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# **Iraq Local Governance Program – Phase III**

**Quarterly Report  
October–December 2009**

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# **Iraq Local Governance Program – Phase III (LGP III)**

Quarterly Report, October–December 2009

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Prepared for  
USAID/Baghdad  
Lado Gorgadze, Contracting Officer's Technical Representative

Prepared by  
RTI International<sup>1</sup>  
3040 Cornwallis Road  
Post Office Box 12194  
Research Triangle Park, NC 27709-2194

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<sup>1</sup> RTI International is a trade name for Research Triangle Institute.

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## Abbreviations and Acronyms

AQI	Al-Qaeda in Iraq
ARDP	Accelerated Reconstruction and Development Program
COR	Council of Representatives
GAPTIS	Governorate Accounting and Project Tracking Information System
GIS	geographic information system
GO	Governor's Office
HCCP	High Commission for Coordination of the Provinces
HR	Human Resources
ILGA	Iraqi Local Government Association
LGP	Local Governance Program
LOE	level of effort
MOF	Ministry of Finance
MOPDC	Ministry of Planning and Development Cooperation
NGO	nongovernmental organization
PC	Provincial Council
PDP	Provincial Development Plan
PDS	Provincial Development Strategy
PFMAG	Public Finance Management Action Group
PPA	Provincial Powers Act
PPLs	Prioritized Project Lists
SDPM	service delivery performance measurement

# I. Introduction: Contradictory Trends

At the end of the fourth quarter of our first implementation year, we find ourselves in a place of uncertainty. Although the year began with peaceful provincial elections, violence now increases as we approach national elections. The year began with great enthusiasm about decentralization and ends with doubts that decentralization will ever be realized. The following events illustrate these contradictory trends:

- On October 20, coordinated suicide car bombs were detonated near the Ministry of Justice and the Ministry of Public Works, killing over 150 people, and seriously damaging the Baghdad provincial hall;
- On October 25, the Shura Council issued an opinion, questioning the extent of the provincial councils' authority to issue legislation;
- On November 21, a bill promising the devolution of the Ministry of Public Works to the control of the governors received its second reading in the national parliament, the Council of Representatives (COR), but questions were raised about the present capacity of the governors' offices to manage basic services;
- On December 8, another coordinated attack occurred in central Baghdad, again challenging the ability of the current administration to keep order, though only resulting in 4 fatalities this time;
- On December 30, a suicide bomber attacked the governor of Anbar province, seriously injuring him and killing a council member; and
- On December 31, the chairman of the Finance Committee of the COR announced that the funds allocated to the provinces in a yet to be passed budget law would be reduced from 4 trillion to 2.7 trillion Iraqi dinar, with the difference being handed over to the ministerial departments.

The violence and the restriction of local authority are related. Every bomb sends the message that the current government of Prime Minister Nouri al-Maliki cannot secure the peace and stability necessary to development and decentralization. Challenges to the authority of the central government by insurgent or terrorist groups provoke it into exerting stricter control, and stricter control necessary to the preservation of security (and perhaps even the current administration) encourages the retention of control over State responsibilities other than security.

Thus, we are ending this year with less confidence about the direction of government than we began it. If the trend was towards decentralization at the beginning, it is towards recentralization at its end. Through this increasingly complicated political environment, we have tried to keep the project focused on delivering neutral technical assistance to build the capacity of subnational government, no matter what its relationship to the central government once it concludes the next round of elections. This report represents a summary of those efforts in the last three months of the year.

## II. Activities Highlighted by Province

In this section, we examine quarterly highlights from provinces currently under the jurisdiction of the Provincial Powers Act (PPA).<sup>2</sup> Our intent is not to give an exhaustive review of all the activities conducted in each province during the past three months. Rather, it is to highlight something distinctive, and where possible, unique. Even though the PPA applies in the same manner to all the provinces, and national law and ministerial regulation also, the way that law is interpreted may differ due to factors outside the law that condition its understanding. In this way, the following, alphabetically-organized review of the provinces is meant to provide only a snapshot of what distinguished them in the fourth quarter.

### Anbar: Measuring Performance through Pilots

In the 14 provinces served by the Iraq Local Governance Program – Phase III (LGP III), we are assisting elected provincial officials in conducting service delivery pilots. Anbar province has chosen sewage facilities throughout the province for measurement. In Ramadi municipality, our staff explained the necessity of removing more solid waste from the streets. As the Provincial Council (PC) members reached out into the community, we were able to demonstrate the benefits of not only participating in hands-on opportunities to make a difference to the residents of the area, but also of raising these members' visibility in the community. When local officials assert their presence and act on the community's behalf, citizens are more likely to recognize and react positively to them.

While furthering their service delivery pilot project, the Anbar PC Services Committee received performance measures from the Anbar Water Office. Our advisors collaborated with provincial officials on the PC committee to help them further understand these measures related to the replacement of broken water pipes, specifically in the leaky railway station. This coordination between local ministerial departments and the elected provincial governments provides a tangible example of how these kinds of problems can be managed and corrected locally.

### Babil: The Drive to Fiscal Decentralization

At the request of the Babil PC, LGP III advisors conducted a seven-day planning workshop in Hillah in mid-October. Among the participants was the PC's Strategic Planning Committee as well as the staff of the Babil Information Center. Topics for discussion included strategic planning principles, the process for updating the province's Provincial Development Strategy (PDS), and advanced training skills.

As a result of LGP III technical support, in November Babil province finalized a new human resources (HR) system. It includes both an organizational structure and job descriptions.

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<sup>2</sup> Also known as Law No. 21, the *Law of Governorates Not Incorporated into a Region*.



*The Babil province's workshop on financial resources development included participants from six provinces in the South Central region.*

Also in November, Babil's governor took significant initiative in forming a financial department, the first of its kind at a subnational level, similar to the Ministry of Finance (MOF), but at the provincial level. The department is responsible for projecting budgets, collecting revenue, and monitoring expenditures.

The governor further proved himself a pioneer in the ways and means of fiscal decentralization when he and the Babil PC chairman hosted a financial resources workshop in mid-December on the site of the ruins of ancient Babylon. The LGP III South Central regional team provided

organizational assistance for the workshop, where PC members and department staff from Babil and the surrounding provinces of Najaf, Karbala, Wasit, Diwaniyah, and Muthanna participated in brainstorming sessions that focused on fiscal decentralization. While such discussions may be in the spirit of Law No. 21, the Iraqi Federal Government has not actually approved fiscal decentralization. (See discussion under *Work Element 2: Capital Investment Planning and Budgeting*.)

## Baghdad: Collaboration towards Improved Monitoring and Oversight

To build the capacity of their staffs, in October, local government officials interested in service delivery performance measurement (SDPM) visited sewage facilities within their jurisdictions. Many of these site visits prompted discussion on water standards and installation necessities and processes. In Baghdad, site visits included the Khadhumiya water project, two visits to the new sewage networks in Zafarania hayy (neighborhood) in Karrada district, and one to the *beladiya's*<sup>3</sup> water treatment plant. These visits underscored the necessity of providing monitoring and oversight, with the goal of ensuring proper project completion. As a result, PC members organized themselves into subcommittees, assigning members to specific projects to begin a more systematic approach to monitoring.



*Local government officials participating in SDPM capacity building visit a water treatment facility in Baghdad.*

Overlapping jurisdictions in Baghdad province caused provincial officials and the *Amanat* (Baghdad mayoralty) to collaborate regularly and help each other define parameters, with the assistance of the LGP III team. Together, they selected the Khadhumiya water project as their service delivery improvement pilot project to define and strengthen their monitoring roles.

<sup>3</sup> Office of the Ministry of Municipalities and Public Works in the *qada'a* and *kati'*.

The *Amanat* contracted for the construction of this project. The *Amanat* staff, with PC members and Governor's Office (GO) staff, developed performance measures directed at project construction and water delivery service to the neighborhood. The *Amanat* took responsibility for the operations of the facility, while the province is covering oversight and monitoring, ensuring infrastructure investment will result in improved public services.

## Basrah: Local Revenue Generation Remaining a Priority

Much attention has been focused on Basrah's attempts to collect a share of the revenue generated by drilling, refining, and shipping petroleum products from and through the province, encouraging others with more moderate petroleum resources to seek their own share. In keeping with the Basrah GO's interest in fiscal decentralization, in October, conflicts emerged as the governor of Basrah sought to collect taxes on all goods sold within the province.

Likewise, a problem arose after attempts to impose a tax on foreign pilgrims continuing on to the Shi'a holy shrines in Karbala and Najaf and to extract a percentage of the price of a barrel of oil led to a practical problem—what to do with the money.

