



Iraq Local Governance Program

Law of Governorates Not Incorporated into a Region: An Annotated Text

JULY 2008
Version 1

TABLE OF CONTENTS

Introductory Note	3	Part II	
Abbreviations	4	Heads of Administrative Units	31
Arabic Terminology	4	Chapter 1: The Governor	31
Map of Iraq	4	Chapter 2: Qada'a and Nahiya Administrators	38
Law No. 21 of 2008	5	Part III	
Preamble	6	Financial Resources	41
Part I		Part IV	
The Councils and Procedures for Their Formation	8	Final Provisions	42
Chapter 1: Membership Requirements and Termination	10	Notes	45
Chapter 2: Competencies of the Governorate Council and the Local Councils	14		

This publication was made possible through support provided by the U.S. Agency for International Development under Contract No. 267-C-00-05-00505-00. The opinions expressed herein are those of the authors and do not necessarily reflect the views of the U.S. Agency for International Development.

INTRODUCTORY NOTE

This document is a product of the Iraq Local Governance Program (LGP), funded by the U.S. Agency for International Development (USAID).

LGP is an effort to strengthen government in Iraq at the local, municipal, and provincial levels. LGP works to:

- Improve governmental management and administration
- Provide training on and technical assistance for the roles and functions of government officials and agencies
- Support democratic, representative, and decentralized government in Iraq.

LGP therefore assists Iraqi efforts to ensure that local government is transparent, accountable, and responsive to its constituents.

On the following pages, the text of the *Law of Governorates Not Incorporated into a Region* appears in black; the annotations to the text appear in gray. The text of this document was originally written in Arabic; in cases of differences between this English version and the Arabic original, the Arabic text governs.

For more information on the Local Governance Program, please visit www.lgp-iraq.org.

Acknowledgments: We wish to extend our appreciation to the Governorate Council of Baghdad, the legal committees of Baghdad district councils, the Legal and Follow-Up Committees of the Iraq Local Government Association, and LGP's legal advisors and training managers for their excellent work and valuable contributions to the final draft of the *Law of Governorates Not Incorporated into a Region: An Annotated Text*. We also express our gratitude to the following for their invaluable assistance in the making of this volume: Riadh Adnan, Taha Salih, Wassan Matty, Fargad Salih, Kareem Jawad, Nael Issa, Zahair Jamal, Abdul Amir, Hiwa Ibrahim, Adel AlMosa, Maki Shaker, Ahmed Muhamed, Lamar Cravens, and Ron Johnson.

Prepared by: Imad Jonaby, National Policy and Legal Reform Manager, and Muhsen Jabir, Senior Legal Advisor.

Baghdad

July 2008

ABBREVIATIONS

- COR Council of Representatives
CPA Coalition Provisional Authority
LGP Iraq Local Governance Program
USAID U.S. Agency for International Development

Arabic Terminology

- Amanat** Baghdad capital mayoralty
Beladiya municipality
Hayy neighborhood
Kati' district (Baghdad capital)
Mudiyar nahiya (subdistrict) administrator
Mukhtar alderman
Nahiya subdistrict
Qa'im maqam qada'a (district) administrator
Qada'a district (outside Baghdad capital)

Map of Iraq



June 1, 2008

In the name of the People
The Presidency Council

Based on the approval of the Council of Representatives in accordance with the provisions of Article 61, “First,” of the *Constitution*, and due to the elapsing of legal duration of time stipulated in Article 138, “Fifth-A,” of the *Constitution*, the following Law was issued on March 19, 2008.

Law of Governorates Not Incorporated into a Region

No. 21 of 2008

Relying on the original Arabic text, this annotated version of the *Law of Governorates Not Incorporated into a Region* (Law of Governorates) provides an explanation of the general meaning(s) of the Law’s provisions. The intended use of this annotated version is to give non-Arabic speakers an understanding of the Law of Governorates, including any ambiguities. It is not an authoritative legal and constitutional analysis of the Law of Governorates.

This document was conceived and developed by the National Policy and Legislative Reform Team of USAID’s Local Governance Program (LGP).

The U.S. Embassy’s translation of the Law of Governorates is the version used here. The annotated comments that clarify or explain provisions are those of numerous Iraqi lawyers and members of current governorate councils and local councils, the Legal and Follow-Up Committees of the Iraq Local Government Association, who interacted extensively with the Council of Representatives (COR) during the Law of Governorate’s progress through the COR, and Iraqi lawyers and other professionals employed by LGP (especially the Legal Department of LGP’s Central Region).

The provisions of the Law of Governorates, with one exception noted in this annotation, do not take effect until the election of new governorate and local councils. Until the election is held, a variety of laws enacted prior to 2003 and specific Coalition Provisional Authority (CPA) orders, mainly CPA Order 71, remain in effect. For a current description of local governance in Iraq, the *Republic of Iraq District Government Field Manual, Volume I-A* is the most convenient source document.

Article 1:

The following terms shall have the meaning indicated opposite to each for the purposes of this law wherever they appear:

The Law: Law of Governorates Not Incorporated into a Region.

Council of Representatives: Iraqi Council of Representatives.

Governorate: An administrative unit in its geographic boundaries consisting of *qada'as* (districts), *nahiyas* (subdistricts), and villages.

The Law is defined as the *Law of Governorates Not Incorporated into a Region* (Law of Governorates). It does not apply to the three provinces of Kurdistan. The Kurdistan Regional Government may decide to hold local elections simultaneously with the rest of Iraq, or not, and may adopt all or some provisions of this Law, or not. There also are some differences for Baghdad Governorate noted in the appropriate following articles.

A governorate is first an administrative unit, with three levels: governorate, qada'a, and nahiya. The Law of Governorates establishes legislative councils corresponding to each of these three administrative units. Across Iraq, those three levels of councils already exist mainly as a result of CPA Order 71 and other laws and actions of the Government of Iraq. The administrative and council structure of Baghdad is an exception. Its structure is unique in Iraq. Baghdad is divided along municipal boundaries, which include the Municipality of Baghdad (capital/*Amanat*), and administrative boundaries, which are on the outskirts of Baghdad (governorate). Baghdad's basic design dates from 1971 and is legally recognized by the judicial authority and federal ministries. Before April 2003, there were six qada'as, 14 nahiyas, and nine *beladiyas* (municipalities) within the municipal boundaries of Baghdad; on the outskirts of the city, there were four qada'as, eight nahiyas, and 10 *beladiyas*. Since April 2003, further administrative and municipal division has taken place.

Council: Governorate Council.

Local Council: qada'a council, nahiya council.

Baghdad also is unique in its current council structure. The lowest level council is not the nahiya council, but the *hayy* (neighborhood) council, created during the CPA administration. District councils do exist, now in greater number than before April 2003, and comprise the outlying *kati*'s (Baghdad capital districts; different than qada'as, which are governorate districts) and councils created during the CPA administration that correspond to beladiya boundaries.

