



Iraq Local Governance Program

Republic of Iraq District Government Field Manual

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INTRODUCTORY NOTE

This manual aims to guide the practice of embedded Provincial Reconstruction Teams (ePRTs), scheduled to be deployed in 2007 in Baghdad, North Babil, and Al Anbar.

The manual consists of a map, a glossary, and three parts. The glossary defines certain terms used in the text. Part I (Chapters 1 to 3) contains a “Chapter Overview” at the beginning of each chapter to guide the reader to the chapter’s contents. Part I differs from Parts II and III in style and format: it is in narrative form and covers background information relevant to Parts II and III. The text in Parts II (Chapters 4 to 6) and III (Chapters 7 to 8) is separated into numbered paragraphs to categorize information and enable the reader to easily extract the desired information. Part II examines, in turn, the framework of sub-national governance, the Baghdad Governorate and *Amanat* (Baghdad capital mayoralty), which have their distinctive features, and the nature of the presence of the federal administration at the governorate level. Part III focuses on fiscal and budgetary matters, with Chapter 7 covering fiscal powers and intergovernmental financial networks and Chapter 8 examining the qada’a and nahiya budgets.

Volume II of this manual will present more detailed resource material that may be examined for further information on the subjects covered in this Volume I. The material will include the Constitution of Iraq; select relevant legislation; areas of operation of ePRTs; maps; and lists of local councils, governorate administrative units, and federal offices in each of the governorates that will receive ePRTs; as well as explanatory material on public finance and economic development.

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Iraq Local Governance Program, Baghdad

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Map of Iraq



ABBREVIATIONS

ARDF Funds for Accelerated Reconstruction and Development Projects transferred by the Ministry of Finance (MOF) to governorate councils under the provisions of the 2006 budget

CERP Commander's Emergency Response Program

COA Chart of Accounts for the Public Sector

Constitution Constitution of the Republic of Iraq 2005

COR Council of Representatives

CPA Coalition Provisional Authority

DGs Directors General

ePRT embedded Provincial Reconstruction Team

IRRF Iraq Relief and Reconstruction Fund

ITAO Iraqi Transitional Assistance Office

KRG Kurdistan Regional Government

Law No. 130 of 1963 Revenue of Municipalities Law No. 130 of 1963

MOF Ministry of Finance

MOMPW Ministry of Municipalities and Public Works

MOPCD Ministry of Planning and Cooperative Development

NDS National Development Strategy

NGOs Nongovernmental organizations

O&M Operations and Maintenance

Order 71 CPA Order No. 71 on Local Governmental Powers, 06 April 2004

Order 95 CPA Order No. 95 on Financial Management Law and Public Debt Law, 02 June 2004

PDS Provincial Development Strategy

PRDC Provincial Reconstruction Development Council

PRT Provincial Reconstruction Team

SOEs State-Owned Enterprises

TAL CPA's Transitional Administrative Law of 8 March 2004

UK United Kingdom

UN United Nations

USAID United States Agency for International Development

GLOSSARY

Note: This glossary provides basic definitions of the technical terms as used in this manual. No attempt is made to offer definitive or expansive explanations or variations to be found in general usage. When the term is first used in the text, it is highlighted.

Administrative unit Geographically demarcated area within which a formal sub-national administration has been established.

Citizen caucus An ad hoc gathering of adults of local-level administrative units organized by the Coalition Provisional Authority (CPA) to nominate candidates for sub-national councils.

Constitutional mandates Binding fundamental constitutional principles.

Deficit municipalities Qada'as (districts) that do not collect sufficient revenue to defray their share of the cost of the beladiya (federal directorate office in qada'as and nahiyas) (the cost is shared between the qada'as and Ministry of Municipalities and Public Works [MOMPW])—contra: surplus municipalities.

Federal state A state that is distinguished by a central government and sub-national governments, with each entity having its own sphere, independent yet co-ordinate.

Implementing legislation A law that puts into effect the directives or instructions as formulated in the *Constitution*.

Judicial review Review by the cognizant judicial body of the constitutionality of legislative measures and executive action.

Refresh The replacement of the membership of the governorate councils and local councils by CPA officials.

Self-funding services Federal services and facilities that are entitled to collect certain fees. This revenue is supplemented by the National Budget funds.

Self-sustained services Services that are able to pay for their operations and maintenance on the basis of user fees.

Surplus municipalities Qada'as that collect revenue more than sufficient to bear the cost of the beladiya by themselves—contra: deficit municipalities.

Transfers Non-reimbursable release of money to administrative units by the federal government.

Unitary state A state that is governed as a single political entity, with a centralized political structure.

Arabic Terminology

Althma'am Reconstruction levy

Amanat Baghdad capital mayoralty

Amin The Amanat's principal executive official (Mayor of Baghdad capital)

Beladiya Office of the Ministry of Municipalities and Public Works in the qada'a and kati'

Hayy Neighborhood

Kati' District (in Baghdad capital)

Mudiyar Executive official for subdistricts (nahiya)

Nahiya Subdistrict

Qa'im maqam Executive official for districts (qada'a)

Qada'a District (outside Baghdad capital)

Chapter 1. Introduction

CHAPTER OVERVIEW

- The manual draws upon several authoritative sources.
- The *Constitution* is a necessary but insufficient source for defining local government in Iraq. Its main drawbacks are that
 - It does not spell out in detail the particular structural form or authority of certain institutions of governance: such details are left to be determined by implementing legislation;
 - Its language is ambiguous and lacks clarity in some cases; and
 - It contains gaps in the specification of institutional arrangements and in the definition of their roles and responsibilities.
- For descriptive precision and completeness, other sources are referenced as necessary. Pre-*Constitution* laws that have retained their legal validity are an important source.
- Beyond the *Constitution* and legislative legacy, ad hoc measures that have become governance custom over time are also referenced.
- Not all details of institutional arrangements are described; a simplified approach is adopted.

This manual draws upon a number of authoritative sources. The first is the *Constitution*; this is an obvious choice because the constitution is the foremost instrument that would illuminate the structure of governance and the roles and responsibilities of the institutions and authorities involved in the governance of modern nations. The use of the *Constitution* as an authoritative source also leads to the subsequent highlighting of what are identified as the **constitutional mandates** in Iraqi governance (see Box 1.1).¹ These mandates are viewed as the juridical touch stones that provide guidance through the review of the source material that is undertaken in this work. Nonetheless, the *Constitution* alone will not enable us to gain an understanding of governance in Iraq. For reasons explained hereafter, other sources should be explored, as well.

BOX 1.1: CONSTITUTIONAL MANDATES IN IRAQI GOVERNANCE

“Constitutional mandates in Iraqi governance” are derived from the fundamental principles enshrined in the *Constitution*. These mandates are significant, for they underlie, separately and collectively, the entire Iraqi governance structure and the institutions and authorities embedded in it. In essence, institutions of governance should be validated with reference to these mandates.

In a significant number of instances, the *Constitution* did not spell out in any detail the particular structural form or authority of the institutions of governance. Rather, the approach it takes in such cases is to identify, in broad terms, the specific institutions and sketch out, again in broad terms, the substance of their respective authority, leaving details to be worked out by **implementing legislation**. There is little doubt that this resulted from the inability of the drafters of the instrument to arrive at a consensus on the precise formulation of the language of the provisions concerned. A conspicuous example of this is the provision relating to the governorates not incorporated in a region. These governorates are identified, but what precise authorities they would have are to be determined by implementing legislation of the incoming legislature.

The constitutional language, in many instances, is ambiguous and lacks clarity. In some cases, the argument may be made that imprecision in the translation of Arabic words into English accounts for this. The ambiguity and lack of clarity in certain constitutional provisions cannot be dismissed. Further, in several significant areas, there are gaps in the specifications of the institutional arrangements or with respect to their roles and responsibilities. These problems, as well as the constitutional directives instructing to resort to implementing legislation, make it difficult to completely and clearly enumerate the governance structure, institutions, and authorities in Iraq based solely on the *Constitution*.

¹ See below, Chapter 3.

Consequently, in many instances it is necessary to resort to the pre-*Constitution* legislation to provide guidance. Several such sources will be referred to in the following discussions and, by way of exemplification, Order No. 71 on *Local Government Powers* of 06 April 2004 (Order No. 71) of the Coalition Provisional Authority (CPA) may be cited.² The pre-*Constitution* laws referred to hereinafter, as well as offered as annexes in Volume II of this manual, have retained their legal validity based on the constitutional rubric that “existing laws shall remain in force, unless annulled or amended in accordance with the provisions of this Constitution” (Article 130).³

However, governance in Iraq is to be understood not only in terms of the constitutional scheme and the legislative legacy. For, there is yet another dimension worthy of attention. Ad hoc measures were embraced as functional necessities in governance at various times in the past. Over the course of time, they have assumed the character of “custom”—perhaps “tradition” is also an appropriate term here—and they have been engrafted into the apparatus for governance. The best examples of this dimension are to be found in Baghdad’s Amanat⁴ (Baghdad capital mayoralty). Ignoring these customary measures because they lack formal legislative basis or recognition would be a mistake.

To describe in detail all these various elements, both formal and customary, would undoubtedly create a complicated picture. To those who are within the operative framework concerned, it is intelligible; to those who are outside it, the structure would be difficult to grasp and understand. Therefore, the discussions to follow have been simplified.

² See Chapter 4 (A).

³ The only law specifically annulled by the *Constitution* was the Transitional Administrative Law (TAL). Its Articles 53 (A) and 58, which dealt with the future of Kirkuk, however, were saved.

⁴ See Chapter 5 (C).

Chapter 2. Iraq as a Federal State

CHAPTER OVERVIEW

- Iraq, a **unitary state**, first became a federal state in June 2004 with the establishment of the Iraqi Interim Government by the Coalition Provisional Authority (CPA).
- The *Constitution*, which came into force on 28 December 2005, ushered in a new Iraq, also as a federal state. The basic distinction between the federal power and the two levels of sub-national governance that existed was retained, but institutional arrangements were sharply different.
- The federal government is organized under three separate branches, legislative, executive, and judiciary, under the principle of separation of powers.
- Sub-national governance is formed by hierarchically arranged regions and by governorates outside a region.
- Details of the authorities of governorates outside the regions are not enumerated in the *Constitution*; they are to be determined by implementing legislation.
- Capital territory, formed of the municipal boundaries of Baghdad, was newly created.

