although some activities have already taken place

In all provinces, LGP III will continue to coordinate and collaborate with other United States Government agencies working at the provincial and central levels.

Annex A: Policy Briefs

The following Policy Briefs were drafted by the LGP III Policy Team in the third quarter. The briefs have been informed by research and our advisors' experiences working with provincial officials. They have also served as useful briefing materials for other development partners at the provincial level.

Policy Brief

Analysis and Recommendations for Iraq's Provincial Governments

Which Law Applies to Provincial, Qada'a, and Nahiya Councils?

Since elections were held for provincial councils on January 31, 2009, a question has arisen about what law applies to provincial, and sub-provincial councils, (the so-called district (or qada') and sub-district (or nahya) councils).

What the Law Says

Iraqi Law 159 of 1969, known as the Law of Governorates (or provinces) of 1969 distinguished between three levels of sub-national councils: governorate (or provincial), qada (or district) and nahya (or sub-district). Order 71 of the Coalition Provisional Authority (CPA), issued in 2003, accepted those three levels but attempted to imbue the councils with more legislative authority and more independence from the central government. Those new characteristics were continued in the Law of Governorates Not Incorporated into a Region, more simply known as Law 21 of 2008, and somewhat misleadingly called the Provincial Powers Act. According to Article 55 of that act, Law 21 became effective from the date of its official publication (March 2008) but not applicable to the provinces until after 'the next council elections.' Article 53 also explicitly abrogated Law 159 and CPA Order 71.

What Experience Suggests

Provincial elections, though first optimistically anticipated for October of 2008, did not in fact occur until the end of January of 2009. Although the second time provincial elections had been held since 2003, this round, like the previous round, did not include elections for district or sub-district councils, raising some doubt about the law applicable to all of them.

Analysis

Although this doubt has not been removed by any official authority, a close examination of the sources of that doubt offers a way out of the confusion. The first issue is what law applied to the old provincial councils between the passage of Law 21 in March of 2008 and the election of (mostly) new provincial councilors at the end of January of 2009. The answer lies in Article 55 of Law 21 itself, which makes application of the law conditional. Publication of the legislation in the official gazette made it 'law,' but only the elections made it applicable. In the interim, the old provincial councils continued to do business in accordance with CPA Order 71.

A second issue of greater difficulty is what law applied to the old councils after the elections of January 2009 but before the seating of new councils. In some provinces, it took until April before all the political wrangling over election outcomes was resolved, and in the interim, the old (albeit 'lame duck') councils were still technically in office. Again, the text of Article 55 of Law 21 resolves this difficulty because it makes 'council elections' the condition necessary for the application of the law. That the outgoing governor in each province behaved in conformity with the new law in calling the first session of the new councils and presiding over the selection of his successor gives weight to this interpretation.

The third issue remains the most contentious, and that is what law applies to the district and sub-district councils, the argument being that since there have not been elections at those levels, Law 21 cannot apply. This contention is reasonable if the exclusive condition for applicability of Law 21 were the holding of elections. Because Article 55 does not specify the next 'provincial' elections, it can be argued that Law 21 does not apply at the district and sub-district levels. Instead, CPA Order 71 would still apply. But this reasoning fails to take into consideration that the condition of elections of Article 55 does not merely affect the applicability of Law 21; it determines the abrogation of prior law, specifically CPA Order 71. Synonyms for 'abrogate' are annul, officially abolish and repeal, and so the condition of elections being met, Order 71 has ceased to exist, and not only for the provincial councils but all councils whether or not there are ever elections.

Recommendations

Provincial Councils: The provincial councils can recognize the legitimacy of the district and sub-district councils despite the absence of sub-provincial elections.

Governors: The governors can insist that sub-provincial councils and executives follow Law 21 in the preparation of budgets and projects.

Development Partners: USAID can direct its development partners to train sub-provincial councils in the authorities given to them by Law 21.

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Policy Brief

Analysis and Recommendations for Iraq's Provincial Governments

Which Authority Can Resolve Disputes between the Provinces and the Central Government?

Law 21 (also known as the Provincial Powers Act) outlines a system of sub-national government that is described as being in accordance with the principles of “administrative decentralization.” Those principles are not defined, and because the authorities given to provincial councils, for example, appear to contradict the authorities of provincial-level departments of central government ministries, conflict is inevitable. What is not clear, however, is which government authority can resolve those conflicts.

What the Law Says

Law 21 of 2008 appears to make elected provincial officials supreme in matters of local governance. For instance, Article 2 declares the provincial council to be “the highest legislative and oversight authority,” and Article 24 describes the governor as “the highest ranking executive officer” in the province. Their supremacy, however, is circumscribed, as it must be exercised “in a manner that does not contradict the provisions of the Constitution and federal laws.” (Article 7) Because the law in Iraq is not limited to only the Constitution and Law 21, other federal law must be taken to mean not just acts of the Iraqi Parliament (Council of Ministers) since 2003, but all prior legislation still in effect, and (significantly) all ministerial regulation.