Provisions of the Law of Governorates may be interpreted as not applicable to Baghdad because there is no reference to hayy councils, nor does the Law of Governorates note a legal equivalence between hayys and nahiyas for purposes of defining local councils. The *Law on Elections* that will govern the next local elections may resolve this issue by defining equivalent ways of electing new councils. Recognizing de facto current local councils and their boundaries, the simplest way to clarify the issue would be to declare that local Baghdad *kati*' and hayy councils are equivalent to qada'a and nahiya councils.

Councils: governorate councils, qada'a councils, nahiya councils.

Administrative unit: governorate, qada'a, nahiya.

Head of an administrative unit: governor, qada'a administrator (*qa'im maqam*), and nahiya administrator (*mudiyar*).

Senior positions: directors general and heads of security agencies, except university chancellors, judges, and army commanders.

Absolute majority: achieved with half plus one of the members.

Simple majority: achieved with half plus one of the members present after a quorum is made.

THE COUNCILS AND PROCEDURES FOR THEIR FORMATION

Article 2:

First: The governorate council is the highest legislative and oversight authority within the administrative boundaries of the governorate and shall have the right to issue local legislation within the boundaries of the governorate so that it can carry out its affairs on the basis of the principle of administrative decentralization and in a manner that would not contradict the *Constitution* and federal laws.

Article 115 of the *Constitution* gives the governorate priority on disputed issues between federal and governorate legislation related to shared authorities: “With regard to other powers shared between the federal government and the regional government, priority shall be given to the law of the regions and governorates not incorporated into a region in case of dispute.” The new Law of Governorates appears inconsistent with this constitutionally clear statement

about the priority of governorate law over federal law in matters of shared powers. The new Law on Governorates requires consistency with not only the *Constitution* but also federal laws, which are not restricted to matters of exclusive federal authority.

Second: The governorate council and the local councils are subject to monitoring by the Council of Representatives.

This provision seems to extend to the COR an authority not granted in Article 61 of the *Constitution* (competencies of the COR). This could be challenged legally. The Law of Governorates does not specify what constitutes monitoring by the COR.

Article 3:

First:

1. The governorate council shall comprise 25 seats with the addition of one seat for every 200,000 inhabitants, if the number of the governorate’s inhabitants exceeds 500,000.

Twenty-five (25) seats is the base number for each governorate. An additional seat will be added for every 200,000 inhabitants exceeding the base 500,000. The eligibility for the additional seat can be established when a governorate proves through official census or other required methods (such as ration cards, Ministry of Planning records, etc.) that its inhabitants exceed 500,000.

For example, if a governorate has 700,000 inhabitants, it would be eligible for one additional seat. Currently, the population of Baghdad is estimated at 6.5 million, which means the governorate council should have 25 (base) plus 33 (additional) seats, for a total of 58 seats; currently, Baghdad has 51 seats. Other than Baghdad, the other 14 governorates may have less than the 41 seats currently allocated to every governorate.

2. The qada'a council shall comprise 10 seats with the addition of one seat for every 50,000 inhabitants.

Ten (10) is the base number of seats for each qada'a council with one additional seat for every 50,000 inhabitants. The number of seats in some of the qada'a councils, as in the case of Baghdad, may be more than the governorate council. For example, the number of

inhabitants in Al Sadr kati' in Baghdad is estimated at 2.5 million. This means that the number of seats for the Al Sadr kati' council shall be 10 plus 50, for a total of 60 seats.

- 3. The nahiya council shall comprise seven seats with the addition of one seat for every 25,000 inhabitants.**
 - 4. Members of the council shall be elected by direct secret ballot in accordance with the election law for councils.**
-

The *Law on Elections* may stipulate other characteristics, as the law governing the election of governorate councils in 2005 did, such as the minimum number of female members required for each council.

Second: The latest official census shall be adopted to specify the number of seats to be added pursuant to Paragraph "First" of this Article.

The official census is one of the exclusive authorities and competencies of the federal government (Article 110 of the *Constitution*). Therefore, local officials cannot initiate and organize their own census before October 1. Local authorities are concerned about the

accuracy of the available data of the latest census, ration cards, and the records of the Ministry of Planning and the Ministry of Commerce.

Article 4:

The electoral term of the councils shall be four calendar years commencing with its first session.

The Law of Governorates does not specify the start date for the four calendar years. The *Law on Elections* may clarify this by setting the specific dates.

Chapter 1 Membership Requirements and Termination

SECTION ONE MEMBERSHIP REQUIREMENTS

Article 5:

The candidates for the council membership shall meet the following:

First: Be an Iraqi citizen, fully eligible, and have attained 30 years of age at the time of candidacy.

An Iraqi citizen means naturalized citizen or born to an Iraqi parent.

Second: Hold, at the minimum, a secondary school certificate or its equivalent.

Secondary school in Iraq is six additional years of schooling after elementary school.

Schools equivalent to secondary schools include all the official vocational and specialized schools credited by the Ministry of Education, such as schools of industry, agriculture, nursing, commerce, and education. They also include all other domestic private and religious schools and foreign schools that meet equivalency requirements and certification of the Ministry of Education.

Third: Be of good moral reputation and conduct and have not been convicted of a crime involving moral turpitude.

The second part of this provision connects moral reputation and conduct to court orders and convictions. According to the Iraqi Penal Code, dishonorable offenses are defined as follows:

Article 21–(1) (a): “Dishonorable offences such as theft, embezzlement, forgery, breach of trust, fraud, bribery, and rape.”

Article 23: “There are three categories of criminal offense: felony, misdemeanor, and infraction.”

Article 25: “A felony is an offense punishable by one of the following penalties:

- (1) Death
- (2) Life imprisonment
- (3) Five to 15 years imprisonment.”

Article 26: “A misdemeanor is an offense punishable by one of the following penalties:

- (1) Detention with hard labor or ordinary detention for a period of between three months and five years
- (2) A fine.”

Largely, the court record will be the basis for demonstrating good moral reputation and conduct.

Fourth: Be from the governorate according to the Civil Status Register, or if originating from elsewhere, be a permanent resident therein for

an uninterrupted period not less than 10 years, provided that his residence is not for purposes of demographic change.

Birthplace in the governorate must be demonstrated and approved by the Civil Status Register, or a candidate must demonstrate that he/she has lived in the governorate for a period of 10 years. The status can be confirmed through certification by the qada’a and nahiya councils, current governorate council, *mukhtars* (aldermen), as well as through the Civil Status Register, which shows changes of physical location.

“Demographic change” refers primarily to Kirkuk (see Article 140, “Second,” of the *Constitution*).

Fifth: Not be a member of the security agencies or the armed forces at the time of his candidacy.

Members of security agencies and armed forces must resign from their current job before the time of their candidacy. They will not be able to resume their original employment upon termination of their membership in the councils.

Sixth: Not be covered by the De-Ba'athification provisions and procedures or any other laws that replace them.

Though individuals sentenced under the De-Ba'athification Law (CPA Order 71), or covered by the procedures before reaching a verdict, may have their sentences reduced or changed, they remain ineligible for election to councils.

If a candidate is covered by the De-Ba'athification Law but was not sentenced or had not started the procedures before the dismissal of the law, then he/she is eligible for membership in the council.

