

Distr.  
LIMITED  
E/ESCWA/ECRI/2017/WP.2  
19 May 2017  
ORIGINAL: ENGLISH

**Economic and Social Commission for Western Asia (ESCWA)**  
**Emerging and Conflict Related Issues Division (ECRI)**

## **Revisiting Decentralization in Iraq: Challenges and Policy Recommendations**

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**Beirut, 2017**

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## ***Abstract***

Iraq's decentralization experiment sheds lights on the challenges of fundamentally overhauling the unitary state's structure to create a federal system in post-conflict countries with strong cultural and institutional legacies of centralization. Despite officially adopting a-symmetrical federalism since 2005, the state structure has remained high centralized. In light of the emerging consensus that decentralization is imperative for the country's long-term development and stability, the study critically analyses its record of reforms. It identifies two generations of reforms, one geared towards de-concentration (2008-2012) and another oriented towards delegation of powers, resources and mandates (2013-). Using a comparative historical analytical framework and based on in-depth interviews with policymakers and stakeholders, the study inductively pinpoints the underlying legal-institutional, economic, ideational and power dynamics that have hindered the implementation of reforms thus far. It puts forward policy recommendations aimed at shifting the policy-framing of decentralization, strengthening institutional arrangements for reforms, deepening links to the citizenry, moderating the system's asymmetry and pursuing financial decentralization.

Against the backdrop of ongoing struggles to re-establish state power, ethno-political tensions, and economic crisis in Iraq, there is renewed interest among policymakers in deepening decentralization reforms. At the current juncture, efforts to accelerate devolution of powers, whereby greater resources, powers and responsibilities are transferred from the core to the periphery, have been specifically hailed as vital both for local actors to constructively engage in stabilizing areas liberated from terrorism, and for creating sustainable peace. The newfound emphasis on decentralization, however, has served to reignite a long-running debate over the ideal system of governance for the country. At issue are equitable sharing of revenues, the ideal scope of restructuring across policy areas, as well as the adequate degree of devolution. While some favor reforms within the parameters of administrative decentralization, and dismiss sectarianism as an organizing principle of governance, others have argued that regional autonomy is the only path for maintaining the territorial integrity of the state (Al Khatab, 2016; Khalizad and Pollack, 2014; Khedry, 2015; Laipson, 2016a; O'Driscoll, 2015). The repercussions of this debate pertain to the very nature of the future Iraqi state, as one based on decentralized local governance and limited regionalism versus a full-fledged federal system, founded on ethnic-sectarian identities, multi-ethnic territorial units, or hybrid geographically defined regions.<sup>1</sup> Notwithstanding disagreements in proposed reform visions, there is an emerging consensus that the Iraqi state's currently centralized structure is no longer responsive to the needs of its citizenry. In light of this, the present study seeks to analyze underlying dynamics that have shaped the country's record of uneven and limited decentralization thus far, and to identify points of departure for a more effective reform agenda in the future.

Despite adopting a formally decentralized federal system in 2005, Iraq's state institutions have remained heavily centralized. Since 2013, the authorities endorsed a plan to push further decentralization reforms aimed at creating functioning federalism, along the lines of the constitution, while continuing to block full-fledged regionalism. The current government's reform package seeks to empower local authorities to extend services while reserving oversight and supervision roles to the federal government.<sup>2</sup> The latest push aims to specifically hasten devolution within eight core ministries to the governorate level<sup>3</sup>, which was originally required by Law 19 (2013) yet was not fully implemented.<sup>4</sup> Initiated in 2015, a draft amendment to Law 21 (2008) on Governorates Not

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<sup>1</sup> For a discussion of the varieties of federal models and their relevance to Iraq see Anderson, 2008.

<sup>2</sup> Government of Iraq, Prime Minister Office, General framework of the Government Program 2014-2018.

<sup>3</sup> Ministries of Housing and Reconstruction, Municipalities and Public Works, Health, Education, Labor and Social Welfare, Sports and Youth, Agriculture, and, even though to a lesser extent, Finance.

<sup>4</sup> The law initially set a two years implementation period.

Incorporated Into a Region attempts to fine-tune the decentralization process by forcing rapid the devolution of some ministry functions while allowing for a more gradual devolution of other ministry functions. At the same time, it delineates more clearly the functions reserved at the federal level.<sup>5</sup> Further, a higher commission, directly accountable to the PM, was activated as a specialized parallel structure in an attempt to resolve disputes among stakeholders, while depoliticizing the process of decentralization. This officially autonomous entity, which functions outside line Ministries and has become the lead agency on decentralization, is ambitiously tasked with implementing legislations, resolving bottlenecks, and coordinating among governorates. Last, an independent commission for regions and governorates was formally established in late 2016 to ensure their representation in the administration of federal government institutions.

In light of the fact that decentralization reforms are regaining momentum, the following critically examines Iraq's track-record to shed light on challenges of implementing the first generation of decentralization reforms as envisioned in the 2005 Constitution, and to highlight enabling conditions for the success of the second generation of reform initiatives. The country's experience is particularly instructive for regional experts and policymakers, as well as actors involved in peacebuilding for two sets of reasons. First, regional trends point to the pertinence of the question of federalism, which has emerged in on-going policy discussions regarding the futures of Libya, Syria and Yemen. Iraq's experience, in this regard, is vital for identifying potential risks and bottlenecks surrounding implementation of federalism as a power-sharing model, typically advocated for Arab countries to manage conflict by guaranteeing the principal elements of society a place, and influence, in governance. Second, more broadly, the country's decentralization experiment sheds lights on the challenges of fundamentally overhauling the unitary state's structure to create a federal system in post-conflict countries with strong cultural and institutional legacies of centralization.

Since official adoption of a federal system has failed to plant the seeds for decentralized governance on the ground in Iraq, what are the underlying dynamics that have shaped the stalled and uneven implementation of reforms in this area since 2005? Based on best practices from other countries with federal systems, the study also seeks to identify institutional arrangements and mechanisms, which are conducive for the effective decentralization of state power without

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<sup>5</sup> It amends Article 45 of Law 21, which contains the devolution of federal ministries, as follows: "The commission shall discharge its functions referred to in paragraph (1) above [coordinate the devolution of federal ministries] gradually as of the date this law comes into effect provided that some powers are delegated immediately, others within 6 months and other powers within one year and above. The powers that remain within the federal ministries' powers must be specified."

undermining its territorial integrity. More specifically, what conditions are conducive for the successful implementation of deeper administrative, fiscal and political decentralization in Iraq? I argue that ideational, and institutional dynamics together with struggles over power and access to economic resources, have served to impede initial bottom-up driven decentralization efforts spearheaded by the Governorates, following the adoption of the 2005 Constitution. In the absence of deliberate efforts to frame decentralization as win-win, strengthen institutional arrangements for reform, deepen links to the citizenry, moderate a-symmetrical nature of Iraq's federal system and pursue fiscal decentralization, the above-identified tensions are likely to derail the currently ongoing second generation of reforms initiated by Baghdad.

