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CONFUSION AND CONTENTION

UNDERSTANDING THE FAILINGS

OF DECENTRALISATION

IN IRAQ

Ali Al-Mawlawi
and Sajad Jiyad

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Confusion and Contention: Understanding the Failings of Decentralisation in Iraq

Ali Al-Mawlawi and Sajad Jiyad

About the Authors

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Abstract

Iraq formally began the process of implementing decentralisation in 2015, with the dual aims of improving service delivery at the local level, and curtailing the centralised bureaucracy. It is widely accepted that this process has not achieved what it set out to do, despite decentralised governing arrangements being broadly accepted in principle by both federal and local authorities. Based on a series of interviews across three provinces with federal and local officials that have direct experiences of the process, this paper examines the flaws in implementation of decentralisation and the resulting outcomes to service delivery. It seeks to understand why this process has yielded overwhelmingly negative results and considers how the recent political turbulence in the country has impacted federal arrangements. The paper offers a number of recommendations aimed at strengthening the implementation process including greater clarity in roles and responsibilities across federal and local authorities, the adoption of an incremental approach to rollout, and greater consideration for local context and political actors.

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For more information about the Centre's work on the CRP, please contact Sandra Sfeir (s.sfeir@lse.ac.uk).



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Executive Summary

By most metrics, Iraq's recent experience of decentralisation has been hugely disappointing. The devolution of powers to subnational entities, which formally began in 2015, has yet to yield any marked improvements in service delivery at the local level, or indeed a pronounced shift away from centralised forms of governance. By surveying the views of federal and local officials with direct experiences of the process, this paper seeks to understand why decentralisation has failed.

Our findings confirm that although decentralised governing arrangements are broadly accepted in principle by both federal and local authorities, the overwhelming impression is that decentralisation has been poorly implemented and has yielded negative results. Not only did officials we interviewed struggle to cite any marked improvements to local governance, some argued that devolving powers to local entities has compounded mismanagement and corruption. Furthermore, our findings underscore how institutional confusion about the respective powers of federal and local authorities under the existing decentralised framework continues to entrench tensions among competing stakeholders, undermining the credibility of the entire process.

This paper also analyses how the recent political turbulence in the country has impacted federal arrangements. Ingrained opposition to decentralisation has markedly weakened the powers of local authorities, and parliament's unprecedented move in October 2019 to suspend provincial and district councils has shifted the balance of power back in favour of the centre.

This paper recommends the following actions:

The high commission responsible for overseeing the decentralisation process should conduct a thorough evaluation to identify areas where devolution of powers has been rushed and thus inadequately implemented. Furthermore, it should identify areas where the legal provisions are not being implemented, such as aspects of fiscal decentralisation. Sequencing the roll out of decentralisation and adopting a methodical and incremental approach could help address the institutional confusion that currently persists.

Education and awareness about decentralisation should not be a mechanical exercise, but needs to be grounded in the Iraqi context through a detailed mapping of powers and authorities across federal and local entities. The gap between formal implementation of decentralisation and realities on the ground, where there is much confusion about where federal authority ends and where local authority begins, needs to be addressed. The legal contestations that are being played out between federal and provincial entities only serve to undermine the credibility of decentralisation and entrench tensions.

Among the greatest challenges to decentralisation's success is addressing the accountability deficit at the local level. Endemic corruption and political outmanoeuvring within provincial councils have rendered their oversight role virtually absent. This is compounded by weak internal auditing mechanisms at the subnational level. One approach is to focus on electoral reform as a means to generate greater public accountability of elected officials. These reforms would fall in line with amendments to the national elections law, namely, reducing the number of provincial council seats and increasing electoral districts to ensure better representation of constituency interests.

Overcoming resistance to decentralisation at the federal level should incorporate a two-pronged approach. Firstly, assuming that political will exists at the highest executive level, the Council of Ministers needs to exhibit greater assertiveness in resolving disputes. Where resistance to decentralisation at the level of federal ministries is unjustified, instead of allowing disputes to play out in the courts, it should be incumbent on the central government to actively pursue a quick and clear resolution that sets a procedural precedent for others to follow.

ملخص البحث

وفقاً لمعظم المقاييس، كانت تجربة العراق في تطبيق اللامركزية مخيبة للآمال بشكل كبير. لم يسفر تفويض السلطات للدوائر المحلية و الذي بدأ رسمياً في عام ٢٠١٥ عن أي تحسينات ملحوظة في تقديم الخدمات على المستوى المحلي، وأعلى تغير واضح من أشكال الحكم المركزي. تسعى هذه الورقة البحثية من خلال دراسة آراء المسؤولين الفيدراليين والمحليين ذوي الخبرات المباشرة لعملية تطبيق اللامركزية إلى فهم سبب فشل اللامركزية.

تؤكد نتائج البحث أنه على الرغم من أن مبادئ الحكم اللامركزي تعتبر مقبولة على نطاق واسع من حيث المبدأ من قبل كل من السلطات الاتحادية والمحلية، إلا أن هناك انطباعاً غامراً بأن اللامركزية قد تم تنفيذها بشكل سيء و قد أدت إلى نتائج سلبية. لم يقتصر الأمر على عجز المسؤولين الذين قابلناهم عن الإشارة إلى أي تحسينات ملحوظة في الحكم المحلي، بل ادعى البعض بأن نقل السلطات إلى الدوائر المحلية زاد من سوء الإدارة والفساد.