When the Basrah governor tried to open a bank account to deposit his provincial revenues, the MOF told him that he lacked the authority. He challenged the ministry and opened a private account anyway. So far, the stand-off remains unresolved, but if the law authorizes the provincial governments to collect taxes, fees, and fines (and it does), they will need a place to deposit these revenues. Given the low level of trust between some provinces and the central government, it is unrealistic to expect that monies, once collected, will readily be handed over to Baghdad. A solution must be found, and our staff continues to seek and discuss options with the elected officials in the provinces, options that might one day make their way into federal legislation.

Ultimately, the distinction between central and provincial authority will require a national, and probably constitutional, solution. At a minimum, further clarity will need to be brought to the PPA, and ministerial regulations be rewritten to accommodate the expanded authorities of the councils.

## Diyala: Organizing a Civilian Surge

Throughout this quarter, LGP III advisors have assisted provincial HR offices in laying the necessary groundwork for a "civilian surge" of 20,000 new (but temporary) provincial-level ministerial positions, approved by the central government in an attempt to mitigate high unemployment in the provinces.

Similar to the Sons of Iraq program, this "surge," as granted to Diyala province by the COR, is part of an effort to defeat Al-Qaeda in Iraq (AQI) economically by recruiting otherwise idle hands into the service of the government.

Our advisors worked closely with the GO's HR manager in establishing a hiring process, setting up recruitment, interviews, and a selections process. By the end of December, staff were hired and will start work in January 2010. Although the program is intended to provide gainful employment for six months only, the governor has decided to take advantage of the

opportunity and assign a small number of clerks to perform Governorate Accounting and Project Tracking Information System (GAPTIS) data entry.

In November, the service delivery pilot performance measurement team completed a draft performance measurement report for assembly and presentation on a periodic basis (monthly or quarterly) to the GO, PC, and the public. The document can be used to report on the performance of local services and meet the needs of monitoring and oversight under the PPA. Multiple service delivery managers from the central ministries participated in this effort.

In December, an LGP advisor met with the provincial accounting manager and discussed the apparent contradiction between the province's Accelerated Reconstruction and Development Program (ARDP) expenditure reports and numbers reported by the Public Finance Management Action Group (PFMAG). The accounting manager noted that Diyala reported the allocation, but not as capital investment projects. This contradiction points to the need for a revision in practice to permit provinces to employ accrual, rather than cost-based accounting.

## Salah ad Din: Community Outreach Leads to Increased Legitimacy

In October, officials increased their community outreach in an effort to better track projects. With the encouragement and counsel of LGP III planning and budgeting advisors, PC members formed joint tracking committees with officials at the subprovincial level to investigate delays and develop solutions to keep projects operating on schedule.



*LGP III staff with the Acting Governor of Salah ad Din province at the official transfer ceremony for the GIS Web site.*

In November, LGP III officially transferred the geographic information system (GIS) ownership to the GO, including ownership of the Salah ad Din GIS Web site, which was created by the LGP III team. The event was attended by the acting governor and other senior GO and PC officials.

Working with the PC Media and Foreign Relations Committee, LGP III advisors assisted in formulating a policy of transparency and public citizen outreach. This included reaching an agreement with a local television channel to host PC members and other key provincial

officials so they could better engage in live interviews, hear citizen's complaints and concerns, and facilitate the flow of information on crucial matters. LGP III played a significant role in founding the *PC Gazette* and *Voice of PC* newspapers, both of which are dedicated to coverage of PC events.

As a result of LGP evaluation, in December, the GO adopted the HR guidelines provided by LGP III for job descriptions, merit promotions, and organizational structure.

## III. Progress of Work Element Activities

This section describes our work over the last quarter by each of the five work elements of our work plan. Although progress in each province is inevitably linked to the unique political context there, our five Work Elements are designed to cut across these differences. The five Work Elements are:

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

The first four Work Elements apply to LGP III activities in the 14 provinces covered by the PPA. Given their national scope, activities under Work Element 5 are currently taking place in Baghdad only. Together, the five Work Elements guide LGP III efforts and reflect the progress of the elected provincial bodies we serve.

### Work Element 1: Provincial Council and Governor Orientation

This Work Element was driven by two subactivities: 1) an introduction to LGP III and its services, delivered in all focus provinces in the first quarter of 2009 by our Iraqi team leaders; and 2) a series of eight PowerPoint presentations which, as of the end of the third quarter, had been delivered by Iraqi technical staff to council members, governors, and their staffs in all LGP III focus provinces. *Therefore, all activities under this Work Element were completed by the end of the third quarter.*

### Work Element 2: Capital Investment Planning and Budgeting

The PPA assigns to each PC the responsibility to outline a Provincial Development Plan (PDP) in coordination with the relevant central government ministries and in line with the overall national development plan. Under LGP III, this process is to build upon each province's existing PDS and PDP, which were submitted to and formally accepted by the central Ministry of Planning and Development Cooperation (MOPDC) in 2008. Consistent with the overall design and intent of LGP III, our role in building upon these documents is that of capacity building, enabling Iraqis to set their own priorities for improving provincial institutions and services—and to do so within the parameters established by the PPA.

An important focus throughout the past year has been the MOPDC-mandated Prioritized Project Lists (PPLs). Although the PPLs include a group of proposed projects over the coming five years, only those that are proposed for the coming year include a detailed budget for consideration by the MOF. When only three provinces were able to meet the MOPDC's deadline of August 31, 2009, the deadline was extended by six months, until February 2010.

In mid-November, a two-day conference convened in Sulaymaniyah by the MOPDC, discussed the five-year plans with the hope of reaching an agreement on them with the

provinces. Unfortunately, rather than motivate the PCs or governors to complete the 17-page forms required for each project in their lists, the conference discouraged provincial governments from taking the planning process seriously. Instead, many provincial governments are certain that they will get their funding, even if they have not submitted PPLs.

Such certainty does not instill the principles of strategic planning and does not provide the incentive for PCs to commit the time to something they believe will be ignored by ministries at the federal level. For instance, although the MOF was supposed to have submitted a draft budget to the COR by the middle of October, and that budget was to include the lists of projects offered up by the provinces and vetted by the MOPDC, the MOF missed the deadline. This contributed to the general sense among some provincial officials that the process itself, from the beginning, was not sincere. Differences, too, between PCs and governors have likewise contributed to missed deadlines and declining interest.

It was in this climate that LGP III advisors continued to stress the importance of a transparent and collaborative process in the development of the lists. One such example was a seven-day workshop conducted in mid-October at the request of the Babil PC, where our advisors provided capacity-building assistance in the area of provincial planning. Using the principles of strategic planning, they discussed how to best update the province's PDS, providing advanced training skills to the PC's strategic planning committee and staff of the Babil Information Center.

Many provinces completed the task of categorizing old projects and budgets, but struggled to move forward with the 2010 projected plans. In Diyala, for example, the PC expressed their dissatisfaction with the 2010 list prepared by the governor. Our planning and budgeting team advised the PC to wait until the governor's office, local councils, and directorates have had the opportunity to offer their feedback on his list.

Other provinces such as Salah ad Din and Maysan were also dissatisfied with the proposed projects. LGP III advisors worked diligently to help these provinces identify the areas of conflict and reach consensus. Our LGP III advisors remain confident that provincial staff can complete these proposals in a timely fashion, and continue to stress the importance of the collaborative process, despite the lack of support from ministerial counterparts.

Although we had hoped that a budget law for 2010 would be passed before the end of the year, we now do not expect it to be approved before January or February of next year. Raising further concern is a recent statement by the chairman of the financial committee of the COR, announcing an amendment to the draft federal budget that will cut allocations for provinces from an estimated 4 thousand billion Iraqi Dinar to almost 2.7 thousand billion Iraqi Dinar. The chairman said that the difference will be transferred to the ministries' investment allocation, which will be increased by 20 percent. This is a significant amendment and quite contrary to the spirit of Law No. 21 in that it gives even greater power to the federal authorities and moves standards closer towards a centralized approach of service delivery to the provinces.

It is just such evidence that drives provinces to seek their own revenue. Even though it was not an explicit part of the 2009 Work Plan, LGP III has been drawn into this discussion. Following meetings in Babil in December, a number of recommendations were made to actualize the authority given to the provincial governments by the PPA (but denied them in practice). This problem of theory versus practice has dominated much of LGP's work.

