

Decentralization in Iraq: Practices, Process, and Prospects

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Abstract: Decentralization has been relied on to dismantle the centralized bureaucracy of Saddam-era Iraq and replace it with more responsive and more democratic regional and provincial government. The decentralization outlined in the Iraqi Constitution of 2005 (and further encouraged by passage of the Law of Governorates in 2008) have been widely debated and differently interpreted. But there has been some progress in using decentralization as a means of moving Iraq from statism to post conflict stability.

Introduction

Breaking the chains of statism calls not simply for reducing the state but reforming it. Among the most fundamental reforms is the restructuring of state responsibility and authority with regard to both territory and functions. Iraq has been on a path toward decentralization since the collapse of the Saddam regime. The 2005 constitution created a decentralized federal structure. Law 21 of 2008, known informally as the Provincial Powers Act (PPA), allocated new responsibilities to the provincial level. This path, however, has been far from smooth. Various actors have interpreted the terms of the constitutional framework differently, and implementation of the provisions of Law 21 has been spotty. This paper briefly overviews the decentralization framework and practices being put in place, summarizes progress to date, and assesses prospects for these reforms' contributions to moving Iraq from statism to pluralism and stability.

Why decentralize?

Decentralization is pursued for a variety of reasons: technical, political, and fiscal/financial. On the technical side, its aim is to improve administrative and service delivery efficiency and effectiveness, and match services to citizens' preferences. Politically, decentralization usually seeks to increase local participation and autonomy, redistribute power, build democratic governance, reduce ethnic and/or regional tensions, and mitigate conflict. On the fiscal/financial side, decentralization is invoked as a means to increase allocative efficiency, give subnational units the authority to raise revenues and manage expenditures, and sharpen accountability.

Decentralization has been much studied and debated, and generalized conclusions remain tentative for the most part because the particulars of a given decentralization are highly context-specific. Nonetheless, empirical evidence suggests that decentralization, appropriately implemented,

can achieve the above aims. Particularly in post-conflict settings, experience has shown that attention to decentralized local government can enhance prospects for stabilization through increasing the speed and responsiveness of service delivery, addressing ethnic/regional inequities, building democratic and conflict management capacities, contributing to citizen trust in the state, and enhancing legitimacy.

Iraq's decentralization

Constitutions establish the governing principles that undergird the legal architecture of the state, and embody societal norms, values, and aspirations. In deeply divided, post-conflict societies, constitution-making tends to pave over divisions with generalities and ambiguities. Thus constitutions confront a paradox. On the one hand, they aim to legitimize a new government by grounding it in agreed-upon principles. On the other, however, to the extent that the consensus on those principles may be weak and not widely shared, they import societal fault lines into the politico-legal arena, thereby exacerbating the potential for discord and conflict. Iraq's decentralization illustrates this quandary.

Iraq's 2005 constitution establishes its government as parliamentary; the executive branch is led by a prime minister, who forms the government by choosing ministers with the consent of parliament, and who is him or herself selected from the members of the national parliament, rather than chosen through direct elections. Iraq is federal with regard to the power and authority of regional government, but unitary with regard to governorates not incorporated in regions. Article 117 of the constitution recognizes only the Kurdish Regional Government (KRG) as an autonomous federal unit, with its own constitution, parliament and ministries. Article 116 of the Constitution characterizes the regions and provinces as "decentralized;" but Article 122, *Second* qualifies that decentralization as "administrative," which places substantial limits on their abilities to take actions independent from central government. The concept of administrative decentralization is not new to the 2005 Constitution; its antecedent is Law

159 of 1969, which likewise states that provinces are governed in accordance with the principle of administrative decentralization.

Article 115 reserves powers to the provinces, but provincial councils are not provincial governments. Although elected council members select the governor, he does not subsequently form a “government” at the provincial level. For instance, the governor does not choose the Health Department Director in his province. All provincial department heads are appointed by their ministers at the national level. Provincial councils, at the present time, bear no responsibility for any public service.

Article 122 states that governance of the provinces shall be determined by law. And the law in question is not a single item of legislation—Law 21 had not even been passed at the time of the Constitution’s ratification—but of many items. This statement is key to the contours of decentralization’s path in Iraq, because of the distinction it suggests between provincial “government” and “governance.” Provincial governance comprises a collection of governmental actors at the provincial level, appointed as well as elected, each of them regulated by their own relevant law(s), and differing in their subject-matter jurisdiction while sharing territorial jurisdiction. Law 21 in Article 7, *Sixth* admonishes provincial councils not to tread on the authority of the central ministries by monitoring their departments’ performance, as departments are “offices under federal jurisdiction.”