The antecedents of Iraq as a **federal state** do not go far back into its history. As a matter of fact, they are to be traced back only to the inauguration of the Iraqi Interim Government on 30 June 2004 as the federal government pursuant to the *Transitional Administrative Law* (TAL) of 8 March 2004. This law was issued by the CPA, the civilian administration that was charged with the governance of Iraq by the Coalition Forces at the end of hostilities with the previous regime. The TAL effectively functioned as the “Interim Constitution” of Iraq until the “permanent constitution” of Iraq came into force in December 2005. Thus, the TAL formed the basis for the establishment and the legal authority of the successor to the Iraqi Interim Government, the Iraqi Transitional Government that was formed following the national elections of 30 January 2005.

Iraq—beginning in modern times as a monarchy created in 1921 and succeeded by the Republic in 1958 (and its various manifestations thereafter)—was functioning as a **unitary state** until the CPA's adoption of the federal model for post-hostilities Iraq; this constituted a radical departure in national governance. The federal (that is, central) government was vested with exclusive competence over a list of specified subjects, and the authority over subject matters outside that specification was handed over to the two levels of sub-national government, the Region of Kurdistan (which encompasses three governorates [provinces] under the Kurdistan Regional Government [KRG]) and the 15 governorates that were not incorporated in a region.

The Constitution of the Republic of Iraq of 2005 (*Constitution*), which came into force on 28 December 2005, ushered in a new Iraq as a federal state (see Box 2.1). The drafting of a “permanent constitution” for Iraq, vested in the National Assembly pursuant to the TAL, and its adoption, was a long, divisive, contentious, and complicated process. The draft constitution was adopted at the National Referendum held on 15 October 2005 only by the bare margin.⁵ In accordance with the terms stipulated in the *Constitution* (Article 144), the instrument came into effect when it was published in the official Iraqi *Gazette* on 28 December 2005.

BOX 2.1: REPUBLIC OF IRAQ

The Republic of Iraq is a single federal, independent, and fully sovereign state in which the system of government is republican, representative, parliamentary, and democratic, and this Constitution is a guarantor of the unity of Iraq.

Constitution, Article 1

At the fundamental level, the federal structure introduced by the *Constitution* did not result in a major departure from those of the preceding period: the basic distinction between the central government and the two levels of sub-national government (region and governorates not incorporated in a region) was retained. However, the institutional arrangements designed to bring about the working of the federal system, both at the central and sub-national levels, were far different, and necessarily so, given that they were crafted by different hands.

FEDERAL GOVERNMENT

The federal government is organized under three separate branches, legislative, executive, and judicial (see Figure 1 below). The separation of powers is the organizing principle of this arrangement. The Council of Representatives (COR)—the popularly elected national legislature—and the Federation Council—whose composition and authority is to be determined by implementing legislation and is intended to act as a second legislative chamber—together constitute the legislative branch at the center. The Federation Council has not been created as of July 2007. The President and two Vice-Presidents—elected by the COR—and the Prime Minister—selected by the President from within COR—and his Council of Ministers drawn from COR, make up the executive branch. The judiciary consists of two principal bodies, the Higher Judicial Council, entrusted with overseeing the judiciary, and the Federal Supreme Court, which will be the highest judicial tribunal in the country with significant and expansive **judicial review** authority.

BOX 2.2: FEDERAL AUTHORITIES

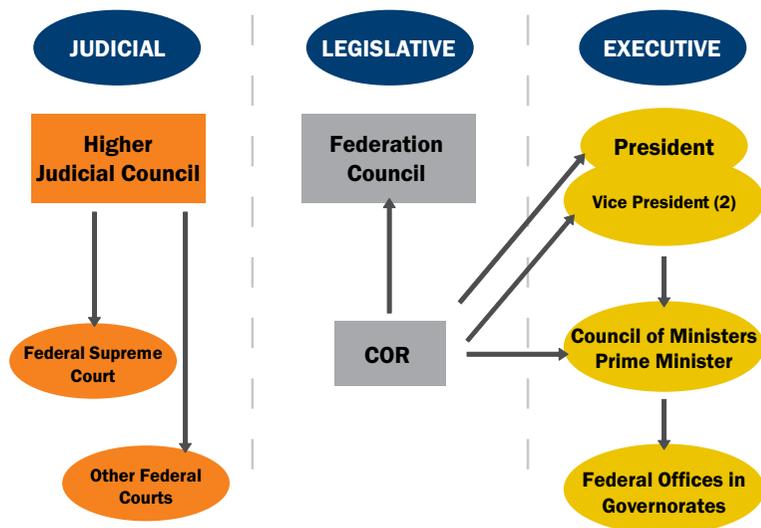
The federal authorities shall preserve the unity, integrity, independence, and sovereignty of Iraq and its federal democratic system.

Constitution, Article 109.

⁵ The Referendum on the draft constitution was successful if a majority of the voters approved it and if two-thirds of the voters of three or more governorates did not reject it. The “no” vote came from only two governorates.

The *Constitution* vests the federal government with two different types of authority, (1) exclusive authority, on the basis of a fairly exhaustive enumeration, and (2) powers that it would share with the region and the governorates not incorporated in a region.

Figure 1. The Three Branches of Federal Government



SUB-NATIONAL GOVERNANCE

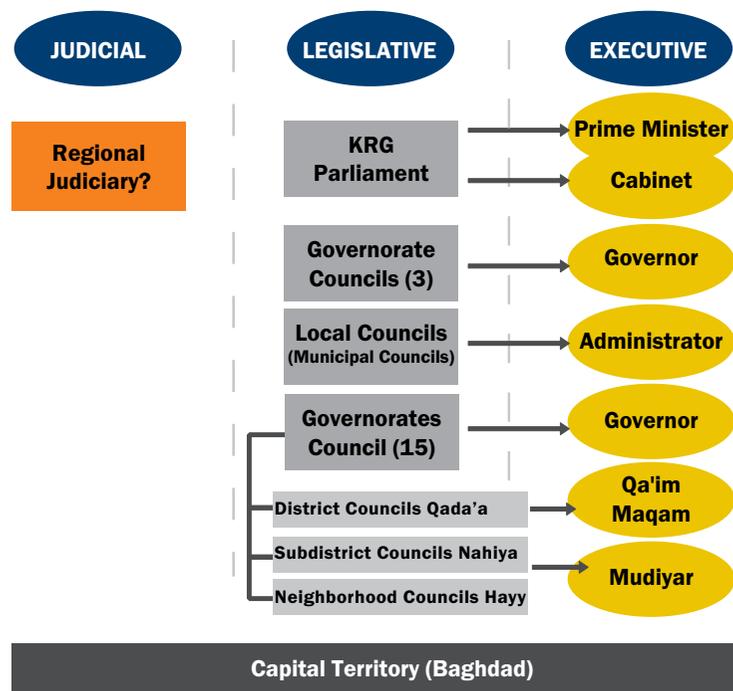
As in the preceding period, the structure of sub-national governance was organized at two levels, (1) regions and (2) governorates not incorporated in a region, arranged hierarchically in that order. There was an innovation as well: Baghdad, the capital, became the new “capital territory,” formed within the municipal boundaries of Baghdad; its governance is to be determined by implementing legislation.

The *Constitution* expressly recognized Kurdistan as a region, validating the special status given to this entity under the CPA. Other regions may be formed by one or more governorates. The *Constitution* gave the regions the right to adopt a constitution of their own that would define the institutions, authorities, and structure of powers of the region concerned, provided such arrangements do not contradict the *Constitution*. This meant that the regions could not transgress the exclusive powers handed over to the federal government.

As far as the governorates outside a region are concerned, the *Constitution* offers only few details of their institutions and authorities. These governorates are granted broad financial and administrative authorities that would enable them to manage their affairs in accordance with the “principle of decentralized administration.” Each of the governorates would have a governorate council with independent finances, and they would not be subject to the control of the central ministries. The governor, elected by the council, is to be the highest executive official within each governorate. The details of all these features of governance were to be determined by implementing legislation.

The *Constitution* vested specific and general authorities upon the regions and the governorates outside the regions. They had powers shared with the federal government. Further, they were entitled to receive equitable shares of the national revenues. Beyond that, they were the recipients of all powers not entrusted on an exclusive basis to the federal government. In this particular instance, the constitutional language does not offer clarity, and there is little doubt that what is precisely meant by this allocation of authority will remain in contention between the center and sub-national entities.

Figure 2. Sub-national Government



Surprisingly, the *Constitution* fails to identify the governance institutions below the level of the governorate. The only reference in the instrument is to “local administrations” in the context of the components of the federal system (see Box 2.3).

BOX 2.3: FEDERAL SYSTEM

The federal system in the Republic of Iraq is made up of a decentralized capital, regions, and governorates, as well as local administrations.

Constitution, Article 116

IS IRAQ A FEDERAL STATE?

Finally, it is relevant to note that a number of commentators have questioned whether the post-*Constitution* Iraq is in fact a federal state—indeed, it is legitimate to raise the very same question in relation to the interim governments that existed under the CPA. The arguments concerning Iraq range from the contention that Iraq’s Federalism is identifiable more in name than in substance to the assertion that the Iraqi state, considering its institutions and the distribution of roles and responsibilities, should be viewed as embodying “federalism by default.” Although the scholarly argument is important, it is arguably of limited value here. This manual, after all, is primarily intended to serve practical purposes, and thus, the scholarly literature concerned will not be engaged.

Chapter 3. Constitutional Mandates in Iraqi Governance

CHAPTER OVERVIEW

- Four fundamental constitutional principles are identified as constitutional mandates in Iraqi governance.

A number of fundamental constitutional principles are enshrined in the *Constitution*. Of these, four are the focus of this manual; they may legitimately be identified as **constitutional mandates** in Iraqi governance (see Box 1.1). These principles and the specific constitutional language that articulates each of them are offered below.

1. Supremacy of the Constitution:

“This Constitution is the preeminent and supreme law in Iraq and shall be binding on all parts of Iraq without exception” (Article 13 – First).

“No law that contradicts this Constitution shall be enacted. Any text in any regional constitutions or any other legal text that contradicts this Constitution shall be considered void” (Article 13 – Second).

2. Separation of Powers:

“The federal powers shall consist of the legislative, executive, and judicial powers, and they shall exercise their competencies and tasks on the basis of the principle of separation of powers” (Article 47).

3. Decentralization:

“The federal system in the Republic of Iraq is made up of a decentralized capital, regions, and governorates, as well as local administrations” (Article 116).

