Exploring the Rationale for Decentralization in Iraq and its Constraints

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The rationale for decentralization in Iraq has evolved over the course of the past 15 years. During the initial post-2003 period, federalism was seen by many as a panacea for mitigating against the rise of another authoritarian regime. In recent years, the devolution of powers to sub-national entities was prescribed as a political tool by both domestic and foreign actors to address the country’s numerous challenges, from containing ethno-sectarian conflict, to addressing the demands of an increasingly disaffected population.

Throughout this period, debate has persisted over the extent to which Baghdad should retain and project strength. Supporters of a strong central government claim that without a strong capital keeping the country together, Iraq will inevitably break apart because of separatist inclinations in the north and longstanding tensions between the country’s ethno-religious components. On the other side of the aisle, many assert that Iraq’s unity can only be maintained by dispersing power and empowering people at the local level to ensure that they have sufficient buy-in to remain committed to a unitary state. Framing the debate over decentralization is crucial to understanding the motives of its proponents and detractors, in addition to offering a balanced appraisal of the pros and cons of decentralization.

From a historical perspective, Iraq’s experience with decentralization is a largely contemporary affair, although, in 1969, Law 159 was passed that established local administrations, albeit controlled by Ba’ath Party officials who took orders from Baghdad. Following the Gulf War, the semi-autonomous Kurdistan Region was established, thereby enforcing a de facto form of asymmetrical federalism. While northern Iraq enjoyed relative autonomy from Baghdad, the rest of Iraq remained firmly under the tight grip of Saddam’s authoritarian regime. It was only in 2005, when the new Constitution was ratified through a nationwide referendum, that federalism was finally enshrined as a formal power-sharing arrangement. Article 116 of the Constitution notes, “The federal system in the Republic of Iraq is made up of a decentralized capital, regions, and governorates, as well as local administrations.”

https://www.youtube.com/watch?v=INKVmBOdxow

While the Constitution does expand elsewhere on the exclusive powers of the...
central government and the prerogatives of the regions and provinces, decentralization was first codified in Law 21, known as the Law of Provinces Not Incorporated into a Region. Over the course of 10 years, Law 21 has been amended three times, most recently in April 2018, providing more clarity on the powers of the provinces and affording greater administrative and fiscal authority to sub-national actors, including provincial councils and governors.

In reality though, sustained efforts to implement Law 21 only began in 2014 – spurred on by the fall of Mosul and the capture of large swathes of land by ISIS. At this critical juncture, the viability of a unified Iraqi state was questioned both domestically and internationally. With a third of Iraq’s territory no longer under the control of the central government, there were many calls from both domestic and international voices for the formal break-up of the country, including Iraqi politicians and tribal actors who saw an opportunity to enhance their position vis-à-vis Baghdad; the Kurdish leadership who held longstanding aspirations for independence; and Iraq’s neighbours who believed they could capitalize on internal divisions.

Trust and confidence in the Iraqi national army and other federal forces were at an all-time low within Sunni-majority provinces and few believed that these forces were capable of defeating ISIS. Meanwhile, in the north of Iraq, Kurdish forces moved swiftly to secure territories outside of their region’s boundaries including the highly contested province of Kirkuk. Masoud Barzani famously claimed that his region’s new borders would be drawn in blood. Iraq’s Gulf neighbours were actively working to undermine the legitimacy of the government in Baghdad – viewed from their perspective as an extension of Iran’s dominance in the region – while Time magazine’s notorious June 2014 cover edition declared, “The End of Iraq”. Under these circumstances, Baghdad was faced with the unenviable task of reclaiming territory from ISIS while, at the same time, seeking to reunite Iraq’s diverse communities.