و علاوة على ذلك، تؤكد النتائج التي توصلنا إليها أن الارتباك المؤسسي حول تقاسم السلطات بين الدوائر الاتحادية والمحلية في ظل إطار اللامركزية الحالي يساهم و بشكل مستمر في ترسيخ التوترات بين أصحاب المصلحة المتنافسين مما يقوض مصداقية العملية برمتها.

تحلل هذه الورقة البحثية أيضاً كيف أثرت الاضطرابات السياسية الأخيرة في البلاد على الترتيبات الفيدرالية وتوضح كيف أدت المعارضة المتأصلة للامركزية إلى إضعاف السلطات المحلية بشكل ملحوظ. والجدير بالذكر أن تحرك البرلمان غير المسبوق في أكتوبر ٢٠١٩ لتعليق مجالس المقاطعات قد أدى إلى تغيير ميزان القوى لصالح المركز.

توصي هذه الورقة بالإجراءات التالية:

يجب أن تجري المفوضية العليا المسؤولة على الإشراف على عملية تطبيق اللامركزية، تقييماً شاملاً لتحديد المجالات التي تم فيها تفويض الصلاحيات على عجل وبالتالي لم يتم تنفيذها بشكل كافٍ. علاوة على ذلك، ينبغي أن تحدد المجالات التي لا يتم فيها تنفيذ الأحكام القانونية التي تتعلق باللامركزية، مثل جوانب اللامركزية المالية. إن تحديد تسلسل واضح لتطبيق اللامركزية واعتماد نهج منهجي وتدرجي قد يؤدي إلى معالجة الارتباك المؤسسي المستمر حالياً.

يجب ألا يكون التثقيف والتوعية حول اللامركزية تمريناً ألياً بل يجب أن يرتكز على فهم عميق للسياق العراقي الذي يتم استرشاده من خلال تحديد مفضل للسلطات عبر الدوائر الاتحادية والمحلية. يجب معالجة الفجوة بين التطبيق الرسمي للامركزية والحقائق على أرض الواقع حيث يوجد الكثير من الالتباس حول أين تنتهي السلطة الاتحادية وأين تبدأ السلطة المحلية. إن الخلافات القانونية التي تدور بين الدوائر الاتحادية والمحلية لا تؤدي إلا إلى تقويض مصداقية اللامركزية وترسيخ التوترات.

معالجة انعدام المساءلة على المستوى المحلي تعد من أكبر التحديات التي تواجه نجاح اللامركزية. أدى الفساد المستشري والصراعات السياسية داخل مجالس المحافظات إلى جعل دورها الرقابي غائباً تقريباً و تفاقم ذلك بسبب ضعف آليات الرقابة الداخلية على المستوى المحلي. أحد السبل هو التركيز على الإصلاح الانتخابي كوسيلة تؤدي إلى قدر أكبر من المساءلة العامة للمسؤولين المنتخبين. وستتوافق هذه الإصلاحات مع تعديلات قانون الانتخابات و تحديداً تقليص عدد مقاعد مجالس المحافظات وزيادة الدوائر الانتخابية لضمان تمثيل أفضل لمصالح الناخبين.

التغلب على معارضة اللامركزية على المستوى الاتحادي يجب أن يتضمن نهجاً ذا شقين. أولاً، على افتراض أن الإرادة السياسية موجودة على أعلى مستوى تنفيذي، فإن مجلس الوزراء يحتاج إلى إظهار قدر أكبر من الحزم في حل النزاعات. عندما تكون معارضة اللامركزية على مستوى الوزارات الاتحادية غير مبررة فبدلاً من السماح بخوض النزاعات في المحاكم، ينبغي أن يكون من واجب الحكومة المركزية السعي إلى إيجاد حل سريع وواضح يشكل سابقة إجرائية لمتبعها الآخرون.

Introduction

Decentralisation has had a demonstrably positive impact on governance and political stability in many countries. But the transition in Iraq from a highly centralised state to a federal arrangement has generated much turbulence. As Iraq's first Voluntary National Review on sustainable development goals explains, the transformation created 'institutional confusion and rivalry' between federal and local institutions. The glaring asymmetry of institutional capacities between national and subnational entities is one reason why the balance of power was unable to shift significantly, since 'local [c]apabilities do not provide effective frameworks for coordination, data collection and policy analysis.'¹

This paper seeks to build on our understanding of what went wrong in Iraq through a series of interviews conducted in three provinces exploring perceptions of how decentralisation has impacted service delivery at provincial level, the key obstacles, how these could be overcome and how international assistance efforts have been received. Some 13 people were interviewed in January and February 2020 including local officials in Anbar, Basra and Baghdad provinces, representing the governor's offices, provincial councils and municipalities. Anbar was chosen because of its significance as one of the provinces that was liberated from Daesh and hence vitally in need of reconstruction; Basra holds a central role as the lynchpin of Iraq's economy; and Baghdad was chosen to understand if its experience of decentralisation was significantly different. At the federal level, we spoke with officials in the ministries of health; housing, construction and municipalities; labour and public works; the Mayoralty of Baghdad; and the High Commission for Coordinating among Provinces (HCCP). Insights are also informed by numerous informal conversations with officials in the Council of Ministers.