Seventh: Not have illegally accumulated wealth at the expense of the national and public funds, according to a judicial decision.

All allegations must be supported by a judicial decision.

SECTION TWO

TERMINATION OF MEMBERSHIP

Article 6:

First: The membership of the councils shall terminate with the expiration of the electoral term or under the following conditions:

1. Death of the member, or his permanent disability, or a disability or a serious disease that prevents him from carrying out his responsibilities as a member, based on a decision from a specialized medical committee.
2. Resignation:
 - A. The council member or the local council member may submit his resignation from the respective councils in writing to the council head [chairman]; the latter shall present it at the next session so that the council may decide on it.
 - B. The resignation shall be considered accepted only if approved by the absolute majority of the council members or when he insists on his resignation even if the council rejects it by an absolute majority.

3. The member shall be considered removed if he fails to attend four successive sessions or a quarter of the total number of council sessions within a period of four months without legitimate reasons. In such cases, the council shall invite him to a hearing to be held at least seven days from the date of notification of the hearing. The council may consider him to be removed upon a decision taken by an absolute majority of the council members.

Four successive sessions means four sessions within a period of four weeks, because a council meets weekly; a quarter of the total number of the council sessions within four months is four if the council meets once a week for 16 weeks. However, the council occasionally calls for urgent meetings in addition to the regularly scheduled meetings over a period of four months. The ratio to the total number of meetings shall be readjusted accordingly.

4. The council may terminate the membership by an absolute majority if any of the conditions stated in Article 7, "Eighth," of this Law is met.
5. If he ceases to possess any of the membership requirements.

Second: The replacement upon the termination of the membership under conditions stipulated in this Article shall be from the same list, if the elections are conducted in accordance with the list system, or by the candidate who obtains most of the votes in compliance with the applicable system of election.

If the party list system is followed, then replacement of a council member follows the order in the list, which means the person whose name is next on the list and who is not already a member of council (as was the case in the 2005 election).

If an election system is followed, then the replacement goes to the candidate who was not seated on the council originally but had the next highest vote total, regardless of party.

Third: A member of the council may contest the membership termination decision before the Administrative Causes Court within 30 days from the date of notifying him of the decision.

There is an existing Administrative Causes Court in Iraq. It deals with cases related to the rightness of administrative decisions and instructions of officials

and commissions of government institutions. It provides an appeal process against administrative decisions that cannot be contested before other courts.

Fourth: The provisions of membership termination stipulated in this Article shall be applicable to the local councils.

Chapter 2 Competencies of the Governorate Council and the Local Councils

SECTION ONE

COMPETENCIES OF THE GOVERNORATE COUNCIL

Article 7:

The governorate council shall assume the following functions:

First: Elect the council head and his deputy by an absolute majority of the council members at the first session of the council called for by the governor within 15 days from the date of the certification of the election results. The session shall be chaired by the oldest member.

This is the same procedure that was followed after the 2005 election of the current provincial councils. It is the current governor's responsibility to call for the first session of the newly elected governorate council within 15 days after the certification of the general election results. In the absence of the governor, it would be the responsibility of the governor's deputies to call for the first session. The council shall meet even if neither the governor nor the deputies call for the meeting.

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

Third: Issue local laws, instructions, bylaws, and regulations to organize the administrative and financial affairs so that it can conduct its affairs based upon the principle of administrative decentralization in a manner that does not contradict the provisions of the *Constitution* and federal laws.

Paragraph "Third" gives the governorate council the authority to issue local laws, instructions, bylaws,

and regulations. As noted earlier, Article 115 of the *Constitution* gives priority to local laws over federal laws in the event of conflict, except over matters that are the exclusive authority of the federal government. This provision in the Law of Governorates seems to give primacy to federal laws in all matters. This conflict likely will have to be resolved by an appropriate court.

Fourth: Outline, in the development of the plans for the governorate, the general policies in coordination with the competent ministries.

In the Law of Governorates, coordination with the competent federal ministries is not defined. Article 114 of the *Constitution* lists powers shared between the federal government and regions/governorates, and Article 115 refers to powers belonging to regions/governorates. If coordination interferes with the priority given to regions/governorates in legislation related to shared or sole local authority, the coordination may be determined to be unconstitutional.

Fifth:

1. Prepare the council budget to be included in the general budget of the governorate.

2. Approve the governorate draft general budget plan referred to the council by the governor, and transfer funds between its chapters with the approval of the absolute majority of the council members, provided that the constitutional criteria shall be observed, and submit to the Ministry of Finance of the federal government to ensure its uniformity with the federal budget.

The Law of Governorates gives the governorate council authority to review, change, and transfer funds among chapters of the draft governorate general budget. The draft general budget includes budgets of the governorate council, qada'a and nahiya councils, governor's office, and offices of heads of administrative units (qa'im maqams and mudiyors). In the case of Baghdad Governorate, the budget for the municipality of Baghdad (Amanat) shall also be included.

The governorate draft general budget does not include the budget of the federal ministries. The Law of Governorates does not give the governorate council and the executives of the governorate the authority to review and approve the budgets of central ministries, directorates, and offices that are carrying out functions within the governorate.

The Law of Governorates does not devolve any authority or jurisdiction to the regions/governorates of the directorates under federal jurisdiction, such as health, education, transportation, and environment, as well as the directorates of the Ministry of Municipalities and Public Works (municipalities and water and sewage). These directorates are administered and controlled by their respective federal line ministries.

The Law of Governorates also excepted from the draft general budget the courts, military units, universities, colleges, and independent institutions in each governorate.

Currently, unless other devolution occurs, the provincial budget is limited to funds allocated from the federal budget for investment decisions made by the councils and governors. By agreement between a central ministry and a region/governorate, power and authority may be transferred in either direction.

The Ministry of Finance is authorized to object to the transfer between chapters and send back the entire budget to the council for amendment to ensure that constitutional criteria are met and that it is uniform with the federal budget.

Article 122 of the *Constitution* grants the governorates not incorporated into a region “broad administrative and financial authorities to enable them to manage their affairs in accordance with the principle of decentralized administration.” But the *Constitution* also calls for this to be regulated by law. The Law of Governorates does not extend the authority of regions/governorates beyond the current authority included in Ministry of Finance allocations from the investment portion of the federal budget.

Sixth: Monitor all the activities of the local executive authority excluding the courts, military units, colleges, and institutes in order to ensure its good performance with the exception of offices under federal jurisdiction.

Seventh:

1. Elect the governor and his two deputies by an absolute majority of the members within a maximum of 30 days from the date of its first session.
2. If any of the candidates to these offices fails to win the absolute majority of the members, the candidates with the highest number of votes shall

compete in a run-off ballot, and the candidate who wins the highest number of votes then shall be elected to the office.