Early momentum of reforms created expectations of full-fledged democratic decentralization in Iraq. However, lack of fiscal decentralization, legal-institutional gaps, and weak capacity *de facto* limited the powers of local level actors to set development priorities, deliver services to the citizenry, or to serve as effective loci of participation. Initially, popular and open elections of governorate officials in 2005 gave Iraq's governorates political presence and popular legitimacy. The elected Councils "subsequently formed an association, and acted collectively to draft the major statute defining the roles, responsibilities and authorities of governorates through Law 21 (2008), namely, the Law on Governorates not Incorporated in a Region" (World Bank, 2016: i). Provincial Development Plans initiated in 2006 as well opened concrete policy spaces for governorates to develop local-level strategic investment plans. Notwithstanding the significance of these initial steps, resource allocation and transfers remained heavily centralized. On the revenue side, as well, Governorates were not empowered to impose taxes or charges without being penalized with reductions in federal budget allocations or transfers. As a result of fiscal centralization, the Governorates were not successful at implementing much-needed large scale projects.

Although the legal framework for decentralization was defined by Law 21 in 2008 and embedded in the 2005 Constitution, both the scope and limits of authorities remained unclear and open to interpretation. In some cases, local elected councils have been successful in enacting reforms, and in other cases they have remained ill-equipped or gone too far in claiming powers from central authorities. As an Iraqi development expert posed the dilemma of decentralization reforms in Iraq is that they are well-intended but insufficient by themselves. "Decentralization laws are "robin hood

laws” compelling ministries to decentralize but there is also a need for management by results and actual capacity development at the local level.”<sup>6</sup>

As a result, between 2008 and 2012, decentralization reforms in fact retrenched. Local councils turned inward as central ministries at the federal level resisted actual devolution of powers. Operational requirements and guidelines reducing the extent of discretion on the part of governorate officials were issued. More recently, legal amendments of Law 21 in 2013 and 2015 (pending) have clarified some governorate authority, such as the legislative authority of governorate councils. They also mandated the devolution of key functions in eight federal ministries. With increased street mobilization demanding access to services, there is growing pressure on provincial authorities to deliver and improve living conditions on the local level. Nonetheless, decentralization has remained disjointed moving forward in an ad-hoc and fragmented manner.

Continuing instability of Iraq does not only pose risks as far as derailing the democratic transition process, but also it awakens fears of potential secession by territorially concentrated minorities. In Sunni areas, for instance, grievances over access to state power and control of the local security apparatus have contributed to the rise of radical non-state actors, like Al-Qaeda and ISIS, while the Kurdish region continues to struggle with limited access to financial resources, thereby curtailing the regional government’s actual powers. Even in areas not directly affected by the fighting, such as oil rich predominantly Shii Basra, there are questions raised about the inequity of Iraq’s federal system, shouldering the costs of hosting IDPs, and financing the liberation of territories from ISIS. Scholars argue that stabilization of the country hinges on establishing a legitimate decentralized system that allows space for multiple levels of government, whereby each level has significant independent decision-making power as well as legislative authority in clearly demarcated policy spheres (Brancati, 2004). In addition, accountability in a politically decentralized system is seen as vital at this juncture because it cements the social contract between citizens and the state. This typically requires putting in place viable accountability mechanisms not just between citizenry and provincial authorities, but also between provincial authorities and the federal state, in addition to between citizens and the provincial as well as federal governments.

Expert participants interviewed in this study have expressed similar rationales linking the imperative of decentralization reforms to long-term stabilization of Iraq. A pro-reform academic, for

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<sup>6</sup> Interview with an Iraqi activist, Beirut, March 7 2016.

example, argued that the long-term integrity of the Iraqi state now hinges on inclusion of minorities in a federal formula. This particularly applies to Sunnis who have long opposed federalism but are now realizing that decentralization is the only key to their community's long-term prosperity and the country's development. Along parallel lines, a local activist views decentralization as essential for addressing the problems of state fragility and communal divides. In his words: "Decentralization is the spinal cord for changing Iraq's reality with ministries having less leeway, smaller budgets, and more powers exercised at the provincial level there will likely be less space for ethno-nationalism. If a particular ministry is headed by a politician based on *mohasasa* and sectarian logic, he/she will not control what happens in governorates with a different sectarian majority."<sup>7</sup> This, according to him, is the recipe for lessening conflict and bringing about much needed stability.

The study adopts 'comparative historical analysis approach in order to uncover underlying dynamics shaping decentralization so far in Iraq as well as identify conditions under which deepening administrative, fiscal and political decentralization can materialize. It applies the comparative logic of inquiry to the single case analysis to generate empirically grounded analysis based on rich reasoning about process and context. Beyond deeply understanding Iraq as a case study, the purpose of the method adopted is to also inductively identify causal inferences about key variables that hinder or facilitate decentralization reforms in Arab countries, which can be theoretically tested across other cases (Eisenhardt and Graebner, 2007). As well, the study comparatively draws on theoretical literature and best practices from countries outside the region to identify from a normative perspective the incentives for policymakers' adoption of the reforms needed. For data collection, I rely on various methodologies. These include, interviewing government officials, stakeholders and country experts. In addition, the study incorporates analyses of legal codes, constitutional clauses and relevant primary documents. A desktop review of secondary sources in Arabic and English has been conducted.

The following starts by presenting the current political-economic context in Iraq, then analyzing contrasting conceptualizations of decentralization, proposing a working definition of decentralization for the purposes of the analysis, and summarizing debates about the effectiveness of decentralization in stabilizing post-conflict countries. Next, the study delves into the evolving nature of Iraq's decentralization process. This is followed by an analysis of underlying dynamics that have hindered the full-fledged implementation of decentralization reforms. Based on international best practices of successful decentralization, the following section identifies some of the pre-requisites for

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<sup>7</sup> Interview with an Iraqi activist, Beirut, March 7 2016.

more effective implementation of ongoing second generation reforms in this area (2013-). Finally, the study concludes by drawing policy recommendations for post-conflict countries in the Arab region, where the establishment of decentralized federal systems is a component of a post-war settlement.

## **I. Context**

Iraq's recent adoption of second generation of decentralization reforms, under Prime Minister Abadi, has come at a challenging context marked by three sets of crises. The country is facing a security crisis represented by expanding violent non-state actors, in addition to a political crisis resulting from popular discontent and street mobilization. As well, with declining oil prices, the Iraqi state is confronted with a fiscal crisis characterized by dwindling revenues from oil exports, despite increasing production levels, and persistent deficit levels. The following discussion briefly sketches the political and economic backdrop to ongoing discussions about deepening reforms.