This paper argues that rather than helping to alleviate dysfunctional governing arrangements, decentralisation has mostly exacerbated incoherence within Iraqi state structures. Institutional constraints have hampered the ability of subnational entities to absorb and utilise delegated powers because state institutions lack sufficient organisational coherence and functional resilience. As a result, in many respects, the transfer of powers to subnational entities simply compounded dysfunctions at the local level and exacerbated deficits in governance such as corruption and mismanagement. This resulted in pushback from federal authorities and a partial reversing of decentralisation, such as amendments to the law that formally reinstated delegated powers within the ministries of health and education to federal control.

Furthermore, the lack of political cohesion at the national level meant that there was insufficient political will and focus on the part of the central government to see through the decentralisation process to its intended finality. The infighting and intransigence at the provincial level also reinforced longstanding resistance from federal ministries to

¹ Government of Iraq, 'First Voluntary National Review on Sustainable Development Goals', *UN Sustainable Development Goals*, June 2019. Available at: https://sustainabledevelopment.un.org/content/documents/23789Iraq_VNR_2019_final_EN_HS.pdf (accessed 5 April 2020).

relinquish powers in accordance with the decentralisation law and generated so much resentment that parliament eventually moved to suspend all provincial and district councils and assume their oversight authority.

Secondly, the paper argues that decentralisation was ill-conceived because it failed to sequence the process in a manner that could have given it a chance to succeed. The architects of the process focused heavily on administrative decentralisation and paid little attention to fiscal and political decentralisation. As a result, the shift in intergovernmental balance of power was minimal and tensions were exacerbated as provincial authorities persisted in their claims over financial resources from local revenue generation. All while democratic legitimacy at the provincial level was eroded because of the failure to hold timely elections or conduct much needed electoral reform.

Thirdly, the views of stakeholders outlined below underscore the need to undertake a thorough evaluation of decentralisation before any progress can be made to rectify the process. A strategy to overcome the underlying obstacles and constraints should then be formulated, namely, resistance from federal institutions to cede powers in accordance with the law; the lack of political will among parties to support the process; contentions over interpreting the decentralisation law and where respective powers between federal and local authorities lie; weak provincial administrative capacity to absorb new powers; and pervasive corruption that impedes effective decision-making. In order to resolve these issues, a much more robust dialogue between stakeholders is needed, one that currently does not exist beyond ad hoc and excessively formal high-level meetings.

Setting the Scene

Iraq had effectively no experience in decentralisation prior to 2003. Even though Law 159 of 1969 empowered local administrations with authorities over security and public services, in practice there was no degree of autonomy since decisions were dictated by Baghdad and implemented through local officials appointed by the Ba'ath Party.² Article 116 of the Iraqi constitution of 2005 forms the basis for a decentralised framework, stating, "The federal system in the Republic of Iraq is made up of a decentralized capital, regions, and governorates, as well as local administrations."³

Attempts to activate this constitutional provision first emerged in 2008 with the passing of the decentralisation law, known as Law 21, which codified the administrative and legal framework for decentralisation. The political imperative for decentralisation was predicated on a broader rationale for instituting federalism as a cornerstone of the post-2003 order. Viewed as a way to check the rise of future authoritarian tendencies, this sought to reconcile the reality of an autonomous Kurdistan Region that had existed since 1991 and embrace the redistribution of power away from the centre. In other words, empowering

² USAID, 'Law of Governorates Not Incorporated into a Region, as amended by Law 15 of 2010 and footnoted', 2011.

³ Constitution of Iraq, 2005.

local authorities through decentralisation was a means to reconfigure power dynamics in order to generate greater buy-in from Iraq's diverse communities.

As Iraq began to emerge from a costly sectarian conflict in 2008, it appeared an appropriate time to implement decentralisation. But the government proceeded with extreme caution, not least because of fears that it could unravel the country's fragile unity. These fears were compounded by a conflation between decentralisation and regionalism, notoriously perpetuated by the so-called 'Biden plan' in 2006, which was essentially viewed by many as the partitioning of Iraq along ethnosectarian lines.⁴ Calls for regionalism among Iraq's Sunni Arab leaders intensified over the following years, leaving little appetite for the central government to pursue decentralisation.

It was only in 2015 when the transfer of administrative powers to the provinces in accordance with Law 21 commenced, after former prime minister Haider al-Abadi issued Executive Order 34.⁵ The effort was led by the High Commission for Coordinating among Provinces (HCCP), a central body that monitored and evaluated the decentralisation process and created a platform to bring together federal ministers and provincial governors to resolve outstanding issues. Monthly meetings were convened by the prime minister with all the governors and chairs of provincial councils to review progress and discuss impediments. A secretariat for the HCCP oversaw the technical details related to the transfer of powers, led by Torhan Mufti with the rank of minister of state, that drew on the bureaucratic and legal resources of the cabinet secretariat.

Although the HCCP's authority was vaguely mentioned in Article 45 of the original version of Law 21, subsequent amendments to the law clarified its remit. Key functions include its role in resolving disputes between the centre and periphery; devising a mechanism for how the central government and provinces would manage shared authorities; and facilitating the transfer of administrative and fiscal powers from eight federal ministries to the provinces, in accordance with Law 21. The slated ministries were municipalities and public works, construction and housing, labour and social affairs, education, health, agriculture, youth and sports, and finance.⁶

Law 21 is made up of over 50 articles that define the types of administrative units including provinces, districts (*qadha'*) and sub-districts (*nahiya*); the process by which members are elected onto them; their powers and competencies; and powers pertaining to the generation of local revenues. Core to the devolution process was to map out and transfer hundreds of federal functions belonging to the eight ministries to dozens of directorates

⁴ Joseph Biden and Leslie Gelb, 'Unity Through Autonomy in Iraq', *The New York Times*, 1 May 2006. Available at: <https://www.nytimes.com/2006/05/01/opinion/01biden.html> (accessed 5 April 2020).