Within this context, the rationale for decentralization in 2014 can be understood as a top-down process that was politically driven to salvage the state. First and foremost, devolution of powers was a means to assure disenfranchized sections of Iraq’s political class that the country could be put back together again through a new power-sharing arrangement that offered legal and constitutional guarantees.
In essence, this arrangement was about empowering localized security actors that could offset the distrust of federal forces controlled by Baghdad. This was also a demand that was encouraged by the International Coalition against ISIS led by the United States, that effectively conditioned military assistance to Baghdad on greater power sharing of the security portfolio.

The broad concept was articulated as “functioning federalism”, offering a multifaceted, long-term, political-military approach to defeating ISIS and, thereby, bringing the country back from the brink. Functioning federalism was based on five principles, four of which required reconfiguring Iraq’s security apparatus as a means to both confronting ISIS in the battlefield and addressing perceived grievances that were considered to have precipitated the rise of the terrorist organization. These principles effectively sought to empower local armed actors to take the lead in securing local areas, modelled primarily on the American National Guard. The role of federal forces, including the Iraqi Army, would be scaled back to focus on securing provincial and national borders. The fifth principle related to adopting a series of political reforms that would “address legitimate grievances and deny any pretext for ISIS activities.”

While discussions on decentralization typically focus on administrative and fiscal aspects of devolving power, in the case of Iraq, security matters are critical to understanding the broader parameters of the decentralization rationale. What started off as a debate over how to allay security fears eventually evolved into a much more comprehensive discussion about administrative, legal and fiscal transfers of authority. By the second half of 2017, as the war against ISIS was reaching a climax and the final pockets of territory were being reclaimed by Iraqi forces, the attention shifted to how decentralization could enhance service delivery. Security across the country had begun to rapidly improve since the commencement of operations to retake Mosul. In Baghdad, for example, the number of mass casualty attacks plummeted. In the southern provinces, security incidents were even less common. People’s attention shifted from the existential threat of ISIS to their personal livelihoods. Still feeling the effects of the fiscal crisis caused by the collapse of oil prices, ordinary Iraqis were growing increasingly concerned about the lack of jobs and adequate basic services. The central government realized two things: first, that with such a rapidly growing population,
it was no longer possible to administer services like education, healthcare and public works under a highly centralized form of governance; and second, that it could potentially divert public disquiet towards local officials. In other words, it was politically expedient for the central government to decentralize blame, and this represented a key incentive to accelerate plans to enforce Law 21.

Spurred on by support from the international community, including technical and capacity building assistance programs from the United States, Canada, the United Kingdom, the World Bank and the United Nations, the central government accelerated the transfer of authorities to the provinces through a government committee known as the Higher Coordination Committee of Provinces (HCCP). Tasked with ensuring the full transfer of powers in accordance with Law 21, the HCCP functioned as a bureaucratic vehicle that reported directly to the prime minister, and facilitated consultations with provincial authorities in order to overcome roadblocks and streamline the rollout of decentralization. This involved almost monthly coordination meetings in Baghdad and the provinces that were chaired by the prime minister and brought together provincial governors to listen to their demands and concerns. Meanwhile, international assistance focused on preparing provincial-level bureaucrats to embrace decentralization by offering technical training in areas such as strategic planning and financial management in order to effectively deal with expanded budgets and personnel. This was generally well-received albeit with questionable results. International organizations often struggled to overcome the resistance to change that persists within outdated bureaucratic institutions that are rife with corruption and hostile to transparency. Often the design of training programmes is flawed because they lack a deep understanding of the problems and fail to build a network of champions who have sufficient authority to ensure that good practices are not reversed.

An Evolving Legal Framework

Law 21 was amended in 2010, 2013 and most recently in 2018. It is now more commonly known as the Provincial Powers Act and applies to 15 out of 18 provinces, excluding the three provinces within the Kurdistan Region.

