Support to Decentralization and Local Government to Enhance Service Provision in Iraq

Executive Summary

Preface

This study was developed as part of the Support to Decentralization and Local Governance Project implemented by the United Nations Economic and Social Commission for Western Asia (UNESCWA) in cooperation with UNDP-Iraq. This study has been developed by Bayt al Hikma based on desk reviews and legal revisions, field surveys and analysis as well as on relevant reports produced by national implementing partners / institutions that included, in addition to Bayt al Hikma, the National Centre for Consultancy and Management Development–NCCMD, the Central Organization for Statistics and Information Technology (COSIT), the Kurdistan Region Statistics Office (KRSO). This report aims at assessing the current situation of the Iraqi governorates and local administrations as regards their relation with the central government and at mapping the current local government structures and practices with the aim of (1) identifying supporting or challenging legal, administrative and financial policies and frameworks, and (2) specifying the requirements to developing strategies in support of strengthening local and national governments, civil society organizations, Iraqi stakeholders and private sector and enhancing their interrelation.

This report was produced by Prof. Amal Shlash, Dr. Wafaa Al-Mahdawi and Dr. Hasan Lateef Kazem.

Note: This document has been presented without official editing. Its content reflects the opinions of the authors and not necessarily those of the ESCWA.
Research Participants

This report is primarily built on the studies, reports and assessments that constituted the project deliverables. Indeed, two major surveys were concluded within the project, namely:

1. A survey of the capacities of municipal bodies to implement administrative decentralization conducted by the National Centre for Consultancy and Management Development (NCCMD).
2. A survey conducted by Central Organization for Statistics and Information Technology (COSIT) about the demographic, economic and administrative aspects of Iraqi governorates with a statistical survey of the KRG conducted by the Kurdistan Region Statistics Office (KRSO).

In parallel, Bayt al Hikma commissioned a specialized team of researchers to conduct a study on the legal framework of decentralization in Iraq and another team to analyze and incorporate the outcomes and conclusions of the above stated reports, researches and surveys within with the final report as well as developing and adding additional chapters and information as required.

This study has particularly benefited from the in-depth expert review of the origin of legal research, the comments by academic, legal and administration specialists (Annex 2) and from the comments received by the Project from representatives and stakeholders (Ministry of Planning representatives. Central Organization for Statistics and Information Technology (COSIT) President, and General Director of NCCMD, presented during the expert workshop that reviewed the final draft of the study and that was also attended by members of Baghdad Council, civil society organizations (CSOs) and governorate councils members who took part in the Seminar organized by the Iraqi Local Governments Association (ILGA) (Annex 3). All received comments enriched the study and added solid scientific and operational aspects.

Study Structure

In order that the study fulfills its objectives, it is divided into three Chapters. Chapter I discussed the decentralization background and content in Iraq where Section I covers the decentralization concepts and meaning and Section II tackles the legal basis of local government and decentralization in Iraq. Chapter II deals with the decentralization experience already implemented in Iraq where Section III focuses on local administration and government in Iraqi governorates and Section IV discusses the financial management of the governorates that are not incorporated into a region. Chapter III reviews the governorates service provision capacities under decentralized administration: Section I covers the demographic, social and economic aspect of these governorates; Section II assesses the service provision landscape; and Section III concludes with the ways towards fostering decentralized administration in Iraq.
Executive Summary

Introduction

Administrative decentralization is raising increased interest in most countries especially those heading towards democratization and in which transition to democracy goes hand in hand with decentralization and wider local government. Moving the decision-making function from central government to smaller (and more citizen-oriented) administration units reflects an actual implementation of participation and community contribution to the government.

The political shift of 2003 triggered serious changes in the Iraqi political system and the parliamentary approach was adopted within a federal framework. Article 1 of the Iraqi Constitution states that “The Republic of Iraq is a single federal, independent and fully sovereign state in which the system of government is republican, representative, parliamentary...” Despite the challenges, the Iraqi society and its political and civil components have strongly supported this democratization process. However, the recency of this experience as well as the deep, structural problems inherited from decades of totalitarian regime and deteriorating security have given rise to new administration and government challenges in Iraq. If not seriously addressed, these might affect the current decentralization trends.

Although the current constitutional and political trends of the Iraqi Administration call for more decentralization, the findings of this study (administrative and sometimes political stumbling in implementation; e.g. the rashly elimination and then reestablishment of the Ministry of Municipality (MMPW)) highlight the need for evaluation.

Meanwhile, the recency of the experience does not allow sound testing of the traditional decentralization concepts, which suggest better civil services, wider participation, democratization, enhanced local development and higher levels of competency, quality and transparency. The efforts since 2005 to delegate more powers to the elected local governments and provide them with larger authority and financial resources have not enabled these governments yet to provide better services and embrace policies that are more responsive to local needs.

To identify the factors affecting the development of a decentralized system, this study has examined three major issues:

- The legal and regulatory framework of decentralization;
- The local authorities’ capacity to provide services and foster local government. Special attention was given to the strengths and weaknesses of Iraqi governorates and the factors governing relationship between local authorities and federal government. The study revealed that, despite the numerous bodies involved in analyzing the decentralization process, these there are still many other areas to be examined and these might be potential components in future initiatives.
- The relationship between central government and governorates in Kurdistan Region.
Why decentralization in Iraq?

The concept of Government is often linked by Iraqis to the central government and its institutions that the citizens have been used to dealing with. Years of totalitarian regime and the political circumstances in Iraq have strengthened centralism while marginalizing local administrations. This has deepened the economic, social, healthcare and cultural imbalances among different governorates. After the 2003 political change, there emerged a conviction that administrative decentralization would ensure more efficient performance and better adaptation with the new economic realities. While centralism impeded an enabling development environment and created serious challenges in terms of power allocation between central government and local authorities and private sector, decentralization would ease the red tape and centralized administrative control. This requires giving the governorates and municipalities large powers, more autonomy and the necessary financial resources to implement local programs.