⁵ For a detailed explanation of why decentralisation became viable in 2015, see Ali Al-Mawlawi, 'Functioning Federalism in Iraq: A Critical Perspective', *LSE Middle East Centre Blog*, 11 March 2018. Available at: <https://blogs.lse.ac.uk/mec/2018/03/11/functioning-federalism-in-iraq-a-critical-perspective/> (accessed 5 April 2020).

⁶ 'Second Amendment to Law of the Provinces Not Incorporated Into Regions', *Constitution Net*. Available at: http://constitutionnet.org/sites/default/files/the_second_amendment_law_for_the_for_non-regional_provinces_no._21_the_year_2008.pdf (accessed 5 April 2020).

at the local level that were now taking orders from local governments. This included transferring authority for tens of thousands of public employees over to the responsibility of provincial authorities. For example, Baghdad province expanded its payroll from 90,000 employees to 325,000, including healthcare professionals and teachers.⁷

There was a broad consensus among officials interviewed in 2020 that there remained a long way to go. Asked about the extent to which they felt decentralisation had been achieved, responses varied, from only 20% according to an official in Basra, 30% according to officials in Anbar and Baghdad provincial council, to 60% and 75% according to officials in the governor's offices in Baghdad and Anbar. The HCCP's assessment was more philosophical, offering the view that decentralisation is an ongoing process that requires a long-term approach. Such a response is expected, since the HCCP holds primary responsibility for implementing decentralisation and managing expectations about when the process will bear fruit. Indeed there is a clear mismatch between the technical transfer of powers on the one hand, and the impact for local governance on the other. In February 2019, Mufti claimed that most of the provinces (with the exception of liberated provinces) had completed the transfer process.⁸

The incoherence in the process described by stakeholders culminated in 2018 – and was spurred on by strong federal resistance and the failure of local authorities to absorb and harness their new powers effectively – when parliament moved to partially reverse the decentralisation process. The original version of Law 21 had authorised the decentralisation of eight federal ministries, but such was Baghdad's level of dissatisfaction at the performance of local authorities in managing health facilities and schools that by May 2018, parliament passed a third amendment to the decentralisation law that reinstated Baghdad's authority over the ministries of education and health.⁹ Despite protests from provincial governors who lodged legal challenges against the amendment, the Supreme Court upheld parliament's decision, finding no constitutional infraction.¹⁰

This episode sheds light on the complex power struggles that have played out between the centre and periphery. Members of parliament view decentralisation as diluting their authority by undermining the role of oversight, yet most of the leading parties in parliament are represented at the provincial level. By the same token, even if the central government is convinced by the decentralisation agenda, the coalition nature of government means that individuals and parties represented at the ministerial level will be more inclined to resist the diminishing of the powers of ministries.

⁷ Mike Fleet, 'Decentralization and its Discontents in Iraq', *Middle East Institute*, 25 September 2019. Available at: <https://www.mei.edu/publications/decentralization-and-its-discontents-iraq> (accessed 5 April 2020).

⁸ Sout Al-Iraq, 'Transfer of 70% of federal government authorities to the liberated provinces', 26 February 2019. Available at: <https://goo.gl/SMby81> (accessed 25 April 2020).

⁹ 'Third Amendment to the Law of the Provinces Not Incorporated Into Regions', *Ministry of Justice*, 16 April 2018. Available at: <https://www.moj.gov.iq/upload/pdf/4487.pdf> (accessed 5 April 2020).

¹⁰ Federal Supreme Court, 2018. Available at: https://www.iraqfsc.iq/krarat/1/2018/80_fed_2018.pdf (accessed 6 April 2020).

Parliament Suspends Provincial Councils

A second milestone came in October 2019 when parliament decided to suspend all provincial and district councils as a response to the demands of the protest movement that emerged earlier that month. Provincial councils were widely seen as ridden with corruption and paralysed by political infighting. A significant portion of public anger at state failures was directed at local councils and parliament used the opportunity to frame its decision as an anti-corruption measure. As the speaker of parliament, Mohammed al-Halbousi, put it, the move was an attempt to ‘raise the standard of services and halt the real problems and violations in the provinces’.¹¹ Parliament predicated its decision on Article 20 of the decentralisation law; this authorises parliament to suspend a provincial council where ‘gross dereliction of duties’ has occurred. But using Article 20 as legal cover for suspending all provincial councils was highly questionable even though the government supported the decision.¹² To illustrate the extent of the government’s U-turn on this issue, Torhan Mufti had been asked earlier in the year about the possibility of dissolving provincial councils and responded that it would be unconstitutional.¹³

Opinions are divided about what primarily motivated parliament to take this action and whether it was the right decision. For executive authorities in the provinces, the councils were often seen as obstructive, corruption-ridden and an unnecessary burden on public spending. This was explicitly stated by interviewed officials working for provincial governors, including within Anbar’s municipality. But there was also a clear acknowledgement that parliament’s decision was politically motivated.