Eighth:

1. Question the governor or one of his two deputies based upon a request from one third of the members. In case the simple majority is not satisfied with his answers, then his removal is put to vote at another session and he is deemed removed with the consent of the absolute majority of the council members. The request to remove or recommend his removal shall be based on one of the following exclusive causes:
 - A. Lack of integrity or abuse of position
 - B. Causing waste of public funds
 - C. Loss of one of the membership requirements
 - D. Willful negligence and dereliction of his duties.
2. The Council of Representatives may remove the governor by the absolute majority of its members upon the proposal of the prime minister for the above stated reasons.

The *Constitution* does not expressly provide this level of authority to the COR, nor does it expressly prohibit

it. This could be an issue because of the priority given to the laws of regions and governorates that apply to powers shared with the federal government, as well as those powers reserved to regions and governorates that are not stipulated as exclusive federal government powers (Article 115).

3. The governor shall be considered to be removed if he ceases to possess any of the requirements stipulated in Article 5 of this Law.
4. The governor may object to his removal decision before the Federal Supreme Court within 15 days from the notification of his removal. The court shall decide on his objection within one month from the date of its filing with the court. In such case, he shall continue to conduct the daily affairs of the governorate until his objection is decided.

The removal of the governor requires the coordination among the COR, prime minister, Federal Supreme Court, and governorate council. The Presidency Council may also interfere because a republican (presidential) decree is required to remove a governor, just as it is required to appoint a governor (see Article 26 of the Law of Governorates).

Article 31 of the Law of Governorates shows that the governor has local and federal powers that must be executed:

- “Execute the decisions of the governorate council as long as they are consistent with the applicable laws and the provisions of the *Constitution*” (Article 31, “Second”).
- “Execute federal general policy within the boundaries of the governorate” (Article 31, “Third”).

5. The governorate council shall, at the end of the challenge period referred to in Paragraph “Fourth” of this Article or when the removal decision is upheld by the Federal Supreme Court, if appealed, elect a new governor in accordance with Paragraph “Seventh” of this Article within 30 days from the date the removal decision was upheld or the date of the court decision.

Ninth:

1. Approve the nomination of three out of at least five candidates proposed by the governor for the senior positions in the governorate by the absolute majority of the council members and the competent minister shall [appoint] one of them.

- The governor nominates five for a senior position.
- The absolute majority of the council approves the nomination of three.
- The competent minister appoints one of them.

Approving the nomination of the governor’s nominees for senior positions is a significant power for the governorate council. Article 1 of the Law of Governorates defines senior positions as “directors general and heads of security agencies.” Currently, all the directors general and heads of security agencies perform on shared authorities between federal ministries and the governorate within the boundaries of the governorate. The Law of Governorates gives the governorate (the governorate council and the governor) the right to nominate the officials of senior positions as opposed to their being hired directly by the relevant line ministry. The competent minister, such as the Minister of Finance, the Minister of Municipalities and Public Works, or the Minister of Planning, must appoint one of the nominees.

The governor may hire advisors at the level of deputy director general for functions related to the governorate only with the approval of the governorate council.

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

The Council of Ministers may also relieve the senior officials upon a proposal from the competent minister. This intervention by the federal government for relieving senior officials seems to contradict Article 115 of the *Constitution*: “All powers not stipulated in the exclusive powers of the federal government belong to the authorities of the regions and governorates that are not organized in a region. With regard to other powers shared between the federal government and the regional government, priority shall be given to the laws of the regions and governorates not organized in a region in case of dispute.”

Tenth: Approve the local security plans submitted by the security agencies in the governorate through the governor in coordination with the federal security agencies with due consideration of their security plans.

The governor is responsible for coordinating with governorate security agencies and federal security agencies and for presenting the security plans to the governorate council for approval.

Eleventh: Approve by absolute majority, upon the proposal of the governor, administrative changes to the qada’as, nahiyas, and villages in terms of merger, creation and renaming, including the name of the center, and the consequential administrative formations within the boundaries of the governorate upon the request of the governor or one third of the council members.

In exercising this authority, the council

- Examines the role of concerned citizens and local councils in qada’a and nahiya councils
- Clarifies objections and issues from hearings for the local council and citizens
- Minimizes the effects and consequences of the changes on the citizens/residents of the administrative units
- Coordinates with federal line ministries
- Sets new laws and instructions.

Twelfth: Issue a gazette wherein the council's decisions and orders shall be published.

This is parallel to the COR and the national Gazette.

Thirteenth: Select a logo for the governorate embodying its cultural and historical heritage.

This is the same as current practice.

Fourteenth: Approve a bylaw for the council within one month from the date of the first session. The bylaw shall be approved by the absolute majority.

All councils currently have bylaws, which are likely to be used until new ones are written, if they are written at all, by the new councils.

Fifteenth: Identify the governorate's priorities in all fields and outline its policies and strategic development plans in a manner that does not contradict with the overall national development.

As elsewhere in the Law of Governorates, the reference to the national government's primacy is inconsistent with Article 115 of the *Constitution*, which gives

primacy to regions/governorates. National development planning is not an exclusive power of the federal government and therefore would seem to be affected by Article 115.

Sixteenth: Approve by an absolute majority of the council members the acceptance or rejection of donations and gifts received by the governorate.

No local council or local officials in the governorate can accept or reject donations and gifts without the approval of the absolute majority of the governorate council.

Seventeenth: Exercise any other competences stipulated in the *Constitution* or applicable laws.

Current laws that are applicable to the competencies of the governorates include:

- Law No. 130 of 1963 (municipal revenues)
- Law No. 165 of 1964
- Law No. 159 of 1969
- Law No. 25 of 1995
- Law of National Ministries

- *Retirement Law*
- *Law of Civil Service.*

SECTION TWO COMPETENCIES OF LOCAL COUNCILS

FIRST: Competencies of the Qada'a Council

Article 8:

First: Elect the head of the qada'a council by the absolute majority of the members of the council at the first session called for by the qada'a administrator within 15 days from the date of the certification of the elections results. The session shall be chaired by the oldest member.

Second: Remove the head of the qada'a council by the absolute majority of the members upon the request of one third of the members if one of the conditions stated in Paragraph "Eighth" of Article 7 of this Law is met.

Third:

1. Elect the qada'a administrator by the absolute majority of the members, and if any of the candidates fails to win the required majority, the

candidates with the highest number of votes shall compete in the second ballot, and the candidate who wins the highest number of votes then shall be elected to the office.

2. Remove the qada'a administrator by the absolute majority of the members upon the request of either one third of the members or the governor based on any of the reasons stated in Paragraph "Eighth" of Article 7.

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

Local administration includes nahiya and beladiya councils; heads of local administration units include qa'im maqams and mudiyars.

Fifth:

1. Prepare the qada'a council's draft budget.

The Law of Governorates considers the qada'a an administrative unit with administrative and financial authorities. The qada'a council budget primarily includes an annual operational budget and a capital investment budget for the qada'a. The draft budget also includes the qada'a administrator's office budget and nahiya council budget.

2. Approve the budget plans of the qada'a offices and refer them to the governor.

Qada'a offices include qa'im maqams and mudiyars within the administrative boundaries. The budget plan does not include the budget of the beladiyas in the qada'a; they are part of the Ministry of Municipalities and Public Works.