Since 2003, local government in Iraq mainly comprises governorate councils and municipal councils. Governorates are run by governors elected by the governorate councils, districts by mayors, and sub-districts by appointed managers. This hierarchy does not cover central administration or the bodies directly reporting to federal ministries (see Figure 1 of the original study). Since 2003, the governorate councils have been elected twice: in 2005 and in 2009. According to the 2009 elections, the councils of the governorates that are not incorporated into a region have 440 members.
Chapter I
Components Supporting Decentralization in Iraq

1. Demographic, social and economic characteristics of governorates

The study identified a number of present and future challenges facing administrative decentralization which requires adequate financial resources as well as competent administrative bodies and qualified human resources (HR). The Iraqi population grew from 5.2 million in 1950 to as high as 25 million in 2000. This is expected to reach 34 million in 2012 and 44 million in 2030.

This is a high population growth rate where the actual fertility rate is 4.3%. Moreover, there are remarkable imbalances both in the population density of different regions and in the age structure (higher percentages of children and youngsters) not to mention the widening urbanization and the existing economic and social differences among governorates. Serious gaps have emerged as a result of increasing poverty, poor resource allocation and deteriorating security. This means critical pressure on the labor market as well as on the federal government which is expected to allocate greater resources to provide the increasing population with direct and indirect education, healthcare and social services. This would also affect its future education, healthcare, housing, production and services plans.

The lack of such services in Iraqi governorates including the KRG region requires a sound foundation to start adjusting the development framework through more balanced distribution of investment, economic activities and services in line with the economic, social and demographic aspects of each governorate. This would ease the development imbalances among governorates and increase access to public services leading to higher and more sustainable growth rates and enhanced human development indicators if the “administrative decentralization” stipulated in Article 122/Second of the Iraqi Constitution of 2005 and organized in Law 21 of 2008 (governorates not incorporated into a region) was in place as a guideline.

In line with the administrative reform trend, local communities and governorate councils are now heading for decentralization at different levels of local government in a bid to improve the services quality and efficiency and stabilize democracy foundations.

2. Decentralization is a constitutional right

The Iraqi Constitution promotes this concept. Article 116 states that governorates are run through decentralization principles. Other legislations have enhanced this trend, especially the law of governorates not incorporated into a region and various directives issued by the governorates councils.

This trend has created new state obligations related to participation in prioritizing the objectives of sustainable development and the satisfaction of basic needs through the provision of public services and the management of regional finances whether budgetary appropriations or grants and loans for
development and reconstruction schemes. Article 114 of the Constitution specifies the guidelines for this economic right of the governorates not incorporated into a region:

The following powers shall be shared between the federal authorities and regional authorities:

a. To manage customs, in coordination with the governments of the regions and governorates that are not incorporated into a region, and this shall be regulated by a law.
b. To regulate the main sources of electric energy and its distribution.
c. To formulate environmental policy to ensure the protection of the environment from pollution and to preserve its cleanliness, in cooperation with the regions and governorates that are not incorporated into a region.
d. To formulate development and general planning policies.
e. To formulate public health policy, in cooperation with the regions and governorates that are not incorporated into a region.
f. To formulate the public educational and instructional policy, in consultation with the regions and governorates that are not incorporated into a region.
g. To formulate and regulate the internal water resources policy in a way that guarantees their just distribution, and this shall be regulated by a law.

To translate this constitutional right and hence ensure proper establishment of administrative decentralization in economic and service provision areas, we need a number of principles that work as basic controls of the relationship between the federal government and governorate councils:

a. Local governments should have financial and administrative autonomy.
b. Regional and local governments should assume the responsibility of planning their own economic, financial and development issues in line with the national development strategy.
c. Central ministries are responsible of drafting a vision for economic development at the national level through planning and implementing strategic projects including major water and oil and gas projects, highways and international airports and other plans falling outside the administrative borders of governorates.

3. Supporting decentralization in the Law 21

Law 21 of 2008 regulating the governorates not incorporated into a region together with the Iraqi Constitution have sought to substantialize the above principles through establishing the partnership foundations, determining the development prioritization powers and responsibilities that would reduce poverty and ensure quality and enhanced provision of civil services and widening the financial powers delegated in Article 121/Third of the Constitution which states: “Regions and governorates shall be allocated an equitable share of the national revenues sufficient to discharge their responsibilities and duties, but having regard to their resources, needs, and the percentage of their population”.
4. Supporting decentralization in the financial management systems

The balanced development stipulated in the Constitution has positively reassured the regions and governorates whether having oil in their territories or not. Article 112/First states that oil revenues shall be distributed “in a fair manner” in line with the stipulations of Article 112 and 121 and proportionately “to the population distribution” and to the needs of governorates and regions “in all parts of the country, specifying an allotment for a specified period for the damaged regions which were unjustly deprived of them by the former regime, and the regions that were damaged afterwards” due to some development policies that led to imbalanced regional growth.

The third criterion in Article 121 is the “region/governorate resources”. The text does not talk about oil revenues because the Constitution considered them as national income to be fairly distributed among different regions/governorates. Instead it talks about other financial resources such as taxes and duties that may be regulated in a law specifying which taxes and duties to be collected by the regional authorities and spent in areas determined by regional governments or governorate councils in line with local priorities and objectives.

Besides, Article 44 of Law 21 of 2008 specified the governorates’ financial resources as follows:

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

b. Revenues generated from the governorate services and investment projects.

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

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

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

Tailoring a decentralized system needs proper assignment of public sector responsibilities among different kinds of government and this must cover four major components: expenditure, revenues, international-government transfers and international-regional credit.

During the period (2003-2005) some governorates complained against the lack of reconstruction funds and the lack of authority to manage such funds which were controlled by the central government. However, with the state orientation toward decentralization and for the first time in the Iraqi history, the 2006 budget allowed the local governments to manage their allocations and expenditure. The budgetary investment allocations amounted to 85,966.5 billion IDs (25% of total public spending) of which 66,406.2 billion for the federal ministries and 19,560.3 billion for the regions and governorates.

However, the central government did raise those allocations but the governorates’ actual spending was modest (28% in 2006, 34% in 2007 and 47% in 2008).
Decentralization appropriations in the 2011 federal budget

The 2001 budget chose to support decentralization by allocating 2,657,256 million IDs for regional and governorate construction and development projects including KRG, to be distributed as follows:

A. According to the population number.
B. According to the poverty levels with the Ministry of Planning setting the poverty criteria, provided this does not jeopardize the population-based distribution, which would be as follows:
   a. Each governor submits a development plan ratified by the governorates council covering the governorate center as well as its districts and sub-districts to the Ministry of Planning for consideration and ratification. This plan should focus on the most damaged areas in the governorate.
   b. The governor shall see to the implementation of this plan under the governorate council supervision.