On December 14, at the site of ancient Babylon, the Babil PC sponsored a full-day workshop with the Babil governor and representatives of the PCs and the departments of Babil, Diwaniyah, Karbala, Muthanna, Najaf, and Wasit provinces. The 92 attendees worked in break-out sessions on four topics of interest: (1) the legal framework for raising and managing local revenues, (2) sources of funding, and (3) the management of and (4) the monitoring of funds.

At issue, legally, are Articles 106 and 122 of the Iraqi *Constitution* and Article 22 of the PPA. Together, they suggest a regime of greater fiscal and administrative decentralization and provincial governments that are authorized to collect taxes, duties, and fees. The working groups formed during the conference urged that additional legislation emanate from the COR to clarify that authority, and that the councils themselves coordinate with one another in passing unified local legislation to exercise it.



*Participants in a working session at the financial resources development workshop in Babil province.*

Complicating whatever legal authority now exists and whatever might exist in the near future are practical problems. Among them are the imposition of a single chart of accounts that is identical for all provinces, the absence of provincial-level finance departments (under the oversight of the governor), and the MOF's current prohibition against provincial bodies opening their own bank accounts. Complicating things further is uncertainty around who would be authorized to assay and collect taxes, something presumably within the executive authority of the governor, but something nonetheless attempted once by the Babil PC.

Conference participants discussed some of those ways, looking at mechanisms for sharing resources between the central government and the provinces, especially for natural wealth taken out of a province. While much attention has been focused on Basrah's attempts to get some of the revenue generated by drilling, refining, and shipping petroleum products from and through the province, other provinces with more modest petroleum resources are eager to claim their share.

The schemes discussed at the workshop focused on surcharges on the activity of contractors with whom the central government had concluded agreements, to extract that wealth, a politically more viable form of taxation than taxing voters. Other sources of funds discussed that would impact local citizens were fees for the registration of vehicles and businesses, and fines for the violation of local ordinances. Obviously less significant in potential, such fees and fines are also much more likely to be accepted by the central government than any direct charges on the production of oil.

Whatever the source of funding, the elected provincial governments are clearly not in a position to manage any monies received at the moment. In answer to that reality, the workshop participants revisited the Babil governor's idea of a provincial-level finance department.

First mentioned in our November monthly report, the so-called Revenue Unit in the GO would be a “one-stop shop” for budgeting, assaying, collecting, and managing locally generated resources. In fact, one outcome of the workshop was a formal request to the PC to pass local legislation creating such a unit. As we have previously reported, however, the governor himself anticipates any such unit to run afoul of the MOF, which leads to a final, legal complication in the whole revenue-generation debate—the absence of a government body with clear jurisdiction to resolve disputes between the provinces and the ministries. At the moment, without an amendment to the statute creating it, the *Shura* Council lacks such jurisdiction. Hence a host of legal and practical challenges remain between the authority in the PPA for the provincial governments to collect local revenues and their ability to do so.

### Work Element 3: Oversight and Accountability of Services Delivery

Work Element 3 is about assisting provincial officials’ efforts to make good on the goals of their Capital Investment Plan and Budget. We are 1) aiding in the development of performance measures for public services; and 2) continuing to facilitate implementation, at the provincial level, of GAPTIS, a tool for monitoring and oversight.

With counsel from our LGP III advisors, several provinces embarked on service delivery pilot projects, with the basic service selected for most of these pilots being water and waste water improvement. Because the *Amanat* is the one local government in the country that possesses jurisdiction over service delivery, and with an amicable working relationship with the Baghdad PC, our Karrada-based staff was well situated to help both elected bodies measure performance of service delivery.

Site visits included trips to the Al Khadhumiya water project, the new sewage networks in Zafarania *hayy* and Karrada districts, and the *beladiyah*’s new water treatment plant. Using the Al Khadhumiya water project site, our advisors further illustrated the differences between project management and service delivery to key provincial leaders, helping them focus on meeting measurement goals.

LGP III staff worked with PC members, as well as directors and managers in the Province and *Amanat*, in developing a public service pilot for the Al Khadhumiya water project. The survey used quantitative and qualitative performance measures to understand the state of service delivery and provide a basis for measuring service improvements. Other financial and project completion measures were collected from the *Amanat* on the water treatment plant under construction at Al Khadhumiya. Additionally, the group of officials approved the basic questions for a household survey to better understand the current quantity and quality of water delivered to Al Khadhumiya households. The survey was delivered to a representative sample of households.

LGP III staff met weekly with government staff, PC members, the governor, and the mayor. These were educational meetings to develop the provincial and *Amanat* staff’s capacity to understand how performance measures assist in improving services delivered to the public. The PC members and GO staff received insights on types of measures, what makes a good measure, how to collect data, and how to perform basic analysis. The staff then conducted the household survey and collected financial and other data on the construction of the water treatment facility.

Replicating the effort in Al Khadhumiya, we assisted a pilot project committee in Ninawa. Both staff from the GO and members of the provincial water department participated. As in the Baghdad *Amanat*, the assistance aimed to conduct a pilot of the delivery of a basic service in the hopes of seeing the quality of that service improve. The pilot project committee was formed like a stakeholder group, with representatives of the GO and affected departments participating. A set of indicators was defined and refined to a number that was manageable for a pilot before data was collected. As a pilot study, LGP III assumed the exercise was an experiment, but it was greeted so enthusiastically that many of the committee members assumed that it would be permanent. LGP III had to explain that the point of this experiment was to work out the mechanics that might be adopted by other service departments working in cooperation with elected officials, not initiating a new government institution.

Having assisted in forming the committee and collecting its data, LGP III staff also assisted in analyzing its results and preparing a report that will go to the PC, GO, and committee members. The report will detail the findings and make recommendations for sharing the methods with other service delivery departments and broadening and improving the oversight of elected officials.

## GAPTIS 2.0 Rollout Continues

Throughout the fourth quarter, LGP III staff continued to facilitate implementation of projects at the provincial level by sharing tools for improved monitoring and oversight. GAPTIS is a financial management tool primarily intended to track expenditures of ARDP funds. Our advisors have completed installing GAPTIS equipment and have trained GO staff in *all* 14 provinces covered by the PPA.



*LGP staff from across Iraq participating on a panel at the National GAPTIS Users Conference.*

With the encouragement of our fiscal advisory team, PC members from Salah ad Din formed joint tracking committees within each district, each chaired by a PC member and including the district mayor. Many projects there had seen unfortunate delays, and the committees were to investigate delays and develop solutions to keep ARDP projects operating on schedule.

Najaf and Maysan provinces conducted beta-testing GAPTIS version 2.0 and presented their experiences at our National GAPTIS

Users Conference, November 23–25, 2009, when we hosted provincial officials from across Iraq—125 participants, including the Baghdad Deputy Governor, Najaf Deputy Governor, deputy PC chairs, and PC members, as well as various accounting, contracting, and project planning unit heads. Through a variety of activities, the participants shared experiences, learned about GAPTIS 2.0, exchanged information on best practices, and formed a nationwide community of users.

The rollout of version 2.0 continued through the month of December and is included among the project's monitoring activities in its Year 2 Work Plan.

During the conference, the Deputy Governor of Najaf spoke about the critical necessity that provincial governments track reconstruction projects. He explained that GAPTIS has helped streamline this process in Najaf by generating required reports quickly and accurately, and urged his colleagues to make use of the technology. Representatives from Maysan province emphasized the importance of accountability and transparency in fighting corruption, and echoed the sentiments of the other dignitaries that GAPTIS could aid in that fight.

GAPTIS 1.0 was especially successful in Najaf because of the political commitment of the governor. Additional conditions of success included the hiring and training of competent staff and locating accountants and programmers in the same office to foster better communication and troubleshooting. Consequently, we premised our GAPTIS activities for the second year on the attainment (or in some instances improvement) of these necessary conditions. Before rolling out GAPTIS 2.0, these indicators of success should already be in place because technology alone will not solve what are essentially problems of organization. A GO with the requisite commitment will have better financial reporting, regardless of whether the staff in that office are using the latest software or keeping records manually.

## Work Element 4: Organizational Development and Systems

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

The PPA required that each PC adopt bylaws within 30 days of its first meeting, and although we reported all 14 LGP III provinces had completed this task, amendments to bylaws continue. We acknowledge that bylaws are not necessarily permanent and are subject to the changing relationships between the central government and the provinces and between the elected officials in a province and the appointed ones that serve departments. LGP III provides ongoing assistance on an as-needed basis to help councils incorporate changes into their internal rules. These changes may be driven more by politics than practicality, but it now seems irrefutable that bylaws are living documents. They will change (and very likely grow in length and complexity) as the experience of the councils themselves grows. Establishing these bylaws, however, was only the first step of the councils to organizing their work. Organizational systems for both the PCs and GOs must be developed.