Initially consisting of over 50 articles, Law 21 outlined the various administrative
units and their competencies within the province, detailing mechanisms for selection and election of local officials, defining the parameters within which they conduct executive and legislative functions. Among the most important provisions, Law 21 establishes the provincial council as the highest legislative and oversight authority. It details the core functions of administrative units including district and sub-district councils, and the governor, who is elected by the provincial council. Law 21 notes that these local entities should organize the administrative and financial affairs of the province “based upon the principle of administrative decentralization in a manner that does not contradict the provisions of the Constitution and federal laws”. Two crucial powers are afforded to administrative units: first, the power to collect taxes, duties and fees (this is an area of strong contention that will be discussed later). And second, Law 21 afforded local authorities’ significant control over mid to low-ranking public employees in the province.

During successive amendments to the Law, these powers were expanded to include legal authorities and greater control over state institutions. As per the 2013 amendment, provincial policies were given precedence over federal policies in areas mutually administered by the two levels of government. This enabled the provinces to enact legislation, regulations, and procedures.

Furthermore, eight federal ministries were slated for decentralization, giving provinces technical, legal, and administrative powers over their local directorates. These were the ministries of Education, Health, Municipalities and Public Works, Agriculture, Construction and Housing, Labour and Social Affairs, Youth and Sports, and Finance. The measures sought to institutionalize the notion that service delivery should be the primary responsibility of local authorities.

In practical terms, this meant that public employees working for local directorates linked to these eight ministries were to be transferred to the authority of the local government. In reality, the law has only been partially implemented. The biggest resistance has come from the Ministry of Finance, which has yet to adhere to Law 21 in its intended sense. Specifically, the ability of provinces to generate local revenues has been vetoed by finance officials, even though Law 21 grants authority to local governments to collect taxes, duties and fees as long as they are in accordance with federal laws. Disputes have emerged about the precise
definitions of duties and fees, and Article 28 of the Constitution is often cited by federal officials to support their claim that new taxes cannot be introduced without the provision of legislation. In effect, this means that provinces are still almost entirely dependent on budgetary allocations that are determined by Baghdad and have limited internal revenue generating mechanisms. Even within the ministries of health and education, where the decentralization process commenced in 2017, it was abruptly suspended the following year, leading to only a partial transfer of public employees to provincial authorities. This has created much confusion over reporting lines and channels of communication.  

On a technical note, it is debatable whether this process can be defined as decentralization, or simply deconcentration – in other words, the transfer of power to an administrative unit of the central government at the local level. In the case of public employees, local governments had no choice but to take on all existing employees. Though budgetary spending for employee salaries was transferred to the provincial budget, local authorities were restricted in their ability to issue directives to people within these directorates.

Law 21 in Practice

Though amendments of Law 21 have added greater weight to the powers of the provinces, this has escalated contestation of authority between national and sub-national actors. Disputes have been played out in courts, with provincial officials challenging the decisions of federal ministers, claiming that they have infringed on their mandated authorities, and vice versa. Although successive amendments to Law 21 were achieved through a consultative process between central and local governments, the implementation of the law has remained contentious.

The Federal Supreme Court, which is the sole authority responsible for interpreting the Constitution and adjudicating over disputes related to constitutional provisions, has intervened on numerous occasions to resolve these matters. Two major issues of contention have emerged: first is the question of who has authority to appoint and dismiss senior ranking officials; and second, the extent to which fiscal decentralization should take place. From a political economy perspective, these disputes are predictable because they cut to the heart of the
struggle to retain power and patronage. Even if there is political will at the highest levels of government to decentralize, ministers will seek to protect their clientelist networks, particularly those that exist at the senior levels of government. Directors-general positions are in many cases political appointments that are linked to individual or party patronage networks. Of course, provincial officials are not immune to self-interest and have sought to expand their political reach through these appointments.

In June 2018, the Federal Supreme Court rejected a lawsuit lodged against the provision within Law 21 that delineates the eight ministries to provincial control. The ruling affirmed that Article 12 of amended Law 21 was indeed in keeping with the provisions of the Constitution.