What Experience Suggests

In practice, since Iraq’s system of government is fundamentally a ministerial one, there is scarcely any aspect of life that is not the subject of a central government ministry. And if every aspect of life is covered by a ministry, it is covered by a ministerial regulation, and, being other “federal law,” those regulations would severely restrict the provincial councils and governors from exercising their authority. Recognizing this conflict between the competencies given to them by Law 21 and the apparently contradictory authority maintained by the central ministries, the Dhi Qar Provincial Council in southern Iraq submitted the issue to the highest-ranking judicial authority for the resolution of constitutional disputes, the Shura Council. Unfortunately for the province, the Shura Council refused to hear their claim on the grounds that (essentially) the provincial council lacked “standing” to sue.

Analysis

The Shura Council is a deliberative body within the Ministry of Justice, created by Law 65 of 1979, to resolve disputes of a constitutional nature between different

governmental entities. Although provincial and sub-provincial councils existed at the time of the Law 65’s passage (the councils having been created by a law dating from 1969), they were not explicitly mentioned as within the Shura Council’s jurisdiction in the 1979 law. Instead, the disputes between governmental entities that the Shura Council was created to resolve were disputes in which a ministry was a party. The law creating the Shura Council did not give it jurisdiction over the provincial councils at that time, and while the character of those councils has changed since ratification of the 2005 Constitution and Law 21, the law determining the jurisdiction of the Shura Council has not. In addition to lacking standing, the Dhi Qar Provincial Council also lacked a dispute. They were asking the Shura Council for an “advisory opinion,” not a ruling. Assuming the Shura Council acted properly, it makes the determination of limits between provincial and central authority all the more difficult.

Recommendations

Provincial Councils: If the jurisdiction of the Shura Council is limited to actions in which a ministry is itself a party, then the only way a provincial council will get a hearing is to sue a ministry.

Ministry of State and Provincial Affairs: If, however, the jurisdiction of the Shura Council is limited to disputes between ministries, then the only way provincial councils will get a hearing is if the Minister of State & Provincial Affairs brings suit on their behalf.

Ministry of Justice: Given that the Shura Council is a part of the Ministry of Justice and subject to its regulation, the ministry might amend its regulations to extend the Shura Council’s jurisdiction to include disputes involving provincial councils.

Council of Ministers: Finally, the Iraqi Parliament (COR) could amend Law 65 of 1979 that created the Shura Council, by expanding the Shura Council’s jurisdiction to include provincial governments.

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Policy Brief

Analysis and Recommendations for Iraq's Provincial Governments

Devolution of Political Authority

Devolution is essentially political decentralization, or the process of transferring decision-making and implementation powers, functions, responsibilities, and resources from the central government to legally constituted local governments. Decentralization in Iraq began with the promulgation of the Constitution and Law 21 of 2008. Ultimately dependent on the political process and the will of national leadership, decentralization requires the continued effort and focus of the central government and local authorities to be successful.

What the Law Says

Article 118, Second of the constitution reads:

Governorates that are not incorporated in a region shall be granted broad administrative and financial authorities to enable it to manage its affairs in accordance with the principle of decentralized administration.

This will be organized by law.

And Article 118, Fifth states, “The governorate council shall have independent finance.” In addition, Article 2 of Law 21 establishes the governorate councils as the highest legislative and oversight authority within their administrative boundaries.

What Experience Suggests

The Constitution granted the provincial councils broad administrative authority; however, this authority is somewhat limited by Law 21. Law 21 suggests that the central government will directly control some provincial departments. According to current statutes, the provinces are under the direct authority of the central government instead of under local provincial councils. Essential public services flow directly from central government ministries to the populace, bypassing provincial governments entirely. In addition, the provinces lack control of their finances, which is in contradiction to the Constitution and inhibits their development and planning.

Analysis

Political decentralization is implemented in two principle areas: 1) by transferring the power of selecting political leadership and representatives from the central government to local levels of government; and 2) by transferring the power and authority for making social, political, and economic decisions from the central government (at the ministerial level) to provincial councils and local communities.

Law 21 supports the first component of political decentralization by stipulating local elections. Yet, decentralization requires more than just local elections; it requires that decision-making authority, planning, budgeting, oversight, and monitoring responsibilities be

transferred from central government ministries to local levels of government. Without the clarification of current legislation, the decentralization scheme in Iraq will not be completed. National political leaders must recognize that decentralization is not a zero-sum power exchange with the provinces; when decision-making authority is transferred to the provinces, the central government’s responsibility for the provinces is commensurately reduced. It is a joint relationship: more power means more responsibility.

Political decentralization not only facilitates planning and budget authority at local levels, but it also charges local government with the responsibility to mobilize resources. When these responsibilities are vested with local authorities, it encourages popular participation that was previously impossible at the central level, reduces administrative costs, and makes power more responsive to local communities.

Local council members should support the devolution of political authority by lobbying the central government. Governors should use the High Commission to lobby the central government, and members of provincial councils should support decentralization.