To assist with developing organizational systems, for example, early in the fourth quarter, we encouraged the Baghdad PC to create a committee of seven individuals to help it define the monitoring function of the PC. Additionally, in October we met with the PC chair's staff to discuss possible workshops to further develop the administrative skills of the council staff.

With an upcoming need to fill approximately 100 vacant administrative positions in Diyala, our advisors continued to work with the PC's HR managers to improve its organizational structure. At our suggestion, the HR managers began advertising to fill these positions with qualified candidates.

Similarly, as a result of our successful restructuring of the Ninawa GO, the deputy chair of the PC sought LGP III support in assessing the processes, functions, positions, and structure of the PC. Initial discussions, attended by key committee members and staff, began the

internal assessment phase of (a) restructuring and (b) assisting in developing a vision, mission, and strategy for the PC.

As the PCs develop their cadres and their capacity, we hope to see them likewise increase their connection with the public. It is important that PC members be reminded that their legitimacy rests on more than their mere election, but on their continued accountability to the people.

To this end, LGP III encourages greater communication with the public, in the attempt to promote transparency and underscore accountability. In Anbar, for instance, PC members and LGP III advisors met to brainstorm means of informing citizens of PC decisions and soliciting input on issues before the PC. The council then decided to appoint a temporary committee to visit each district and subdistrict to provide detailed reports in person to citizens.

In this same vein of maintaining legitimacy, the Najaf PC hosted a regional anti-corruption workshop at the end of October. Seventy-six officials from Najaf, Babil, Diwaniyah, Karbala, Muthanna, and Wasit attended the workshop, which served to develop interaction and cooperation between anti-corruption committees in the region, thus increasing their understanding of transparency and accountability issues.



*LGP III led a discussion about organizational structures with the Organizational Development Committee in Maysan province in November 2009.*

In addition to helping the councils develop their internal systems, LGP III continues to work with GOs in developing theirs. Our potential for success with the governors is greatly dependent on the trust we earn from them. As our operations in Dhi Qar province began, the governor and PC chair from Babil province attended Dhi Qar's orientation workshop, expressing their appreciation for the LGP III program and offering the Dhi Qar LGP III team advice on how to forge a similarly close relationship with the governor there.

As part of our ongoing assistance to the Babil GO, in November we introduced a new HR system for the GO's staff. In an attempt to eliminate redundancy and increase the professionalism of his cadre, we helped produce organizational charts and job descriptions. The process of developing an organizational structure involved an examination of reporting relationships and how to shape the function of an office to complement the functions of all the others. Consequently, this process revealed redundancies in staffing. Our review of the organizational structure of the Babil GO should help increase the competence of his staff and reduce corruption in the province.

One experience that came as a surprise during the fourth quarter was a less political than usual explanation for understaffing of the GOs. Article 33 of the PPA provides that the governor shall have "a maximum of five assistants" who shall hold the rank of deputy director general, and Article 34 provides for "not more than seven advisors." Across the country, however, few governors have their full staff. Although politics certainly complicates the matter, our team in Anbar province uncovered a simpler explanation: Because the PPA

was not in effect in 2008, the budgets prepared at that time did not account for the five assistants and seven advisors required by the law. As a result, the monies necessary for their salaries were not included in the current year's budget, which has frustrated the GOs in their attempts to find and retain competent staff.

On a more positive note, our Salah ad Din civil service team completed an evaluation of the GO's knowledge of organizational structure, staff affairs management, management and leadership, contribution/collaboration/coordination exchange, committee structure, periodic meetings, and meeting structure. The GO HR director and GO staffing director contributed directly to this evaluation, which revealed that a) the GO understood its vision and mission statement clearly but did not appear to have the will to execute the vision; b) joint coordination between the PC and GO has declined to a very low level because of the political disputes between these two bodies despite the fact that the governor's deputies attend most PC sessions; c) while LGP III provided the necessary technical assistance to the top manager teams, there was an apparent unwillingness to apply or incorporate the knowledge and skills to their daily duties and the GO has not initiated any knowledge or skills training for its staff and relies on LGP for building staff capacity; and d) the GO adopted the HR guidelines provided by LGP III for job descriptions, merit promotions, and organizational structure.

## Work Element 5: Supporting Sustainable National Institutions

Under Work Element 5, LGP III continues to: 1) support the Iraqi Local Government Association (ILGA) by advising on its organizational development and developing the capacity of its Secretariat and members; and 2) support the creation of the High Commission for Coordination of the Provinces (HCCP), in close coordination with the Prime Minister's office.

This quarter was significant in that the ILGA received its certification documents, granting the ILGA official Iraqi nongovernmental organization (NGO) status on October 20, 2009. By obtaining legal personality, the association became capable of entering into agreements on its own, and the acquisition of that formal independence encouraged the ILGA board to assert itself more.

At this same time, LGP facilitated a two-day strategic planning meeting for the Executive Committee of the ILGA Board's Executive Committee. Concurrently, the board leadership continued its negotiations with other international donor organizations, seeking further support for association activities and advocacy.

At its second board meeting, conducted November 14–15 in Sulaymaniyah, the ILGA Board made several resolutions to exercise greater autonomy. The association, which only recently had obtained legal status as a registered NGO, seemed keen to emphasize its independence. In revising its bylaws, the ILGA leadership opted for a strong presidency, removing the Executive Council in favor of a Presidency Council and downgrading the position of "Executive Director" to "Administrative Director." The Presidency Council and five Standing Committees then developed outlines of their short and long-term priorities, goals, and activities as inputs to the ongoing process of developing the ILGA strategic plan. Recognizing that the association was in part becoming emboldened and in part playing politics, we decided to decrease our assistance through the campaign season. To make sure

that the relationship between the newly registered organization and LGP III is clear, we intend to make it the subject of a formal agreement.

In making these changes, the current association president and the remainder of the board assumed that other members of the association would not object to their alteration of the bylaws and assertion of exclusiveness. Currently, we cannot predict the members' reactions, because of the complicating overlay of national politics. These include board alliances that depend on relative party strength outside the board, alliances that continue to change in the uncertain period before parliamentary elections, and the dependence of the effectiveness of the ILGA on the composition of the COR.

### **HCCP: A Surprising Beginning**

After finalizing the organizational design of the HCCP in October, LGP staff conducted several meetings with the head of the Commission of Advisors in the Prime Minister's office and with the Bureau of Regions and Provinces to further assist in the formation of the HCCP. In a meeting on October 29, the head of the commission indicated that he intends to forward the proposed design to the Prime Minister, along with a recommendation that he take the necessary steps to formalize the HCCP as an official commission before national elections are held.

Throughout November, LGP III staff conducted several meetings with the Commission of Advisors in the Prime Minister's office and with the Bureau of Regions and Provinces to follow up on the Prime Minister's deliberations about the organization of the HCCP. At the end of November, the Prime Minister still had not made any decision. The Prime Minister's advisors informed us that other pressing matters of State prevented the Prime Minister from giving his attention to this matter.

In December, we learned that the Office of the Prime Minister determined that the conference of Governors held this past summer now constitutes the first meeting of the HCCP, as called for by Article 45 of the PPA. Rather than initiating the commission by the end of the year, as previously reported, the Prime Minister took the politically expedient route of declaring it already initiated. Our focus now shifts from encouraging its creation to attempting to guide its development as an organization representing the interests of all local governments in the country. Our Year 2 Work Plan activities aim to achieve this target.

## **Annex A: Policy Briefs**

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

## Process for Expulsion of Council Members & Governors

*There are many legal causes for which a Provincial Council member or a Governor can be expelled. This Policy Brief will examine the actual process of expulsion that is used for the more contentious legal causes. All legal references are to Law 21, 2008 unless otherwise noted.*

### What the Law Says

The more contentious causes for expulsion are the same for PC members and Governors (please see Policy Brief "Causes of Expulsion for Council Members and Governors"). However, the process of expulsion for these parties varies. Art. 7, Eighth gives guidance for the expulsion of Governors. For PC members one must carefully examine Art. 7, Eighth in conjunction with Art. 6.

### What Experience Suggests

Unfortunately, the issue of expulsion manifests itself as a political maneuver just as often as it does for purposes of upholding the rule of law. Judgment on this point with regard to any particular instance of expulsion is left to the reader. Here we will examine process of expulsion only.