Sixth: Approve naming of streets and planning of roads.

Seventh: Approve the basic designs of the qada'a in coordination with the governorate council and consistent with the general plans of the federal government.

The same conflict with Article 115 of the *Constitution* exists here as with the governorate general plans and federal general plans.

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

This monitoring and evaluation authority does not give control, but it does authorize the council to evaluate and potentially embarrass the ministry officials in the qada'a.

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

Currently, in urban areas, most public lands are owned by a number of ministries and federal and local government agencies. In rural areas, most of the land is owned by the ministries of Agriculture, Municipalities and Public Works, and Education. For utilization of public land, the qada'a council must coordinate with relevant ministries.

Tenth: Approve the security plan presented by the heads of the local security agencies through the qada'a administrator.

Currently, the qada'a administrator is the qa'im maqam. Article 7, "Tenth," of the Law of Governorates gives the governorate council the overall approval authority of the security plans for the governorate. This suggests that security plans must be approved at the qada'a

and nahiya levels before they are approved by the governorate council.

Eleventh: Any other competencies delegated by the governorate council that would not contradict applicable laws.

Twelfth: Draft the bylaw of the qada'a council.

Article 9:

The qada'a council, for successful performance, shall:

First: Present scientific studies and research for the development of the qada'a, and refer them to the governorate council.

The Law of Governorates recognizes the importance of the research and scientific studies for the development of the qada'a. Another provision (noted below) in the Law of Governorates provides for a source of funding for the capital investment to build and equip scientific studies and research facilities but not to pay salaries and other operating costs.

The outcome of the studies and research is subject to the approval of the governorate council. Article 7, "Fourth," gives the governorate council the overall authority to "outline, in the development of the plans

for the governorate, the general policies in coordination with the competent ministries."

Second: Cooperate and consult with the nahiya councils of the qada'a so as to ensure the welfare of the community.

Article 10:

The heads of the administrative unit, heads of the security agencies, and the directors of offices shall have the right to attend the council's ordinary meetings as nonvoting members at the invitation of the council.

The appearance is by invitation only; there are no sanctions specified for failure to appear, but the council bylaws could provide for sanctions.

Article 11:

In the event that the qada'a council's decisions are contrary to the governorate council's decisions, priority shall be given to the latter if the decision concerns the governorate in general.

The Law of Governorates recognizes the administrative authority of the qada'a council. However, if the decision concerns the qada'a only, the priority shall be given to the decisions of the qada'a council.

SECOND: Competencies of the Nahiya Councils

Article 12:

The nahiya council shall assume the following functions:

First: Elect the head of the nahiya council by the absolute majority of the members at the council's first session called for by the nahiya administrator within 15 days from the date of the certification of the elections results. The session shall be chaired by the oldest member.

Second: Remove the head of the nahiya council by the absolute majority of the members upon the request of one third of the members if one of the conditions stated in Article 7, Paragraph "Eighth," of this law is met.

Third:

1. Elect the nahiya administrator by the absolute majority of the members, and if any of the candidates fails to win the required majority, the candidates with the highest number of votes shall compete in the second ballot, and the candidate who wins the highest number of votes then shall be elected to the office.
2. Remove the nahiya administrator by the absolute majority of the members upon the request of either one fifth of the members or the qada'a administrator based on any of the reasons stated in Paragraph "Eighth" of Article 7.

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

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

Sixth:

1. Prepare the nahiya council's draft budget.
2. Approve the budget plans of the nahiya's offices and refer them to the qada'a council.

Seventh: Approve the local security plan submitted by the nahiya police through the nahiya administrator.

Eighth: Present scientific studies and research for the development of the nahiya, and refer them to the qada'a council.

Ninth: Cooperate and consult with the other nahiya councils of the qada'a so as to ensure the welfare of the community.

Tenth: Draft the bylaw of the nahiya council.

Eleventh: The governorate or the qada'a council may delegate any other competencies to the nahiya council in a manner that would not contradict applicable laws.

The competencies of nahiya councils mirror the competencies of the majority qada'a council. The processes of most of the competencies are also similar.

Article 13:

The nahiya administrator shall have the right to attend the nahiya council's ordinary meetings at the invitation of the latter, as a nonvoting member.

At the invitation of the nahiya council, the qada'a administrator also has the right to attend the nahiya council's ordinary meetings.

Article 14:

In the event that the nahiya council's decisions are contrary to the qada'a council's decisions, priority shall be given to the latter if the decision concerns the qada'a in general.

The Law of Governorates recognizes the administrative authorities of the nahiya and gives the decision of the qada'a priority if it is contrary to the nahiya council's decision and concerns the qada'a. The Law of Governorates, however, does not specify the mechanisms for settling a dispute over a decision between qada'a and nahiya councils.

SECTION THREE RIGHTS AND PRIVILEGES

Article 15:

1. The members of the councils shall be free to express their opinions in the deliberations.

2. The councils may decide, by a majority of the members present, to deny a member from attending one or more sessions if his conduct in the council or his general conduct has brought discredit to the council in which he is a member.

The Law of Governorates does not specify what constitutes bad behavior during a council meeting. However, the following types of behavior are not accepted culturally and professionally in Iraq: constant cursing, vulgarity and swearing, yelling, and physical fights. The criteria for denying a member from a meeting are not specified in the Law of Governorates. If a member is denied participation, it is not clear if the involuntary absence counts toward the number of absences that result in dismissal from the council.

Article 16:

During their membership tenure, council and local council members shall be deemed members of the public service and are subject to the Penal Code.

Council and local council members are deemed members of the public service, and they are protected by the Iraq Penal Code. Any attack or assault against

the members is a punishable crime according to the Penal Code.

Article 17:

First: In return for his service in the council, the member of the council shall receive a monthly remuneration and allowances equivalent to that of a director general.

Second: In return for his service in the council, the member of the local council shall receive a monthly remuneration and allowances equivalent to a deputy director general.

The Ministry of Finance did not create a new or special employment grade scale after the passing of the Law of Governorates; rather, the scale remains incremental to existing and historical employment grades. There are no variations in pay and benefits related to the density or complexity of a qada'a or nahiya. The grade scale and grading system are the same for local councils.

Third: The provisions of this Article shall be applicable to the members of the councils who took up their positions after April 9, 2003.

According to this article, all individuals who have served for at least one year in a council during the CPA administration, the Interim Iraqi Government, or the current government shall receive pension benefits and allowances (80% of the current salary of a deputy director general).

Article 18:

First: The members of the council shall not be permitted to combine their council membership with any other official position, and shall have the right to resume their original employment upon the termination of their membership. The competent authorities shall facilitate the approval of the full-time service of the member to the council and his resumption of the original position upon the termination of his tenure of membership.

To avoid conflict of interest and possible overlapping responsibilities, the Law of Governorates does not permit a council member to combine council membership with any other official position in the public or private sectors. The council member shall be available full time for council membership. According to the Law of Governorates, the council members

can resume their original positions upon the end of a four-year term of membership, if the original positions were not in the security agencies or armed forces. For example, in the public sector, if the original job of a council member was as a teacher, then by this Law the Ministry of Education must guarantee the resumption of the original position after a four-year term.