Recommendations

To support the devolution of political authority in Iraq:

- 1) Amend Law 21 to facilitate the transfer of political authority, i.e., all aspects of local governance should be under the authority of the local government.
- 2) Grant local levels of government more financial authority, including control over budgeting, resource allocation, and revenue collection.
- 3) Have the Council of Representatives play a pro-active role in amending the new legislation.
- 4) Give elected leaders in the provincial councils capacity-building training in legislation, planning, and resource mobilization, to take advantage of future decentralization.
- 5) Establish a national training institute for capacity building for elected leaders.

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Policy Brief

Analysis and Recommendations for Iraq's Provincial Governments

Causes for Expulsion of Council Members and Governors

Of the many legal causes for which a provincial council (PC) member or a governor can be expelled, most are easily understood. This Policy Brief will examine those causes in the law that are less easily determinable.

What the Law Says

Article 6 (First) of Law 21 enumerates the conditions under which a PC member's seat can be lost. In summary, they are: the term of office has come to an end; the member resigns (which requires an absolute majority vote for approval, or the member's insistence); failure to attend a certain number of sessions without good reason; one of the membership requirements is no longer satisfied; satisfaction of any of the conditions for expulsion of the governor (or his two deputies), which are given in Article 7 (Eighth) of Law 21.

What Experience Suggests

There are many reasons under the law for expulsion from the PC or governor's seat: those related to membership requirements are relatively easy to prove because the proof is essentially objective. For example: the person never finished high school (no diploma); the person did not live in the province for the required period of time (he was in Jordan); failure to attend meetings is merely a matter of counting the roll call (although there may be room for argument in what constitutes absence with or without good reason). In contrast to this are those enumerated in Article 7 (Eighth) of Law 21. The grounds for expulsion here are satisfied more subjectively. It comes as no surprise then that these are the grounds around which most controversy has centered. As a matter of coincidental convenience, Article 7, Eighth, applies to both PC members and the governor.

Analysis

Article 7 (Eighth) lists four grounds for expulsion. Below are definitions in accordance with international best practices:

1. "Lack of integrity or abuse of position": Political integrity is recognition of society's expectations of you and also your recognition of how social conditions can be improved, and then acting in accordance with those expectations and toward those improvements. Taking action through one's political position that disregards society's expectations and has no consideration for improving social conditions would constitute a lack of integrity in the political sense. Abuse of position is very similar, where actions are taken through one's political position that willfully disregard political integrity because some other objective is sought. Abuse of position is more easily identified because there is a specific objective (influencing the local police to hire many of your relatives, for example). Lack of integrity is less clearly

recognizable and therefore a more difficult accusation to prove.

2. "Causing waste of public funds": Determining waste is a cost-benefit analysis; when the cost is too high or the benefit too small then waste has occurred. Waste need not be intentional; the actions of a politician's incompetence, no matter how well-intentioned, can be wasteful. Some cases of waste are clear, such as the repaving of a road that was in good condition. Most cases, however, are less clear, for example, the repaving of a road that was in poor condition, but is rarely used even when newly paved. In determining waste, one judges from the information available to the accused at the time he made his decision, not from observable consequences that can be made in hindsight.
3. "Loss of one of the membership requirements": Discussed earlier, this is relatively easy to determine, but issues of residency and education leave room for controversy.
4. "Willful negligence and dereliction of his duties": The first is an action, while the second is based on inaction. When a politician knows of and is indifferent to the high risk and likely harm of an action and performs that action anyway, he has been willfully negligent. It is a lack of a reasonable degree of care in making the decision to act. Similarly, dereliction of duties is the willful neglect of one's duties.

Recommendations

Reasons 1, 2, and 4 are used more easily and more frequently as methods to attack and discredit political rivals because they are more vulnerable to subjective interpretation (as opposed to counting the attendance record, for example). However, when used politically rather than justly, such charges undermine the democratic principles of tolerance, plurality of opinion, and constituent representation. It also undermines the law itself, making it a political weapon rather than a standard of excellence that all citizens have the right to demand of their representatives and of themselves as a people. All courts and all politicians must insist, in every case, that a determination of guilt or innocence is conducted in a consistently uniform manner with uniform standards, irrespective of the accused's political disposition. This is the rule of law.

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Policy Brief

Analysis and Recommendations for Iraq's Provincial Governments

Can a Person Be Governor and Provincial Council Member Simultaneously?

Not surprisingly, some provincial councils (PCs) elect one of their own members to the office of governor. Status of that council member's seat, once he or she becomes governor, has been questioned in a myriad of ways. Is the governor no longer a member of the PC? Does the governor hold his seat in the PC but forfeits his voting rights?

What the Law Says

Law 21 of 2008 allows for members of the provincial council to be elected governor (Article 26(2)). Law 21 also states that a member of a provincial council cannot hold any other official position (Article 18(1)).

What Experience Suggests

All provincial councils and attendant governors are now seated. Given the broad scope of Law 21 and its lack of specificity in some areas, PCs and governors' offices (GOs) are beginning to develop multiple interpretations of Law 21 on a province-to-province basis.