In Wasit two PC members publicly claimed that minutes of the session in which the Governor was elected were forged, in response to which the PC charged them with slander and expelled them from the body. In accordance with Art 6, First (3) their expulsion of the PC members was by an absolute majority of the PC, on the grounds enumerated in Art 7, Eighth (1). As is their right under Art 6, Third the expelled members contested the decision before the Administrative Causes Court within 30 days. Of interesting note is that the Prime Minister's Office issued an opinion (which is non-binding) that the PC members' statements were well within their right on the basis that any citizen is free to declare their opinion. Of course freedom of speech is not absolute. You cannot cause a public disturbance that endangers people by yelling "bomb!" in a crowded marketplace, or claim that a political rival is a trafficker of children when you know it is not true. The court will have to first determine if the two PC members had a reasonable basis for their claim of forgery and if they did not the court must balance 1) the harm done (if any) by the statements of the expelled PC members (taking into account if the false statements were reckless or intentionally false) and 2) the near-absolute right of freedom of speech.

In Salah a'Din the Governor was expelled on various grounds by the PC. In accordance with Art. 7, Eighth (1) the PC's movement for expulsion was passed by an absolute majority. This is the same threshold needed to expel a PC member. Unlike an expelled PC member, an expelled Governor has fifteen days, not thirty days, to contest the decision with a court. The courts are also different: the Governor must file with the Supreme Federal Court and not the Administrative Causes Court that PC members file with.

### Analysis

Art. 6, First (4) states: *The council may terminate the membership by an absolute majority if any of the conditions stated in Article 7, Paragraph 8 of this law is met.* To what extent does Article 7, Eighth apply to PC members? For example Article 7, Eighth (2) states that the Council of Representatives may remove the Governor by absolute majority if proposed by the Prime Minister. Does this mean that PC members can be removed in the same manner? No. Although Art. 6 First (4) folds Article 7, Eighth into the reasons for PC member expulsion one must not ignore the discretionary language of Art 6, First (4): *The council MAY terminate...* Termination of PC membership lies within the powers of the PC only. For practical purposes it is only the four enumerated reasons given in Art 7, Eighth (1) that apply to PC member termination.

The distinction is significant: the nexus with the federal government is much greater for that of the Governor than it is for PC members. This closer association is also expressed by the need for a Presidential Decree to formally seat the Governor. No mention is made as to whether such a decree is needed to formalize his expulsion. None are needed for PC members.

Although the case of an expelled Governor will be decided within 30 days of his filing, the law is silent on the issue with regard to expelled PC members that have filed with the court. Another matter of contention is the fact that while the Governor may continue in his post until the court upholds the expulsion, the law is unclear as to the fate of expelled PC members that have filed with a court.

### Recommendations

One must be clear on the fact that although causes for expulsion of PC members and Governors are almost identical, the process for that expulsion is different in several significant ways. Greater clarity must be established in the law. Under best practices a court should decide the case of an expelled PC member in a timely manner and within a specific period of time. Best practices would also allow expelled PC members to continue in their seat until a court has deemed the expulsion valid. Clarity on the need for (or not) a Presidential Decree to formalize a Governor's expulsion is also needed. These three issues should be addressed in Law 21 by amendment.

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# Policy Brief

Analysis and Recommendations for Iraq's Provincial Governments

LGP III  
Quarterly Report  
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## Immunity: To Protect Democratic Governance, Not People

*Immunity is a legal status conveyed upon a government position thus excepting that position to certain areas of the law. This legal status is interpreted conservatively in a democracy. This Policy Brief will examine the reasons for immunity and some of the ways in which it is used.*

### What the Law Says

The supreme law of Iraq, the Constitution, is the only law that addresses immunity. Article 63, Second (A) states that members of the Council of Representatives cannot be prosecuted for "statements made while the Council is in session". It goes on to say that members cannot be arrested unless caught in the act of a felony or unless accused of a felony and the CoR lifts his immunity by an absolute majority (Second, B). After the member's term expires he maintains his immunity except if caught in the act of a felony or unless accused of a felony and the Chairman of the CoR lifts his immunity (Second, C).

### What Experience Suggests

Immunity is not granted to a person as a benefit or reward for being elected. The only purpose of immunity is to ensure that the position the person holds is able to function. It is not the person that is important, but the function they are supposed to be serving. The functioning of a republican parliament (Art. 1 of the Constitution) is deemed more important than the arrest of its members for minor alleged crimes. Absent immunity, constant accusations of crimes/fault could be used to hamper and even disengage a Member of Parliament from his duties to serve the people. Immunity is extremely powerful: more than a defense to liability, it is immunity from suit in the first place.

To be consistent with international best practices a conservative (limited) view rather than a liberal (broad) view is to be used when determining whether immunity applies or not. Typically immunity is recognized only when the actions of a person are actions that fall within the scope of their official duties. In this case a government employee could not be held liable for discretionary actions that his position as a government employee allows, but could be held liable for actions that have nothing to do with his duties as a government employee, such as driving 90km per hour in a 30km per hour zone. In a democracy the government is empowered by the people and authorized by the people to function in a particular manner: those in government should not be held liable for taking actions that the people gave to them in the first place. A bad decision by a government employee or elected official is not punishable in court but there remain other avenues for redress: demotion of the employee or not re-electing the official are but examples.

Typically the greater the import a position holds to the functioning of the democracy the broader the application of

immunity. However it is never absolute. A good example is that of the Office of the President of the United States: although granted a very broad standard of immunity, it was found in 1997 that President Clinton was still subject to a civil suit for actions that occurred before he became President and that such a lawsuit could proceed even during his presidency. The court concluded that 1) the actions in question had nothing to do with the Office of the President and 2) defending the lawsuit would not divert Clinton's energies.

### Analysis

The degree of immunity granted in Article 63, Second (A & B) to members of the CoR is compatible with best practices that we see around the world. Second (C) is another matter: immunity is to protect the seats of government, not people. It is hard to justify any reason that a person that was once a member of the CoR should not be liable for any non-felony crimes that he commits. One possible argument is that it deters future retribution (through repeated, time-consuming accusations) against CoR members, although there are other methods within the law to deal with petty retribution (false accusations are punishable, for example).

### Recommendations

Future court decisions should recognize that government officials, national and local, should be immune from suit for any *reasonable* discretionary acts within the scope of their duties. Courts must also decide that when application of immunity does not protect the office but only the person, then immunity should not be recognized. Immunity for ex-government officials/employees for actions after they left office is contrary to a just legal system and does not serve the purposes that immunity serves.

Local government officials cannot convey upon themselves immunity from federal laws: local laws cannot contradict federal law, just as federal law cannot contradict the Constitution. Local government officials could in theory make themselves immune from their own local laws, but such action would call into question in the minds of their constituents how genuinely those officials wish to serve them and the Republic of Iraq and not themselves.

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# Policy Brief

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## Status of Security Forces and the Role of Provincial Authorities

*Iraq has experienced multiple transitions in the status of its security forces within a short period of time. At the same time the Iraqi people have, through Law 21, initiated devolution of national governing powers (the actual extent of which remains to be seen). These two trends, occurring in tandem, require clarification as to the current status of Iraqi security forces and the role that provincial authorities have with them.*

### What the Law Says

Provincial authorities play no role in the military wing of the security forces: it is the exclusive jurisdiction of the federal government (Constitution, Art. 110) and provincial authorities are explicitly excluded (Constitution, Art 31, Tenth, 1, and throughout Law 21).

The police, however, are different (see “Analysis”). Although the police are part of Iraqi security forces and are a national body, provincial authorities hold a number of powers over the police.

### What Experience Suggests

Beginning in 2005 Iraqi security forces were expected to go through four transition phases: MNFR partnerships (completed in May of 2006), Iraqi Army begins to lead (also completed, with ten Iraqi Army divisions transferred to an Iraqi chain of command), provincial Iraqi control, and security self-reliance. With the US-Iraq Status of Forces Agreement and thus US withdrawal from all cities and operating as support only, the third phase was accomplished. Iraqi security forces have now moved into the fourth and final phase.

As with any nation, Iraqi Security Forces are multiple in number and complex in organization. At its most basic, the National Intelligence Service is administered by the Council of Ministers, the military is administered by the Ministry of Defense and the police are administered by the Ministry of Interior. The military is comprised of the Army, Navy and Air Force. The police are comprised of the Iraqi Police Service (IPS), the Federal Police, the Department of Border Enforcement and the Facilities Protection Service.

### Analysis

Although the police are a national body under the Ministry of Interior provincial authorities are quite broad with regard to the security of the province. Security plans (of the province only) are submitted to the Provincial Council, through the Governor, for approval (Law 21, Art 7, Tenth) and the provincial government is “...responsible for the administrative requirements of the region, particularly the establishment and organization of the internal security forces for the region...” (Constitution, Art 121, Fifth). [Note however that “administrative” is a term of great debate at the moment, as it is also used in (and seen as greatly limiting) Law 21 in the key phrase “administrative decentralization”.]