In the private sector, if the original job of a council member was as an executive officer in a construction and general trading firm, the employment must be terminated or the council member must be provided a leave of absence.

Second: The duration of the service in the council of a member shall be taken into account for the purposes of increment, promotion, and retirement.

The four-year term membership counts toward increment, promotion, and retirement according to the Civil Service Law.

Third:

1.
 - A. Members of the councils, heads of the administrative units, and the two governor's deputies who took up their positions after

April 9, 2003, shall be paid pensions no less than 80% of the monthly remuneration prescribed under this Law provided that the active service be no less than one year or in the event they suffer a disability that prevents them from discharging their duties during their membership tenure.

Following are the qualifying criteria for a pension (80% of the monthly remuneration prescribed under the Law of Governorates):

- Be a council member
- Be a head of an administrative unit (governor, qa'im maqam, mudiyar)
- Be a deputy governor
- Serve at least a one-year employment term
- Took up the position after April 9, 2003
- Served at least a year or suffered a disability during the period less than a year.

There may be some confusion for individuals who served at different levels in more than one council during the period since April 9, 2003.

Articles 17, "Third," and Article 18, "Third" (A), take effect immediately. All other provisions of the Law of Governorates are not in effect until governorate and local elections are held.

- B. Members of the councils, heads of the administrative units and the two governor's deputies who assume their positions in accordance with this Law shall be paid pensions no less than 80% of the monthly remuneration prescribed under this Law after the termination of the electoral term or if they suffer a disability that prevents them from discharging their duties during their tenure.

The newly elected council members who will assume their position on the council after the upcoming election are also entitled to the pension (80% of the monthly remunerations).

2. The legal heirs of the members of the councils, heads of the administrative units, and the two governor's deputies, according to the *Unified Retirement Law*, shall receive the pension of the member in the event of his death or martyrdom during his membership tenure.

Article 19:

First: The quorum for sessions of the councils shall be met with the attendance of the absolute majority of the council's members.

Second: The decisions shall be taken at the sessions of the governorate council and the local councils by a simple majority unless otherwise stated.

Article 20:

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

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

Any council decision that contradicts the *Constitution* and laws can be overruled by a specialized court or the COR; the council need not be dissolved.

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

Second: The Council of Representatives may dissolve the council by an absolute majority of the members based upon the request of the governor or one third of the governorate council members if one of the conditions stipulated above is met.

As with the COR's involvement in the dissolution of the governorate council, this provision likely is inconsistent with Article 115 of the *Constitution*.

Third:

1. The governorate council may dissolve a local council by an absolute majority of its members upon a request from the qada'a administrator, as regards the qada'a council, or the nahiya administrator, as regards the nahiya council, or one third of the local council members if one of the conditions stipulated above is met.
2. The dissolved council or one third of its members may contest the dissolution decision before the Federal Supreme Court within 15 days from the date of its issuance. The court shall decide on the challenge within 30 days from the date of receiving it.

Article 21:

First: In case the decision to dissolve the council is approved or the legal period of the contest expires, the governor shall call for the governorate council to conduct elections.

Second: The work of the council shall terminate on the date of convening the first session of the newly elected council.

Third: The provisions of this Article are applicable to the local councils provided that the call for new elections for the qada'a councils shall be made by the qada'a administrator and the call for the elections for the nahiyas shall be made by the nahiya administrator.

HEADS OF ADMINISTRATIVE UNITS

Article 22:

Each administrative unit shall have a juridical character and financial and administrative independence. In the performance of its functions, it may:

First: Collect taxes, duties, and fees in accordance with the federal laws.

A federal revenue law is expected in the future that presumably will detail shared taxes (between federal, region/governorate, and local levels) and other sources of fines, fees, charges, and duties that may be allowed.

A public commission mentioned in Article 106 of the *Constitution* has a role in monitoring the distribution of federal revenue and transfers, but that commission has yet to be established by a separate law.

Second: Exercise the competencies granted to it in accordance with the *Constitution*.

Authorities granted by the *Constitution* (Article 122, “Second”) include administrative and financial independence that does not contradict the *Constitution*.

Third: Fulfill the duties and functions it is entrusted with in accordance with the laws and in a manner that will not contradict the *Constitution*.

Article 23:

The governor and the qada’a and nahiya administrators are the highest executive employees in their respective administrative units and shall have authority over staff of each, and subject to the *Public Service Law* in terms of their rights and employment in a manner that would not contradict this law.

Chapter 1 The Governor

Article 24:

The governor shall be considered the highest-ranking executive officer in the governorate at the rank of a deputy minister as regards rights and service.

Article 25:

1. The candidates for the position of the governor shall meet the requirements stipulated for membership of the governorate council and shall hold a university degree or its equivalent.
2. The requirement referred to in Paragraph “First” of this Article shall be applicable to the two deputy governors.

Article 26:

First: The appointment of the governor shall be under a republican decree issued within 15 days from the date of his election, and he shall commence his duties from the moment of his appointment.

Article 122, “Third,” of the *Constitution* states: “The governor, who is elected by the governorate council, is deemed the highest executive official in the governorate to practice his powers authorized by the council.” The republican (presidential) decree is not mentioned in the *Constitution*.

This provision tying the appointment of the governor to a republican decree inserts the central government

into the councils’ authority to elect and to remove the governor.

Second: The governorate council may elect the governor from within or outside the council.

Article 27:

First: Each governor shall have two deputies elected by the council. Their orders of appointment shall be issued by the governor within 15 days from the date of their election by the council. Each of the deputy governors shall hold the rank of director general and they may be elected from within or outside the council.

Second: Each deputy shall be required to meet the requirements for membership of the governorate council stipulated in Article 5 of this Law and shall hold a university degree.

Article 28:

If the governor fails to fulfill his duties for reasons of health for a period exceeding three months, he shall be superannuated and the council shall elect a new governor pursuant to Paragraph “Seventh” of Article 7 of this Law, and the governor’s first deputy shall be the acting governor until such election is conducted.

Article 29:

The governor and his two deputies shall take the following oath before assuming their duties:

“I swear by Allah the Almighty to sincerely safeguard the federal republican system, guard the public interest and the safety of the homeland, uphold the *Constitution* and the law, and discharge my duties sincerely, faithfully, and impartially, and may Allah be my witness.”

The oath must be taken before the highest judicial authorities in the respective administrative unit. The Law of Governorates does not obligate the qa'im maqams and mudiysars to take a similar oath, nor does it comport with the religious beliefs of some minorities in Iraq.

Article 30:

The governor, his two deputies, and the heads of the administrative units shall continue to discharge their daily responsibilities after the expiration of the electoral term of the councils until their respective successors are elected by the new councils.

Article 31:

The governor shall exercise the following powers:

First: Draft the general budget of the governorate in accordance with the constitutional standards, except for those which fall within the jurisdiction of the federal government, and submit the budget to the governorate council.