Where federal law allows for varied implementation is not a problem. For example, if federal law allows provinces to raise revenue through licensing, some provinces may decide to license restaurants while others may decide to license food markets. However, the meaning of "licensing" is not open for interpretation: it must have the same meaning in all provinces, otherwise the law loses all effect. Standardized application must be achieved.

Such is the case with the issue here in question (whether both seats be held simultaneously). Article 18(1) states that a PC member cannot hold any other official position: The meaning of this must have standardized application. Just as there can be no variation on the meaning of "licensing," there can be no variation on the meaning of "PC member," "hold," and "official position," nor in the application of that article in each province.

Analysis

Although a PC member can be elected to the governor's office, that PC member cannot retain his or her seat on the PC to any degree. Article 18(1) of Law 21 clearly states that a member of a PC cannot hold any other official position. A governor cannot, therefore, hold a seat in the PC, as that would make him or her a member of the PC that holds another official position: that of governor. Conversely, if a person outside of the PC is elected to the seat of governor, that governor may not become a PC member: doing so would make him or her a PC member that holds another official position: that of governor. The

person would have to withdraw himself from either the PC or the governor's office. The scenario is possible if the person elected to governor had run in the PC elections and did not win, but is next on the list to replace a member of the PC.

In the scenario discussed immediately above, an interesting situation could unfold: Article 18(1) also states that upon a PC member's termination of membership that person is entitled to "resume their original employment." For a PC member that had come from the position of governor, their "original employment" would be the position of governor, which is already occupied by another person elected by the PC.

There is, in fact, no dilemma here: The grounds for termination of PC membership are the same for the governor. For example, if PC membership expires because of a new election, the governor's term has also expired. That term of the governor's office no longer exists, and thus the ex-PC member cannot return to it. What if a PC member is expelled for reasons given in Law 21, and that PC member had been governor? (Please see Policy Brief "Causes of Expulsion for Council Members and governors.") Reasons for expulsion of PC members and governors are the same: if a PC member is expelled for reasons under Law 21 then that person is not fit to hold the seat of governor. For example: A PC member is expelled for "lack of integrity" (Article 7, Eighth (1)). That PC member has no standing whatsoever to return to the post of governor because his lack of integrity is also grounds for expulsion from the seat of governor. Indeed, to place such a person into the seat of governor would be an illegal act.

Recommendations

Law 21 must be applied in a consistent manner when warranted by the law itself. Federal law allows room for interpretation in certain areas, but in the case posed in this brief there is only one interpretation that is legal. No individual can maintain at the same time both a seat on the PC and the seat of governor.

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Policy Brief

Analysis and Recommendations for Iraq's Provincial Governments

Numeric Thresholds as Applied to Councils and Voting

Questions regarding proper calculation of when council members reach a numeric threshold, as required by law, frequently arise. This occurs in two ways: 1) the numeric requirement as it relates to the body of council members themselves (quorum, simple majority, and absolute majority) and 2) the numeric requirement as it relates to voting.

What the Law Says

Law 21 of 2008 clearly states in Article 1 that both an absolute majority and a simple majority are calculated by “half plus one”.

What Experience Suggests

All provincial councils (PCs) and attendant governors are now seated. Given the broad scope of Law 21 and its lack of specificity in some areas, PCs and governors' offices (GOs) are beginning to develop multiple interpretations of Law 21 on a province-to-province basis.

Where federal law allows for varied implementation is not a problem. For example if federal law allows provinces to raise revenue through licensing some provinces may decide to license restaurants while other may decide to license food markets. However, the meaning of “licensing” is not open for interpretation: it must have the same meaning in all provinces, otherwise the law loses all effect. Standardized application must be achieved.

Such is the case with the issue here in question. Numeric requirements must have standardized application and therefore “simple majority” can have only one meaning. This brief recognizes recent application of these numeric requirements and supports that application with its legal analysis in the hope that future application will remain consistent. In short, this policy brief memorializes numeric applications for future reference.

Analysis

In relation to voting, it is most important to define what is meant by “majority.” Under Law 21, both absolute and simple majority is defined as “half plus one.” This does not mean “more than half”: ramifications of this must be understood for the reason that PC application of “more than half” would be 1) illegal (contrary to Law 21), and 2) alter the outcome of many PC decisions, all of which are important.

For example, for a voting body of 19 people, using “half-plus-one,” the majority is 11 ($19/2 = 9.5 + 1 = 10.5$). You

cannot have half a vote, and best practices are to round up, thus 10.5 becomes 11. Also, if you were drop the fraction, then 10.5 would become 10, and 10 is less than “half plus one,” which is the threshold. Using “more than half” the majority is 10. The impact is significant: with as few as 19 members, you need 3 more votes than the other camp (11 yea, 8 nay) when using “half-plus-one,” instead of just 1 more (10 yea, 9 nay) when using “more than half.” “Half plus one,” therefore, creates a higher threshold than does “more than half.”