More specifically, the governor has direct authority of over local security agencies and can order the police to investigate crimes and can establish or abolish police stations with the PC's approval (Law 21, Tenth, 1 and Ninth, 1 & 2). It is arguable that of the four branches of the police it is only the IPS that comes under this local jurisdiction, as the other three operate nationally and not locally. The Federal Police, for example, were created and operated across provincial lines to keep law and order while IPS forces were being trained.

Further, the Provincial Council can remove by absolute majority “senior officials” (Law 21, Ninth, 2). Senior officials are defined in Article 1 of Law 21 as “directors general and heads of security agencies, except university chancellors, judges, and army commanders.” This gives local authorities – in theory – significant influence over the conduct of the Chief of Police because they can remove him or her from that office.

### Recommendation

The law must be recognized and upheld. Provincial authorities and their constituents must insist upon it, and national authorities must honor it. Removal of “senior officials” will be one of the first real tests of whether Provincial Councils can in fact exercise the powers - of security and otherwise - granted to them in Law 21. Removal of the Chief of Police has occurred in Wasit. In that case the PC's Decision No. 22 referred to Law 21 (but did not cite any specific article) and also made reference to a piece of legislation that came out of a previous PC. Irrespective of the local legislation the PC was within their right under Law 21 to remove the Chief. Whether the successful removal represents recognition of Law 21 and the PC's powers under it is another matter.

The case of Wasit is encouraging but there remain concerns. Although not security related, in Ninewa the Director General of education was removed by the PC with the support of the Governor's Office, yet the Ministry of Education reinstated the individual. This is relevant because DGs and Chief of Police are both “senior officials”.

The extent of provincial authorities' powers within Iraq's security forces - under the law - is significant. Although the central government has at least in one case recognized these powers, its failure to recognize the same power in at least one non-security case is troubling. The rule of law is not a matter of convenience. Law 21 must be recognized in all cases, not just a few. The rule of law, and Iraq's security, depend on it.

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# Policy Brief

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## PC Removal of Senior Officials

*With new Provincial Councils and Governors now well into the first year of their term it is not surprising that many of their actions raise questions of local, federal and shared jurisdiction. It is too early to discern any trends that might define where one begins and the other ends. However, it is worth examining one of the more clearly defined powers of local government – that of removal of senior national officials – and the manner in which the national government recognizes (or not) this power.*

### What The Law Says

The Provincial Council can remove by absolute majority “senior officials” (Law 21, Ninth, 2). Senior officials are defined in Article 1 of Law 21 as “directors general and heads of security agencies, except university chancellors, judges, and army commanders.”

### Defining “Senior Officials”

There has been some confusion with regard to what constitutes a “senior official” within the line ministries in the provinces and within security agencies.

Within a ministry’s provincial office there are General Directorates (commonly referred to as DGs) and there are managers (also known as Official Directorates). The PC (and the governor’s office) cannot remove Official Directorates: they can only make a recommendation of removal (by the PC, through the GO) to the appropriate ministry. Law 21 refers specifically to General Directorates, not to Official Directorates.

In addition to General Directorates Law 21 refers to “heads of security agencies”. This also has generated some degree of confusion. At its most basic, Iraq’s security agencies are: the National Intelligence Service (administered by the Council of Ministers), the military (administered by the Ministry of Defense), and the police (administered by the Ministry of Interior). Intelligence and the military are the exclusive jurisdiction of the federal government (Constitution, Art. 110) and provincial authorities are explicitly excluded (Constitution, Art 31, Tenth, 1, and throughout Law 21). Therefore “heads of security agencies” can only mean Chiefs of Police. [Please refer to Policy Brief “Status of Security Forces and the Role of Provincial Authorities”]

### Removal of Senior Officials

There are two prominent cases in which a General Directorate was removed by a Provincial Council. In Diyala the DG for oil was successfully removed. In Ninewa the DG for education was removed on the basis of low test scores and low passage rates of students. However, the Ministry of Education intervened and the DG was somehow reinstated.

Provincial Council attempts to remove Chiefs of Police have also produced mixed results. Removal of the Chief of Police

has occurred in Wasit. In that case the PC’s Decision No. 22 referred to Law 21 (but did not cite any specific article) and also made reference to a piece of legislation that came out of a previous PC. The PC was within their right under Law 21 to remove the Chief. Whether the successful removal represents recognition of Law 21 and the PC’s powers under it are another matter.

In Diyala, the same province that removed the oil DG, some PC members accused the Chief of Police of corruption and murder. The police arrested multiple PC members, while some PC members remain on the run to escape arrest. The Chief of Police charges them with aiding terrorists but did not produce any evidence when asked to do so. Some PC members went to the Ministry of Interior to ask for his removal but they were denied. There was never a vote to remove the Chief, and now (at the time of this writing) a quorum is not possible because of those arrested and on the run.

There could be several explanations for the inconsistent behavior of the national government. One would be that the national government accepts the provincial authority to remove senior officials only when they themselves agree to the removal. In other words, by coincidence. However it is not the role of the national government to determine if the Provincial Council’s removal was correct or not: it is a right of the Provincial Council clearly granted to them by law.

Another explanation could be the character of the ministries individually. Perhaps one ministry recognizes the importance of the rule of law more so than another. However in these cases also it is not the character of the minister nor of the ministry’s institutional history and character that is important: it is the law that is important.

### Recommendations

Whatever the explanation may be it is difficult to refute what is clearly stated in Law 21, a law of such import that it is specifically referred to in the Constitution. Application of the law must be consistent and objective and not a tool of convenience. National leaders should insist on this. Local leaders should pursue the issue with their constituents and national government, and if need be within the courts. Finally, development partners need to recognize the problem and respond accordingly. To compromise on the rule of law is at odds with establishing a rule of law.

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## Iraq's Shura Council issues an opinion: Provincial Councils cannot make laws?

*In October, the Shura Council issued an opinion, referencing the constitution and the distinction it makes between regions and provinces and the authorities enjoyed by each. Specifically, the opinion stated that the constitution gave the regions the power to make law. It did not recognize that same power in the provinces, not incorporated into a region.*

### What the Law Says

Article 2 of Law 21, commonly called the Provincial Powers Act (PPA) describes the provincial council as the 'highest legislative and oversight authority' in the province. It goes on to say that the council enjoys the 'right to issue local legislation' provided it does not exceed the territorial jurisdiction of the province or contravene the Constitution or other federal law. Article 7, paragraph 12 requires the council to publish its 'decisions and orders' in a provincial gazette.

### What the Opinion Said

The Shura Council referred to Article 121 of the Iraqi Constitution of 2005 for the authority of the regions to exercise legislative, executive and judicial power. It observed that the constitution did not extend the same power to the provinces. The Shura Council then cited Article 7, paragraph 13 (sic) of the PPA to conclude that provincial councils are authorized to issue decisions and orders only, but not legislation. It interpreted the word 'legislation' as it appears in the law to mean only rules related to the management of a provincial council's administrative and fiscal affairs.

### Analysis

There are at least three problems with the opinion of the Shura Council. The first, and easiest, is a citation error. In its opinion, the Shura Council cited Article 7, paragraph 13 as requiring the provincial council to publish its decisions and orders, when the correct citation should have been to paragraph 12.

The second problem is more substantive and much more difficult. In its reference to the constitution, the Shura Council suggested that by omitting explicit reference to the provinces, the constitution has somehow denied them the powers of government mentioned for the regions. But the constitution was adopted in 2005. The PPA was adopted in 2008 (and only implemented in 2009). And the fact that the constitution does not explicitly preclude the possibility of extending the powers granted to the regions similarly to the provinces cannot be held to preclude them implicitly. In fact, Article 115

of the constitution explicitly states the exact opposite: that powers not denied to the provinces are retained by them.

The third problem with the Shura Council's opinion is its restrictively narrow definition of legislation. The opinion did not cite the first paragraph of Article 2 of Law 21 which describes the provincial councils as 'the highest legislative' body in the province. It neglected that reference entirely and instead argued that the 'decisions' and 'orders' requiring publication in the provincial gazette do not include 'laws.' Going even further, the Shura Council attempted a definition of the word 'legislation' as it appears in Law 21 as meaning rules for the councils' management of its own affairs.