Article 19 of the Budget Law stipulated the fairness in distributing the loans received by the federal government among the Iraqi regions and governorates according to their population and after considering the strategic projects financed exclusively by such loans.

This law requested that the ministries and the bodies not affiliated to ministries should coordinate beforehand with the governorate councils when choosing the projects. The law allowed each federal ministry to ask certain governorates to implement investment projects covered by its budget and designed for these governorates. It also allowed the governorate to ask the relevant federal ministry to implement investment projects in this governorate in line with the construction and development appropriations allocated for this governorate (Article 20).

5. Supporting decentralization in civil jobs

Increased decentralization in Law 4 of 2009 (Federal Service Council)

In line with the general decentralization trends this law (ratified by the past parliament) has headed, but not actually implemented, toward giving the governorates not incorporated into a region additional powers in civil service. Article 16 of this Law stated that “the regions and governorates that are not incorporated into a region shall establish a civil service council to assume all the civil jobs issues within the mandate of the regions and governorates that are not incorporated into a region and based on equality, equal chance, competence and justice”.

6. Supporting decentralization in the National Development Strategy

The National Development Strategy (2010-2014) aimed at moving from central to decentralized economy (market economy and competition) through gradually delegating greater role to local governments in order to establish market economy mechanisms in prioritization and decision making.

The NDS identified the decentralization measures required to substantialize its strategic objectives, which include:

a. Involve governorate authorities in identifying and establishing the development priorities especially in social services, while limiting the role of central government to planning and implementing nation-wide strategic projects in coordination with the concerned local authorities.

b. Balanced distribution of investments based on social justice principles (for services and infrastructure) and on economic efficiency (for production activities) to establish integration and interdependence among different regions and governorates based on their comparative advantages and development potentials and limitations.
Chapter II
Administrative Decentralization Challenges

The study has identified a number of problems that impeded the success of the administrative decentralization system. Major challenges include the legal and regulatory framework, poor resources for local administrations and low women participation.

1. Legal basis of decentralization

There are disputes among the Iraqi political forces today about the approach to state administration and whether it should be federalism or decentralization. Law 21 of 2008 came as a half-solution compromise after a hard labor reflecting such differences. The law mingles between federalism and decentralization. While stipulating a decentralized administration of the governorates not incorporated into a region, it does not consider supervision on local authorities by the executive power hence maximizing some of their power to become similar to regional powers.

a. Relationship between the federal government and the governorates not incorporated into a region

The legal approach to administrative decentralization in Iraq during the transition period (i.e. since the change of 2003 till the governorate councils were elected on 31 March 2005) was based on the law of Iraqi State Administration of 2004 and on the Coalition Provisional Authority Order 71 of 2004. However, after eliminating the above two documents, administrative decentralization is based on the following two legal texts:

1. Iraqi Constitution: the Iraqi Constitution builds on the law of Iraqi State Administration of 2004 and on the CPA Order 71 of 2004. Article 1 of the Constitution states that “The Republic of Iraq is a single federal, independent and fully sovereign state in which the system of government is republican, representative, parliamentary, and democratic, and this Constitution is a guarantor of the unity of Iraq”. Article 116 states that “The federal system in the Republic of Iraq is made up of a decentralized capital, regions, and governorates, as well as local administrations”. Article 117(first) states that “This Constitution, upon coming into force, shall recognize the region of Kurdistan, along with its existing authorities, as a federal region”. While Article 122 states that “Governorates that are not incorporated into a region shall be granted broad administrative and financial authorities to enable them to manage their affairs in accordance with the principle of decentralized administration”. Expanding local administrative and financial powers does not contradict the administrative decentralization principle so long as such expansion does not cover the legislative areas. In order that local administrations practice such expanded powers, they need to be elected by their community to enjoy original powers not delegated powers ready to be removed by the delegating central government.
2. **Law 21**: incorporating expanded regional and governorate powers in the Iraqi Constitution came as a reaction against the excessive centralism of the past regime rather than a response to the need for a strong central government with broadened decentralization authorities in the governorates to ensure balance between Iraq unity on one hand and local development needs on the other. Such imbalance in powers has led the Constitution to mingle between decentralization, federalism and confederation.

b. **Administrative decentralization and federalism in the governorates**

Articles 121 and 122 of the Constitution distinguish between the legal natures of the regulations decreed by the two systems: governorates not incorporated into a region issue administrative directives while regional legislative councils issue laws. However, Article 7/Third of Law 21 of 2008, which entitles the governorate councils to “issue local legislation as well as regulations and instructions to help them manage organize administrative and financial affairs in line with the administrative decentralization principle” gave rise to mystery and blurred the borders between the two systems. Here, we may refer to the last sentence of this text which says: “without prejudice to the Constitution and federal laws” to come out with a specific interpretation that limits the legislative function to the central authority hence distinguishing the decentralized system from the federal system because the Constitution gave the non-central authorities administrative and financial powers only and not legislative powers. The term “local legislations” in the above mentioned paragraph does not refer to laws. This is what can be understood from Order No. 39/2008 by the State Shura Council, and this is also clear in Para 12 of Article 7 of the Law of the governorate not incorporated into a region, which entitles the governorate council to issue a gazette to publish its orders and directives and not laws.

Building on the above, the governorates not incorporated into a region are governed by the administrative decentralization system in accordance with Article 122/Second, despite the legal text entitling their councils to issue “local legislations” regulating administrative and financial decentralization. We may name such “legislations” as “sub-legislations” and hence any attempt by the governorate council to expand such a “legislative power” would be challenged before the COR or the Federal Supreme Court in accordance with Article 93/Fourth of the Constitution.

Article 122/Third states that “The governor, who is elected by the Governorate Council, is deemed the highest executive official in the governorate to practice his powers authorized by the Council.” The governor is not subject/affiliated to the federal Prime Minister as is the case with the Region President, and this means eliminating the control/guidance of central government which is a core aspect of administrative decentralization. Article 45 of Law 21 of 2008 is intended only for coordination between the two government levels.