Turning now to the body of council members themselves, we know that Law 21 defined a quorum as an “absolute majority of the council’s members” (Article 19(1)). “Absolute” in this case means “all members,” thus an absolute majority is “half plus one” (Article 1) of all members. As with voting, you cannot have a fraction of a council member and, in accordance with best practices, any fraction is rounded up. If a PC has 21 members, its quorum is 12 members and NOT 11 ($21/2 = 10.5$ and $10.5 + 1 = 11.5$ rounded up to 12). This is significant because a quorum is needed in order for the PC to hold a session and is the number needed for a vote to occur.

A “simple majority” is achieved when you have “half-plus-one” of the number of the quorum, or when you have “half-plus-one” of any whole number greater than the quorum. An “absolute majority” is when you have “half-plus-one” of the number of all PC members.

Recommendations

All councils—provincial, qada’a, and nahiya—must apply the same standards used for achieving numeric thresholds related to voting and to their own number.

Historically some have considered “half plus one” an inaccurate attempt to achieve “more than half”: if this is the case in Law 21—that the intent was to achieve “more than half”—then the law must be amended (without retroactive application, of course).

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Policy Brief

Analysis and Recommendations for Iraq's Provincial Governments

Article 18 of the 2009 Budget Law

Article 18 of the 2009 Iraqi Budget law suggested that from 2010 the provincial governments described in Law 21 would control both the administration and the finances of the provincial level departments of central government ministries. That does not seem to be happening.

What the Law Says

Article 18 of the 2009 Iraqi budget law, promulgated in March of 2009, states that the Council of Ministers shall put provincial level departments under the control of provincial governors and provincial councils, in accordance with Law 21 of 2008 (also known as the Provincial Powers Act). That act, for its part, states that the provincial governor shall prepare and the provincial council shall approve the budget for the whole province, and that the governor shall exercise oversight of the provincial departments. (Articles 21, 7, and 31, respectively).

What Experience Suggests

The behavior of the Ministry of Finance and the Ministry of Planning suggests that nothing has changed, despite whatever the intent of the drafters of Article 18 of the 2009 Budget Law. In July 2009, for instance, the Ministry of Finance published final instructions for the interpretation of the annual budget law, initially giving both provincial level departments and the provincial councils just over one week to prepare their operational budgets for 2010. Those instructions gave no indication that the councils would be assuming any greater responsibility over the operations of the departments than they have now (which is none). Also, the short deadline made impossible the deliberative process necessary for the exercise of such responsibility. Similarly, the Ministry of Planning required lists of capital projects from the provincial councils by August 15, expecting them to prepare 5-year improvement plans in a space of 6 weeks. By separating Operations and Maintenance budgets from capital budgets (and demanding them in an illogical order), by keeping department budgets separate from the budgets of the councils and governors' offices, and by giving such short deadlines, the ministries appear to have violated the text of Law 21 and the spirit of Article 18.

Analysis

A closer reading of Article 18 shows the enthusiasm it generated to be premature. First, while other articles in the law describe a current state, Article 18 describes a future one. The Council of Ministers is expected to prepare a "draft law" further qualified "to amend the Iraqi

ministries law." Presumably, the drafters could have written the article simply, without qualifiers: "the Council shall amend the Ministries law," but they did not. Instead, they left more doubt by ending the paragraph with another qualifier that "this shall come into effect from 2010," leaving it open to question whether "this" is the hoped for turning over of departments to provincial control or just the Council of Ministers (COM) obligation to author a draft that must occur in 2010.

Regardless if these problems of drafting are problems of politics, and even if the Council of Ministers did draft an amendment to the Ministries law that gives control over some or all departments to elected provincial officials, the COM by itself does not make law. Making law is the obligation of the national parliament, the Council of Representatives, and those representatives must face an election, presently scheduled for January 2010. So for the implied promise of administrative and financial decentralization in Article 18 to be realized, first a known Council of Ministers must draft, and an as yet unknown Council of Representatives must pass, an amendment to the Law of Ministries, taking away the power they currently have over provincial level departments and giving it to provincial level elected councilors and governors.

There is a final issue: time. Iraq passes annual budget laws, and the articles in the 2009 law will expire at the end of the year, whether realized or not.

Recommendations

Provincial Councils: The provincial councils could use the leverage of the upcoming parliamentary elections to argue for incremental decentralization of departments to the provinces, not the wholesale transfer implied by Article 18. Following the example of the Amanat, they should start with the Ministry of Public Works.

Governors: The governor could also use that leverage to insist on the recognition of his authority under Law 21 to prepare the "general budget for the province" by first aggregating the operations and capital budgets of the departments, with a view to eliminating duplication and inefficiency.

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Policy Brief

Analysis and Recommendations for Iraq's Provincial Governments

Formulating Iraq's Provincial Budgets: Who Does What—and When?

The authority for preparing and approving annual budgets at the provincial level is given to the governors and the provincial councils, respectively. Yet, this year, as in years past, instructions from the Ministry of Finance have effectively negated that authority. To improve the quality of services afforded to citizens in the provinces, the councils and governors should advocate changes in the law and immediate changes in practice.