Since mid-2014, rapid advance of Islamic State in Iraq and Levant served destabilize Iraq's fragile state institutions, particularly in the governorates of Anbar, Salah al-Din, Diyala, Ninewah, Kirkuk and Babel. The occupation of several key cities, notably Mosul, Tikrit, and Ramadi led to a large-scale disintegration of the Iraqi Security Forces and the subsequent resurgence of militias as well as widespread popular mobilization of armed groups in an attempt to halt and reverse ISIL's advance. Massive displacement of civilians has unfolded. As of December 2016, an estimated 3.1 million Iraqis have been displaced prompting international organizations to continue to declare a state of humanitarian emergency in Iraq. Attempts by the Iraqi Security Forces, Kurdish Peshmerga, and *al hashd al-shaabi* militias to liberate areas occupied by ISIL are ongoing, with Tikrit, Ramadi, and Sinjar being recaptured in 2015. Fierce battles were underway in Mosul following an offensive by Iraqi forces and their allies in 2016.

The current violence and the resulting displacement crisis have led donors to shift their attention to humanitarian relief for the displaced and emergency assistance, focused on infrastructure rehabilitation, livelihoods, community reconciliation, and capacity support for local actors to meet challenges arising during stabilization.<sup>8</sup> This has come at the cost of diverting resources away from rebuilding fragile state institutions and extending longer-term development assistance.<sup>9</sup> As well, there

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<sup>8</sup> See for example, UNDP (2015), *Funding Facility for Immediate Stabilization Quarterly Progress Report for Q2 and Q3 for Year 2015*.

<sup>9</sup> Skype interview with official at UNDP- Iraq November 10 2016.



is rising skepticism among donors about the effectiveness of rebuilding post-conflict state institutions as numerous reports provide agonizing detail about waste and mismanagement in development and governance projects. As put by Ellen Laipson: “These wildly ambitious efforts often distorted local economies by infusing tens of millions of dollars into national and regional institutions that were not ready to scale up so quickly” (2016b). Indeed, some observers have concluded that rich countries should simply slash funding for grandiose schemes to reinvent governments in developing countries, while others call for reorienting it towards a more selective, strategic, sustained and systemic approach to engaging with fragile states (Burns, Flournoy and Lindborg, 2016).

Iraq’s recent relapse into conflict came at a time of widespread popular discontent and political deadlock. Massive youth-led street mobilization calling for reform reflected grievances of de-politicized masses. The cross-sectarian mobilization centered in the predominantly Shia Basra since 2015. At the heart of this movement’s demands are improving access to public services, ensuring rule of law and curtailing allegedly endemic corruption. Prime Minister’s Abidi’s attempt to put in place a technocratic cabinet and his package of reforms came in response to grassroots pressure but has thus far failed to fully materialize.<sup>10</sup> His agenda included a shift away from *mohasasa* the allocation of positions on the basis of sect and party, which has riddled Iraq's government with fiefdoms and inefficiencies in every level up to the cabinet. However, he has faced considerable pushback from parliament and even from members of his own *Dawa* party, which has blocked the implementation of reforms. As well, the Supreme Court recently struck down his signature reform step of cancelling three vice presidential positions, a move that restores competitive sectarian grip on the upper echelons of the state.

Finally, despite its affluent rentier oil-based economy, the Iraqi state has been facing a fiscal crisis in recent years. On the revenue side, the Iraqi state, including the Kurdistan Region, has systematically increased production since 2010. However, the oil price collapse has eliminated 60 percent of oil’s previous market value. On the expenditure side, the cost of war with ISIS, managing massive case load of internally displaced people, factional domestic politics and stalled mega-infrastructure projects have aggravated the already existing state’s budget deficit. Indeed, “Iraq’s federal budget has increased to five times its size between 2004 and 2015. No matter how much oil revenue enters the treasury, budgets always have a deficit of around 20 percent, while actual spending

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<sup>10</sup> The slow pace of reform led to mass protests by followers of Muqtada Al-Sadr in the Green Zone in 2016.

always amounts to 70 percent or more. This leaves less than 30 percent for investment and development” (Al-Khatteeb, 2016).

## ***II. Conceptualizing Decentralization:***

Decentralization is a political process that involves restructuring relations among state, society and the market, with important implications for both the role of civil society and the exercise of state power. Conceptualizations of decentralization have evolved over time, as development agencies have increasingly shifted their focus from reforming local public administration systems to enabling participation by community-based and market actors in policy formulation and implementation. For instance, World Bank documents refer to decentralization as the “transfer of authority and responsibility for public functions from the central government to intermediate and local governments or quasi-independent government organizations and/or the private sector.” [\(World Bank, 2004\).](#) United Nations agencies, however, in their efforts to promote decentralization stress accountability, responsiveness, and local empowerment as vital aspects of reforms. Indeed, UNDP advocates the broad concept of ‘local governance’ to highlight linkages among democratic governance practices, civic values and human development. The concept encompasses “the combined set of institutions, systems and processes, at the sub-national level, through which local authorities interact with and provide services to citizens, groups and local communities and through which the latter articulate their interests and needs, mediate their differences and exercise their rights and obligations” (UNDP, 2017).

While decentralization may carry important implications for state society relations, the nature of these effects are contingent on pre-existing power structures, the design of reforms and the relative capability of actors to take advantage of reforms. According to John-Mary Kauzya, “Decentralization succeeds best in situations where there is a strong central government (strong in terms of legitimacy and capacity) as well as an empowered population at local community level. Otherwise it contains no intrinsic value for being a natural promoter of peaceful development and democracy” (Kauzya, 2005). The vital importance of both sets of enabling conditions has indeed been aptly demonstrated by, the disappointing record of limited reforms that ensued post the Arab uprisings despite the presence of significant grassroots community mobilization (See El-Meehy 2013a; 2013b). Decentralization may not necessarily as well consolidate peace as an instrument for social integration, and reconciliation in post-conflict environments. Also, policy areas matter since the process of reform is often uneven and countries may choose to decentralize some policy areas while centralizing others (Wilson, 2006).

Accordingly, the analysis presented here does not presume that decentralization is uni-directional or irreversible. Indeed, nuanced studies of state formation and evolution over time reveal that it is common to have “pendulum-like” movements from “centralized” to “decentralized” state structures (*Ibid.*).