Federalism is the regions' legal system stipulated in Section I, Chapter V of the Constitution whose articles don't provide for applying federalism to the regions in the same way as applying the administrative decentralization to governorates not incorporated into a region pursuant to Article 122/Second.
c. Federalism and confederation in the regions

Such misinterpretation may be discussed first in the Constitution and then in the KRG Constitution. The Kurdistan Region was created as a de facto situation after the Security Council Resolution No. 688 dated 5 April 1991, which established a security zone northern to Latitude 36, separated from the central Iraqi government. Kurdistan Parliament was held on 19 May 1992 and on 5 July 1992; a local government emerged and declared confederation inside Iraq.

After overthrowing the past regime, Article 117 of the Iraqi Constitution, and after a referendum conducted on 15 October 2005, stated: “First: This Constitution, upon coming into force, shall recognize the region of Kurdistan, along with its existing authorities, as a federal region”. Article 114 stated that “Legislation enacted in the region of Kurdistan since 1992 shall remain in force, and decisions issued by the government of the region of Kurdistan, including court decisions and contracts, shall be considered valid …. provided that they do not contradict the Constitution”. The harmony between such legislation and decisions and the Constitution has not been verified until now.

Since no other region was created, the Kurdistan Region, which was retroactively incorporated into the Constitution, is still the only region in the confederation in Iraq. This region is drafting its own constitution with a framework, institutions and powers that should not contradict the national constitution according to Article 120 of the latter: “Each region shall adopt a constitution of its own that defines the structure of powers of the region, its authorities, and the mechanisms for exercising such authorities, provided that it does not contradict this Constitution”.

The KRG parliament has voted on the draft but it has not been set for referendum due to the wide powers contradiction the federal constitution. The KRG has been practicing its powers de facto since its establishment before the creation of the federal constitution.

The confederal elements in the federal constitution are:

1) The powers shared between the central government and the regions. According to Article 114, all that is not stipulated as central powers shall be regional (or even governorate) powers. Governorates are inserted here out of the legal context of the administrative decentralization system only to limit the central government powers and to give governorates more powers, which apply to confederation rather than to decentralization.

2) Regional and governorate laws have acquired priority to federal laws when the shared powers are concerned, according to Article 115: “With regard to other powers shared between the federal government and the regional government, priority shall be given to the law of the regions and governorates not incorporated into a region in case of dispute”. This will give rise to continual disputes between the two parts given the great interrelation between the exclusively federal powers and those shared with the regions and governorates, which affects the central government ability to lead the country in a time when security and political stability are badly needed.

3) Regions and governorates are establishing offices within the Iraqi diplomatic missions abroad
to follow up cultural, social and development issues, but this is creating disputes with the central government regarding the management of Iraqi foreign policy.

2. Powers of the governorates not incorporated into a region

When drafting the Constitution, Iraqi legislators were not in a position to distinguish between federalism and decentralization in the administrative system of governorates. This led a hybrid situation that confuses the two systems within the Constitution hence giving rise to power overlapping, which can be noticed in the following:

a. Exclusive powers of central government

Article 110 of the Constitution specifies the powers of the federal authorities while Article 115 states that “All powers not stipulated in the exclusive powers of the federal government belong to the authorities of the regions and governorates that are not incorporated into a region”. This gives the governorate the status of a region in terms of powers, which violates the provisions of Article 122 which limits the governorate powers to administrative and financial issues in the governorate and within the administrative decentralization framework.

Though, as inferred from Article 115, the powers shared between the federal government and the regions include governorates, the limited interpretation blocks such inclusion. According to Article 93/Fourth of the Constitution, the Federal Supreme Court is entitled to give limited or expanded interpretation of this Article.

b. Hybrid powers of local government

Article 115 and 122 of the Constitution mingles between the decentralization and federal aspects of governorates (when sharing powers with the regions) and their confederal aspects (when the Governorate Law has priority on the federal law) in the following:

1. Article 122 states that governorates shall “manage their affairs in accordance with the principle of decentralized administration, and this shall be regulated by law”.

2. Article 115 states that “all powers not stipulated in the exclusive powers of the federal government belong to the authorities of the regions and governorates that are not incorporated into a region”. This means that these governorates enjoy un-exclusive powers like the regions, which falls outside their powers limited exclusively to administrative and financial issues. This confusion between the two texts may expand the governorate powers vis-à-vis the federal powers, which contradicts the administrative decentralization.

c. Shared powers

Article 115 deludes that the laws of the regions and governorates not incorporated into a region have priority to the federal laws in case of dispute about the shared powers, while the reference to such shared powers should be limited to the federal government and the regions and should not concern the relationship between the federal government and governorates.
No matter what interpretation Article 115 may have, the ambiguity of its text will give rise to numerous problems between the central authorities and governorate administrations, similar to the problems between the central government and the KRG, if the governorate law has priority over the federal law, which is a confederal aspect not a federal one.

If the regions and governorates chose to go in this confederal way, the federal system stipulated in the Constitution would face legal, political and administrative problems, which is already clear in the oil contracts concluded by the KRG without consulting the central government; not to mention other problems like Article 140 of the Constitution related to the disputed governorates and districts, Kirkuk referendum, the governorate councils election law, the customs duties in the KRG border outlets etc.

3. Conflicts with the center and policy-making

a. Conflicts regarding interpreting the constitutional and legal provisions

Shared powers between federal institutions and local units raise major problems related to the interpretation of Article 115 of the Constitution: does a law issued by a governorate council or a region council amend or nullify the contradicting federal laws? While the Federal Court denies both the amendment and nullification process, it protects the federal form of the state and preserves Iraq's unity, building upon Article 109 of the Constitution, which states: "The federal authorities shall preserve the unity, integrity, independence, and sovereignty of Iraq and its federal democratic system". This Article is at the beginning of Chapter IV regulating the powers of federal authorities.

b. Conflict regarding legislative powers

Texts vie which calls for a trade-off to organize the relation between the center and governorates based on administrative decentralization as stipulated in the Constitution and Law 21 and give preference to it over federalism stipulated only in Article 115 of the Constitution, i.e. to outweigh Article 61/First and Article 122/Second of the Constitution and Article 7/Second of Law 21, which provide for applying administrative decentralization for governorates instead of the region federalism; otherwise, the two systems would have no separating lines.

This means that only the COR shall have the power of tax legislation. This interpretation is supported by the COR power to control and dissolve the governorate councils pursuant to a decision taken by its absolute majority based on a request by the governor or a third of the COR members when these councils breach the Constitution as stipulated in Article 20/Second of Law 21 with reference to Paragraph First/2 thereof.