4. Democracy:

“The law is sovereign. The people are the source of authority and legitimacy, which they shall exercise in a direct, general, secret ballot and through their constitutional institutions” (Article 5).

Chapter 4. Framework of Sub-national Governance

A. CPA ORDER 71

1. Order 71 on Local Governmental Powers remains the basic framework law for sub-national governance and will have the same standing until the COR enacts a new law for governorates pursuant to the *Constitution's* directive for implementing legislation. Although the instrument recognized Kurdistan as a region, it is not applicable to that entity.
2. In terms of its actual effect upon sub-national governance, Order 71 has had mixed results. Anecdotal evidence suggests that it has not been fully implemented anywhere in Iraq; implementation has been selective at best. Certain federal governmental agencies have contributed to this situation, as well. For example, the Ministry of Finance (MOF) has consistently opposed the raising of revenues by the governorate councils, despite the fact that Order 71 explicitly authorizes it (see Chapter 7:2).

BOX 4.1: ORDER 71 – PURPOSE

By appropriately empowering government bodies at the governorate, municipal, and local levels, the Order [71] is designed to improve the delivery of public services to the Iraqi people and make the Iraqi government more responsive to their needs. This Order encourages the exercise of local authority by local officials in every region and governorate.”

Order 71, Section 1

3. There are several reasons why CPA Order 71 has not been uniformly implemented:
 - The rejection or reluctance of some Iraqis to embrace Order 71 is based on the contention that it is the product of the occupying power and as such is not deserving of respect.
 - Security issues have precluded the working out of particular aspects of Order 71 in some areas. For example, a number of governorate councils function with greatly reduced memberships because a

significant number of members are no longer in the governorate concerned or have been assassinated.

- Certain provisions of Order 71 undermine the popular basis that it sought to introduce for governance. For example, the Order permitted governors appointed by the CPA to continue in office, even though the principle of elections had been introduced for choosing chief executives by the councils.
 - The interventions of individual CPA officials functioning at the governorate level—for example, opting to **refresh** the membership of councils—undermined the credibility of the measure.
 - The decentralization principle embodied in Order 71 has not won favor at the center, and indeed, decentralization in general has been overtly resisted by the Ministry of Finance (MOF) and Ministry of Planning and Cooperative Development (MOPCD).
4. Despite the problems in the workings of Order 71, it established the formal contours of sub-national governance.

B. GOVERNORATE-LEVEL AUTHORITIES

5. Two principal institutions will be discussed in this section: the governorate council and the governor. Both these institutions have a long history in Iraq, but they assumed radically different identities and roles in governance in the new era after the defeat of the previous regime. This discussion excludes the Baghdad Governorate, which will be treated separately.⁶ The three governorates of the Kurdistan Region are outside the scope of this work.

Governorate Council

6. Initially, the Coalition Forces, which had effectively assumed governing responsibilities at the end of the hostilities, organized the existing governorate councils as “advisory” councils to assist its governorate officials and the governor in the administration of the governorate. This practice was initially continued by the CPA.

⁶ See Chapter 5.

7. Order 71 formalized and redefined the structure and role of the governorate councils in governance. As conceived by Order 71 and the *Constitution*, this council is the highest elected body in the governorate, the principal **administrative unit** in sub-national governance in Iraq. Its independence from the central ministries was granted by both instruments; under Order 71, it was to be funded by a national budget allocation. National funding continues to be the primary revenue source for the councils.
8. Those that already held membership in the governorate councils at the time Order 71 was introduced were specifically permitted to become the initial members of the re-organized governorate councils. For the majority of the councils, the council membership was subsequently “refreshed” by CPA officials.
9. The *Elections Law* of 2005, enacted by the National Assembly, introduced the principle of popular elections for the membership of the governorate councils (41 for each, with an additional 10 for Baghdad). The elections for the councils were held on 30 January 2005, coinciding with the national elections.
10. Order 71 does not provide for the election of chairpersons by the governorate councils, but in practice, such officers are in place in all the councils. Many of the councils have adopted bylaws that govern their internal proceedings.
11. The authorities that were entrusted to the governorate councils by Order 71 may legitimately be characterized as policy making and supervisory powers and include the following:
 - Setting priorities for the governorate;
 - Amending a specific local project described in an annual ministry budget without increasing the set spending limits or efficient execution of national objectives set forth;
 - Monitoring and recommending improvements in the delivery of public services;
 - Representing the concerns of constituents;

- Independently generating and collecting revenue by imposing taxes and fees;
- Organizing the operation of the governorate administration;
- Initiating and implementing provincial projects alone or in partnership with nongovernmental organizations (NGOs) and international organizations;
- Playing a role in the appointment and removal of directors general (DGs) of the national ministries and senior federal officials; and
- Establishing subcommittees and taking testimony of and requiring reporting by DGs.

12. The *Constitution*, as noted previously, does not provide the details of the broad administrative and financial powers that are to be vested in the governorates outside a region. The implementing legislation that the *Constitution* calls for is not yet in place.

Governor

13. Order 71 authorized the governorate councils to elect governors and deputy governors. However, those already in place—for the most part, appointees of the military commanders of the governorates or of CPA officials—were to remain in office. The governors and deputy governors may be removed for cause, defined as incapacity, serious misconduct in or out of office, dereliction of duty, or abuse of office.
14. The governor is the chief executive official of the governorate, responsible for implementing the decisions of the governorate council and accountable to that body. The appointment of administrative officials is subject to the approval of the council, with the sole authority to remove them vested in the governor.
15. Order 71 does not address the subject of a governorate administrative structure, separate and distinct from the federal presence. However, in virtually all governorates such a mechanism exists under the executive office of the governor. One of the primary impetuses for this development came from the decision of the MOF to require the

establishment of, at minimum, spending units in each governorate that would engage in the utilization of Accelerated Reconstruction and Development Project Funds (ARDF), transferred and placed under the control of governorate councils under the 2006 National Budget. In all governorates, more than the minimum has been met.

C. LOCAL-LEVEL AUTHORITIES

Qada'a and Nahiya Councils

16. Below the governorate are two formal administrative units: *qada'as* (districts) and *nahiyas* (subdistricts) within each of the *qada'as*. *Qada'as* and *nahiyas* have governing councils. Each *nahiya* incorporates *hayy* (neighborhood) councils. However, *hayys* are of significance in formal governance only in Baghdad (see Chapter 5:15). There is no symmetry in the presence of these councils within a governorate, either in terms of their numbers or of geographical extent and population distribution.
17. Order 71 provides that *qada'a* and *nahiya* councils—referred to as local councils hereinafter—in the administrative units of *qada'as* and *nahiyas* may be established by the governorate councils on the basis of majority vote to achieve greater efficiency and economies of scale and coordination in providing service delivery. However, no new *qada'as* or *nahiyas* have been established; the existing entities, which were pre-Coalition institutions that had been adapted by the Coalition as advisory bodies, were redefined to conform to the instrument.
18. The members of each local council and their respective chairpersons are to be selected in accordance with regulations approved by the majority of the governorate council. All local council members, who held office when Order 71 was issued, were permitted to continue in office. However, similar to the governorate councils, the membership in some local councils was “refreshed” by CPA officials. No popular elections for local councils have been held to date.
19. Local councils are vested with the following authorities:
 - Represent the constituents;
 - Ensure that service delivery responds to local needs;

- Organize operations of local administrations;
- Review local ministry plans;
- Collect and retain local revenues, taxes, and fees;
- Identify local budgetary requirements through the national budgetary process; and
- Recommend appropriate action to the governorate councils with respect to officials on matters such as misconduct.

Qa'im Maqams and Nahiya Mudiarys

20. *Qa'im maqams* and *nahiya mudiarys* are the executive officials of the *qada'as* and *nahiyas* respectively.⁷ They are elected by the majority vote of the local council concerned and may be removed for cause by these bodies; the definition of cause is the same as that applicable for the removal of the governor by the governorate council (see 13, above).
21. The *qa'im maqam* and *nahiya mudiary* are responsible for implementing the decisions of their respective councils, and they serve as the primary liaison between their council and the governor. They are also authorized to appoint local officials, subject to approval of their councils.

D. BELADIYA

22. The *beladiyas* (office of the MOMPW in the *qada'as*) owe their existence to the *Beladiya Administrative Law No. 165 of 1964*. They are an integral part of the outreach of the Ministry of Municipalities and Public Works (MOMPW) in the governorates. The *beladiyas* are the executive offices of MOMPW at the sub-national levels, and their operations are critical to sub-national governance and will be examined subsequently.⁸
23. The MOMPW, though the most prominent, is not the only federal presence within the governorates. A variety of central ministerial agencies function in the governorates. Their role, too, is examined subsequently, in Chapter 6.⁹

⁷ Order 71 collectively identifies the executive officials of local councils as “mayors.” This is inappropriate and misleading.

⁸ See Chapters 6 (A), 7 (C).

⁹ See Chapter 6.

Chapter 5. Special Case: Baghdad Governorate and Amanat

Figure 3. Baghdad Governorate and Amanat Territory



Note: Amanat territory marked “Baghdad.”

1. The recent history of the governance in Baghdad is quite complicated. The make-up of Baghdad governance is owed to disparate sources: the *Constitution*, pre-*Constitution* legislation that dates back as far as 1964, and custom. All of this means that Baghdad governance is unlike that of any other governorate in Iraq.
2. For governance purposes, currently Baghdad is divided into two distinct entities: governorate and Amanat, with the boundaries of the Amanat in the interior urban core demarcating the two. The Amanat’s original boundaries were established by the *Baghdad Master Plan Law No. 151 of 1971*. As will be noted, these boundaries have been adjusted more recently. The governorate and Amanat have their own unique roles and

institutional arrangements, share in common institutions, and are linked together at different administrative and political levels by other institutional mechanisms.