### ***III. Defining Decentralization:***

Decentralization programs typically entail both vertical devolution of power and resources from the central state to local government structures, as well as horizontal reforms aimed at the empowerment of grassroots communities to enable them to determine, plan, and implement their socio-economic development (Kauzya, 2003: 3-4). The focus of the following analysis is on the former aspect of decentralization, meaning the vertical shift in decision-making authority, for three reasons. This first is shortage of available data on local empowerment practices in Iraq<sup>11</sup> particularly ones that can capture significant differences across space in the degree of participation by non-state actors, such as religious community based organizations, in local governance. The second is the fact that decentralization in Iraq has thus far strictly focused on shifting powers from the federal to the governorate level, but not to levels of districts or local sub-districts, where engagement with grassroots organizations and community actors is typically more common. Third, Iraq has taken few tentative steps towards creating formal structures for local participation that can facilitate horizontal decentralization.<sup>12</sup>

In order to comparatively assess the degree of vertical devolution of power and resources overtime as well as across countries, six indicators are pertinent. First, is the number of vertical tiers within the state apparatus that are funded from the public budget. Second, is the breadth of decision-making powers wielded by office holders at sub-national state tiers. Third, is the ratio of sub-national office holders that are appointed and whether the actors entrusted to appoint local officials are at a higher or similar tier of the state’s apparatus. Fourth, is the ratio of sub-national office holders who are popularly elected in pluralistic competitive elections. Fifth, is fiscal decentralization or the assignment of expenditure and revenue raising powers to the various tiers. Last is personnel

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<sup>11</sup> These were typically introduced as part of donor funded or UNDP projects. For a discussion see Brinkerhoff and Mayfield, 2005; Jarvinen, 2013.

<sup>12</sup> A recent PM decree called for the establishment of Development and Planning Councils at the governorate level. The councils’ composition, however, seems to be dominated by representatives of government agencies, with civil society and private sector representatives representing just a third of members. Further, at the time of writing, it is unclear if these councils will play a significant role in advising governors and provincial councils in policy formulation.

decentralization or the distribution of civil servants across the various tiers of the state represented as a ratio to population size per jurisdiction (Triesman, 2002).

Decentralizing the central state apparatus may follow *different modalities* that entail *varying degrees* of power transfer to lower tiers of the state. At one end of the spectrum is *deconcentration* of policy implementation, while policy formulation continues to be made at the central level. These reforms have been adopted in the case of “services where scale or externalities are involved (for example, non-local roads and water resources), or where redistribution of wealth and national standards are important” (USAID, 2009: 9). Since de-concentration entails reassigning administrative responsibilities to field offices of national ministries and improving the national government’s presence in remote territories, it has been widely adopted in post-conflict states. Similarly, this limited scope of decentralization reforms have been popular in contexts where policymakers are hesitant to surrender power due to geostrategic instability or fears of nation-state breakdown. At mid-point is *delegation* whereby some decision-making authority is transferred although the central state still reserves control over key aspects of policy. At this level, power transfer can be used as a means of building the capacity of semi-autonomous local level structures, which are accountable to the central government, in preparation for further decentralization in the longer term. Finally *devolution* transfers maximum decision-making to legally constituted and popularly elected subnational governments. Decentralization at this level requires “subnational governments to hold defined spheres of autonomous action, which typically means the use of subnational elections” (*Ibid.*: 10).<sup>13</sup> Generally, it is rare for countries to adopt a single modality of decentralization. “All countries, centralized or decentralized, always seek to find an appropriate mix of these types, the central question always concerning how much decision-making power to transfer to local governments” (Kauzya, 2005: 4). The precise mix of decentralization modalities is a function of the country’s degree of political decentralization.

#### ***IV. Decentralization in Post-conflict contexts:***

There are mixed opinions about the degree to which decentralization can maintain national integrity in fragile post-conflict polities or contexts where state institutions collapsed. Indeed, there is a rich debate among practitioners and analysts over the potential benefits as well as risks posed by

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<sup>13</sup> Privatization as a modality of decentralization will not be discussed in the paper.

the transfer of power, authority and resources to sub-national government institutions during war to peace transitions.

The literature advances four major arguments in support of decentralization. *First*, shifting the balance of power from the central to sub-national levels during the reconstruction phase allows for the reconstitution of state legitimacy. Post-conflict elites, who develop broad networks distributing power and patronage at the local level, are less likely to face challenges to their rule during stabilization missions and can go on to build broad-based political coalitions (Myerson 2011). This is particularly the case, if these networks are embedded in a democratic decentralized political regime that brings decision-making closer to the citizenry. In fact, some like Derick W. Brinkerhoff view reforms of local government structures as a vehicle for gradually “expanding participation and inclusiveness, reducing inequalities, creating accountability, combating corruption and introducing contestability (elections)” (2005: 5). Governance reconstruction centered on re-building legitimacy at the local level is particularly important because it is the corner stone for national reform efforts focused on re-establishing security as well as rebuilding state effectiveness.

*Second*, decentralization can support peace building both by mediating differences as well as opening spaces for the integration of communities. According to a 2010 World Public Sector Report, “when local governance structures exist, citizens and groups can articulate their interests, mediate differences, receive services and exercise legal rights and obligations. Increasingly, decentralization is also regarded as an effective instrument for building and sustaining peace” (UNDESA, 2010: 87). Along parallel lines, Merel Heijke and Dion van den Berg favor carefully crafted decentralization reforms as a vehicle for integration of communities, on the dual bases of citizenship and participation. In their view, “decentralization can best be organized in a way, that it provides local governments with the incentive, the mandate and the capacities to be a strong actor in support of peace and peace building” (2011: 7). Particularly in the case of territorially concentrated minority groups, decentralization allows them control over their own social, economic and political affairs. Because these groups may have little impact at the national level, decentralization can serve to reduce risks of secession or relapse into ethnic conflict.

*Third*, decentralization can facilitate the growth of bottom-up governance initiatives, as well as cementing national ownership of reconstruction processes by stakeholders. Charles T. Call and Susan E. Cook argue that identifying local voices and carefully integrating them into decision-making through effective local institutions are vital steps for the reconstruction process (2003). While bottom-

up approaches to post-conflict governance are often overlooked by international organizations and even local peace building practitioners in the pressure to produce results, they are crucial for establishing lasting peace.

*Fourth*, decentralization creates room for elite accommodations across ethnic groups. It is thought to “reduce conflict by habituating politicians, who represent different ethnic groups, into dealing with each other at the subnational level before they need to work together at the national level” (Horowitz, 1991).

On these bases, some go as far as suggesting that decentralization is most urgent in post-conflict settings. The rationale is that the process may serve to both diffuse conflict and moderate prior polarizing dynamics by redistributing power relations and restructuring state-society relations (Oxhorn, 2010). Indeed, proponents of decentralization contend that carefully designed reforms can potentially serve to promote a sense of autonomy among citizens, deepen state legitimacy, as well as limit pressures for separatism by diverse regions or ethnic groups (Bardhan and Mookherjee, 2006). Vigorous local government structures have the potential for: (i) Broadening direct participation by the citizenry in elections; (ii) Diffusing new civic norms and citizenship practices; (iii) Creating opportunities for development of new local elites with political skills allowing them to not only participate but also to effectively monitor national politics; (iv) Broadening the range of policies and alternative strategies of development; and (v) Preventing overload of national level authorities at the center (Baldersheim et al., 1996).