The distinction between territorial and subject-matter jurisdiction is critical to understanding the relationship between elected and appointed provincial actors. Because central government creates those relationships in law, provincial bodies are subordinate to the center, as the following articles of Law 21 demonstrate. Article 7, *Third* enjoins a governorate council against taking any action that contravenes the constitution or other national law. Enforcement of this limitation is given both to the national parliament and the governor. In Article 2, *Second*, the national parliament (Council of Representatives) is given an oversight role, and by amendment that role has been strengthened to prevent governorate councils from violating the constitution and other national law. The governor is

obligated by Article 31, *Second* to enforce the decisions of his council, but he is also obliged in Article 31, *Eleventh* to object to any action of the council that he deems to violate the constitution, applicable law or central government policy.

Progress so far

Iraq's decentralization is incomplete. On the political side, two rounds of local elections have been held and provincial officials have gained governing experience and some legitimacy (by virtue of having been elected) operating in a decentralizing setting, but provincial councils remain weak relative to centrally appointed actors. Regarding fiscal/financial decentralization, although Article 44 of Law 21 opens the door to local revenue generation, in practice, almost all provincial funding comes from central government transfers. Administrative decentralization, not surprisingly given the constitutional and legal framework summarized above, is most accurately characterized as deconcentration, where provincial administrative and service delivery actors operate under the authority and direction of their parent central ministries.

There have been some efforts to enact national legislation to advance decentralization. In January-February 2010 the Presidency Council passed two laws transferring authorities, resources, and personnel from two central ministries to the provinces (Law 18 for the Ministry of Labor and Social Affairs and Law 20 for the Ministry of Municipalities and Public Works). However, in June-July 2010 the Supreme Court first froze implementation and then reversed both laws, declaring them to be unconstitutional.

Provincial officials are testing the boundaries of the discretionary space that Law 21 creates, with mixed results. For example, in January 2010, Najaf issued a law authorizing collection of local revenues generated from donations at religious sites and from the operation of capital projects. Later in 2010, Basrah proposed a surcharge on the issuance of passports within the province. The Council of

Ministers Secretariat voided Basrah's surcharge, stating that it was unconstitutional, while leaving Najaf's law in place.

Decentralization's tenure in Iraq is still relatively short. While some observers fear that the forces of recentralization may prevail, undoing or severely delaying the progress made so far; compared to other countries, Iraq's situation is not out of the ordinary. Decentralization is a long-term process that usually consists of the classic two steps forward and one step back, and is never "finished" in a definitive sense. In decentralized governance systems, intergovernmental authorities and responsibilities are constantly subject to revision and renegotiation. Indonesia, for example, undertook a "big bang" approach to decentralization; yet despite this push, it took years and extensive bargaining, negotiating, and experimenting to move Indonesia's governance structures beyond centralization and standardization.

Prospects and caveats

There are, however, some sources of concern regarding progress with decentralization as a means to move Iraq toward pluralism and away from statism. First is the lack of institutions empowered to clarify center-province relationships, remove any inconsistencies or contradictions, or adjudicate disputes. Nominally, institutional space exists for entities that take into consideration the interests of the provinces or resolve disputes between the various government bodies at the provincial level, but in practice they are largely absent. The High Commission for Coordination Among the Provinces, called for in Law 21, Article 45 of Law 21, has met only three times since its formation in 2009 and has yet to form a secretariat. The "upper house" of parliament called for in Article 65 of the constitution has never been formed, and the Minister of State for Provincial Affairs has no rulemaking authority. Neither the Federal Supreme Court nor the Shura Council is authorized by their statutes to hear cases from provincial

councils. These institutional gaps bode ill for clarifying legal ambiguities and resolving disputes in favor of provincial actors.

Second, although the debates about decentralization are conducted ostensibly around constitutional, legal, administrative issues, the underlying dynamic is contestation for political power and control. The recent uptick in violence and the deliberations around the departure of U.S. forces have highlighted the fragile nature of the elite pact that supports the tenuous stability in Iraq at present. The Maliki government has shown a growing tendency to consolidate state control; he and his cohorts have few incentives to empower provincial actors who could become political rivals through making more progress on decentralization. Rumbblings in Basrah about creating a south-east federal region along the lines of the KRG further discourage decentralizing authority and resources.

On a more positive note, the government is under increasing pressure from citizens to deliver services, jobs, and security. The “Arab spring” demonstrations in the Middle East have added momentum to such pressure. The Iraqi government’s need to respond could create incentives to move decentralization beyond its most modest expression, administrative deconcentration, toward more expansive devolution, despite the countervailing political forces militating against pluralism.

Suggested further reading

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