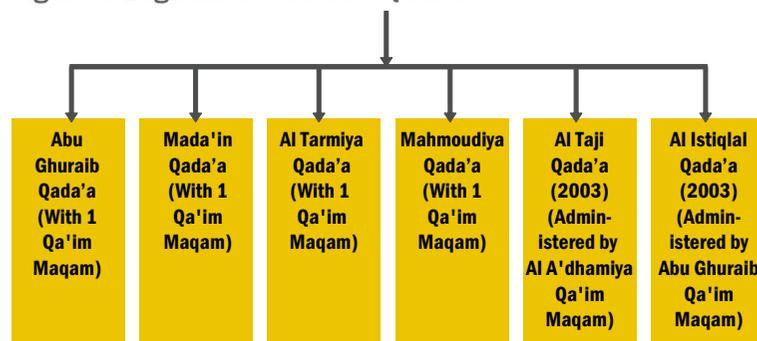
A. GOVERNORATE AND GOVERNORATE COUNCIL

Baghdad Governorate

3. The Baghdad Governorate is one of the 15 governorates in Iraq that are treated separately in the *Constitution* as governorates not incorporated in a region. Thus, it shares the same institutions and authorities as the other governorates outside a region (see Chapter 4:6–21), as well as certain rights such as the right to establish itself as a region following the constitutional requirements. Like other governorates, Baghdad is also subject to Order 71. Yet, because it is linked to the unique institution of the Amanat, the Baghdad Governorate is also characterized by institutional arrangements that are not replicated elsewhere in Iraq.
4. The Governorate of Baghdad as an administrative unit is best identified by listing the next level of administrative units or qada’as that are incorporated within it. In general, these qada’as are known as the outer qada’as because they form, in a sense, a ring around the administrative areas under the Amanat.
5. Currently, six qada’as come under the Baghdad Governorate: Mada’in, Mahmoudiya, Al Tarmiya, Abu Ghuraib, Al Istiqlal, and Al Taji (see map above). Al Istiqlal and Al Taji became qada’as in April 2003; they had previously functioned as nahiyas that came under the Al A’dhamiya Qada’a and Abu Ghuraib Qada’a, which form part of the Amanat.
6. Although now separated, Al Istiqlal and Al Taji continue to be linked to their original administrative units; their administration continues to be directed respectively from Al A’dhamiya Qada’a and Abu Ghuraib Qada’a. This unique arrangement means that they do not have qa’im maqams; nahiya mudiyars remain their executive officials. The other qada’as have qa’im maqams as their principal executive officials selected by the councils concerned.

7. Except for the two councils newly created in 2003, the qada'a councils of the governorate pre-dated the regime change in 2003. Under the CPA, they were re-defined as advisory councils, with new members nominated by **citizen caucuses**; the two new councils emerged as advisory councils, as well. This was also the experience of the local councils elsewhere in Iraq. Similarly, the qada'a councils of the governorate were re-defined again when Order 71 went into effect.

Figure 4. Baghdad Governorate Qada'as



8. The history of the nahiya councils of the governorate followed the same path as that of its qada'a councils.

Baghdad Governorate Council

9. The Baghdad Governorate Council formally came into existence after national elections were held for governorate councils on 30 January 2005. The council consists of 51 members and an elected chairperson. It has proceeded to draft bylaws and establish and regularize its internal proceedings, including establishing a number of committees devoted to specialized subjects. The council has also engaged in developing its own administrative apparatus, distinct from the federal offices in the governorate; this apparatus had begun to take shape even before the council was entrusted with the task of utilizing ARDF transferred to it by MOF, and now there is a notable presence of the governorate administration.

10. The Baghdad Governorate Council took over from the Baghdad City Council, which was dissolved by agreement when the governorate council was established. The Baghdad Council had come into existence under the CPA in February 2004; this council had 46 members, the majority of whom were chosen under the caucus system, and this was viewed by the CPA as providing it with a representative character. The dissolution of the Baghdad City Council may properly be viewed as a successful power play on the part of the Baghdad Governorate.

11. Two other councils were in existence at the time the governorate council began functioning. The first was the Baghdad City Council that was established by the Coalition in July 2003 with 37 members; its primary responsibility was service delivery. In March 2005, the governorate council dissolved the Baghdad City Council and established in its place the Baghdad Services Commission. The second body was the Baghdad Regional Council with membership drawn from all the outer qada'as. It was dissolved in June 2007 with the Baghdad Outskirts Service Commission replacing it.

12. The governor, elected by the governorate council, functions as the governorate's chief executive official with powers vested in him under Order 71.

B. BAGHDAD AS THE CAPITAL¹⁰

13. The geographical area of the Baghdad Capital Territory created by the *Constitution* corresponds to the area that comes under the Amanat. The capital territory is a unique entity, and under the *Constitution*, it is separated from the governorate. It is also not permitted to join a region—in other words, it will not become a part of the region of Baghdad, if Baghdad realizes its aspiration to politically and administratively transform itself.

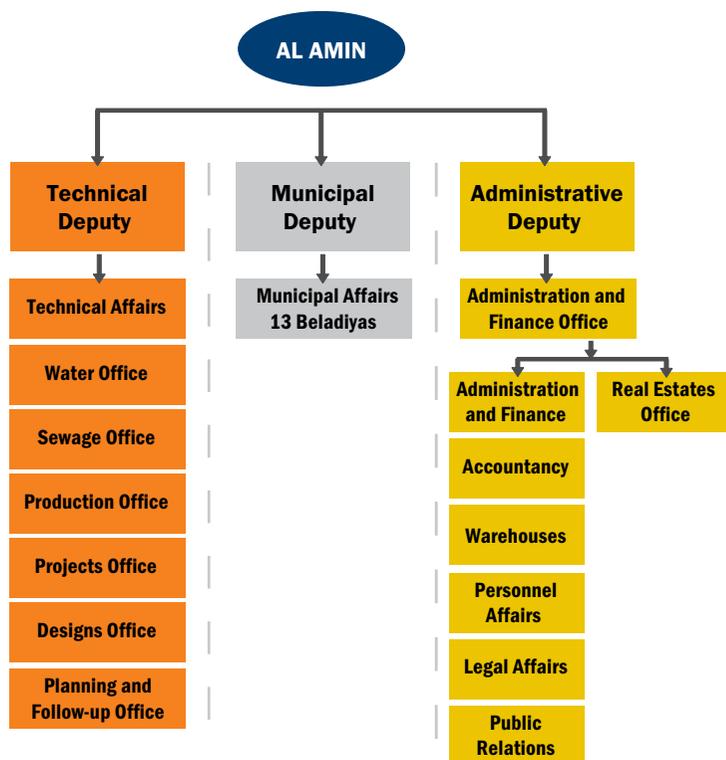
14. The *Constitution* requires implementing legislation for the government of the capital territory. If and when this is accomplished, it will likely have an impact on the Amanat's role as an administrative entity, as well as dramatically and radically transform the current arrangements in place for linkages between the governorate and the Amanat.

¹⁰ See also Chapter 7 (C).

C. AMANAT

15. The Amanat is an administrative entity and has no elected body solely attached to it, although it is linked to the governorate council by the fact that its principal executive official, the *Amin* (Mayor of Baghdad), is appointed by that body and is accountable to it. Incorporated within the Amanat are hayys as subsidiary administrative units. Nahiyyas, the standard administrative unit below qada'as, are absent in the Amanat. Thus, hayy councils take the place of the nahiya councils with respect to administrative affairs.

Figure 5. Baghdad Amanat: Administrative Structure



16. In 2003, the Coalition authorities introduced a new terminology to the Amanat. This terminology continues to be used as custom, even though it has no legal basis. Thus, the Baghdad Governorate and the Amanat reference different entities in terms of governance (see Box 5.1).

BOX 5.1

AMANAT USAGE	GOVERNORATE USAGE
Kati' Council	Qada'a Council
Hayy Council	Nahiya Council

17. Currently, the following kati's together form the administrative entity of the Amanat:

- On the Risafa (east) bank of the Tigris River (5): Al Sadr, Al A'dhamiya, Al Risafa, Al Karrada, and 9 Nissan. Al Karrada and 9 Nissan were established as kati's in April 2003.
- On the Kharkh (west) bank of the Tigris River (4): Al Kharkh, Al Khadhumiya, Al Mansour, and Al Rashid. Al Rashid and Al Mansour became kati's in April 2003.

18. Although geographically separated by the river, the kati's on its two banks are administratively linked. Since their establishment, the two kati's of Al Karrada and 9 Nissan have been administratively annexed to Al Risafa Kati'. Similarly, after establishment, the kati's of Al Rashid and Al Mansour have been administratively linked to the Al Kharkh Kati'. Thus, unlike the rest, these four kati's do not have their own qa'im maqams.

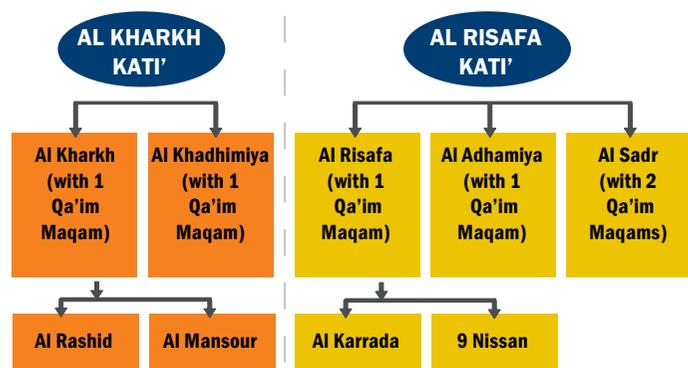
19. Another unusual arrangement in the Amanat is the appointment of two qa'im maqams for Al Sadr. Al Sadr is a sprawling, densely populated district.

20. The Amanat's main responsibility is for the delivery of services to the administrative units within its boundaries pursuant to two pre-Constitution laws, *Law No. 151 of 1971* and *Law of Amanat Baghdad No. 16 of 1995*. In strict terms, the activities are limited to its territorial coverage, but as has already been noted, the administrative linkages

of some of its kati's with qada'as belonging to the governorate has meant that faithful adherence to this restriction has not been followed. The Amanat has responsibilities beyond service delivery, such as the development and implementation of projects.

21. Where the qa'im maqams are located in the kati's of the Amanat has been noted previously. The role of the kati' qa'im maqams as the principal executive officials is significantly different from those of the qa'im maqams of the governorate, and indeed, those in other qada'as in Iraq. Unlike the qa'im maqams of the governorate who are constrained by Order 71, the kati' qa'im maqams act in accordance to custom on the basis of the original powers granted to the official in 1969.
22. The legal basis for the expansive authority that the Amanat qa'im maqams enjoy is the *Governorates Law No. 159 of 1969*. Order 71 suspended this law, as it did other existing laws, to the extent they were inconsistent with it. However, there has not been any formal adjudication as to which provisions, if any, of the 1969 law are inconsistent with Order 71. Thus, the qa'im maqams of the Amanat continue to function with the authority they had under the *Law No. 159 of 1969*. In addition, they also exercise authority granted by Order 71.