In contrast, skeptics allege that decentralization potentially constitutes a risk to the very existence of nation states particularly in post-conflict societies. In the latter settings, for instance, decentralization can be a distraction from the core task of consolidating central government control, especially the urgent need to strengthen the police force and to get control of revenue collection and fiscal and monetary policies. By providing ethnic minorities access to certain resources at the sub-national level (i.e. legislatures, media, and militia/ police forces), decentralization can even undermine the stabilization of central state institution, and reignite ethnic conflict (Kymlicka, 1998; Snyder, 2000).

While the pursuit of decentralization in post-conflict fragile countries may pacify warring groups, it can come at the cost of undermining national cohesion on the longer run. Because citizens may lack a sense of unity and ideological commitment to decentralized governance, the process can

be politically destabilizing (Burgess, 1993). Further, granting greater autonomy and voice for ethnic minorities can even in fact “harden” sub-national identities and eventually lead to demands for full independence rather than plant the seeds of inclusive citizenship. And, the diffusion power at the local level may even lead to “the intensification of forces for secession” (Kulipossa, 2004: 770). Hence, decentralization may ‘un-make’ nation-states, particularly in developing world contexts where the former are artificial constructs and by-product of colonial legacies.

Finally, decentralization’s tendency to allow groups to produce sub-national legislations that discriminate against regional minorities is another argument emphasized by skeptics (Lijphart et al., 1993; Horowitz, 1991). In such situations, where there are mixed populations in decentralized territories, decentralization bears risks of exclusion of minorities. Local level discrimination can trigger descent into a conflict cycle, and more demands for secession.

Nonetheless, notwithstanding the importance of the above outlined debate and the viable arguments on both sides, the literature does not actually address the question of why decentralization is more successful in reducing ethnic conflict and secession in some countries more than others. Under what conditions can decentralization mediate communal differences, and encourage elite compromise, thereby leading to a virtuous cycle of peace and development? The following sections of the study dive into a discussion of the Iraq case, seeking to reflect on this question. The analysis illustrates the tension between the perceived benefits and potential risks of decentralization in Iraq’s post-conflict context, which has constrained the evolution of the country’s federal system thus far.

## ***V. Overview: Evolving A-Symmetrical Federalism***

A-symmetrical federalism is used to describe “a situation whereby some federated entities have gained greater self-governing powers than others” (Swenden 2002: 67). Under Iraq’s federal system power is in fact unevenly divided among constituent Governorates. Thus, there are two tiers of decentralization in state power. The first tier entails granting full-fledged autonomy to Governorates that are organized into regions. The second tier delegates administrative powers to governorates organized outside the regions. Currently, the country has a total of eighteen governorates (sometimes referred to as provinces in the literature), three of them have special status<sup>14</sup> because they constitute the Kurdish federal region. “Article 117 of the Constitution recognizes the Kurdistan Regional Government, as autonomous and therefore entitled to have all the hallmarks of a

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<sup>14</sup> These are Erbil, Sulaymaniah and Duhok.

government: its own constitution, its own parliament and its own ministries” (UNHABITAT 2011: 21). Governorates have locally elected councils and they in turn select the local executive authority (i.e. Governor) based on majority formula or a deliberated consensus. Unlike the case of the regions, Central Government has the constitutional authority to legislate Governorate authority and sources of revenue. Although there have been a number of local initiatives for the formation of Sunni regions in the northeast and a *Shii* region around Basra, the central government has resisted the formation of regions. As a result, only the Kurdish region thus far exists.

Iraq has progressed toward a more decentralized governance framework, but the process has been uneven. The first generation of reforms 2005–2012 were marked by enthusiasm and leadership from the Governorate level stimulated by the political legitimacy achieved by the election of governorate councils. Yet, these reforms did not materialize for various reasons discussed in the next section. Instead, they were often watered-down by the central government at the drafting stage or faced bottlenecks in the course of implementation. Since 2013, driven by reform impulses from the center, Iraqi officials have proclaimed a second generation of de-centralization reforms. Parliament and reform-minded executive authorities seeking to reverse some of the earlier centralization and resistance to federalism, moved towards deepening decentralization.

Indeed, the initial major step toward decentralization under the Iraqi authority was the election of the governorate councils (for all 18 Governorates) in January 2005. The election overcame some stigma attached to occupation period advisory councils. According to the World Bank, “In this one step of citizens choosing their own representatives, Iraq achieved a degree of political decentralization much more quickly than many other countries’ whose decentralization process is considered highly successful, such as Indonesia” (2016: 3). The elected governorate councils took two significant initiatives to fill in vague and somewhat contradictory references in the Constitution to a decentralized state: namely, the lobbying for passage of the Law on Governorates not Incorporated into a Region (Law 21), as well as the preparation of strategic plans for the development of the Governorates. Law 21, which was passed in 2008, provided the statutory basis for governorate authority.<sup>15</sup> According to UNHABITAT, the legislation “provided for a major conceptual shift for Iraq with the character of governorate councils changing from a body composed of department heads presided over by the governor , to an elected body, which itself chooses the governor” (2011: 21).

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<sup>15</sup> Amendments in 2010, 2013 and 2015 (pending) have clarified some governorate authority, such as the legislative authority of governorate councils. They also mandated the devolution of key functions in eight federal ministries.



Governorates also took the initiative to address demands from citizens for basic service improvement. As early as 2005, Basra Governorate started a strategic planning process that in 2006 expanded to all 18 Governorates. Development plans were drawn-up at the district or *qadaa level*<sup>16</sup>, approved by the Governorate Council and finally transferred the executive authorities for implementation. This framework allowed Governorates a margin for formulating policies, setting plans and identifying priorities according to their development needs, separately from the ministry level plans, which are formulated at the federal level (Al-Abadi and Al-Matoury, 2014: 77). Over time, the Governorates expanded this mandate into a strategic planning process that produced multi-year development and action plans consisting of capital projects to rehabilitate, replace or create new capacity for service delivery (USAID, 2007). It is estimated that a total of 8093 provincial development projects were implemented between 2006 and 2011 across Iraq's Governorates, with Baghdad, Basra and Kirkuk benefiting from the highest number of projects (Al-Abadi and Al-Matoury, 2014: 77).

The Governorates' attempts to empower subnational authorities through issuing a decentralization law, however, never fully materialized. Indeed, law 21 proved politically controversial and centralist forces succeeded to limit the scope of decentralization envisioned in the legislation, as well as curtail the powers of the Councils, and Governors. Most notably, the law required consistency with federal laws, ministerial regulations, PM decrees and Supreme Court decisions, despite the fact that article 115 of the Constitution gives governorates priority on disputed issues between federal and governorate legislation. While the Governorate councils were granted powers within their respective territorial jurisdictions, the law specified that such powers could not encroach on the local branches of the central government.