The governorate council doesn't have a legislative power to enact local laws; however, it practices its broad administrative and financial powers pursuant to Paragraph 3 of Article 122 of the Constitution, which states: "The governor, who is elected by the Governorate Council, is deemed the highest executive official in the governorate to practice his/her powers authorized by the Council". On the other hand, the word "laws" in the following text: "therefore, councils of governorates not incorporated into a region may enact laws of taxes and..." may be interpreted as
decisions issued by the governorate council as a form of indirect or sub-legislation to enforce the
direct legislations issued by the COR. The constitutional and legal system in Iraq is based on a
hierarchy, at the top of which is the Constitution followed by legislations issued by the COR, then
by the regions (these legislations are implemented only in the regions), then regulations,
instructions and administrative decisions issued by the governorate councils.

c. Conflicts regarding powers of providing public services

Conflict of powers often appears between the governorate councils and central government on
finance, returns, freedom to conclude contracts, designating lands for developmental projects, etc.
The foremost issue is the conflict regarding running Al-Najaf International Airport and powers of
the governorate and the Ministry of Transportation. There is another fervent conflict related to
interpreting some of the constitutional texts regarding oil and gas and the possibility of carrying out
investments by some governorates or the government's right to conclude agreements with foreign oil
companies without consulting the producing governorates.

d. A problem regarding eliminating the MMPW

One of the most controversial issues between the center and governorates was the decision of
eliminating the MMPW. In cooperation with the COR Governorates and Regions Committee, the
COR Work and Service Committee sought to eliminate the MMPW. Some departments (Urban
Planning Department, Municipality Department, and Water and Sewage Department) were supposed
to be detached then administratively, technically and legally attached to the governors and controlled
by the governorate council. In addition, staff of the aforementioned departments was supposed to be
distributed to the governorate departments and directorates. Eliminating the MMPW was supposed
to enhance decentralization and grant the governorate councils more executive powers, especially in
field of providing all forms of municipal services. Indeed, Law 20/2010 on detaching the
departments of the MMPW was issued and stated: "A General Directorate shall be established at
each governorate not incorporated into a region and shall be called the General Directorate for
Municipal Affairs. It shall be affiliated to the governor and run by a General Director..." provided
that "the councils of governorates not incorporated into a region shall issue a law regulating this
Directorate structure". Pursuant to Article 1 of Law 20, Urban Planning Department, Municipality
Department, and Water and Sewage Department shall be affiliated to the General Directorate for
Municipal Affairs. Under Article 6 of Law 20, all powers of the Minister of Municipalities and
public Works shall be transferred to the governors who shall have the Minister's administrative
powers in the General Directorates for Municipal Affairs.

The governorates welcomed the elimination decision; Head of Karbala Governorate Council accused
the MMPW of being an obstacle to many investment projects in the governorate and indicated the
rightness of the decision. Al-Najaf Governorate Council referred two sewage projects implemented
by the MMPW to the Commission of Integrity because the implementation had been delayed.

However, the Prime Minister challenged the COR decision before the Federal Court because it
contradicts the Constitution provisions. Through scrutinizing the Constitution texts, the Court found
that Article 47 thereof adopts the principle of separation of powers, and that law drafts shall be
provided by the Executive Power and its competent bodies because they are related to financial,
political, international and social obligations which shall be met by the Executive Power (pursuant to
Article 80 of the Constitution) rather than the Legislative Power.
4. Decentralization and gender

Despite the important role played by women in development process, their reality in Iraq is similar to it in the Arabic countries where women's participation in decision-making positions in the government is still low and the gap between men and women in the top management levels is huge.

The analysis shows some difficulties facing the process of considering gender in supporting the administrative decentralization, as well as those facing women promotion in the top and middle leading and administrative positions at the governorates because the low rates of women in such positions mean that their promotion is restricted and subject to the space in which they are allowed to work. In light of no strategy to support the new organizational structures at all levels to achieve equality of gender; no developed techniques to select, support and empower the administrative leaderships to achieve gender justice; and the clear disparity between men and women in terms of education levels, promotion of women will still be largely subject to their educational attainment.

Distribution of top and middle management positions at local governorates shows that it's biased towards males; women occupy only 5% of these positions. There is no woman occupies the position of governor or head of governorate council. Regarding governorate councils, the highest rate of males occupying the aforementioned positions is 88.6% at Salah ad Din, while the highest rate of women is 31.8% in Kirkuk. The highest rate of male bachelors is 76.5% in Basra Governorate and the lowest is 9.1% in Wassit Governorate comparing to 25.3% in Baghdad Governorate and 0.05% in Wassit Governorate respectively for women.

5. Poor features of providing the Municipal Services

The following table summarizes the results of the survey of service providing reality in the governorates in supporting for decentralization, which was conducted by the NCCMD. The results show poor administrative decentralization features in four fields: planning, HR, service quality, and relation between local government and federal government; mediocre features in two fields: financial management and infrastructure quality; and good features in field of management capacities and organization.
Results of evaluating the service providing reality in the governorates in supporting for decentralization

<table>
<thead>
<tr>
<th>Service Area</th>
<th>Poor</th>
<th>Mediocre</th>
<th>Good</th>
<th>In supporting for decentralization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Planning</td>
<td>✓</td>
<td></td>
<td></td>
<td>Poor due to lack of cadres and continued dependence on the central competent ministry.</td>
</tr>
<tr>
<td>Capacities and organization</td>
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<td></td>
<td>Good.</td>
</tr>
<tr>
<td>HR</td>
<td></td>
<td>✓</td>
<td></td>
<td>Poor because number of staff is not commensurate with the governorate population, in addition to poor efficiency and quality of staff which reflect on the performance.</td>
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<tr>
<td>Financial management</td>
<td></td>
<td>✓</td>
<td></td>
<td>Mediocre due to disparity in the governorate capabilities for implementing the projects identified in the investment budget.</td>
</tr>
<tr>
<td>Service quality</td>
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<td>✓</td>
<td></td>
<td>Poor due to poor service quality provided by the state institutions.</td>
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<tr>
<td>Relation between local government and federal government</td>
<td></td>
<td>✓</td>
<td></td>
<td>Poor because local governments and municipal bodies depend on the federal government in fields of finance and planning, in addition to poor local capabilities.</td>
</tr>
<tr>
<td>Infrastructure quality</td>
<td></td>
<td>✓</td>
<td></td>
<td>Mediocre due to poor governorate infrastructures.</td>
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Chapter III

Towards Enhancing Decentralization in Iraq: Conclusions and Recommendations

In light of studies conducted within the project, experts’ related recommendations and results of analysis and additions made by the study’s basic team, the study has reached several conclusions and recommendations.