Figure 6. Baghdad Amanat: Kati's



Chapter 6. The Federal Presence

1. This chapter describes the way that the federal authorities radiate and function at the sub-national level.
2. The table below provides information on the presence of the federal ministries in general in the qada'as and nahiyas.

Table 1. Qada'as and Nahiyas: Federal Ministry Presence

Governorate Level	Qada'a Level	Nahiya Level
Ministry of Finance		
Retirements Directorate	None	None
Governmental Real Estate Directorate	None	None
Commission for Taxes	None	None
Treasury Directorate	Treasury Branch	Treasury Branch
Ministry of Interior		
Nationality Directorate	Nationality Branch	Nationality Branch
Civil Defense Directorate	None	None
Police Directorate	Police Directorate	None
Traffic Police Directorate	None	None
Ministry of Labor and Social Affairs		
Social Care Department	None	None
Labor and Social Security Department	None	None
Ministry of Health		
Health General Directorate	None	None
Ministry of Education		
Education General Directorate	None	None
Ministry of Youth and Sport		
Youth and Sports Directorate	Youth and Sports Branch	None

Table 1. Qada'as and Nahiyas: Federal Ministry Presence (continued)

Governorate Level	Qada'a Level	Nahiya Level
Ministry of Municipalities and Public Works		
Construction Planning Directorate	None	None
General and Local Administration	None	None
Water Directorate	Offices at production site	None
Sewage Directorate	Offices according to own territorial scope	None
Municipalities General Directorate	Municipality	Municipality
Ministry of Agriculture		
Agriculture Directorate	Agriculture Section	Agriculture Section
Ministry of Water Resources		
Irrigation Directorate	Irrigation Section	Irrigation Section
Ministry of Planning and Development Coordination		
Statistics Directorate	None	None
Ministry of Environment		
Environment Directorate	None	None

3. Each central ministry has a distinctive way to deliver the services it covers. In addition, there is no uniformity in the way these ministries radiate to the governorates. In general, this occurs through a system of either decentralized or centralized ministerial offices. In both cases, the offices are identified as governorate general directorates (in essence, offices headed by DGs), although in formal terms only the offices of the ministries of Finance, Education, Health, and the MOMPW are ranked as general directorates (commonly also called DGs in the governorates). The relationship of both decentralized and centralized governorate offices to the central ministries, including the important functions

of drawing funds and procurement, varies considerably. Further, the decentralized offices do not enjoy complete autonomy from the center; here, decentralization means that they have a degree of authority to handle administrative duties that are formally prescribed or deemed attributes by custom.¹¹

4. The organization of five of the most important ministries at the lower administrative units is explored below.

A. MINISTRY OF MUNICIPALITIES AND PUBLIC WORKS

5. The MOMPW has three directorates that reach the qada'as at the governorate level: Municipalities, Water, and Sewage. As examples, two of these directorates are discussed below.

6. Municipalities Directorate:

The basic functions of this directorate are

- Surfacing and maintenance of roads;
- Building and maintenance of gardens and parks;
- Defining the usage of lands for commercial and residential purposes, and distribution of land among the citizenry either through direct allocation or public sale;
- Placement of traffic signals as well as cleaning of public places and organization of streets;
- Garbage collection and its safe disposal; and
- Environment controls and actions to prevent and clean pollution generated by factories and industrial areas.

7. The Municipalities Directorate, headed by the DG of Municipalities, represents the MOMPW in the governorate and is fully funded by it. The DG is responsible for the distribution of the MOMPW's budget among the qada'as and nahiyas, depending on the area that they serve, and the deficit between their revenues and expenditures. Further, the DG reviews all work of the administrative unit to ensure that they meet their objectives.

¹¹ LGP2 Fiscal Policy Briefing Paper 5, included as an annex in Volume II of this manual, discusses these matters further.

8. Each qada'a and nahiya contains a directorate office, identified as a beladiya, to deliver services to the inhabitants of the corresponding jurisdiction (see Boxes 6.1 and 6.2). As an executive office of the MOMPW, the beladiya is a federal office, yet it is also deemed to be the administrative offices of the qada'as and nahiyas. This status permits the beladiya to control all revenues authorized to be collected and retained by the qada'as under the *Revenue of Municipalities Law No. 130 of 1963* (Law No. 130). All beladiyas function under a self-finance principle, but in actuality, they use the qada'a revenues to pay for their respective operational expenditures (see also Chapter 7:2).

BOX 6.1: BELADIYA

Al-Beladiya is a local institution which has a moral character, renders public services, and acts in accordance with what has been stated in this law and certain other laws.

Law No. 165 of 1964, Article 1

Box 6.2: HOW MANY BELADIYAS?: BASRAH GOVERNORATE

Basrah incorporates 15 qada'as, and thus, it has 15 beladiyas, each one with a department manager and staff. The total staff in Basrah Governorate Beladiyas is 1,912 employees.

9. Capital investment for projects assigned to the beladiyas rarely comes from surpluses in the qada'a revenue collection. They are usually provided by the MOMPW from Baghdad, through its governorate DG. Occasionally, the beladiya may become associated with projects promoted by the governorate council in the qada'a or nahiya. In particular, this occurs when the governorate council delegates to the MOMPW DG in the governorate the execution of specific projects funded with ARDF (see Chapter 7).

10. This Municipalities Directorate is responsible for managing the work of all beladiyas in the qada'as and nahiyas, and it does so from a technical and financial perspective. Each beladiya should report monthly to the Municipalities Directorate on financial matters and on the physical progress of its works.

11. Water Directorate

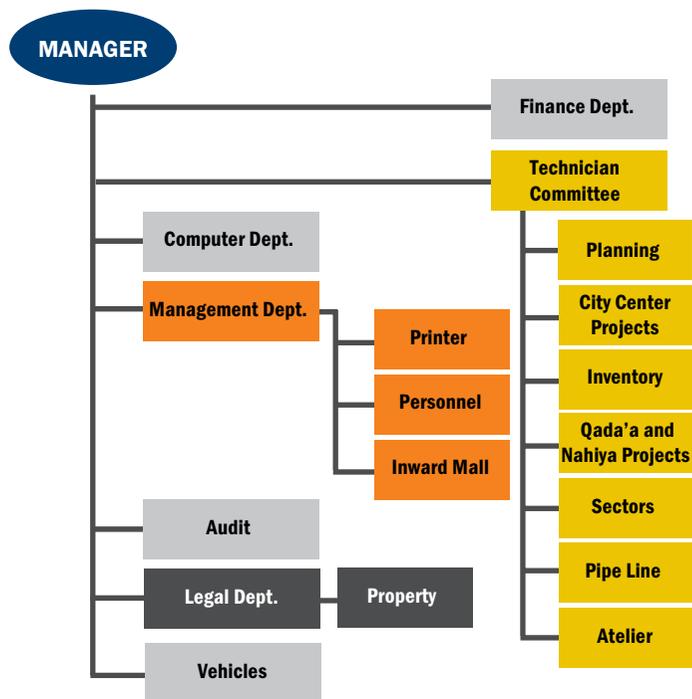
The basic objectives of this directorate are:

- Pumping and purifying potable water;
- Lay out of the water pipeline network; and
- Maintenance of all potable water projects.

12. Each governorate contains a governorate Water Directorate, headed by the governorate Water DG, which is directly linked to the MOMPW in Baghdad. In the ministry office in Baghdad, there is a Ministerial Water Directorate with a DG. This constitutes the central office, and the governorate Water DGs report to the DG at this office. The Ministerial Water Directorate is considered a semiautonomous directorate, and this affects the manner in which it may manage the budget. The Water Directorate in Baghdad receives the budget allocations from the MOMPW's Finance Office, and these are distributed throughout the country through its governorate DGs. This is the process through which funds ultimately reach the Water Directorate sector offices in the governorate. Sector offices in the governorate reach qada'a and nahiya, but the coverage of sectors may include more than one qada'a. This is because the service organizational needs follow cost effective criteria and not a political-territorial criterion. In general, Water DG sector branches are located at the locations where the principal pumping stations operate.

13. The governorate Water DG's administrative structure is given below.

Figure 7. Water DG's: Governorate Administrative Structure



B. MINISTRY OF FINANCE

14. The MOF's branch offices at the governorate levels are known as the governorate Treasury Directorates. Their branches at the qada'a level are known as Treasury Departments. The Treasury Departments receive their funds from the governorate Treasury Directorate, which in turn receives its funds from the MOF in Baghdad.

15. The Treasury Departments play an important role in the governorate. They are responsible for managing all financial matters at the qada'a level, most importantly the tax collection. The Treasury DG is in charge of distributing all federal moneys in the governorate, and his office controls a significant share of the financial operations and bank accounts of the different public sector offices in the governorate.

C. MINISTRY OF AGRICULTURE

16. The Agriculture Department of the Ministry of Agriculture at the governorate level has sub-offices in each qada'a. The qada'a offices manage the delivery of agriculture services in qada'a and nahiya, and they report directly to the head of the governorate Agriculture Department.

D. MINISTRY OF EDUCATION

17. A DG for Education is in charge of the Education Directorate in the governorates. The DG is responsible for implementing and managing education programs in the respective governorates. There is no DG representative at the lower administrative units. In each qada'a, the directorate simply controls schools and other programmatic activities from the center of the governorate.

E. MINISTRY OF HEALTH

18. The Ministry of Health has branches in each governorate in the form of governorate Directorates of Health headed by a Health DG. The directorate organizes the delivery of health services to the inhabitants through hospitals, clinics, and dispensaries. All health facilities are located at strategic geographical locations consistent with population density. Every hospital and clinic has its own budget, which is allocated from the governorate directorate and based on the rules and releases authorized by the Ministry of Health in Baghdad.