The following month, the Court was required to deliberate on an appeal filed by the chair of Maysan provincial council, who claimed that a provision within Law 21 that required the local government to obtain approval from ministers in order to appoint senior grades (directors-general and above) was unconstitutional. The Court rejected the appeal and affirmed the precedence of the Council of Ministers as the highest executive body responsible for setting guidelines for the appointment of senior officials. This issue has continued to play out across the country. When the governor of Mosul issued a directive to replace the city’s municipalities chief in May 2018, the Minister of Municipalities responded swiftly with her own directive affirming that the governor lacked the authority to do so.

Provincial officials have also sought to assert their authority over security affairs. Among the most notable controversies was the appointment of a new police chief in Basra prior to the 2018 national elections. Then-prime minister Haider Al-Abadi moved to unilaterally replace Gen. Abdul Kareem Mayahi with Gen. Jasim al-Sa’di, creating uproar within the local government. Basra’s governor Asad Al-Aidani and provincial council members declared their strong objection to the appointment, claiming that the power to remove and appoint the police chief fell within the purview of provincial authorities. Governor Aidani noted that as chair of Basra’s higher committee on security, such a decision should be coordinated between the federal and local governments. The provincial council chair cited Law 21 as the basis for their authority to approve the appointment of the police chief. Another key objection from Basra’s officials was that the new chief was from the province.
of Diyala, insisting that the post should be reserved for someone from the province of Basra.

The deputy minister of interior reacted, citing the exceptionally difficult security situation in the province as the reason for appointing someone from outside of the province. He noted that given the tribal ties and vested interests, it would be difficult for a local to assume the role of police chief required for the next phase of security operations in the province, adding that following the culmination of these operations, the interior ministry would reconsider appointing a local to the position. Regarding Law 21, the deputy minister insisted that security affairs fell under the exclusive powers of the federal government, as stipulated in the constitution.

**Optimizing Decentralization**

Ultimately, the success of decentralization should be measured against public trust and confidence in both federal and local authorities. Polling has consistently illustrated the erosion of trust, linked predominantly to dissatisfaction with the provision of jobs and services, and high levels of corruption. While security is still a key issue of concern, a nationwide public opinion poll conducted by the National Democratic Institute in September 2018 shows that nearly 60% believe that access to basic services is getting worse. Tackling corruption is also cited as one of the top three priorities for the new government – an issue that is considered more important than security, according to those who were interviewed. Asked about how much they trust state institutions, only 27% expressed some degree of trust for provincial councils. That figure fell to 24% with the central government.11

The first real measure of decentralization’s utility emerged during the summer of 2018, when violent protests erupted in Basra over the shortage of clean water and electricity. Although demonstrations are an annual occurrence during the scorching summer, the unrest in 2018 was particularly poignant because of its politically charged nature. Protests emerged during a political transition, when parliamentary election results had just been announced and an agreement on the formation of the new government had yet to be resolved. For that reason, the protests had wide-ranging implications on the outcome of negotiations between
political blocs to form the new government.

The water crisis exposed the local government’s inability to address a basic service provision without significant support from the central government. In fact, both sides sought to blame each other for the crisis, culminating in an unprecedented showdown between the prime minister and the Basra governor during a parliamentary session that was supposed to discuss ways to address the crisis. Instead, the two traded blows, accusing each other of failing to meet their responsibilities. Protests eventually subsided, but only after Baghdad sent a high-level taskforce to Basra to directly intervene and address the problem.

For decentralization to achieve its intended developmental and political results, a number of core policies need to be pursued, although expectations vary regarding what an ideal arrangement would look like. Firstly, local officials need to continue to receive sufficient technical assistance in order to enable them to exercise their expanding authorities. Much of the deficiencies at the local level also exist in Baghdad, namely, the lack of technical expertise such as modern bureaucratic procedures that involve e-governance rather than outdated paper-based procedures; modern accounting and auditing techniques; and strategic planning. Training should be consistent rather than sporadic, and it will take time for public employees to adapt to the new arrangements. The legal issues will also persist, and only over time will sufficient legal precedence exist to establish new power-sharing norms.