1. General Conclusions

Despite the fact that the Constitution supports decentralization and that the political power of governorates is currently decentralized, the current administrative structures still reflect an obvious centralized approach. Administrative decentralization hasn’t been seriously implemented in the modern sense and the directorates affiliated to the federal ministries still work as delegated departments. Furthermore, the hasty birth of decentralization has made the structure of governorate councils fragile because they are based on political rather than professional loyalty.

In general, conditions of administrative decentralization can be summarized as a hindering environment reflected in a conflict of articles, politics and administrations. This environment has resulted from the political situation of the duration when the Constitution and Law 21/2008 on Governorate Councils were written and legislated:

- There is a legislative gap resulting from a hybrid system, which requires the amendment of the Constitution and Law 21. There are constitutional and legal articles that lead to conflict of powers such as Article 115 of the Constitution, which conflicts with Article 12 thereof.
- Claiming for legislative powers by the governorate councils takes the form of political conflict with the center which sees that they are heading towards federalism rather than administrative decentralization. Law 21 has been hastily issued and for electoral purposes without taking the center’s point of view into consideration. Some call for amending Article 7 to nullify the legislative powers, while others call for maintaining them provided that they are not used to legislate rules contradict the federal laws, and restricting them to instructions and local systems only.
- Conflicts of administrations is reflected in competing for powers in a time where various forms of administrative corruption prevailed due probably to poor central authority control, dispersed powers and poor administrative capacities of the center and governorates.

A long controversy had taken place before the Law on Councils of Governorates not Incorporated into a Region was enacted. This controversy was between two groups adopting two contradicted theories: the first is to grant the governorates extreme powers that reach federalism and intertwine with it till the situation becomes hybrid and difficult to be practically achieved. The second is to gradually transform from centralism into decentralization with each governorate having specific powers and is controlled by the center to correct defects and failure that can take place at the beginning of the transformation. This contradiction clearly appears in the Law, especially in the local legislation powers granted for the governorate councils pursuant to a rule by the Federal Supreme Court after controversy had been erupted. Furthermore, there are a lot of defects which necessitate the amendment of some articles of the Law to remove its legal deformity and obvious political nature so as to become able to provide solutions for administration crises at the governorates.
a) In light of the administrative system based on decentralization principle, the governorates are strongly connected to the federal government due to their finance needs; this finance is still generated and run centrally because it still primarily depends on oil revenues. However, general trends reveal that the federal government applies the principle of administrative decentralization as it continues to support the governorates through its sustainable commitment to provide financial resources to meet the governorate needs.

Implementing the administrative decentralization has a major challenge related to finance; we don’t mean the lack of finance or federal allocations to local governments but the continuous dependency by governorates on the federal government to provide their financial needs instead of enhancing their own capacities to supply the financial resources necessary to provide services and facilitate local administration. Another problem is related to poor local administrative capacities, which is manifested in the inability of many governorates to reach acceptable levels of disbursement out of the investment budget although many federal institutions have been reproduced at the level of governorates, such as investment commissions which still play limited roles.

Even though the financial powers are related to legal frameworks and financial instructions, they are affiliated to the center. While local administrations fail to mobilize the governorate’s own resources, the federal government fails to encourage the governorates to acquire such resources, for example, selling/leasing lands. The federal government considers that the governorate councils have no appropriate capacities or expertise to identify the governorate developmental, service or strategic planning needs, which leads to wasted public money.

Decentralization requires good techniques for managing the governorate resources by the governor and the council through convenient legislations, non-conflicted powers and a clear relationship between the center and the governorate (it’s not a competitive or hostile relationship). For example: granting broad powers through the law is useless as long as financial allocations are identified and attached with instructions and controls that forbid the good use of available resources in addition to the interference in providing the municipal services due to conflict between the powers of governorate and the MMPW.

b) Despite the available financial resources and capabilities, the Iraqi governorates still have obvious shortage of infrastructures; electricity is still one of the major problems affecting the society and economy due to the close correlation between this sector and the other national economy sectors. The country still suffers in field of transportation; services of transportation, communication, mail and internet are retarded in all governorates, which require huge investments and changes in the organizational and administrative structures of this sector.

c) When assessing the relation between the federal government and the local governments, the role which can be played by the government towards the private sector is a major issue. Throughout the past years, the developmental role of the private sector has had main marginalization; hence, the government has to revitalize this sector through making it an active sector in the economic activity, job opportunity creator, sustainable growth enhancer, development finance contributor through maximizing its returns and savings. Redistributing the roles in the economic activity in favor of the private sector requires important actions, including facilitating and simplifying the governmental procedures at the business level, carrying out reforms at the commercial and organizational level, developing an institutional and legal transparent framework to encourage the works of the private sector, and encouraging
and expanding the process of lending the private sector. Here, we have additional challenges related to the governorate ability to enhance the role of private sector rather than to compete with it, in light of the role mandated to them by the federal government.

2. Specific Conclusions

a. Legal Conclusions

This study shows that there are two different legal systems for the administration in Iraq; the first is the administrative decentralization at the governorates not incorporated into a region pursuant to Article 22 of the Constitution and Law 21, while the other is federalism at the regions as stipulated in Article 113 and Article 114 of the Constitution.

This expansion in federal and confederation powers is restricted to some legislative powers of Law 21 which regulates the governorate powers in accordance with the administrative decentralization regulation issued pursuant to Article 122/Second of the Constitution, which necessitates the interpretation of the texts in a constricting way in terms of particularizing the general text (Article 115 of the Constitution) by the specific text (Law 21). This interpretation is based on a constitutional text which provides for implementing the administrative decentralization pursuant to a law according to interpretation rules. Otherwise, decentralization features provided for by Law 21 and Article 122 of the Constitution would be lost, and we would have conflict of texts, which might in turn leads to nullifying them according to interpretation rules.