Chapter 7. Fiscal: Fiscal Powers and Current Intergovernmental Financial Framework

A. REVENUES

1. In the past, the highly centralized public administrative structures in Iraq provided little room for fiscal autonomy for qada'as and nahiyas. Although in the early 1960s a more reasonable framework for the autonomy of these bodies emerged, developments thereafter, in particular legislation enacted in 1969 and 1995, took away the attributes of autonomy from qada'as and nahiyas. Even through the centralization process, however, the right of these administrative units to collect and retain some revenues was maintained. The list of revenue sources for the qada'a was long, and their financial weight appears not to have been significant; they did not provide large inflows of money, and moreover, they have been diminishing over time.
2. Sub-national authorities' development of their own administrative structures to handle the assigned revenues was hindered by the administrative support from the central authorities. On one hand, the collection of local revenues has been in the hands of the Tax Inspectorate of the MOF in all qada'as. On the other hand, the disposition of these moneys is closely controlled by the offices or beladiya of the MOMPW in each qada'a. The MOMPW may transfer surplus of the revenue collected to any other administrative unit.
3. This situation seemed to change in 2003. The CPA, looking to improve the situation, empowered the governorate councils by Order 71 to organize governorate revenues according to the needs of their jurisdictions (see Box 7.1). However, Iraqi administrative practice requires implementing legislation to be issued to further detail how these powers received by the governorate councils could actually be implemented. This implementing legislation has not been passed.

BOX 7.1: GOVERNORATE COUNCILS

The governorate councils may set priorities for the provinces to independently generate and collect revenues by imposing taxes and fees...

Order 71, Section 2 (2)

4. There has not been a lack of initiative on the part of several governorate councils, for they have applied their revenue raising powers, though relatively imprecise their actions may have been. The only indisputable revenue attributed to the governorates by Order 71 is the so-called "reconstruction levy" (see Box 7.2); hence, many governorate councils are applying this levy to a variety of transactions. Governorates are also authorized to impose taxes and fees.

BOX 7.2: "RECONSTRUCTION LEVY"

Notwithstanding existing Iraqi law, governorates are hereby authorized to impose althma'am of no greater than 5% of the relevant taxes.

Order 71, Section 8

5. However, sustained opposition by the MOF has deterred governorate councils from becoming more active in developing a more comprehensive governorate fiscal framework. Such a fiscal framework could have provided for meaningful revenues for qada'as and nahiyas governorate-wide.
6. Order 71 also authorizes local councils to act with respect to their own revenues (see Box 7.3). While it is clear that the governorate councils can generate, collect, and retain revenues, taxes, and fees, local councils can only collect and retain revenues, taxes, and fees, but cannot generate them.

BOX 7.3: LOCAL COUNCILS

Local councils are responsible for....collecting and retaining local revenues, taxes, and fees.

Order 71, Section 4 (1)

7. Revenue raising powers of the qada'as and nahiyas depend exclusively on legislation enacted by the COR or by the governorate council concerned. To date, no governorate council has generated legislation to share revenues with qada'as or attribute new revenues to these bodies. Thus, the only revenues that local councils have are those established under the *Law No. 130 of 1963*. The list of revenues of qada'as as stated in this law is summarized for budgeting purposes and illustrated below.

Table 2. Qada'as: List of Revenues

Some revenue is being collected in the name of local authorities (General Budget 2006)

Number	Concept	Amount in Iraqi Dinars
3	Other Charges and Duties	4,000,000,000
5	Capital Income	4,000,000,000
6	Rent Income from Municipal Property	15,000,000,000
7	Transferable Income	
8	Charges for Services	0
9	Unclassified Income	3,000,000,000
Total		31,953,000,000

Note: US\$1 = ID1,200

8. In the aggregate, these revenues are insufficient to cover the operational costs of the qada'as. The major operational cost of qada'as is the beladiya. The beladiya is the executive office of the MOMPW situated in the qada'as. The federal budget always allocates a matching grant to meet the operational cost of the beladiyas. However, the matching grant formula implies that the qada'as levy revenues for 40% of the cost and that the remaining 60% be provided by the federal budget through the MOMPW. In the event that a qada'a exceeds the given amount, the matching grant is correspondingly reduced to match the budgeted amount.

9. There are cases of qada'as collecting more than sufficient to pay the operational cost of the beladiya. Such qada'as are called **surplus municipalities**. The MOMPW is entitled to transfer the surplus of such qada'as to supply the needs of the **deficit municipalities**, those that

cannot collect sufficient revenues to fund the operation of the beladiya. The transfer of surpluses is possible because the beladiya, which is an office of the MOMPW, controls the authorized bank account where the collected revenue is deposited in the qada'a. This method of inter-municipalities' equalization is inadequate to cover all the needs of all beladiyas in the country. Thus, the matching grant from the federal government is a necessity.

10. This surplus transfer discourages the fiscal effort of all qada'as. However, it is a national policy that the entities concerned are powerless to change. Prior to 2007, some surplus municipalities succeeded in devoting their surpluses for projects of interest to them.

11. Although the *Constitution* reinstates the financial autonomy of the governorate administration, the financial situation of the next level of administrative units is not mentioned. In fact, the instrument does not refer to qada'as and nahiyas at all.

12. At this point, the qada'as and nahiyas remain subject to the authority of the governorate councils in financial aspects. The details of the governorate administration's financial authority also have yet to be worked out as required by implementing legislation. In the absence of legislation that addresses fiscal intergovernmental issues, qada'as and nahiyas will be well served by continuing to use the fiscal framework and revenue authorizations of Order 71 and a prior law, *Law No. 130 of 1963*.

B. FUNDING SERVICE DELIVERY

13. Neither the beladiya nor the local council authorities collect charges or fees for services. The user fees are collected by the offices and facilities of the federal ministries that organize the provision of services in qada'as and nahiyas.

14. The current structure of charges for services in Iraq seeks to make the service **self-sustained**. Overall, "self-sustained" is understood to mean the ability to pay for operational costs and maintenance, omitting new construction or overhaul requirements.

15. This leaves out of the equation the growth of services, traditionally funded from the federal government's capital investment budget. As long as it refers to providing basic domiciliary services, the practice of building infrastructure that has to be sustained by the users is sound policy. However, for community-based services, such as health care and education facilities, the practice of building infrastructure if left to the local authorities to fund operational and maintenance cost, is deemed bad fiscal policy. This arrangement favors the creation of unfunded mandates in the local tier of government. In addition, the infrastructure is built without consulting the recipient population as to their priorities regarding services they would like to receive.
16. The organization of services delivery by the federal ministries does not necessarily correspond to the organization of the administrative units of governorate, qada'a, and nahiya. Also, how federal ministries reach out to the qada'a and nahiya levels is necessarily different, depending on the type of service offered. Health care has a network of hospitals and clinics that follows the population density, regardless of the administrative-territorial divisions. Electricity deploys state-owned enterprises (SOEs) to generate and distribute power; these facilities are not qada'a based. In general, a single facility serves several qada'as, extending even over several governorates in some cases. Water resources also function based on their own ministerial territorial divisions that cover several qada'as. Elementary and secondary education mainly follows the population density in establishing schools.
17. Many of the services and facilities, such as hospitals, clinics, schools, drinking water enterprises, or power generation and distribution enterprises, are deemed to be **self-funding**, which entitles them to collect certain fees. This revenue is combined with the national budget funds allocated to them by the center.
18. During the 1990s, the maintenance of most basic infrastructure was postponed, allowing unsuspected deterioration in the delivery of basic services. In addition, many service deliveries were re-directed from the areas originally targeted to support areas with populations loyal to the regime. These factors contributed to the confusion in service delivery under the previous regime.
19. With the establishment of the CPA, many qada'as and nahiyas began to benefit from the inflows of funds provided as donations, mainly from the Commander's Emergency Response Program (CERPs) and the Iraq Relief and Reconstruction Fund (IRRF). Unfortunately, most of the infrastructure created with these funds failed to consider the implications of the lack of fiscal and administrative autonomy of the administrative units intended to be served.
20. The lack of autonomy of local administrative units meant that infrastructure developed by donor funds could not be maintained. Iraqi legislation on public investment precluded federal agencies from accepting them as public assets, and no Iraqi public expenditure was devoted to them. There have been few funds for maintenance because federal budget resources are scarce and dedicated mainly to sustain the payroll and the rehabilitation of infrastructure built before 2003.
21. The qada'a and nahiya councils may, under Order 71, influence federal offices working on their jurisdictions with respect to investments. However, this has occurred only in an uneven fashion; generally, this task has been delegated to the governorate councils. Local councils could also coordinate the activities of nongovernmental organizations (NGOs) and international donors in their areas.
22. By and large, the original authority that was vested by the *Law No. 159 of 1969* in the executive officials of the qada'a and nahiya local councils—qa'im maqam and nahiya mudiyar, respectively—was transferred to local councils by Order 71. However, in some cases, they have continued to exercise some or all of the original authority based on delegation from local councils concerned or from the governor. The qa'im maqams, as noted previously, also continue to exercise power originally vested in them (see Chapter 5:21).

BOX 7.4: QA'IM MAQAM AND NAHIYA MUDIYAR

It is prudent to delegate to the executive branch some or all of the authorities that local councils received from these officials under Order 71, without resigning them for good. With respect to the budget, the governor may delegate some of the coordinating tasks to these officials as well.

C. THE CASE OF BAGHDAD AS CAPITAL: THE AMANAT

23. Baghdad as a capital has a different constitutional standing than the regions and governorates outside the regions, but because the implementing legislation that should order its administration has yet to be enacted (see Chapter 5:13–14), the capital functions as subject to the control of the governorate council established pursuant to Order 71.
24. The Amanat functions as the administration of the capital (see Chapter 5:15–20). Currently, all public sector interventions in all sectors in the capital are coordinated via the office of the Amin. The executive office of the Amin of Baghdad is the Amanat, and it essentially functions as a commission of the governorate council. Both the Amin and the Amanat are dependent on that council.
25. The collection of municipal revenues in Baghdad capital is in the hands of the Amanat. Prior to 2003, revenues collected by the Amanat were rather sizable. That made Baghdad a **surplus municipality**; it even transferred fiscal resources to the federal budget. The deterioration of security and the consequent turmoil has left the Amanat with about one-quarter of the collections it used to register. The year 2005 was a zero collection year because of lack of a legal framework to support the enforcement of revenues by the Amanat. Kati's and hayys of Baghdad also intervene in the collection of revenues under specific circumstances but are required to deposit all money inflows in the official accounts of the Amanat.
26. The qa'im maqams and nahiya mudiyars of Baghdad continue to exercise some coordinating functions, which in qada'as and nahiyas elsewhere are handled by local councils. Of these, coordination relating to the interventions by federal offices, NGOs, and international donors are particularly noteworthy.
27. Basic services delivery to the inhabitants and major efforts to rehabilitate the infrastructure of basic services in Baghdad have only partially paid off. The accumulated unattended needs, combined with the growth in demand by the population, have reduced the impact of investments in basic infrastructure aimed at solving the problem of a deficit of basic services in Baghdad. In many cases, the rehabilitation

of state-provided basic services infrastructure in the capital, based on a user fees recovery method, has proven impossible. The explanation for this is clear. The provision of the services either does not exist or is substantially deficient, and the users in many qada'as are unwilling to commit to the investment in such efforts. Another reason is that they simply do not have the financial capacity to afford the start-up investment and the subsequent payment of fees required to keep the services operational.