In Basra, one official explained the move as an attempt by MPs to remove the oversight role of provincial councils, thereby handing that responsibility to parliament so it could interfere in local decision-making and gain access to illicit deals through local capital projects. In Anbar, the move was seen by an official in the governor’s office as a rushed attempt to quell public anger. A member of Baghdad’s provincial council also asserted that they had been scapegoated, but acknowledged that the political infighting within the council had contributed to their poor performance. Nevertheless, in his view, the primary goal was to remove oversight in order to give the governors – all of whom are tied to parties in parliament – free reign over decision-making in the province.

Tensions between governors and provincial councils were apparent across Iraq, where there were persistent efforts to impeach and remove governors from office. For instance, in 2017, the governors of all three liberated provinces were sacked by their respective coun-

¹¹ Council of Representatives, ‘Third Session’, *YouTube*, 8 October 2018. Available at: https://youtu.be/JKS_M6BaV8c?t=716 (accessed 5 April 2020).

¹² Ali Al-Mawlawi, ‘Is the Decentralisation Process Being Reversed in Iraq?’, *LSE Middle East Centre Blog*, 2 December 2019. Available at: <https://blogs.lse.ac.uk/mec/2019/12/02/is-the-decentralisation-process-in-iraq-being-reversed/> (accessed 6 April 2020).

¹³ Asia TV, ‘Torhan Mufti: It is not possible to dissolve provincial councils except through a constitutional amendment’, *YouTube*, 22 January 2019. Available at: <https://www.youtube.com/watch?v=KWUFellmtrw> (accessed 3 April 2020).

cils. In every case, party politics was the dominant driver in the impeachment process. The governor of Anbar, who belonged to the Iraqi Islamic Party, was replaced by Mohammed al-Halbousi from a rival party.¹⁴ Struggles between governors and provincial councils have even been mediated by the courts. When the Wasit provincial council voted out Governor Mohammed al-Mayahi in 2019, the decision had to be considered by an administrative court after Mayahi appealed that the no confidence procedure had been violated because the council had not held a session to question him first.¹⁵

Provincial governors are clearly satisfied with the current void and will seek, along with their political backers, to ensure that the suspension of provincial councils endures for as long as possible. In April 2020, Najaf's governor, Luay Al-Yaseri, described the impact of this new reality on his work in the province. He lamented the destabilising impact of political 'struggles' between provincial council members and his office that had impeded his ability to work, adding that he now enjoyed greater ability to approve capital projects, streamline decision-making and avoid outside interference. As he explained, since many provincial public servants are tied to political parties, his ability to remove or transfer them was seriously curtailed by objections from council members with political interests.¹⁶

While there are no expectations that provincial councils will be reinstated in the near-term, it does appear to be a temporary measure until local elections can be organised. Indeed, as one council member in Anbar insisted, provincial councils are explicitly mentioned in Article 122 of the constitution, meaning that even if parliament was within its rights to suspend them because their electoral term had expired, it would not be possible to scrap them altogether.

The absence of provincial councils also has created a legal conundrum over how vacant posts for governors should be filled because Article 122(c) explicitly states that governors should be elected by provincial councils. This question became a matter of practical urgency when the governor of Dhi Qar province resigned in response to largescale violence when demonstrations reached a boiling point in November 2019.¹⁷ The issue remained unresolved for five months until Prime Minister Abdul Mahdi decided to exercise executive authority to appoint Judge Nadhim Al-Waeli as governor.

The executive order cited Article 78 of the Constitution in a vague reference to the prime minister's general authority as convener of the Council of Ministers, but the decision was met with much scepticism. Asked to explain the legal basis for his appointment, the new governor noted that in the absence of the provincial council, authority now fell to the

¹⁴ Al-Mawlawi, 'Functioning Federalism in Iraq'.

¹⁵ 'Administrative court approves sacking of Wasit governor', *Baghdad Today*, 24 December 2019. Available at: <https://bit.ly/2MumUy1> (accessed 13 April 2020).

¹⁶ Al-Iraqiya, 'Najaf governor: Freezing of provincial councils improved matters', *YouTube*, 26 April 2020. Available at: <https://www.youtube.com/watch?v=l9hGhfvo88w&t=2s> (accessed 27 April 2020).

¹⁷ Anadolu Agency, 'Dhi Qar governor resigns in response to bloody events', 29 November 2019. Available at: <https://bit.ly/2BKBcbX> (accessed 3 February 2020).

Council of Ministers to appoint governors.¹⁸ Abdul Mahdi's executive order could be reasonably challenged since it was not based on cabinet's approval, nor did it involve any role for parliament, which retains powers to dismiss governors, meaning a formal legal challenge to Waeli's appointment is likely.

There is no doubt that Iraq's federal structure has taken a major hit; trust and confidence in the ability of local authorities to deliver results is very low; and therefore the relevance of decentralisation to Iraq's governance framework is being questioned.