### Analysis

What may explain this restrictive reading of the authority of provincial councils to legislate is the history of the councils. In the 1969 law of governorates, the provincial councils consisted of the directors of the provincial departments and were a part of the Ministry of Interior. As members of the executive branch, they issued orders, not legislation. The Shura Council seems to have this practice in mind in its reading of Article 7, paragraph 12 which requires provincial councils to publish their 'decisions and orders.' But even that reading would be liberal compared to what the Shura Council gratuitously added – that even the decisions and orders the provincial councils are allowed to issue are limited only to their own internal affairs. Such a reading would render the legislative power of the provincial councils meaningless.

### Recommendations

*Provincial Councils:* The Shura Council opinion is advisory, and could be ignored. The threat of their legislative authority being taken away from them, however, should motivate provincial councils to concentrate on the mechanics of making law and to exercise it cautiously.

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# Policy Brief

Analysis and Recommendations for Iraq's Provincial Governments

LEGISLATING

PLANNING

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## Service Delivery of the Provincial Council

*Public services refer to services authorized and funded by the government and delivered to the public. Quality, availability, and access to essential services, such as healthcare and primary education, are a key measure of good governance. Regional and local governments are closer to the people they serve, therefore local elected officials are more likely to know the demands of their communities than the central government – the basic theory behind decentralization policy.*

### What the Law Says

Law 21 does not mention the service delivery role of the provincial councils; however, the governor has some authority to establish local educational institutes and monitor local security, Article 31, Sixth & Tenth. Sixth stipulates governors can “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.” Tenth adds “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).” In addition, Article 31, Eighth empowers the governor to “take legal and administrative measures against the director general and employees in the governorate with the approval of the council by a simple majority.”

### What Experience Suggests

Public service delivery in Iraq has been traditionally delivered through a myriad of government agencies often without cooperation between these agencies. In practice, the central government directly controls the delivery of public services in Iraq. Current law does not give provincial councils authority over the agencies of the central government working in their province. Even the basic issues of healthcare delivery and public sanitation are out of the control of the provincial council or the governor. One exception is security, wherein the governor has limited authority and influence.

While the provincial council can influence development strategy and investment projects, these projects typically focus on infrastructure development with limited influence on basic service delivery. The strict budgetary controls of the Ministry of Finance and continued delays in the disbursement of allocated funds to the provinces discourage the councils from focusing on basic service delivery. While at the same time, the provincial council is prohibited from legislatively influencing any project under the jurisdiction of the central government agencies.

### Analysis

Delivering services to the public is one of the basic duties of government. The new constitution in Iraq and subsequent

legislation envision a decentralized, federal administrative system in Iraq. Experience suggests that the governorates are extensions of the central government to implement infrastructure development programs.

Services reach the public in a two-step process: allocation by policymakers, and production by implementers. If these two steps are not coordinated to form a strong relationship, service delivery will be inefficient (coordination implies service delivery standards, monitoring methods, rewards, and sanctions). In Iraq, services are delivered in the provinces, while the central government makes policies. A lack of accountability ensures poor services and bad governance.

While some central service delivery can be effective, decentralization has its advantages: 1) the decentralized provision of services is more efficient in a context where there is heterogeneity of preferences. This is because information and transaction costs are reduced by the proximity of policymakers to targeted groups; 2) competition and innovation in the provision of public services by local governments enhances efficiency; and 3) local authorities are directly accountable to local population through elections.

However, it is important to note decentralization can only produce these advantages after the devolution of power to locally elected leaders and the establishment of clear and predictable rules for revenue and expenditure assignment to local or sub-national governments. This implies the extension of a pool of financial resources to finance a set of services that more closely satisfies the needs of the local population.

### Recommendations

1. Devolve political and fiscal authority to improve service delivery at the provincial level.
2. Central government should focus on national priorities, and leave service delivery to the provincial level.
3. Provincial councils should be included in local projects instituted by central government agencies.
4. Local oversight committees to assess the effectiveness of projects and to prevent the misuse of allocated funds.

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## 2009 Provincial (ARDP) Budget Execution Trends and Problems: The Case of Babil

*Budget execution in Iraq is a topic that receives a great deal of attention by financial advisors. The suspicion surrounding the matter revolves around the fact that huge amounts of money are allocated to the Provinces, yet they still yield a low rate of budget execution. Budget execution rates are used as barometers to measure security stability and good performance of government. However, these amounts barely reach 4 to 5 percent of the total federal budget of Iraq.*

### What the Law Says

Currently, there is no legal authority which defines how the budget is to be executed at the provincial level. But each year the Ministry of Finance (MOF) issues annual regulations that regulate budget execution at the national level, as well as stating expenditure authorities for each spending unit.

### What Experience Suggests

According to the sum of funds received in Babil province for the year 2008, the rates were as follows: May was 63.39%, June was 78.2%, and July was 96%. While for the same months in 2009, the rates were as follows: May was 16.48%, June was 10.32%, and July was 12.14 %. The disparity in percentages indicates that budget execution is behind for this year. The fact that the MOF instructed local authorities to combine all previous year accounts into one, making all unspent funds a part of the ARDP budget, left the provinces with limited ready money available.

### Analysis

Given the percentages previously mentioned, the decline in budget execution in Babil needs to be addressed. Some contributing factors include the 1) late approval of the Federal Budget by the Council of Representatives, 2) the first transfer of funds were in May, 3) the long transaction period between the old and new governor, 4) land acquisition, 5) the poor performance of contractors, and 6) the long routine of payments to contractors. All these factors affect budget execution at the provincial level. In addition, the inexperience of newly elected officials in budget execution and government procedure lays a weak foundation for efficiency in monitoring and oversight.

### Recommendations

**Provincial Councils:** According to Law 21, the Provincial Council (PC) is responsible for overseeing project implementation and all the functions of the executive. New policies and procedures need to be put in place. PC members should initiate legislation for oversight of budget execution, and to

work with the Governor in establishing practical mechanisms to that effect.

**Governors:** The Governor's Office (GO) needs to be reorganized to meet the new responsibilities according to Law 21. A new section needs to be created, such as a Budgeting section. Other sections need to be further developed, such as the Planning section, by expanding its staff and providing them with technological training and assistance. The GO needs to create a practical, low cost monitoring system capable of capturing and accurately handling current information in order to provide up-to-date information on budget execution.

**Development Partners:** There are three major USAID contractors working with local government at different levels. It should be understood that these three levels are very much related to each other. Starting from the nahiya level and up, there is a need for better coordination between the programs. Each should know what the other is doing. More practical coordination needs to be accomplished: contractors should share work plans with each other in order to avoid redundant programming and also to identify complimentary areas of programming that would become even more effective with cooperative coordination.

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## Forms of Decentralization

*Theories of decentralization alone do not give us the specific mechanics for implementing a process of decentralization. However, we can examine and learn from the actual experiences of other countries in their attempts to employ various forms of decentralization. One primary lesson from this is that decentralization is a complex system, one package of multiple parts that need to be implemented at the same time. In Iraq as in many transitional countries, decentralization was employed as a means to better governance. But as in all transitional countries seeking to decentralize, decentralization faces a lot of challenges in Iraq. One of these challenges is that decentralization is not well understood by officials nor the public. This Policy Brief will try to spotlight the more significant characteristics of the forms of decentralization for the reader.*

### What the Law Says

Article 116 of the 2005 Iraqi Constitution describes the Republic of Iraq as a “federal system...made up of a decentralized capital, regions, and governorates, as well as local administrations”. Article 122, Second establishes the administrative principles of the governorates not incorporated in regions. Articles 110, 114, and 115 attempt to define the exclusive and shared jurisdictions of the federal and local government. The Law of Governorates not Incorporated into a Region (aka Law 21, 2008) is the implementing legislation for Article 122, Second of the Constitution. This law describes in some detail the responsibilities and authorities of local governments. It also refers to “administrative decentralization” as does the Constitution. This term, a very complex concept, is not fully defined, and we are unsure of what lawmakers intended when they used this phrase.

### What Experience Suggests

Theory and practice shows us that decentralization takes on many forms. Across the globe each effort at decentralization is unique but we can categorize them into three basic forms or systems. The three forms are:

*De-concentration.* This means the redistribution of decision-making and financial and administrative authorities among different layers of central government. This system is considered weak (in terms of the extent of decentralization) and is usually applied in unitary systems. De-concentration does little to transmit authorities and responsibilities from the central government to officials in the regions and the governorates.

*Delegation.* This is a more sophisticated form of decentralization. Through delegation central government transfers decision-making and administrative authority to semi-autonomous identities that are not absolutely controlled by the central government, but they are accountable to the central government. These identities have relatively broad liberties for decision making.