BOX 7.5: THE CASE OF PROVIDING ELECTRICITY TO BAGHDAD

Providing electricity is one of the most visible problems in Baghdad capital. Despite being just as important as potable water or sewage and sanitation, lack of electricity often generates the most indignation in Baghdad capital's population. Currently, electric power provided by the state organization to Baghdad capital is barely enough to deliver 2 hours of electricity a day, and this does not necessarily occur every day.

This failure of government service has led to a situation in which supply of electrical power—where available—is in private hands and provided in the most chaotic manner. Neighborhoods and private groups of citizens have managed to obtain generators that cover small residential areas. Citizens organize themselves, on their own initiative, sometimes under the qada'a or nahiya or under the hayy councils, and actively look for subsidized gas or oil that they purchase with voluntary contributions to keep the generators operating at the lowest possible cost. In 2002, the state-owned enterprise (SOE) for Baghdad Power was able to collect sufficient funds from user fees to keep the services running 22 hours a day. However, this level of service delivery was sustained by transferring the power generated by other power plants nationwide to Baghdad. This scheme deprived those who should have been the original recipients of service.

According to the Ministry of Energy, most of the SOEs dedicated to power supply nationwide are regaining their financial self-sufficiency. The ministry also has hopes to improve the provision of services in areas they cover. Nonetheless, the solution to the problem of providing adequate electricity for Baghdad capital remains elusive.

28. The major difference in the organization of the provision of services between Baghdad capital and Baghdad Governorate is that Baghdad Governorate's qada'as and nahiyas did not benefit until 2007 from the concentrated coordination exercised by the Amanat upon the intervention of the federal authorities.
29. Baghdad Governorate's qada'as and nahiyas work with the same administrative structure as the qada'as and nahiyas elsewhere. This structure is the beladiya office belonging to the MOMPW. The qa'im maqams and nahiya mudiyars function on the executive side of the local administration but with much reduced authority. The main coordinating authority lies with local councils.
30. In 2007, the federal government decided in its budget law that all federal ministries could perform improvements and work on service delivery in Baghdad without the authorization of the Amanat, which had been required in the past. This new development may place Baghdad in the same situation as other urban centers. However, the technical strength of the Amanat provides a considerable leverage to the capital authorities in the public investment area.

Chapter 8. Budget: Qada'a and Nahiya

A. INTRODUCTION

1. The complexities of the current practices and legal framework for fiscal management at the sub-national level were summarized in the previous chapter. This chapter describes the process that may be deemed as the most feasible for any donor to interact with the qada'as and nahiyas in financial terms. It would also describe the budgetary arrangements that endeavor to make qada'as and nahiyas participants of the current public budgetary process of Iraq.

BOX 8.1: QADA'AS AND NAHIYAS: DO THEY HAVE TO DRAFT THEIR OWN BUDGETS?

The obligation to prepare qada'a and nahiya budgets is set forth in the *Law No. 159 of 1969*. The current law on financial management—CPA Order 95—defines governorate budgets but says nothing about the budgets of the local councils. Iraqi legal experts tend to agree that, in absence of new regulations, the duty to prepare local budgets as established in the *Law No. 159 of 1969* remains in place. There is the need to harmonize this law with the new legislation on the public budget.

As a consequence of this legal imprecision, no qada'a or nahiya has actually engaged in preparing their own budget. In certain instances, either the qa'im maqam or the qada'a council participates in the preparation of the budget request by the beladiya and in that of other federal offices present in the qada'a. As for the nahiya, sometimes its authorities—nahiya council or mudiyar—are consulted or participate in the making of the federal budget for the offices operating in the qada'a in an effort coordinated by the qada'a authorities.

More recently, an extensive citizens' consultation process on needs and services priorities has been initiated through the Provincial Development Strategy (PDS). The PDS aims to channel major federal budget resources according to the needs and priorities expressed by the people.

2. Nahiyas have no authorization to generate revenues, but it is possible for a nahiya to collect and retain some revenues under legal authorization. In 2007, the only legal way for a nahiya to start collecting any type of revenue is based on authorization by the governorate council; any attempt to collect revenue, such as taxes and fees, by the nahiyas without prior authorization of the governorate council is illegal. There are no cases recorded nationwide of any nahiya collecting revenue under authorization of the governorate council because the MOF has opposed the exercise of most revenue-raising efforts of the governorate councils.

3. Regarding donations, the nahiyas are authorized to assist in initiating and implementing local projects alone or in conjunction with international organizations and NGOs. Some donors have coordinated projects or given funds to nahiya authorities to carry out timely improvements in the delivery of certain basic services. The same has happened on many occasions between hayy authorities and donors.
4. The advantage of this procedure is clear: the community recipient of the service would likely be interested in preserving these assets. In reality, the nahiya and hayy authorities are not strictly accountable. The best way to ensure the proper use of these resources by nahiya and hayy authorities is through the active involvement of the community in the projects; thus, the community would have a sense of ownership of the asset that ultimately results. Under the current legislation, the nahiya mudiyar is charged with recording these assets in the official books of the nahiya and reporting to the relevant federal entity in the qada'a the donations concerned. There have been attempts by the MOF to seize such donations, but they have so far not been successful.
5. Qada'as are authorized to collect and retain the revenues established under *Law No. 130 of 1963*. As noted previously (Chapter 7:2), currently, the revenue is collected by the Tax Inspectorate of the MOF, and the MOF, in addition, controls their disposition via the annual budget law, transferring its control to the MOMPW.

BOX 8.2: IMPROVING THE TECHNICAL CAPACITY AT THE QADA'A AND NAHIYA LEVELS IS A LONG-TERM CHALLENGE

Baghdad, with its technically strong Amanat, is unique. Most qada'as do not have an extensive cadre of technical staff. Typically, the qa'im maqam works with a limited—three to five—staff paid by the MOF, and at times, he outsources services when no permanent staff is appointed to him.

Adding staff to the offices of the qa'im maqam requires the adherence to all the procedures for hiring federal employees, which require the candidate to be interviewed in Baghdad. Creating ad hoc positions to support temporary tasks is feasible but needs consultation with the qa'im maqam. In this regard, there is no certainty that staff paid by donors while being trained would be included in the official cadres once the training is completed and the donor aid ends.

B. CAPITAL INVESTMENT AND THE PROVINCIAL DEVELOPMENT STRATEGY

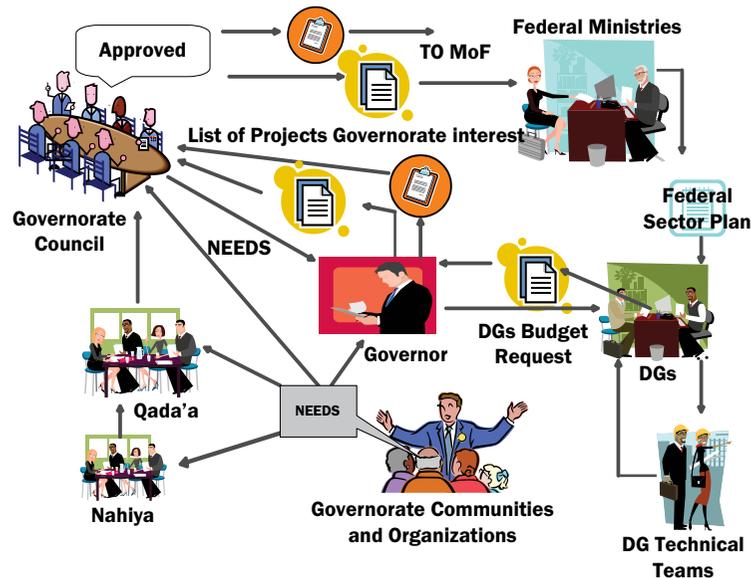
Own Resources

6. Surplus municipalities can engage in certain investment projects with their own resources, but such cases are few. As noted previously (Chapter 7:2), the beladiya of the MOMPW may allocate qada'as' surpluses to the deficit qada'as. To this paucity of resources should be added that most qada'as have no technical staff and have only a very limited finance staff. This situation makes it difficult for them to undertake technical designs for public capital investment projects. The most likely way a qada'a may obtain technical expertise is by using the avenues opened to local councils by Order 71: coordinating the actions of the federal offices in the provision of public services. Another alternative is outsourcing to a private provider the entire technical design of a given project, but for this, the qada'a needs to have its own financial resources or obtain support from a donor or an NGO.

Federal Funding

7. The most common way a qada'a obtains capital investment funds is by participating in the preparation process of the federal budget. This is a time- and effort-consuming process with uncertain results. To effectively engage in this, the qada'a must develop strong links with the federal offices in its territorial jurisdiction, if there are any, and at the governorate level. The illustration below (Figure 8) shows the way this process was ordered to take place for the 2007 annual budget. In the illustration, the role of the qada'as and nahiyas is illustrated as only applying to the identification of needs from the communities; developing the technical aspects of investment projects have yet to come within their competence.

Figure 8. Local-Level Authorities: Obtaining Capital Investment Funds



Provincial Funding

8. In 2006, thanks to the decentralization process, local council authorities had the opportunity to receive public investment funding from **transfers** that the federal government allocated to the governorates under the 2006 Budget Law (the ARDF). Governorate authorities—governor and governorate council—are charged with managing these transfers, which are relatively sizable, exceeding US\$100 million per governorate in many cases. The distribution of these transfers among the local councils within the governorate differs from governorate to governorate (See Box 8.3). The illustration above, which represents

the way qada'a and nahiya authorities may try to influence the federal offices in the governorate in the preparation of the federal budget, illustrates how they might participate in the decisions relating to the listing of capital investment projects. The list of capital investment projects that the governorate authorities submit to the MOF is the key to grantee capital investment in the qada'a.