General Perceptions of Decentralisation

Public discourse over decentralisation is noticeably scant, making it difficult to identify specific positions or differences between the ruling elite. During the 2018 national election campaigns, there was no noticeable debate over decentralisation as a policy or electoral issue. However, discussions in parliament over the third amendment to Law 21 in 2018 shed some light on the interests of MPs. A central concern was constraining the powers of provincial councils, most notably those linked to their role in appointing senior officials in the province. MPs insisted that although provincial councils could nominate individuals and the governor would then choose his/her preferred choice, final approval should still fall to the relevant federal minister. As one Sadrist MP noted, ceding too much authority to provincial councils over the appointment process would render these positions subject to illicit deals and bribery.¹⁹ A cynical view would suggest that parliament's intention was to ensure that MPs maintained firm control as beneficiaries of these illicit dealings.

A key factor in ensuring that decentralisation yields positive outcomes is political will at the federal and local levels. We explored the perceptions of officials within federal and provincial governments towards decentralisation to understand how they assess the process as a whole. The findings show that they hold overwhelmingly positive views about decentralisation in principle, but Iraq's experience in devolving powers is largely viewed in a negative light. This suggests a good degree of acceptance towards the notion that local authorities should bear greater responsibility for delivering services, but a clear failing in planning and execution of the decentralisation process.

Multiple officials at the federal and local levels reiterated this point: that their reservations towards the process stem from the view that what currently exists does not truly reflect the aspirations and intended consequences of decentralisation. Much

¹⁸ Hussein al-Amil, 'New Dhi Qar governor assumes his role through a controversial executive order', *Al-Mada*, 4 May 2020. Available at: <https://www.almadapaper.net/view.php?cat=226503> (accessed 4 May 2020).

¹⁹ Council of Representatives, 'Transcript of Session 4', 14 January 2020. Available at: <https://arb.parliament.iq/archive/2018/01/14/م-14-1-2018-الأحد-4-رقم-جلسة> (accessed 28 April 2020).

of the research suggests that this is because the necessary prerequisites for ensuring the success of the process had not been established. As a Ministry of Health official explained, ‘the conditions for success were not created, [t]he timing and sequencing were not correct.’ As others also pointed out, Iraq’s long history of highly centralised governance meant that a reconfiguration in power centres would require a massive undertaking in shifting mindsets and generating a sufficient degree of buy-in. This begins with a genuine commitment from Iraq’s highest executive authorities and consensus among the governing elite, without which, the entire process is compromised. But it also requires officials at the subnational level to accept greater responsibility for the failures within their jurisdiction.

In its defence, the HCCP emphasised the importance of education and raising awareness about the decentralisation process among key stakeholders, insisting that the first stage in its multi-year strategy sought to improve general understanding about how decentralised arrangements work and their implications for roles and responsibilities at every level. It is clear, however, that these efforts were insufficient. The lack of understanding about newly devolved powers and how they should be utilised was a common theme among those we interviewed. Several officials lamented that the process had been rushed, with little clarity about how powers between the centre and periphery had been demarcated, casting doubt about whether it was in line with Law 21. As an official within the Basra municipality put it, ‘decentralisation would have been positive if it had been implemented in a legal and proper way.’

Nevertheless, despite these shortcomings, some officials claim decentralisation has produced two encouraging outcomes. First, as officials within Anbar governor’s office and municipality asserted, there has been a notable improvement in the way bureaucratic procedures are processed. With greater autonomy from Baghdad, they assert that decision-making processes are quicker and there is less red tape to deal with. Of course, it is also possible that local officials could seek to profit from corruption by imposing their own bureaucratic hurdles, making processes more complicated than they were to begin with. Secondly, the HCCP claimed that decentralisation addressed a key source of political instability, namely, that calls for regionalisation had diminished.

The notion that Baghdad’s embrace of decentralisation had scuppered these inclinations is of course highly debatable, but the HCCP’s viewpoint sheds light on an aspect of its rationale for embarking on decentralisation. Drawing this causal link is difficult because of statistically confounding factors. Iraq was in the midst of a war with ISIS when Law 21 was first implemented. The politicians from provinces that were most vocal about creating a region were now under ISIS occupation and there was little political appetite for this issue. Nor was regionalisation seen as a solution to Iraq’s problems at a time when these provinces were heavily dependent on federal forces including the army and police to take back their cities.

Nevertheless, in 2018 and 2019 those calls were resurrected, this time in Basra in response to public anger over squalid living conditions.²⁰ Basra's woes reflect the collective failure of governance across the country, albeit these are more pronounced there. The contamination of drinking water in the summer of 2018 that led to over 100,000 hospitalisations is illustrative of the institutional incoherence. Work to address water and sanitation shortfalls in Basra involved no less than eight ministries and departments, six local agencies and the governor's office.²¹

Decentralising Service Delivery

Since the rationale for decentralisation focusses primarily on improving the effectiveness of governance, one of the hallmarks of success is measured by improvements in service delivery at the local level. Based on this criterion, decentralisation has been a resounding failure according to officials we interviewed. In fact, from the perspective of the central government including the health ministry, not only have services not improved, but they have regressed. Nationwide polling from 2018 confirms this view. According to the National Democratic Institute, 59% of respondents believed that basic services were getting worse, an increase of 9% compared to earlier in the year. Public trust in district and provincial councils also fell to less than a third.²²

However, officials in Anbar assert that there have been limited improvements in the completion of small capital projects that were agreed by local and federal authorities. This highlights the fact that where there is agreement between the federal and local authorities, it is possible for the benefits of decentralisation to be realised. Indeed, there was agreement among officials in Anbar and Baghdad provinces that decision-making and bureaucratic procedures have been sped up, but only in instances where the central government has not objected to local authorities exercising their autonomy. An important point raised by the Anbar governor's office is that in many cases, the employees working in decentralised departments will still bear allegiance to their ministries over local executive authorities, thereby undermining the province's ability to assert its will in matters disputed by federal entities.