What the Law Says

The Iraqi Constitution of 2005 gives “broad authorities” to the governorates or provinces, and the specific law on governorates, Law 21 (also known as the Provincial Powers Act) states that the governor shall have the authority to prepare and the provincial council to approve the general budget of the province. (Articles 31 and 7, respectively.) In addition, the Iraqi Parliament (or Council of Representatives [COR]) passes an annual budget law, and the Ministry of Finance (MOF), as the central government ministry responsible for spending, issues administrative instructions based on that law.

What Experience Suggests

Although Law 21 became effective with the seating of provincial councils elected at the end of January 2009, the instructions issued by the Ministry of Finance did not appear to recognize the authorities it gives to the governors to prepare nor to the provincial councils to approve the budgets of the provinces. Instead, the councils and governors’ offices were required to submit their Operations & Maintenance (O&M) budgets to the ministry directly. In parallel, the provincial level departments were asked to submit their O&M budgets for 2010 to their respective central government ministries, who were then expected to aggregate all of the provincial budgets and submit them to the Ministry of Finance. Draft instructions published by the ministry in May suggested that the elected bodies at the provincial level had until August 31, 2009, to prepare their budgets, but “final” instructions shortened that deadline first to only one week after publication, a deadline that was subsequently extended by another 10 days. Although the draft instructions implied that both O&M and capital budgets were to be developed according to the same process and submitted at the end of August, and even though that deadline would have been tight for a thorough, bottom-up budgeting process, the shortened deadline and the separation of O&M from capital budgets meant that many provincial councils were forced to do as

departments did in the previous regime—look at last year’s budget and add a modest percentage increase for inflation. (Capital budgets from the councils and governors were also nothing more than a list of projects, with all costs loaded and no possibility of sustainment or inclusion in the O&M budget because they were to be submitted to a different ministry, the Ministry of Planning, and well after the O&M budgets were submitted to the Ministry of Finance).

Analysis

The low level of recognition by the Ministry of Finance and the Ministry of Planning of the authorities granted to the provincial councils and governors by Law 21 is due to inertia and the absence of a champion at the national level. As for inertia, the ministries have behaved as they have always behaved, but without a champion for local government could not be expected to behave any differently. Unlike any provincial level department, sub-national government is not “owned” by any ministry. While it is true that there is a Ministry for State and Provincial Affairs, it has a small staff and budget, and most importantly does not seem to have the power to issue administrative regulations that would bring clarity to the broad authorities in Law 21. In the instance of budgeting, this lack of a champion is particularly acute, because unlike the departments, the provincial councils do not have anyone to champion their cause before the Ministry of Finance.

Recommendations

Provincial Councils: The provincial councils can form working groups with the provincial level department heads. If the goal is to improve the quality of the services provided to the citizens of a province, a cooperative approach between elected and unelected officials is the most practical (and does not require any change in law).

Governors: The governors can insist that through the soon-to-be inaugurated High Commission for Cooperation, called for by Article 45 of Law 21, regulations emanate from the Prime Minister’s office to actualize their authority over budget preparation.

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Policy Brief

Analysis and Recommendations for Iraq's Provincial Governments

Formulating Iraq's Provincial Budgets: The Budget Formulation Process

The Ministry of Finance publicly embraced Law 21, and ceded budget authority to the local provinces; however, the ministry privately retained its original control over the budgetary process. This action precludes the benefits of fiscal decentralization (local control over the development, maintenance, and implementation of the provincial budget), and reduces the progress to date of decentralization in Iraq.

What the Law Says

Article 110, Third, of the Constitution states that the Federal Government will have the exclusive authority in “drawing up the national budget of the State.” Law 21 recognizes the Office of the Provincial Governor as the highest level of public office in the provinces, with the authority to develop and manage its own budget; so long as it does not violate any other Federal or Constitutional laws, articles, resolutions, or statutes. Article 31, First and Second of the Constitution further denotes:

The Governor selected by the Council aims to achieve two functions at the same time: 1) implement the Council's decisions, and 2) implement the general policies of the Federal Government.

What Experience Suggests

The current law undermines a governor's ability to completely develop, maintain, and implement the provincial budget. He or she essentially retains authority over the Provincial Council's (PC's) investment budget, being 5–10% of the provincial budget. Previously known as the Accelerated Reconstruction and Development Program (ARDP), estimated at 5–10% of the provincial budget, the PC's investment budget is derived from their project list. Having such limited authority over the provincial budget reduces the authority and influence of the provincial government. The limits on the financial authority of provincial leaders skew the decentralization of political and financial authority in Iraq; for whereas the provincial government should be between the central and local governments in the federal system, it instead is hobbled and excluded.

Analysis

The governor has authority over the PC's investment budget, only 5–10% of his or her province's budget. This limited authority severely inhibits his office's influence when it comes to addressing provincial matters, such as project planning and the distribution of goods and services within provincial boundaries. These boundaries

are evident in the central government's Operating and Capital Investment Budget. The decentralization of the central ministries' administrative functions to the provinces has made little progress towards total government decentralization from a fiscal management standpoint. Yet, if total budget authority were vested in the governor upon advice and consent of the local elected council, it would achieve this objective.