The general draft budget will include the budget of the administrative units and its offices in the governorate. It does not include the budgets of line ministries providing services in the provinces.

Second: Execute the decisions of the governorate council as long as they are consistent with the applicable laws and the provisions of the *Constitution*.

Third: Execute federal general policy within the boundaries of the governorate.

Fourth: Oversee and inspect public facilities in the governorate except for courts, military units, universities, colleges, and institutions.

Public facilities include all the administrative units and their offices in the governorate, including line ministries, directorates, and other federal offices and

security agencies. “Oversee and inspect” does not grant authority over the actions of line ministry employees occupying or operating those facilities.

Fifth: Represent the governorate at the conferences, symposia, and general forums to which he is invited and which are relevant to the governorate affairs and local administrations. He may delegate any of the governorate employees to carry out these functions in accordance with the law and applicable rules and regulations.

Sixth: Establish universities, colleges, and institutes in the governorate in coordination with the Ministry of Higher Education and Scientific Research within the governorate budget and with the approval of the council by an absolute majority of the council members.

This is consistent with Article 114, “Sixth,” of the *Constitution*, which states that one of the competencies to be shared between the federal and regional authorities is “to formulate the public educational and instructional policy, in consultation with the regions and governorates that are not incorporated into a region.”

The only budget available to the governorate to establish such institutions is the investment budget.

Thus, while facilities and equipment for a university may be funded by the governorate, personnel would have to be included in the budget of the Ministry of Higher Education.

Seventh:

1. Issue official letters of appointment for local employees in the governorate from grade 5 and below in the employment scale stated in the *Federal Civil Service Law* upon the recommendations of the offices concerned and in accordance with the staffing plan approved by the council.

This covers employment grades 5–9 and applies to the employees of the governor or the council, not including line ministry personnel.

2. Appoint local employees in the governorate on a permanent basis from grade 4 upward in the employment scale stated in the *Federal Civil Service Law* except for the senior positions upon the recommendations of the offices concerned and in accordance with the guidelines prepared by the council.

Appointments for senior positions (grades 1–4) require a number of approvals (governorate council, governor, and competent minister) as stated in Article 7, “Ninth,” of the Law of Governorates.

Eighth: Take legal and administrative measures against the directors general and employees in the governorate with the approval of the council by a simple majority.

Administrative measures include salary increment, promotion, disciplinary action, and termination.

Ninth:

The governor may:

1. Order the police to investigate the crimes that take place within the administrative boundaries of the governorate according to the law and to present the investigation reports to the concerned judge, provided that the governor has been informed of the investigation outcome.
-

The Law of Governorates does not specify the type of crimes and specialized courts. There shall be a court order first before conducting investigations. This

particular power of the governor may conflict with judicial jurisdictions.

2. Establish or abolish police stations with the approval of the council by the absolute majority of the council members in accordance with the relevant laws and guidelines of the Ministry of Interior.

Tenth:

1. The governor shall have direct authority over the local security agencies and all authorities tasked with protection duties relating to peace and order within the governorate, except for the armed forces (army units).
 2. If the governor is convinced that the security agencies in the governorate are unable to fulfill their duties in maintaining peace and order on account of insufficient numbers, he shall promptly inform the Minister of Interior with a recommendation as to the size of the numbers required to fulfill their responsibilities.
-

The governor can recommend changes to the security plans.

Eleventh:

1. The governor shall have the right to object to the decisions of the governorate council or the local council in the following cases:
 - A. If they contradict the *Constitution* or applicable laws
 - B. If they are not within the competence of the council

That is if they are not within the competencies specified in the Law of Governorates.

- C. If they contradict the general plan of the federal government or the budget.
2. The governor shall communicate to the council concerning the reasons for his objection together with the decision of the council within 15 days of the notification of the decision.
3. If the council concerned affirms its decision or amends it without removing the violation communicated by the governor, the matter shall be referred to the Federal Supreme Court for conclusive decision.

The council shall refer the case to the court.

Article 32:

The ministries and offices not affiliated with ministries shall notify the governor of their correspondence with their offices and public utilities within the governorate so that the governor may monitor the implementation of the instructions in such correspondence. The heads of the offices and public utilities in the governorate shall abide by the following:

First: Notify the governor of official correspondence with their respective offices.

Second: File reports to the governor on matters that he has referred to them.

Third: Notify the governor of their activity on matters that relate to security and important issues as well as on matters that relate to more than one office within the governorate or the conduct of their personnel.

Fourth: Notify the governor when they commence and end their work.

Fifth: Fulfill the functions that the governor assigns and the work of the committees that the governor requires to be formed.

Federal ministries and offices not affiliated with ministries are required to report to the governor, or his monitoring ministries within the governorate, at the commencement and completion of projects and activities.

This provision is repeated for qada'a and nahiya administrators within their respective administrative units.

This would give the governor awareness, but not control over, the activities in the governorate of the ministries and offices not affiliated with ministries.

Article 33:

First: The governor shall have a maximum of five assistants for administrative and technical affairs and they shall fulfill the tasks assigned by the governor and work under his supervision and guidance.

This provision enables the governor's office to hire staff to support the governor but implicitly requires a budget from the Ministry of Finance.

Second: The assistants shall have at least 10 years of experience in their specialization and shall meet the requirements stipulated for deputy governors.

Third: The assistants shall hold the rank of deputy director general.

Article 34:

First: An advisory board consisting of not more than seven advisors specialized in legal, technical, and financial affairs chosen by the governor shall be formed in each governorate. The advisory board shall report directly to the governor and shall function under his supervision and guidance.

Second: The advisors shall have 10 years of experience in the areas of their specialization. Each of them shall hold the rank of assistant director general.

Third: The board referred to in Paragraph "First" of this Article shall assume the responsibility of studying matters referred to it by the governor, each

according to his area of specialization, and shall submit relevant written recommendations.

Article 35:

The governor may delegate some of his powers to his deputies and assistants. The governor shall not delegate powers exclusively vested in him.

Article 36:

The services of the governor's experts of the advisory board, assistants, and heads of administrative units who are permanent public employees shall be transferred to the staff of the administrative units in which they are elected or appointed for such positions for the duration of their tenure.

Article 37:

First: The governor, his two deputies, and heads of administrative units may submit their resignation to the councils that elected them. The resignations are deemed accepted as of the date of their submission.

Second: Their replacements shall be elected pursuant to the procedures stipulated in this Law.

These procedures are stipulated in the following articles of the Law of Governorates:

- Article 5
- Article 8, "Third"
- Article 12
- Article 25
- Article 26.

Article 38:

The provisions for removing the governor stipulated in this Law shall be applicable to the two deputies of the governor.

Chapter 2

Qada'a and Nahiya Administrators

Article 39:

First: The qada'a and nahiya administrators are the highest executive employees in their administrative units to be elected in accordance with Paragraph 3 of Articles 8 and 12 of this Law.

Second: The qada'a and nahiya administrators are required to meet the conditions stipulated for the governorate council member in Article 5 of this Law and hold a university degree.