²⁰ Omar Sattar, 'Iraq's Basra seeks to upgrade to federal region,' *Al-Monitor*, 26 April 2019. Available at: <https://www.al-monitor.com/pulse/originals/2019/04/iraq-basra-region-federalism.html> (accessed 17 April 2020).

²¹ Sajad Jiyad, 'Failure of Governance in Basra Puts All of Iraq at Risk', *LSE Middle East Centre Blog*, 2 April 2020. Available at: <https://blogs.lse.ac.uk/mec/2020/04/02/failure-of-governance-in-basra-puts-all-of-iraq-at-risk/> (accessed 5 April 2020).

²² National Democratic Institute, 'NDI Poll: Iraqis Call on the New Government for Jobs, Services and Reconstruction', 20 November 2018. Available at: <https://www.ndi.org/publications/ndi-poll-iraqis-call-new-government-jobs-services-and-reconstruction-august-october> (accessed 31 July 2020).

Obstacles to Decentralisation

Understanding the variety of obstacles and constraints to decentralisation is key to devising an appropriate strategy to move forward. Among the most notable issues cited by interviewed officials include:

Resistance from federal authorities to cede powers. From the perspective of local officials, federal authorities are still unwilling to accept the power sharing arrangements stipulated in Law 21, whereas federal officials will assert that provisions within the law have been misconstrued, resulting in instances where they will seek to overturn administrative decisions made at the local level. This includes objections from the finance ministry over local revenue generation. The Maysan local government tried to impose a surcharge for issuing passports; it was opposed by the finance ministry and the Supreme Court ruled in its favour.²³ Appointments of senior officials by governors is another common point of contention. In 2017, the governor of Mosul sacked the head of the province's municipalities and appointed himself in an acting position. The municipalities minister responded swiftly with a letter claiming that the official was an employee of the ministry and therefore the governor did not have authority to remove him.²⁴

Lack of political will was cited by the HCCP as an impediment on three counts. First, the resistance from ministries to concede their authorities; among political actors who had ambitions of regionalisation and believed that decentralisation would undermine their case; and thirdly, among the older generation of civil servants who are set in their ways and unwilling to adapt. Some of this resistance is exhibited in successive amendments to Law 21, which have tended to claw back powers to federal authorities, such as giving a greater say to federal ministers over senior appointments in the provinces and limiting the extent of fiscal decentralisation by constraining the share of locally generated revenues that are owed to the province.

Unclear demarcation between the powers of federal and local authorities. Not only does Law 21 require greater clarity about the respective powers of the central government and the provinces, but, as the Ministry of Labour underscored, there are numerous contradictions between older legislation and bylaws that undermine the principles of decentralisation. This type of confusion was expressed by officials at both the federal and local levels. Indeed, a commonly cited area of contention concerns fiscal decentralisation. Despite the provisions laid out in Article 45 of Law 21 that grant local authorities the right to generate local revenues and establish greater control to manage their financial resources, this issue is among the most hotly contested. The political

²³ Federal Supreme Court, 8 July 2014. Available at: https://www.iraqfsc.iq/krarat/1/2013/82_fed_2013.pdf (accessed 10 April 2020).

²⁴ Noor News, 'Ministry of Municipalities renews affirmation to Ninewa governor about his lack of authority to sack the municipalities director', 13 June 2018. Available at: <https://bit.ly/36ZflZJ> (accessed 5 April 2020).

economy drivers of this resistance are intuitive: an unwillingness by the finance ministry to cede control over budgetary allocations and spending that would dilute its authority; and concerns over how the balance of power across the country would be disrupted. The latter point was reiterated by the Ministry of Labour, which expressed concerns about the implications of unequal distribution of state revenues.

The lack of administrative capacity at the local level to absorb new powers. This was reiterated by a number of officials who asserted that the failure to provide requisite training and technical assistance to local administrations has left local authorities heavily dependent on federal administrative assistance, namely in dealing with financial and human resources management. A notable example is provincial budgeting. Both Law 21 and public financial management legislation require local governments to draft annual budgets through a consultative process before submitting to the finance ministry to incorporate within the federal budget. But their inexperience and lack of expertise means that the process is largely dictated by the federal government in a top-down fashion. Arguably there has been progress in some provinces through programmatic training to raise the quality of budgeting standards, demonstrating how weaknesses in administrative capacity can be overcome through a process of iterative learning and adaptation.²⁵

Pervasive corruption that impedes effective decision-making processes. Political dynamics at the local level have also impeded the ability of local authorities to utilise their new powers effectively. In all three provinces, officials complained that competing party interests and rivalries were stagnating the work of provincial councils and undermining the day to day functions of executive authorities. As one official in Anbar governor's office explained, senior civil servants who were either failing to perform or engaged in corruption enjoyed political protection from individuals or parties within the provincial councils. Bargaining over illicit interests among competing elites is common before an agreement can be reached. Not surprisingly, federal officials claimed that corruption was more pronounced on the provincial level. Indeed, every province has been gripped with unrelenting political turmoil caused by entrenched attempts by governors and provincial council members to undermine each other. These disputes have had such a disruptive impact on the functioning of local governments that, from the perspective of many in Baghdad, it would be irresponsible to afford them with so much authority.