As far as the selection of appointees for senior positions at the governorate level, the appointment process was preserved in the hand of the Minister, while the power of the Councils was restricted to the selection of three out of five proposed by the Governor for senior positions. The law did not stipulate clear fiscal decentralization measures or identify local revenue sources for local governments. Last, it undermined the autonomy of the *qad'aa* (district) level councils, by requiring

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<sup>16</sup> There are 105 districts in Iraq and 196 sub-districts or *nahyaa*. In addition, Article 124 of the Constitution refers to municipality of Baghdad, the Amanat, to be regulated by a law. However, disagreements over the latter's boundaries within the larger Baghdad province prevented the establishment of a that structure.

consistency with federal government on matters of *qad'aa* design. Further, their oversight functions were severely restricted to just monitoring local schools.

As for provincial strategic plans initiated bottom up by the governorates, they have also faced serious bottlenecks in their implementation. Operational details were not really worked out, especially as to how governorate development plans turn into investment programs, and then individual projects. Details were also lacking with respect to access to funds to implement the projects, which resulted in the implementation of smaller low-cost projects. Both as a practical matter and perhaps because of some reluctance at the central level to see decentralization proceed too quickly, operational requirements and guidelines issued by the central ministries have tended to reduce the extent of actual discretion on the part of governorate officials. Weakness in local capacity as well hindered the realization of these plans (See discussion in Al-Abadi and Al-Matoury, 2014).

In other words, one could argue that the first generation of reforms, amounted to de-concentration of policy implementation, rather than full-fledged devolution of powers. This is the case since, governorates continued to be legally enshrined only “as administrative units of central government, working along-side the local ministerial department of the federal government” (UNHABITAT, 2011: 22). While reforms created the space for a degree of political decentralization, represented by the creation of elected councils and indirectly elected governors, both the decision-making powers of elected officials, as well as the ratio of subnational office holders who are popularly elected remained limited. Also, the law did not assign revenue raising and expenditure powers to the Governorates and lowers tiers of government. In the absence of local tax revenues, the governorates remained heavily dependent on transfers from the center, which represented around 5% of the total budget in the case of Governorates and 17% in the case of the Kurdish Regional Government (*Ibid.*: 27). This has in turn undermined downward accountability of local authorities to the citizenry, and raised serious questions about equalization transfers between provinces. As a result, the World Bank refers to a period of retrenchment in decentralization reforms following the enactment of this central piece of legislation (World Bank 2016).

Decentralization developed more quickly with the enactment of a second generation of reforms since 2013. This time the momentum for reform initially came from the Parliament in the center, not the governorates. Contrary to the earlier emphasis on *de-concentration*, reforms were now geared towards *delegation*, meaning the transfer of decision-making powers from the center to the periphery, while the former continues to retain control over key aspects of policy. There are signs that

the initiation of these reforms marked a shift, in the dominant assumptions among Iraqi decision-makers, towards viewing decentralization as essential for keeping the country together.

Looking at the six indicators for reforms outlined in Section III it is clear that Iraq officially made some, though uneven, progress in pursuing vertical devolution of powers and resources.<sup>17</sup> The central piece of legislation was Law 19 (2013), which overhauled law 21. It granted local governments broader powers to administer sub-national units, by endowing it with legal status and linking their legislative powers to constitutional clauses. Governorate Councils were *empowered to draw up public policies* in all spheres, with priority going to the Councils' perspective, in case of disagreements with the Ministries in Baghdad. The Councils were also now designated the *power to appoint* senior officials in the governorate, by selecting one of the three nominees put forward by the Governor. While this fell short of increasing the ratio of popularly elected local office holders, it nonetheless relatively improved local accountability. The Councils' powers were as well formally broadened to cover designating land use, and approving housing projects on lands owned by ministries. District level councils as well saw their *oversight powers* widened to include agricultural, health and social sectors.

The 2013 legal amendments also consolidated the financial position of local governments in Iraq, by granting them *revenue-raising powers*. The law specifically outlined eight sources of revenues for the Governorates, aside from federal allocations, which were now also stipulated explicitly as based on population size and degree of deprivation. Among the revenue sources designated for local governments is a fixed ratio of local oil and gas production, together with local taxes, grants, as well as income generated through rent and sale of property.

In addition, the law sought to *activate the roles of local councils*, while strengthening the sub-district level of governance. For instance, it required the (s)election of presidents and vice presidents of the elected councils by local MPs within two weeks, upon initial invitation by the Governor. To guard against the monopolization of power by the executive branch, the law stipulated an automatic requirement for the Councils to hold their opening sessions, even if not formally invited by the Governor. Further, under the 2008 legislation, *naheya* (sub-district) councils can only perform their

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<sup>17</sup> As discussed in this section officially local powers were broadened, there were changes in the appointment of local office-holders, and fiscal decentralization steps. However, there were no changes in the number of vertical tiers directly funded by the public budget, local expenditure powers, and number of civil servants as ratio the population in the jurisdiction where they work. The latter is expected to increase with devolution of eight ministries, but did not materialize yet at the time of writing.

oversight functions, by forwarding their recommendations to the *qadaa*'s council. With the 2013 amendments, however, they were now granted autonomous powers to monitor and oversee the work of directorates at the local level. This is particularly important because it increases these bodies' accountability to the citizenry, as opposed to higher tiers of governance.

Although some of the law's clauses ultimately did not see the light, like those specifically allowing governors to oversee, and to exercise a veto over, security policies in the provinces, which were subsequently overturned by the *Shura* Council, the amendments constituted a qualitative shift towards decentralized governance in Iraq.<sup>18</sup> More specifically as a result of this legal act, eight sector ministries were now officially expected to transfer core implementation functions and responsibilities to the Governorates, while preserving overall policy planning roles at the federal level. Further, according to article 45 of the law, a High Commission for Coordination between Provinces (HCCP) was entrusted with implementing decentralization of public services delivery, under the auspices of the eight ministries. The Commission, which operates as a parallel "autonomous" structure is directly headed by the PM, holds regular meetings with representatives of ministries and governorates. It has been tasked with pushing through implementation of devolution, resolving bottlenecks, and coordinating the implementation of the 2013 legislation within a two-years period at the end of which all mandates are automatically the responsibilities of the Governorates.

Recently, the HCCP seems to have added momentum to the reform process<sup>19</sup>, especially because its high profile organizational set-up allowed it to raise awareness among stakeholders. However, the HCCP's ambitious end goal to transfer powers to the local governments by 2015, proved difficult to realize. This is the case as the HCCP's official role is to some extent contradictory. On the one hand, the HCCP is officially charged with directly implementing key aspects of decentralization by transferring responsibilities, jobs and units to the local level, coordinating and resolving disputes among the various tiers of the state, in addition to establishing new mechanisms dedicated to managing shared mandates between the federal and governorate levels.

On the other hand, there is no consensus on this body's actual rule-making authority to determine how ministries can devolve powers or how the elected councils work, nor can the HCCP legally demarcate the relationship between Governorate structures and the federal government.