Recommendations:

In the short-term: Develop working relations with the PCs and the GO (Governor's Office) to assist them in developing and articulating their priorities when the Operating/Capital Investment Budgets are submitted. One way this can be achieved is to request the central ministry grant the ability to provide “Reader Notes or Footnotes” to the budget submissions for identifying priorities of the province versus the priorities of the central ministry. This would be done after the directorate general (DG) submissions.

Provide methods to PC and GO on cross coordination between the PC's investment budget (previously ARDP) and the Operating and Capital Investment Budget; highlighting the stated authority of the GO and the PC to fiscally develop, implement, and manage their own province.

Strengthen service delivery of the PC's investment budget so as to demonstrate to the central government effective management with limited financial resources; possibly achievable through developing a close relationship with contractors providing service delivery or researching alternative funding means when project disbursement have not been received.

In the long-term: Work with the Minister of Finance and the Council of Representatives to strengthen sections within Law 21 to clearly define fiscal decentralization. In addition, revise Law 21 to entrust total responsibility for fiscal matters in the GO and PC

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Policy Brief

Analysis and Recommendations for Iraq's Provincial Governments

Formulating Iraq's Provincial Budgets: National vs. Provincial

Article 110 of the constitution states:

The Federal Budget is an exclusive power of the Federal Government. This article vests formulation of the Budget in two Federal Ministries (Ministry of Finance and Ministry of Planning and Development Cooperation).

Article 115 reads:

All power not among the exclusive powers of the federal government belong to the authorities of the region and governorates...and where conflicts arise between federal laws and those of the regions and governorate...the latter take precedence.

A simple reading of the law suggests the central government is supportive of the derivative rights of the provinces and gradual decentralization and that this was expressed in Law 21 of 2008.

What the Law Says

Article 122 of the Constitution requires:

That governorates be given broad administrative and financial authority to manage their affairs in accordance with the principles of a decentralized administration.

As it relates to formulating the budget, it appears that the central government draws its authority from article 115, while the provinces follow article 122.

Article 7, Third, Fifth (2) and Article 31, First of Law 21 provides the governor with broad authority to draft the general budget of the governorate (province) and submit it to the provincial council (PC) for review. Without a clear legal definition, it is reasonable for a governor, as the most senior public official, to assume the responsibility of drafting the entire provincial budget.

What Experience Suggests

Per the authority granted to them by Article 115 of the Constitution, the ministries of the central government (Ministry of Finance [MOF], Ministry of Planning and Development Cooperation [MOPDC]) formulate the federal budget. All ministries of the central government submit their budget proposals for Operating & Maintenance (O&M) between April–July of each year. These ministries then submit the final budget requests for O&M and the Investment Budget to the MOF and

MOPDC in August. These budget requests represent roughly 95% of each province's budget. The provincial role in the budget process is limited. The PC and governor's office (GO) submit the PC budgets (Accelerated Reconstruction and Development Planning [ARDP]) accounting for only 5% of the provincial budget.

Analysis

Although the Constitution vests broad fiscal authority in the provinces to manage their own finances, the only active role they play in the formulation of their budget is the PC's investment budget (previously known as ARDP), which is derived from their projects list. Also, provincial participation in the budget process is not clearly delineated in federal law. The PC's investment budget and the GO/PC operating budgets are minimal and have insignificant impact on provincial operations. Without true budget authority vested at the provincial level, the roles of the GO and the PC in the budget process will remain inhibited.

Recommendations

- 1) Work within the central government (MOF, MOPDC, Council of Representatives [COR]) to decentralize the formulation of the central ministerial budgets, staffs, and management function to the provinces.
- 2) Revise Law 21 to vest the authority to formulate the Operating, Capital Investment, and ARDP budgets in the office of the provincial governor with the advice and consent of the PC.
- 3) Give PCs greater influence over the formulation of the budget to ensure it reflects the priorities of the local community.

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Policy Brief

Analysis and Recommendations for Iraq's Provincial Governments

Intergovernmental Fiscal Relations

“Intergovernmental Fiscal Relations” is the foundation for any decentralized system. It is critical for organizing the fiscal relations between the central government and local government.

Intergovernmental fiscal relations encompasses all aspects of expenditure, revenue and revenue collection, intergovernment grants, and service delivery arrangements between the central and local governments, including the delegation of expenditure, taxation, and regulatory roles and responsibilities for the delivery of public services across levels of government. In order to sustain growth and provide vital public services, responsible parties ought to focus on fiscal arrangements and other institutional reform options to facilitate the efficient and equitable delivery of services.

What the Law Says

There is no clear definition for intergovernmental fiscal relations in the Constitution or Law 21; however, there are many inferences and references to the concept, i.e., constitutional articles 105; 106; 110; 112; 114; 115; 121, First-Third; 122, Second; 123; and Law 21: Article 7, Third, Fifth, Fifteenth; Article 44; and Article 52. Yet none of these articles provides a clear definition for Intergovernmental Fiscal Relations in Iraq.