Provincial authorities currently lack the capacity to execute their budgets and manage the high number of employees under their control. There is always a risk that expanded budgets will simply exacerbate corruption, so strengthening accountability should go hand in hand with rolling out decentralization. According to the proposed 2019 budget which details the number of public employees under the budgetary jurisdiction of each province, Basra now has over 70,000 employees. Even a small province like Muthana has 22,000 public employees under its responsibility. Total budgetary allocations to Basra in 2019 amount to some $1.6bn – a vastly expanded sum compared to previous years that includes over $780m in capital spending. Without sophisticated strategic planning and professional project management expertise, it will be impossible for Basra’s local government to dispense with these funds in an efficient and effective manner.
The picture in provinces liberated from ISIS is somewhat different. While decentralization is slowly being rolled out, it is happening at a much slower pace because of the limited capacity of local governments. To illustrate the point, in the province of Mosul – considered Iraq’s second most populous province, only 1,400 public employees are under their budgetary jurisdiction. Spending allocations for the province are still predominately administered by the central government so only around $180 million has been directly allocated to local authorities for 2019.

Secondly, decentralization should not neglect the district and sub-district levels of governance. In fact, the experience of other countries, most notably Indonesia, has shown that service delivery should focus on these lower-ranking administrative units. This is where authorities interact most closely with the general public. They tend to have a far more acute understanding of needs and day-to-day problems.

Thirdly, electoral reform must go together with any effort to enhance the utility of decentralization. Political intransigence and infighting continue to dominate provincial councils across the country. This means that rather than improving the work of the governor and other executives through oversight and regulations, the councils simply compound dysfunction. One potential policy prescription would be to curtail the powers of provincial councils altogether and transfer more authority to both the governor, who should be directly elected through a public ballot, and the district and sub-district councils. Parliament would still retain oversight functions and it would simplify coordination and communication between Baghdad and the provinces. In December 2018, the parliamentary judiciary committee sought to propose a motion that would suspend the work of existing provincial councils, but the motion failed to get a simple majority within the committee. Naturally, the political blocs that dominate provincial councils have strongly opposed such a move, and this was reflected at the national assembly level. Nevertheless, this is indicative of a growing sense that provincial councils do more harm than good.

Overall, Iraq’s experience with decentralization has been a mixed affair. While there is a far greater appreciation for the legal framework that regulates devolution of powers, few experiences have yielded positive results that can be accounted for by the general public. Though the rationale for decentralization has
evolved over the past decade, the country’s long-term challenges of rebuilding infrastructure and creating jobs will continue to dictate priorities for sub-national authorities. Most importantly, decentralization should not be viewed in isolation from other key issues, including security sector reform, electoral politics and education, but rather as a crucial component to improving governance and restoring trust between authorities and the people. The nature of Iraq’s post-conflict environment – characterized by enhanced security and the growing confidence of federal security forces – means that the imperative of power-sharing as a way to mitigate against forces that undermine the territorial integrity of the state has diminished for the time being. Separatist inclinations in northern Iraq have been put on hold but the challenge is now to ensure that the state can reclaim its legitimacy by demonstrating that it can function effectively at both the federal and local levels.
Endnotes


2. Time, The End of Iraq, 30 June 2014 time.com


4. Decentralization programmes were implemented by USAID, DfID, Canada’s Institute on Governance, the World Bank’s governance team and UNDP, among others.


6. Todd Diamond and Cameron Berkuti, “Improving Services and Strengthening Cohesion in Fragile States: The Case of Iraq”, October 2017 chemonics.com


8. Federal Supreme Court ruling, 12 June 2018 iraqfsc.iq

9. Federal Supreme Court ruling, 1 July 2018 iraqfsc.iq

10. Twitter, 5 June 2018 twitter.com/aalmawlawi/


12. Deutsche Welle, “Baghdad lifts Basra Curfew as PM Pressed to Quit”, 8 September 2018 dw.com

13. Based on the author’s analysis of the 2019 federal budget.
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