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<sup>18</sup> The Shura council ruled in favor of maintaining centralization of security sector based on 1994 legislation Skype interview with constitutional building expert, Zaid Al-Ali October 21, 2016

<sup>19</sup> The HCCP became the lead agency for decentralization in Iraq following the abolishment of the Ministry of State for Provincial Affairs in 2015.

Although the Commission's creation was legally stipulated by law 21 and a federal court has affirmed its powers, participants in this study have expressed skepticism regarding its ability to push reforms through. They argued that even where the HCCP has issued executive orders or decrees to facilitate devolution through authorizing governors to take certain actions, in the absence of specific rulings by a judicial body the devolution process may be legally tenuous. As an executive coordinating body directly accountable to the PM, it is also unclear the extent to which the Commission actually has sufficient independence from the federal government to adjudicate disputes. As a non-judicial and non-legislative body, its strengths rather seem to be in the realms coordination, capacity-building and furnishing technical advice.

As well, it is unclear the extent to which the HCCP has the capacity to push through the actual implementation of devolution steps across line ministries. Indeed, the associated devolution committees at the governorate level and the sectoral coordinating committees within ministries, are often inactive and do not take the initiative to implement decentralization steps. Often, actors serving on these committees are themselves unclear on the rights and obligations of the governorates, especially since the central government has been slow to clarify policy directives. As a result, it often came down to individuals and local actors with sufficient political-clout to spearhead the process of devolution by negotiating with individual ministries. Further, lack of coordination between the HCCP and the Ministry of Finance has stalled the implementation of some reforms. In particular, the latter's budget cycle has affected the transfer of resources to the Governorates, in the case of some ministries like the Ministry of Sports and Youths, which has yet to be fiscally decentralized<sup>20</sup>.

The new Government of Prime Minister Haider Al-Abadi who took office in 2014 has lent its support to these reforms. The PM identified decentralization as a core policy priority. Although Iraq's fiscal crisis has impeded his reform agenda, Al-Abadi government has attempted to entrench the decentralized governance vision stipulated in Law 19 (2013) within an extended time framework. In addition, he has proposed additional amendments to Law 21 to fine-tune the decentralization process. These pending amendments stipulate in more details the devolution process of all ministry functions to be transferred to local units on the short-run, while explicitly designating certain functions to be more gradually transferred, or to be retained at the federal level. In addition, the proposed legal changes will strengthen the Governorates' budgetary authority by allocating to them 5% of the market-selling price for each barrel of oil produced in the Governorate (World Bank, 2016: iii).

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<sup>20</sup>Skype Interview with Dr Torhan Al Mofty Chair of the HCCP Secretariat March 10<sup>th</sup> 2017.

However, political deadlock has meant that anticipated legal changes, which are part of Abadi's larger reform package, have not seen the light since their presentation to Parliament in 2015.<sup>21</sup>

## ***VI. Towards An Explanation:***

While Iraq has officially adopted an asymmetrical federal system that transfers powers, responsibilities, and resources to lower tiers of the state since 2005, the process of implementation has been non-linear, contradictory, and in some cases even ad-hoc and incomplete. As a result, reforms were often blocked or diluted and the formally decentralized state structure did not contribute to stemming the violence or to enhancing the state's legitimacy. On the contrary, Iraq's system bred weak institutions in the periphery and rigid resistance in the center, which seems to have contributed to the violence and rise of non-state actors, by undercutting the ability to deliver basic services, extend security, or broadly distribute development gains, even in areas belonging to the regime's social bases of power, thereby undermining both the state's presence on the ground. This section addresses some of the reasons why the implementation of decentralization in the Iraqi context has stumbled.

### **1. Gaps and Inconsistencies in A De-Centralist Legal Institutional Framework**

Iraq's constitution calls for a highly decentralized asymmetrical form of federal governance. Some legal scholars have criticized it due to critical gaps and inconsistencies. Writing a year after the constitution was adopted, for instance, constitutional expert David Cameron made the case that Iraq's new constitution sets the federal process in motion but does not create the foundations for federalism, since none of the major federal institutions were established at the time of its adoption, and the Kurdish region predates the document (2006). Further, according to him, the document sets out a federal process that is opaque as "Iraq's constitution has a range of alternative, potential federal futures embedded within it" (*Ibid.*: 3).

Indeed, the original constitutional settlement did not address in sufficient detail several key elements of the federal system. These include: the creation of the Federal Council (Articles 65 and 137); the composition of the Federal Supreme Court (Article 92 (2)), as well as the Higher Judicial Council (Article 90), and the procedures for the formation of regions (Article 118) (*Ibid.*: 6). Scholars

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<sup>21</sup> For a discussion see Al-Khadimi, M. (2015), "Is It Time to Formally Decentralize Iraq?", *Almonitor*. Retrieved from <http://www.al-monitor.com/pulse/originals/2015/09/iraq-abadi-reform-decentralized-state.html>

argue that aside from leaving aspects of the federal system to future legislative action, the relationship between one provision and another is ambiguous.

Most problematic perhaps, the constitution does not fully distinguish between the powers of regions and regular governorates outside the KRG. While it is apparent that the drafters envisioned the regions to have higher status, greater powers and a more senior position in the federation, in many sections of the constitution, the governorates have a status and authority similar to, or in some cases, the same as regions (See discussion in Yehia, 2016: 34-37). As a result, there has been tension between Article 122, which explicitly deals with the powers of governorates at the administrative level, on the one hand, and the rest of the Constitution, on the other hand. This has in turn opened the window for considerable confusion over the powers of governorates. Further compounding the picture is article 123, which envisions delegation of powers across government tiers both ways. It flexibly allows the federal government to delegate powers to governorates, as well as vice versa, meaning that governorates can delegate some of their powers back to federal authorities.<sup>22</sup> In other words, the country's legal-institutional framework allows for variations in both degrees and forms of devolution across governorates even when it comes to the organization of the same sector, such as education or health.<sup>23</sup> As a result, the process is likely to result in divergent institutional arrangements at the local level. Further, as participants in the study noted "viewed in light of article 123, the process of decentralization, though constitutionally enshrined, is procedurally reversible."<sup>24</sup>

Nonetheless, compared to other federal constitutions, Iraq's 2005 constitution has a pronounced decentralist bias to subnational units (Cameron, 2006: 8).<sup>25</sup> Indeed, the document sets out a relatively short list of exclusive federal powers namely nine powers related to foreign policy, national security, fiscal and customs policy, regulatory standards, citizenship, population statistics, investment budgets, planning access to water, as well as mail and broadcast frequencies.<sup>26</sup> It is notable that these exclusive powers pertain to formulation of policies but not their actual implementation and enactment, which are left to the provincial level. Where powers are not stipulated as exclusively federal or shared, they are legally designated in the constitution as powers of the regions or the governorates. Further, where powers are shared between the two levels of government, they in fact go to the regions and governorates. As a result, Zaid Al-Ali observes that "the powers that were

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<sup>22</sup> Iraqi Constitution, p.38.