Third: The governor shall issue an official letter of appointment to the qada'a and nahiya administrators, who shall be under his guidance and supervision.

Fourth: The qada'a administrator holds the rank of director general and the nahiya administrator holds the rank of deputy director general.

Article 40:

First: In the absence of the qada'a administrator, the governor shall assign the administrator of a nahiya affiliated to the qada'a to function in his place.

Second: In the absence of a nahiya administrator, the qada'a administrator shall assign the administrator of a nahiya affiliated to the qada'a to function in his place.

Third: The qada'a administrator shall notify the governor and the nahiya administrator shall notify the qada'a administrator of their absence sufficiently in advance so that the governor may appoint a replacement for the duration.

SECTION ONE POWERS OF THE QADA'A ADMINISTRATOR

Article 41:

The qada'a administrator shall exercise the following powers:

First: Execute the decisions of the qada'a council that are consistent with the *Constitution* and applicable laws.

Second:

1. Directly supervise and inspect the public offices in the qada'a and their employees excluding the army, courts, universities, and institutes and to impose legally sanctioned punishments on the violators with the approval of the qada'a council.
2. The qada'a administrator may order the police to investigate the crimes that take place within the boundaries of the qada'a and to present the investigation reports to the investigative judge concerned, and must be informed about the investigation outcome.

Third:

1. Maintain security and order and protect citizen's rights, lives, and property.
2. Preserve the rights and public property and collect the revenues in accordance with the law.

Fourth: Prepare the draft budget of the qada'a and submit it to the qada'a council.

Fifth: When necessary, the qada'a administrator may order police patrols and posts to be established on a temporary basis within the qada'a in order to maintain security.

Article 42:

The heads of government offices within the governorate shall submit to the qada'a administrator, where they are relevant to the qada'a concerned, copies of their communications and decisions to their respective branch offices so that the qada'a administrator may follow up on the actions taken.

SECTION TWO

POWERS OF THE NAHIYA ADMINISTRATOR

Article 43:

The nahiya administrator shall exercise the following powers:

First:

1. Directly supervise and inspect the public offices in the nahiya and their employees, but excluding the army, courts, universities, and institutes.
2. The nahiya administrator may order the police to investigate the crimes that take place within the boundaries of the nahiya and to present the investigation reports to the investigative judge concerned. The nahiya administrator shall be informed of the investigation findings.

Second:

1. Maintain security and order within the boundaries of the nahiya.
2. Preserve the rights and public property and collect the revenues in accordance with the law.

FINANCIAL RESOURCES

Article 44:

The financial resources of the governorate shall consist of the following:

First: The budget transfers to the governorate from the federal government in accordance with the constitutional criteria prepared by the Ministry of Finance and approved by the Council of Representatives.

The budget transfer from the federal government to the governorate shall be an equitable share of federal revenues based on the population, resources, and needs of the governorate (Article 121, “Third,” of the *Constitution*). Currently, by Ministry of Finance regulations, these funds are to be used only for investment purposes, with the exception of staff and other costs necessary to support investment decisions.

Second: Revenues generated from the governorate services and investment projects.

Third: Proceeds from taxes, duties, and local fines in accordance with the *Constitution* and the applicable federal laws.

Fourth: Donations and gifts that may be received by the governorate in a manner that would not contradict the *Constitution* and the applicable federal laws.

Fifth: Proceeds from the sale and lease of public movable and immovable assets in accordance with the *Law on Sale and Lease of Public Properties* and other applicable laws.

The appointment of a special commission is called for in the *Constitution*, Article 106: “A public commission shall be established by a law to audit and appropriate federal revenues. The commission shall be composed of experts from the federal government, the regions, the governorates, and its representatives.” Further legislation detailing revenue is likely to be required. Currently, numerous provinces generate significant revenue on their own through fees for services and other transactions, such as the revenue generated from religious tourism in Najaf.

FINAL PROVISIONS

Article 45:

First: A high commission for coordination between the governorates headed by the Prime Minister shall be formed and shall include as members the governors. This commission shall specialize in reviewing the affairs of the governorates, their local administrations and means of coordination between them, and shall address problems, obstacles that it faces, and common issues between the governorates.

Second: The commission shall meet at the invitation of its head every 60 days or when necessary.

Third: The head may invite those whose presence is required and necessary for the commission meetings.

The high commission's role is advisory in nature.

Article 46:

The governorate council and administration shall adopt recognized accounting systems.

The Ministry of Finance will specify what constitutes recognized accounting systems.

Article 47:

The governorate offices and councils shall together be subject to monitoring and auditing of the Supreme Audit Board and branches of the independent commissions formed in accordance with the constitutional provisions.

Article 48:

The period of real service of the governor, his two deputies, his assistants, his advisors, and the heads of the administrative units shall be taken into consideration for the purposes of increment, promotion, and retirement.

Article 49:

Prior to commencing their respective duties, the head and members of the council and local councils, the governor and his deputies, and heads of administrative units shall be sworn in before the highest judicial authorities in the respective administrative unit in the manner stipulated in Article 26 of this Law.

Article 50:

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

Article 51:

Every removal or relieving of duties referred in this Law shall be preceded by a hearing for the individual concerned.

Article 52:

The budget allocated to the governorate from the federal budget shall be submitted directly to the governorate by the Ministry of Finance after subtracting the strategic expenditures.

Strategic expenditures are not defined by the Law of Governorates. Strategic expenditures can be defined by an intergovernmental fiscal relations law or by each annual budget.

Article 53:

The following shall be abrogated:

First: The *Governorates Law No. 159 of 1969* as amended.

Second: The *Law on Peoples' Councils No. 25 of 1995* as amended.

Third: References to the formation and competencies of the municipal councils in the revised *Law of the Municipalities Administration No. 165 of 1964*.

Other than the section/chapter on the formation and competencies of the municipal councils, the rest of the *Law of the Municipalities Administration No. 165 of 1964* remains in effect.

Fourth: Coalition Provisional Authority Order No. 71 of April 6, 2004, as amended.

Fifth: Laws, regulations, and decisions that contradict with the provisions of this Law.

Article 54:

First: The Council of Representatives shall promulgate a law for the council elections which shall be held in accordance with this law within 90 days from the date this law is enacted by the Council of Representatives.

Second: The next council elections shall not be conducted later than October 1, 2008.

Article 55:

First: This Law shall come into force as of the date of its publication in the *Gazette* and it shall be applicable to the governorates not incorporated into a region only after the conducting of the next council elections, except Paragraph “Second” of this Article.

Until new councils are elected, prevailing laws, orders (including CPA 71), and practices remain in effect.

Second: The provisions in the Articles of this Law that affect the benefits of the council members, heads of administrative units, and the two governor’s deputies, shall come into effect as of April 9, 2003.

Justifying Reasons

This Law has been enacted pursuant to the scope of the competencies and powers granted by the *Constitution of the Republic of Iraq* to the governorates and their administrations and for the purpose of organizing these competencies and powers in a manner that is in harmony with the new state that is based on the federal and decentralized system, and taking into account the fact that existing legislation is inadequate.

NOTES