This distinction, however, fades out due to the overlap between these two systems through the confusing concepts and power distribution as follows:

1) Law 21: Federalism is manifested in granting the governorates legislative powers pursuant to Article 2/Seventh, whereas the administrative decentralization includes no legislative powers for the local administrative units practicing administrative rather than legislative powers.

2) The Constitution: Article 115 thereof gives broad powers to regions and governorates vis a vis the central authority in terms of the restrictive identification of the latter powers, the existence of shared powers between the two parties, and the precedence of local laws over the federal one in terms of shared powers; a matter that would impose confederation problems rather than just federal problems between the central government and local administrations. It’s worth mentioning that the provisions of decentralized system are regulated through the law rather than the Constitution since they are an administrative rather than political issue.

Despite the fact the Law 21 provides a primary base to empower the local government institutions, it doesn’t provide a comprehensive framework towards establishing an effective and efficient decentralized system because the governorate councils still lack the adequate powers. Accordingly, some obstacles at the legal level can be identified:

- No clear legislative framework for decentralization work, and the legal duality between federalism and decentralization.
- Incomplete legal system supporting the decentralization, and defects of Law 21.
- No identified controls or criteria to regulate the public-private partnership, set up the legislations necessary to encourage it, or define the activities that may be the axis of such partnership.
b. Administrative Conclusions

Years of war, the economic sanctions and the unpeaceful change of authority since 1985 have made the state institutions weak and inflexible without any change towards improving the institutional performance, which adversely affects the local development and administrative decentralization. Administration was coupled with the philosophy of political regime and its increasing attempts to dominate the state institutions and penetrate its body. Hence, the state institutions were subject to intensive politicization which weakened the administration structures and negatively impacted on the decision-making mechanisms within each institution and on its perspective towards the higher bodies in the administrative hierarchy. The collapse of the state and its institutions, as well as their hastily rebuild have aggravated their performance and their inherent problems, the foremost of which is the corruption problem. The administration in Iraq in general, and in the governorates in general, has many features that may impose a challenge to enhancing the administrative decentralization in the near future, including:

- Retarded administration systems, and adoption of traditional methods in administration and organization.
- Lack of labor in relation to population at some governorates, which affects the administrative body work there.
- Poor existing efficiencies and leaderships. Although democracy forms an important platform to make the decentralized administration successful, the party system and the nature of election laws don't lead to selecting efficient administrative and leading elites at the level of governorates.
- Corruption, nepotism and interference of parties with the work of local government institutions.
- Low efficiency at the lower and middle management levels, which threatens the local administration.
- Widespread disguised unemployment at the state institutions in general.
- No planning at work.

c. Service Conclusions

1) The deteriorated economic reality at the level of all governorates necessitates the provision of appropriate platform for taking off towards rectifying the development spatial structure through more balanced and integrated distribution of investments, economic activities and services and in a way commensurate with the economic, social and human characteristics and features of each governorate so as to minimize the developmental differences among governorates and levels of deprivation of public services among their populations, maximize the sustainable growth rates and enhance the sustainable human development. This goal can be achieved through adopting the administrative decentralization stipulated in Article 122/Second of the Constitution and regulated by Law 21 as basic platforms.

2) The analysis shows some difficulties facing the process of considering gender in supporting the administrative decentralization, as well as those facing women promotion in the top and middle leading and administrative positions at the governorates because the low rates of women in such positions, in light of no women quota, mean that their promotion is restricted and subject to the space in which they are allowed to work. In light of no strategy to support the new organizational structures at all levels to achieve equality of gender, no developed techniques to select, support
and empower the administrative leaderships to achieve gender justice, and the clear disparity between men and women in terms of education levels, promotion of women will still largely subject to their educational attainment.

3) The municipal capacities survey generally shows:

- Poor infrastructures of service sector at the governorates, and poor efficiency in running them.
- The governorates need huge investments in basic infrastructures.
- Lack of structures supporting the good governance.
- Poor information and electronic structures, which adversely affects the availability of information and infrastructures supporting the e-government.
- Continued centralism in the important aspects of planning process; the competent ministry is still the body endorsing the plan. However, the governorate participation in developing this plan is good, which indicates that the endorsing body consults the departments; yet, the decision is taken centrally by the ministry. On the other hand, the participation of the different units in setting the goals and developing the plans is still poor, which is in line with the previous indicators pointing out to the poor administrative decentralization features.
- In terms of contributing to decision-making process, the survey shows that this contribution is rather good; however, it differs among the governorates where the highest rate was in Sulaymaniyah followed by Dhi Qar and Baghdad, while the lowest rate was in Salah ad Din.
- When developing the plans, prioritization is one of the basics that express the needs of the region and citizens. The assessment shows that there is a greater dependence on decentralization in prioritization. In Kurdistan Region, the survey results indicate that the body that sets priorities is primarily the municipal council, which stresses the increased adoption of decentralization when developing the plans. The survey also shows that prioritization is carried out in accordance with population density.
- Lack of specialized and efficient cadres is a major obstacle facing the planning process, followed by the absence of coordination between the department and the body implementing the projects, and then shortage of financial allocations.
- Separation between powers and responsibilities was good, which is a good indicator.
- The surveyed departments seems unsatisfied with the investment allocations and financial powers as they are (whether administrative, financial or technical) poor and don't meet the needs of these bodies, which leads to low service quality which is related to volume and level of granted powers. Increasing the powers in light of the status quo where administrative and financial corruption is widespread may provoke negative rather than positive results.
- The survey shows that the efficiency of financial activity workers is good; however, calculation documentation and many other processes are still unreliable even though some of which now use electronic documentation. The surveyed departments use a system for financial reports, which is imposed by the federal financial instructions, legislations and controls regarding exchange control through all its stages, which is a good indication that systems of control, auditing and financial assessment well function.
- The survey shows that the municipal departments prefer to be connected with the local government due to several reasons: geographical location, i.e. the far distance away from MMPW, especially for the governorates of Anbar, Basra, Qadisyia, Salah ad Din (Tikrit District only) and Erbil; to avoid red tape regarding Kurdistan Region governorates; the local governments understand the needs more (according to the municipal departments of the governorates of Basra, Qadisyia, Anbar, Erbil and Sulaymaniyah); quick achievement; easy
access to financial allocations; and enhancement of the administrative decentralization culture.