BOX 8.3: PRACTICES RELATING TO THE DISTRIBUTION OF TRANSFERS RECEIVED BY THE GOVERNORATES

Babil follows a strict per capita distribution of the transfers for capital investment. This governorate applies an adjustment to the per capita distribution to provide further support to the qada'as that have security problems.

Ninewa has set aside 10% of the total transfers for provision of grants to any qada'a or nahiya that is able to present its initiative in a viable project with proper feasibility study and technical design.

The Baghdad Governorate Council has developed a consultation process with every qada'a and nahiya council to establish needs and priorities through the communities.

At Ta'min pledges to consult all qada'as in the governorate before deciding on the final capital investment list of projects that the governorate will fund with transfers.

9. The process of participating in the decision of funding investment projects in the governorate is new for the governorate authorities and for the authorities of its administrative units. The MOF is the regulating body that controls that process. Because these transfers to the governorates are a recent feature of public finance in Iraq, the process still presents contradictions and confusing instructions. However, the instructions are being improved and are taking into consideration the issues and obstacles faced and identified by transfer recipients.

Provincial Development Strategies (PDS)

10. Many international donors have offered help in the reconstruction efforts for Iraq. To get involved, the donor community requires the design of an articulated medium- to long-term investment program that would guide their decision making. For that purpose, the United Nations (UN) and the MOPCD have launched the National Development Strategy (NDS). The national strategy becomes based on the needs of qada'a and nahiya populations through the Provincial Development Strategy (PDS) (see 8:11 below).
11. Under the PDS platform, all governorates must initiate and develop an extensive consultation processes that involves the communities of all nahiyas to establish priorities in public services and economic development. These priorities are contrasted with the economic studies by sector, and the PDS document must integrate all these activities. The completed PDS must then be submitted to the MOPCD for approval. Many governorates are well advanced in the process. A few governorates have decided to use the PDS as the guideline for their capital investment, including in the use of transfers from the federal government.
12. The tables below show the status of the PDS in each governorate as of July 2007.

Table 3. PDS Status, by Governorate (July 2007)

Phase	Tasks	Provinces	Output	Duration
1	Preparatory meeting with PRTs Development of PDS process guidelines Enhance provincial knowledge of PDS Facilitate provincial stakeholders forum Selection of key development		PDS guidelines: Provincial Coordination Committee and Sectoral Task team Key development areas	30 days
2	Assessment of provinces socioeconomic profile Data collection and compilation Data and sectoral analysis of service standards and gaps Compilation of provincial profile	Dohuk	Data base Provincial socioeconomic profile Service standards and challenges	60 days

Phase	Tasks	Provinces	Output	Duration
3	Preparation and facilitation of provincial stakeholders forum Development of provincial vision Development of mission statement Identification of priority issues with corresponding goals and objectives	Qadissiyah, Diyala	Provincial vision Provincial mission statement Provincial priority issues, goals, and objectives	10 days
4	Facilitation of inter-sectoral stakeholders forum to formulate appropriate strategies Preparation for district and subdistrict workshops to discuss priority issues Compilation of prioritized strategies	Anbar, Salah ad Din, Baghdad, Karbala, Wasit, Babil	Provincial strategic objectives Strategic objective for each priority issue Tentative framework	20 days
5	Preparation of project document for prioritized projects Identification of resources and cost and budget estimation Identification of responsible agencies		List of prioritized projects Major activities and time-line Project documents Responsible agencies Cost/budget estimate	30 days
6	Cost estimation and allocation Preparation of financial framework (3-5 years) Preparation of annual plan of action Preparation of annual budget	Erbil, Sulaymaniyah, Kirkuk, Ninewa, Basrah, Dhi Qar, Muthanna, Maysan, Najaf	Prioritized projects 3-5 years action plan 3-5 years financial plan Annual plan of action Annual budget	60 days

C. BUDGETING FOR MAINTENANCE

13. Maintenance expenditures are budgeted based on the instructions and technical assessment of the technical offices of each line ministry in the governorate. Regular maintenance is budgeted by the technical offices in accordance with field reports of the sub-offices and technical staff. In addition, they also budget for extraordinary maintenance in the form of major preventive actions to be undertaken in case of major problems or emergency needs.

14. On many occasions, these efforts are rendered fruitless because the MOF has the final say on how much can be afforded for operations and maintenance (O&M). Usually salaries consume the bulk of the available MOF funding, and maintenance is left aside. The most common instruction from MOF is to prepare budgets by adjusting the previous year's approved request in accordance with a given percentage increase. This base budget increment does not take into account realistically the need for the maintenance of essential infrastructure, giving preference to new investments and disregarding urgent maintenance.
15. The 2006 transfers to the governorates were split into "reconstruction funds" and "new investment funds." The reconstruction funding provided the governorate councils with opportunity to devote expenditures to the much delayed maintenance in lieu of waiting for the federal ministries to come forward with funds from their own budget.
16. To some extent, qada'as and nahiyas have been able to utilize the funding from the transfers allocated to the control of the governorate authorities for maintenance. Coordination with the federal technical offices has been essential for this undertaking.
17. In any case, maintenance funding is not the strength of the budget system in Iraq.

D. BUDGET IMPLEMENTATION

18. Local councils have oversight authority on any investment taking place in their jurisdiction. Depending on their relations with the federal offices in the governorate, information on work planned by the federal authorities flows to the local authorities, enabling them to organize their oversight work. This oversight function is easier to exercise in urban centers; the local authorities generally face the problem of adequate resources to carry out effective oversight in the rural areas.
19. If the investment project is funded with transfers to the governorate, then governorate authorities can use a funding amount to defray the oversight cost. Because the local authorities generally lack the technical capacity to undertake the oversight tasks of complex projects, the governorate council may decide to outsource such tasks to the private sector.

20. Credit is not an option for qada'as and nahiyas. Order 95 does not permit them to resort to credit in the public sector without the authorization of the MOF. During 2006, the MOF attempted to recapitalize the regional banks that are SOEs. The move was scrapped because of the many problems the State as a lender faces and imposes on the financial market. No bond obligations may be legally issued by governorates, qada'as, or nahiyas.

E. TECHNICAL FINANCIAL ASPECTS

21. Regardless of the type of expenditure local authorities would like to budget or have to track and register, they are duty bound to follow the Budget Classification and the official Chart of Accounts for the Public Sector (COA) prescribed by the MOF. The qada'as and nahiyas have a duty to maintain certain official journals and such documentation necessarily should follow the official COA.
22. In 2007, there are efforts to shift the Budget Classification and COA from the customary format followed in Iraq to international standards. This has resulted in the development of a new Budget Classification embedded in COA that is compatible with government financial statistics standards prescribed by the UN and the International Monetary Fund.¹² The new budget classification and COA make the understanding of financial reports easier. During 2007, the new COA is expected to be adopted officially, and all public sector offices, including the qada'as and nahiyas, would be required to follow that new template.

F. ECONOMIC DEVELOPMENT ISSUES¹³

23. From a strictly economic viewpoint, the local authorities are most likely to be interested in diversification. Finding new sources to invigorate the existing productive activities or finding new ones that can help to alleviate poverty in their communities is important to local authorities.

¹² A sample of the new Budget Classification, including the conversion table, is to be found in Volume II of this manual.

¹³ Volume II of this manual will constitute an additional resource on economic development issues.

24. Micro-credit cooperatives can be multipurpose, dedicated to agriculture, or targeted to a specific social group, such as women or widows. Orientation of micro credit for activities such as improving market facilities or providing machinery or other forms of capital, such as seeds, pesticides, and fertilizers, though well received, have proved to be unsustainable when loans were not repaid.
25. The best guide to promote economic development in many governorates may be found in the PDS technical documents. These documents provide an analysis of the economic impact of certain activities prioritized by the population concerned.
26. The PRT structure offers experts in a number of subject areas that may also effectively help to guide economic development initiatives in each governorate.

G. DONOR RELATIONSHIPS

27. Although donors have been noted in several previous sections, it is relevant to explore the subject further.
28. To guarantee that donor funds reach the chosen qada'a, nahiya, or governorate, donors need to enter into negotiations with the MOF regarding their choices. If no agreement with the MOF is reached, then the funds may not reach the recipients earmarked by the donor. This explains the current practice of by-passing the MOF and interacting directly with the administrative units on the part of donors.
29. In 2007, only a few donor sources fund the qada'as and nahiyas. The U.S. Military is very active in providing multipurpose financial assistance through the Commander's Emergency Response Program (CERP). The process for defining CERP funds usage implies the creation of a Provincial Reconstruction Development Council (PRDC) in the governorate. Ideally, PRDCs should include the governorate council, and this body and the PRDC should work harmoniously, but the PRDC structure presents uneven results because governorate authorities have not been fully cooperative. With the governorate authorities now facing increasing responsibilities to respond to their constituents, the need for funding has grown and the dialogue between them has improved.

30. The fact that the PRDC functions mainly at the governorate level has led to a tendency to overlook that it is necessary and relevant to maintain linkages with the authorities at the local levels. It is important that the qada'a and nahiya authorities be kept advised of the initiatives taken.
31. The U.S. Government's Iraq Relief and Reconstruction Fund (IRRF) and successor accounts remain an important funding source for the qada'a and nahiya levels. Originally, this fund was dedicated to large reconstruction projects. Moreover, the indications are that IRRF will shift to smaller projects in water, electricity, and sanitation.
32. The MOPCD is engaged in refining the NDS that will integrate national and governorate development goals and coordinate the communications between governorate administrations and agencies such as the Iraqi Transitional Assistance Office (ITAO), United Nations Assistance Mission for Iraq, USAID, and United Kingdom (UK) Department for International Development, and international donors such as the World Bank, UN Trust Fund, and individual governments. Currently, the MOPCD is soliciting input from governorate administrations in furtherance of the NDS.

Negotiations

33. For donors, negotiating with qa'im maqams and nahiya mudiyars while in Baghdad capital or the Amanat would be a sound strategy. However, virtually everywhere else, negotiation and interactions should take place with local councils.
34. Local councils may delegate the coordinating authority with respect to donor funds to the qa'im maqams and nahiya mudiyars (see Box 7.4), but this has not taken place. However, in some qada'as and nahiyas, because of the security situation or the weakness of local councils, the qa'im maqams and nahiya mudiyars continue to exercise the coordination authority in the customary manner.
35. Care should be taken to identify who legally has the authority to negotiate on behalf of local councils. Anecdotal evidence suggests that there are individuals who claim to have the proper credentials but on closer examination proved to be fakes.