*Devolution.* This is the process of transferring decision-making and financial and administrative authorities to non-national levels of government. These levels elect governors, local councils and are responsible for service delivery. They can generate their own revenue and use it in a manner they see fit. Local governments in this system are very active in serving their constituents and have very significant authority within their geographical boundaries.

### Analysis

The Iraqi Constitution and Law 21 describe Iraq as a federal and decentralized state, yet there is no clear vision in Iraq of what this means and how this will be achieved. All the forms of decentralization discussed in this Policy Brief are applied in Iraq, to some degree, one way or another. There are ministries that are de-concentrated. There is delegation to the municipality and also from the Ministry of Interior for the ARDP implementing process (now the PC budget derived from the PC investment plan). At the same time devolution of power is expressed as local elections, and to some extent investment decisions. Despite the Constitution and Law 21, no one can really determine what decentralization means for Iraq: what it should be and how to achieve it.. Lacking a clearly defined goal and how to achieve that goal - such as decentralization - means a severely handicapped ability to evaluate one's progress toward that goal. Steps toward the decentralization process are being taken, but they are slow, face many obstacles, and are not part of a clearly defined and objective of decentralization.

### Recommendation

A national strategy is needed. Iraq can “discover” decentralization through trial and error, or it can plan and manage the transition to decentralization. National and local authorities must meet regularly to develop and then implement a strategy that honors the aspirations of the people. At the local level authorities can prepare for anticipated increases in political, administrative and fiscal decentralization in a manner that ensures resources are not squandered and subject to corruption: decentralization is for the people, not the officials. The greater an understanding authorities have of decentralization the greater likelihood of success for Iraq, thus they must also understand the different *types* of decentralization (please see Policy Brief “Types of Decentralization”).

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## Types of Decentralization

*There are many definitions for decentralization. These examples arose from the practical implementation of decentralization throughout the world. Thus, all experiences with decentralization are directly related to the local circumstances and environment of each country in which it was implemented. In the past century decentralization rose to the forefront of accepted good governance. In its many practical applications, decentralization has resulted in some common terms and definitions. This briefing paper will explore the definitions of decentralization commonly used in political economy literature.*

### What the Law Says

The constitution references decentralization in Article 122, Second and Law 21, 2008 references it in Article 2, First and Article 7, Third. These articles specifically refer to decentralization as Administrative Decentralization – one of the three types of decentralization. However, there is no legal definition for decentralization in either the constitution or Law 21.

### What Experience Suggests

In decentralization theory and practice, there are three types. They are:

*Political decentralization:* The first definition, political decentralization, derives from the popular election of local representatives. The basis of political decentralization is the devolution of decision-making power from the central government to the public to closer reflect popular needs. Political decentralization is more closely related to the concepts of devolution of power than deconcentration or delegation. It necessitates supportive reforms in associated laws and the administrative practices of local authorities.

*Administrative decentralization:* This definition of decentralization addresses the redistribution of power, responsibilities, and financial resources for the provision of public services from the central government to local levels of government. It also encompasses the transfer of planning, finance, and administrative responsibilities from the central government to local levels.

*Fiscal decentralization:* This definition of decentralization involves the devolution of fiscal responsibilities from the central government to local governments, including the responsibilities for expenditure assignment, revenue generation, and local taxation. Under this form of decentralization, local governments manage financial planning and the allocation of resources. Local officials ultimately become accountable for the allocation of resources. Fiscal decentralization is critical to any decentralized system.

### Analysis

In light of these three types of decentralization, there are three scales by which decentralization can be measured in Iraq. Political decentralization, a clear goal in Iraq, is gradually being

implemented through the local election of officials and representatives; however, the devolution of power in Iraq from the central authority to the local level is still in progress. The Iraqi Constitution and Law 21 establish clear steps for administrative decentralization. Fiscal decentralization is underdeveloped in Iraq. To support fiscal decentralization, authorities should focus on reforming intergovernmental fiscal relations, clarifying Iraqi statutes that govern fiscal authority, as well as developing new financial procedures to devolve fiscal authority to the local level.

The lack of a national framework for decentralization or a clear definition in Iraqi law inhibits continued progress in this development goal. To date we see some degree of progress in political and administrative decentralization but not with fiscal decentralization; significant effort is still required to effect all three types of decentralization in Iraq.

### Recommendation

Although both the constitution and Law 21 reference administrative decentralization, realizing such a system in Iraq cannot be accomplished without certain degrees of political and fiscal decentralization. Each of the three types of decentralization are not wholly stand-alone systems: any type of decentralization typically relies on some combination of all three – perhaps more of one and less of another – but one cannot exist when the other two are completely absent. Iraq needs a clear understanding of how the move to administrative decentralization can be made in a manner that makes the most of scarce resources (financial and otherwise): this requires an understanding of what administrative decentralization is, what the other two types are, and how the three can work in concert to achieve a stronger republic.

A national strategy is needed. Iraq can “discover” decentralization through trial and error, or it can plan and manage the transition to decentralization. National and local authorities must meet regularly to develop and then implement a strategy that honors the aspirations of the people. At the local level authorities can prepare for anticipated increases in political, administrative and fiscal decentralization in a manner that ensures resources are not squandered and subject to corruption: decentralization is for the people, not the officials. The greater an understanding authorities have of decentralization the greater likelihood of success for Iraq, thus they must also understand the different *forms* of decentralization (please see Policy Brief “Forms of Decentralization”).

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## Ministry of Finance Control and Decentralization

*A country's Ministry of Finance typically plays the leading role in determining its fiscal policies and Iraq is no exception. In addition to this function the MoF has the responsibility to control national accounts and make sure that all financial procedures are well kept. Also it has the responsibility of managing the national income and the redistribution of it, according to Constitution and laws. Of course developing the national budget is one of the main functions of the MoF. The importance of this role is magnified in a decentralized system, where multiple spending units coordinate and operate within federal laws and regulations. Contrary to the ideals of decentralization, it is possible for the MoF to use their function within the broader system as a political tool, to impose its will over local governments.*

### What the Law Says

The role of MoF is well defined in Law 95 (The Financial Management and Public Dept Law). This law was issued by the CPA in 2004. The main foundation of this law is a centralized financial system, which was at that time a clear contradiction with Order 71. Nevertheless, local government managed to tolerate it. Now with the implementation of Law 21, it seems that Law 95 is even more incongruous. There is nothing in this law that supports the decentralization process in Iraq.

### What Experience Suggests

The MoF is acting in accordance to law 95, which is a centralized financial law. This practice makes it difficult for the provinces to enjoy the authorities granted by Law 21. For example, Law 95 states that all revenues are regarded as resources to the national treasury. While Law 21 – despite its need for greater clarity - gives the provinces the authority to levy, collect and spend local fees and taxes (also according to Federal Court resolution #16 at 21/4/2008). In addition the annual budget execution regulation issued by the MoF does not take in to account the new authorities of the provinces, and deals mostly with ministries and how they implement the budget. As for budget formulation, there is a lot of contradiction between Law 95, Law 21, and MoF regulations. Law 95 does not give any guidance on how the provincial budgets are formulated.

### Analysis

The situation is more and more urgent: Iraqi financial laws and regulations need reforming. Although this process started in 2004 no real action has been taken to put any reforms in to real action. Part of this due to technical factors and part is due to the lack of political will to implement these reforms. Security at some times played an important role in delaying these reforms. As long as the financial laws and regulations in Iraq

remain contradictory and the system remains structured in a highly centralized fashion, there will be always this conflict. When provinces want to practice their authority according to new laws they encounter the difficulties of Law 95 and the financial regulations issued by MoF according to this law. MoF have every

reason to argue that it has been acting according to Law. So while Law 21 deals with provinces as decentralized identities, other financial laws deal with them the same way as did Law 159 of 1969, or even worse. As political powers in the central government fear losing any control over the provinces, they issue regulations that delay the reforming of financial management and thus they maintain their control.

### Recommendations

*Provincial Councils:* PC's need to address with the CoR the subject of their authorities according to Law 21 and its contradiction with Law 95 and other financial regulation, in order to force the central government to propose new amendments on the applicable financial laws.

*Governors:* Governors' authorities are the most damaged due to the contradiction between Law 21 and other financial laws. This has restricted their ability to implement their budgets. Governors need to propose new laws and regulations to PCs to manage the financial issues of the provinces according to Law 21. Governors also need to accelerate the formulation of the *High Commission for Coordination Among Provinces* in order to address such issues.

*LGPIII:* As this matter is related to the central government, LGPIII should address these issues with partners who work with the central government such as Tatweer, PFMAG, and smaller programs such as the Adam Smith institution, to better explain the point of view of the provinces and perhaps organize workshops and meetings with local authorities and these agencies.

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