What Experience Suggests

One of the principal features of Intergovernmental Fiscal Relations in Iraq is the grants system, otherwise known as Accelerated Reconstruction and Development Program (ARDP) funds. Other features in development include tax-sharing, and revenue and expenditure assignments. Law 21 broadly outlines the framework by which Intergovernmental Fiscal Relations should function, but does not explore the concept in detail or provide specific guidelines for implementation. Clarity and guidance on the definition and implementation of Intergovernmental Fiscal Relations in Law 21 can improve the state of fiscal relationship between central and local governments in Iraq. In addition to the lack of clarity in the Constitution and Law 21, current Iraqi laws do not support efficient and effective intergovernmental fiscal relations: Law 95 stipulates all revenue and expenditure flow through the National Treasury, precluding the designation of real revenue or expenditure roles and responsibilities to local governments. Despite the restrictions, some provinces collect revenue and spend according to Law 21 and in line with Federal Court Resolutions. Yet these provinces tend to levy local fees and surcharges without efficient collection systems or clear expenditure guidelines.

Analysis

The political, economic, and social state of affairs in Iraq influences intergovernmental fiscal relations. The current

political situation does not foster a supportive environment to begin and continue the implementation of decentralization. Decentralization is central to intergovernmental fiscal relations as it produces different levels of government. The lack of familiarity with a decentralized system and its components is a significant impediment to decentralization. One key component of Iraq's decentralization is a powerful central government; a component widely perceived as negating the concept of decentralization in part or in whole. A powerful central government implies an empowered popular national authority that facilitates decentralization and the devolution of power to the local level. This devolution strengthens the central government by freeing it of the responsibility to deliver services at the local level, leaving it to focus on national and international issues, i.e., economic and political stability, domestic development, economic growth, and its relationships with neighboring states.

Recommendations

Provincial Councils: As authorized by Article 122 of the Constitution and Articles 7 and 44 of Law 21, provincial councils should define their fiscal relationship with the central and provincial governments and improve the status of local revenues and expenditures.

Governors' Offices: Study the implementation of Article 106 of the Constitution and Article 45 of Law 21.

LGP III: As intergovernmental fiscal relations are underdeveloped in Iraq, LGP III should highlight this concept while considering its domestic political implications. Concurrently with publicizing the legal foundation for intergovernmental fiscal relations in the constitution and previously cited laws, LGP III should focus on developing the capacity of local levels of government in this regard.

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Policy Brief

Analysis and Recommendations for Iraq's Provincial Governments

Legislative Oversight: Provincial Councils in Iraq

Law 21 of 2008 forms the legal foundation for the existence of governorates or provinces in Iraq. It establishes the provincial councils as the highest legislative and oversight body in their jurisdiction. However, the law is not well understood and many council members have but a vague familiarity with the law's provisions. The law grants the councils oversight authority and the responsibility to monitor their provinces.

What the Law Says

Law 21 invests the provincial councils (PCs) with the responsibility to monitor all the activities of the local executive authority, excluding the courts, military units, colleges, and institutes in order to ensure the executive authority's good performance, with the exception of offices under federal jurisdiction (Article 7).

What Experience Suggests

According to the law, the jurisdiction of the PCs is quite limited. In this limited role, the PC can only monitor the staff of the governor's office. Even the limited role accorded to the PC is not clearly delineated in the law. In absence of federal legislation clarity, the PC has made its own bylaws to perform such functions. Due to a lack of training in drafting legislation, most PCs infrequently draft bylaws to guide their monitoring functions.

The PCs can and do create associated committees to assist with and accelerate their monitoring functions, but a clear lack of experience with the committee system inspires more interest in forming committees than in guiding committees. In some provinces, the number of committees significantly outnumbers the council members.

Analysis

The PC as legislative body should be assigned greater oversight responsibility. The PC members are elected representatives, and in conjunction with their staff, should be entrusted with a more significant role in provincial affairs. The currently vague duty of monitoring assigned to the PC diminishes the potential effectiveness of the legislative committees.

If the PC is to make laws and policies for the province, it should have the authority to oversee the implementation of their laws and policies. As a monitor, a curtailed role

compared to oversight, the PC cannot direct the implementation of its policies. A lack of oversight authority reduces the ability of the PC to effectively deliver goods and services to the public. The central government continues to manage local projects directly in contradiction to the principles of decentralization envisaged in the Constitution.

PC members need clear guidance to begin overseeing the actions of executing agencies. As elected representatives, and the highest legislative authority in the provinces, they derive legitimacy from national law and should exercise their oversight authority at the local level. This authority benefits the efforts to decentralize Iraq, ensuring better service delivery and the implementation of other development programs.

The power of policy-making and implementation needs to be balanced between the legislature and the executive in the provinces to prevent the misuse of power and the potential for corruption.

Recommendations

1. The PC should be given the authority to oversee all executing agencies, excluding the courts and the military.
2. The monitoring role of the governor of the province should be complementary to the oversight function of the PC.
3. A legislative orientation for newly elected PC members should be developed within first six months of election.
4. The PC should be given an appropriate budget to hire qualified staff to assist with oversight.
5. The PC should form committees with clearly defined responsibilities to oversee effective service delivery and other important functions.

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