Lack of strategic sequencing to phase in decentralisation. This is a point emphasised by several officials in Anbar and Baghdad provinces. Understanding that decentralisation cannot be implemented wholesale but rather through a sequenced approach is a hallmark of best practice around the world. This approach recognises that decentralisation is a process of public policy reforms rather than a state of being, nor does it happen with the flick of a switch; and that devolving powers should proceed in a calculated and incremental manner if it is to succeed in altering the intergovernmental

²⁵ Fleet, 'Decentralization and its Discontents in Iraq'.

balance of power.²⁶ Resistance from stakeholders is inevitable and sequencing should bear a relationship to the gradual building of capacities at the subnational level. But capacities of local authorities can only be truly developed through experience.

If the decentralisation process is rushed, it can lead to a backlash from institutions required to devolve powers, or loss of faith with those that are unable to effectively utilise their new authorities. Furthermore, it is worth considering the three primary categories of decentralisation, namely, administrative, fiscal and political; and in what order they should be rolled out to ensure maximum impact. When administrative powers are delegated before fiscal powers, local authorities often remain weak and vulnerable to undue interference from national authorities. Similarly, if political decentralisation such as electoral reform that creates greater accountability does not occur, administrative and fiscal decentralisation risk undermining democratic accountability by conferring too much power on unrepresentative bodies.

How to Reboot Decentralisation

A number of suggestions to overcome the obstacles to decentralisation were offered by officials we interviewed. Firstly, better training to build capacity and understanding in order to adequately navigate the legal and administrative minefield was a common demand. Secondly, as authorities in Baghdad provincial council pointed out, more efforts are needed to raise public awareness and understanding about decentralisation by utilising media platforms. Here it is relevant to elaborate on stakeholder perceptions of the international community's role in supporting the decentralisation process. Across the board, officials we spoke to described the contribution of international organisations as limited in scope and impact with a focus only on education and awareness about the general principles of decentralisation. Perceptions were particularly poor in Baghdad province; an official in Basra said he believed the few workshops that were held were for media consumption only and none of the outcomes were implemented; while in Anbar there was a more positive impression overall.

A Ministry of Health official said that international organisations had rushed into rolling out programmes without listening enough to the concerns and expectations of Iraqi stakeholders. This view was reiterated at the Ministry of Housing, Construction and Municipalities, where an official said the workshops were too theoretical and 'lacked an understanding of day to day issues and how local administrations were implementing decentralisation'. Interestingly, these largely negative views contrast with the HCCP's overwhelmingly positive impression of their role in reinforcing the decentralisation process in the provinces. This mismatch may also reflect an insufficient feedback loop that would be vital to enhancing the effectiveness of international assistance.

²⁶ Tulia G. Falsetti, 'A Sequential Theory of Decentralization: Latin America Cases in Comparative Perspective', *American Political Science Review*, Vol. 99, No. 3.

Thirdly, greater assertiveness by the central government to force ministries to comply with Law 21 was emphasised by the Anbar governor's office. In many instances, interventions at the highest level of government can help resolve disputes faster and without resorting to legal recourse, which often just compounds tensions. As the Wasit governor, Mohammed Al-Mayahi, suggests, the HCCP's function ought to extend beyond coordination and assume executive powers to bridge the gap between national and subnational entities and enable them to address challenges together.²⁷

Fourthly, among the most common demands was the need to institute more effective monitoring and auditing mechanisms to evaluate the performance of local authorities. This is something that Anbar officials suggested in addition to the HCCP, which noted that assessment teams were already in place at the provincial level. But in the absence of functioning provincial councils, direct oversight responsibility belongs to parliament. In this regard, testimonies from a number of governors have suggested that MPs representing their respective provinces are now working more closely with governors to fill that void.

Finally, accountability can be enhanced through electoral reform. There are limitations to what changes can be made to the provincial elections law because of constitutional provisions that stipulate an explicit role for provincial councils in electing governors. However, it is theoretically possible to adopt a similar approach used to amend the parliamentary elections law. Reducing the number of elected seats within the provincial councils could curtail the degree of infighting and interference with executive officials. This is a point that one official within Baghdad provincial council advocated, adding that if governors were to be chosen through a majoritarian approach rather than through consensus, it would reduce the amount of bargaining required, and in turn the governor would be less beholden to political factions. A second approach would be to reduce the size of electoral districts so that elected officials would be more accountable to constituents, a measure that was supported by the Basra municipality. Combining these two measures would also address concerns about adequate representation in provinces that have heterogenous communities.

Ultimately, any endeavour to reevaluate the decentralisation process and address electoral reform should be framed within a broader effort to salvage state legitimacy and remedy deep-seated flaws in Iraq's governance. Embracing decentralisation as a means to achieving these goals is by no means an inevitability. Iraq should learn the lessons of its recent experience and choose a path that works for its specific circumstances.

²⁷ Al-Iraqiya, 'Wasit governor: clear division between the federal government and the provinces', *YouTube*, 26 April 2020. Available at: <https://www.youtube.com/watch?v=9kHniFNqTl8&t=1s> (accessed 27 April 2020).

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Iraqi security forces stand guard outside a near Basra provincial council building during ongoing protests in Basra, Iraq.

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