3. Recommendations

a. General Recommendations

- It's necessary to highlight the importance of political support to the administrative decentralization through clear visions and developing their mechanisms in a specific period to enhance the citizens' trust in the government's procedures and plans.
- The study notices that women's role in the middle and top management is poor and that their limited existence in the governorate councils is due to the adopted quota system. Therefore, more efforts are requested to empower women and raise society awareness of the importance of their participation.
- It's vital to involve the civil society organizations (CSOs), and that they cooperate to support the principles of good governance.
- It's important to facilitate the participation of the private sector in local development so as to minimize the differences at the local level.

b. Legal Recommendations

- A second amendment should be made to the Governorate Law No. 22 of 2008 to identify the powers of local authorities in accordance with the public contexts of administrative decentralization rather than of federalism in a way that lead to stabilized administrative system in light of a strong federal government that maintains the unity of legal and political system, administrative powers to be granted to local authorities to achieve their development, and effective administrative control. This would aim at establishing criteria of quality and integrity management to rebuild Iraq and maintain its political and regional unity because democracy in Iraq is still young, the governorates suffer from poor administrative cadres that are able to efficiently and transparently run the public facilities, and expanding their powers for the time being with no central control would waste their budgets and frustrate their performance.
- The first amendment of Law 21, which was issued through Law 15/2010, doesn't address problems resulting from power interference; instead, it is confined only to amending procedural aspects related to appeals and enable the COR to object to the governorate council decisions as some of these decisions contradict the Constitution or the applicable laws issued to bridge the gap resulted from the absence of central administrative control.
- Despite the circulars of the Council of Minister's Secretary and decisions of the State Shura Council, which were issued to clarify powers and tasks of the governorates and their councils, there is a need to higher levels of coordination at the level of federal government in order to coordinate the administrative performance of local authorities in a way that achieve a balance between local needs and state policy in rebuilding the country.
- The legislative gap resulting from the absence of laws supporting the decentralization work should be bridged; most of the current legal structures belong to pre-change period, and the laws issued at a later stage have made the legal situation more complex. Therefore, laws, regulations and instructions commensurate with the trend towards decentralization should be issued.
• Laws, instructions and controls regulating the relation and communication system between the municipal units and governorate councils with MMPW should be activated.
• The situation of the Region of Baghdad, stipulated in Article 124 of the Constitution, should be considered because there is overlap between powers of Baghdad Governorate and the Capital Secretariat. Therefore, it's necessary to establish a realistic mechanism to facilitate work procedures.
• Federal laws contradicting the decentralization, such as the laws of ministries that are still centralized, should be amended. The ministries' laws should be enacted in accordance with the form stipulated in the Constitution so as to establish harmony and coordination between them and Law 21.
• A partnership between the local and federal governments should be established to draft the laws and public policies regarding, for example, oil, electricity, etc.

c. Administrative Recommendations

Establishing an active system to divide powers requires designing structures for transparency and accountability to ensure that decentralization optimally make use of resources and provide them to the society. Here, the federal government can play an important role in policy-making, quality insurance, monitoring and evaluation, and supervising the decentralization of services. There are a number of reforms that should be considered in supporting the decentralization, including:

• Setting specified timeframes to expand the administrative, technical and financial powers and programming them in phases.

• Institutional development through amending the Election Law to change half of the council members at each election cycle.

• Setting controls so that the employees of the governorate or the governorate council, including the governor office and head of the governorate council, don't change after each election cycle to benefit from training and capacity building.

• Strengthening the capacities of local governments in fields of financial management, budgeting and project developing.

• Tax reforms, including preparations for taxes at both centralized and decentralized (regional and local) levels.

• Developing the tax management.

• Strengthening the processes of budgeting and setting the financial reports.

• Changing the management philosophy and applying the new management approaches.

• Providing training opportunities for different levels of local administrations and giving priority for training in basic fields such as conducting the technical and economic feasibility study and mechanisms of developing the strategic plans for governorates.
• Establishing active mechanisms for monitoring and evaluation at the administrative level of the governorate.

• Improving the efficiency of administrative cadres and developing the human resources through setting systems to evaluate the functionality based on measurable and objective criteria that contribute to the improvement of staff performance, in addition to the other administrative purposes in promotion, transportation, allowance, etc.

• Maintaining the supervision by MMPW over the municipal units at the governorates after nullifying their dissolving resolution until the full development of the administrative decentralization experiment, in addition to easing the burdens of local governments' pressures on those units. This requires qualifying them to supervise the governorates as they are incapable of meeting their obligation for the time being.

• Establishing a central institute for strategic and developmental planning at the headquarters of the Ministry of Planning under the patronage of the UN and supporting countries so as to include the important decentralized elements of the related ministries such as (municipalities, planning, representatives of the governorates, the Capital Secretariat, and national academics and experts).

d. Services Related Recommendations

To improve the decentralized services, a number of reforms should be carried out at the level of governorates:

• Establishing infrastructures for the wide networks at the national level to meet the different needs based on using technologies as a means to improve access to services.

• Providing the structures supporting the e-government, and using computers to document the financial reports and procedures to ensure accurate and fast implementation, as well as creating a database for staff working at the service sectors at the governorates to benefit from in developing the training plan in line with the governorate needs.

• Qualifying the departments of planning and monitoring through providing qualitative and quantitative cadres to play their roles in developing the plans and monitoring their implementation in order to enhance the features of administrative decentralization in these departments.

• Focusing on developing the capacities at the sectoral units in the governorates through activating the participation in identifying the financial allocations and estimates of the budgets (current/investment) to ensure a real connection between the goals of the municipal units and the required financial allocations.
4. Urgent tasks to enhance decentralization

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<th>Aspect</th>
<th>Required action</th>
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<td>Legal Aspect</td>
<td>Amending Law 21 to identify the powers of local authorities in accordance with the public contexts of administrative decentralization</td>
<td>COR Governorate Councils</td>
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<td>Bridging the legislative gap resulted from the absence of laws supporting the decentralization</td>
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<td>Carrying out tax reforms</td>
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<td>Providing training opportunities for different levels of local departments</td>
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<td>Enhancing and developing the infrastructures supporting service provision</td>
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| Gender Integration | Enhancing women's participation in decision-making positions | Local governments  
Governorate Councils  
CSOs  
International Organizations |