<sup>23</sup> Seminar on Decentralization in Iraq, SKL Workshop, Beirut, 15-17 August 2016.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.* 8.

<sup>26</sup> Iraqi Constitution, p.35.

granted to the federal government were so weak and so limited that the state was among the most underpowered in the world” (2014: 94).

Further, the constitution creates legal space for the federal process to further evolve overtime. Technically, the schema of decentralization allows provinces to acquire varying degrees of autonomy and self-government, ranging from that of a federal unit to that of an administrative governorate, depending on the province’s aspirations for self-government. As it currently exists, the system is highly asymmetrical since Kurdistan is the only federal region while the rest of Iraq is composed of administrative governorates. “However, the constitution contemplates the formation of an unspecified number of regions in the future” (Cameron, 2006: 9). Indeed, the constitution envisions the potentials for a single governorate or a group of governorates to form a region by holding a referendum as specified in Article 119. This potential was not restricted to a certain timeframe and was to be regulated by a specific law. The latter controversially stipulated support of just one third of the Governorate council (Yehia, 2016: 34).

This decentralist bias has according to analysts fed anxieties among Iraqi politicians regarding the potential dangers of secession and state breakdown under such a decentralized federal system. Lawmakers have attempted to address the gaps and contradictions in the constitution by issuing law 21 (2008) on Governorates Not Incorporated Into a Region. The law tilted the balance in favor of the central government by explicitly defining the functions of governorates in more limited ways, and restricting their powers to the administrative sphere.

## 2. Centralist Norms and Lack of Ideological Consensus

Some scholars highlight the vital importance of dominant ideas, norms, and cultural values for the stability of federal systems of government, in the face of risks of secession and/ or ethnic conflict. One such argument suggests that decentralization fails to take root in countries where citizens lack a sense of unity and commitment to decentralized governance (Lijphart, 1977; Burgess, 1993; Narang, 1995). The prevalence of a “federal culture” or a “federal ideology” is seen as essential for preserving national cohesion.

Observers of the Iraqi case echo similar arguments stressing that the process of decentralization has been hindered by a lack of ideational preconditions. According to one expert, Iraq’s ruling elite share “deeply centralizing instincts”. He explains that, “There is a cultural obstacle to federalism or decentralization in the country. The ruling elite may express token support for



decentralization but for them the process amounts nothing more than de-concentration, whereby policies are set in the capital and the local entities put into effect. Nothing more.”<sup>27</sup> Furthermore, Iraq’s bureaucracy is opposed to the process of decentralization due to the prevalence of a deeply rooted centralized state culture. As a result, at the local level they wait for Bagdad to draft policy rather than take the initiative. “From the perspective of local level officials, why would he take the initiative and be held responsible?”<sup>28</sup> According to another analyst, decentralized governance did not organically emerge in Iraq as was the case of other federal countries, where devolved powers were part of elite settlements marking the historical emergence of the modern state. Iraq, rather emerged from colonialism with a centralized modern state structure and a relatively cohesive society, notwithstanding the presence of vertical cleavages, and it was only after CPA that federalism was superimposed on the country. As a result, there is deep seeded opposition to decentralization.<sup>29</sup>

In contrast to the emphasis on the *longue duree* historically constituted culture, other analysts emphasize the absence of an ideological consensus during the more recent state building efforts post-Saddam as a serious obstacle to reforms. In this perspective, decentralization and the federal option in Iraq are compounded by the lack of a strong domestic consensus, which has hindered the institutional development of decentralized governance. As one scholar puts it: “The Shiites, the Sunnis and the Kurds stand poles apart on the federal question and their differences are unbridgeable” (Nuruzzaman, 2010: 515). On the one hand, Sunni elites have traditionally opposed federalism as a threat to the territorial integrity of the state and an inadequate arrangement for equitably sharing Iraq’s oil wealth and resources. On the other hand, Iraqi Kurds, and to a lesser extent Shiite elite, have uniformly supported federalism. Indeed, the country’s adoption of a federal system since 2005 has been attributed to the practical need to acquiesce Kurdish demands for autonomy in any emerging political order, in order to maintain the territorial integrity of the state.<sup>30</sup> For much of the Shia population as well, “the federal reconstruction of Iraq was viewed as a positive option” that affords the majority with the power to control the country’s future and wealth.<sup>31</sup>

Aside from contrasting interests, according to Zaid Al-Ali, the very process of drafting the constitution, which was flawed on several counts, has contributed to the lack of a broad-based consensus on this question (2014). First, the committee charged with drafting the final draft of the

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<sup>27</sup> Interview with constitutional building expert Zaid Al-Ali October 21, 2016.

<sup>28</sup> *Ibid.*

<sup>29</sup> Interview with Iraqi expert Mejahed Al-Taey, Istanbul, March 12 2016.

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

constitution was not fully inclusive of major groups. Some like the *Sadrists*, were excluded from the process. Because Sunni Arab candidates abstained from elections to the Transitional National Assembly, they were also initially excluded as well and their representation was a recurrent concern even after fifteen representatives eventually joined the Assembly. Further, the views of other groups, who were formally represented on the committee, were de facto marginalized in the drafting process. Second, outside actors exercised a great deal of influence over the process of writing the final draft of the constitution, which was far removed from initial drafts when it comes to the respective powers of the federal and sub-national levels of government. Third, the drafting of the constitution was done in a relatively short time period in an effort to stem the violence and restore security in post-war Iraq (Cammett, 2013). This has meant that there was less space for popular deliberation aimed at ensuring the embeddedness of the proposed system of governance in prevailing cultural norms and values.

### 3. Power Struggles

A UN comparative study of local governance reforms observed that power struggle tend to shape the course of decentralization even if an adequate legal-institutional framework is in place. Because central- level officials and government bureaucrats are accustomed to wielding enormous power, they “always get the impression that decentralization will diminish their bureaucratic empire and power. Consequently, they tend to oppose or quietly sabotage it” (Kauzya, 2003: 14). In the case of Iraq, the implementation of decentralization policies faltered in the face of a drive towards increased concentration of power. Analysts argue that the country experienced further centralization of governance as the ex-PM worked to amass greater controls and power ranging from militarily to legislative for his party.<sup>32</sup> According to Melanie Cammett, the re-centralization of power has been linked to Iraq’s overall “regression towards authoritarian” particularly since 2010 as the then Prime Minister extended his control over key state institutions (2013: 1).

Decentralization reforms became enveloped in larger power struggles that ensued within factions of the ruling elite, as well as between the dominant religious parties at the center, on the one hand, and the opposition, on the other. Iraq’s 2008 law designated limited powers to the provinces despite the much broader mandates designated to them by the constitution because of the drive to concentrate power at the center. The issuing of amendments to modify the law in 2013 was according to some an attempt by parliament to check the increased powers of the executive branch at the federal

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<sup>32</sup> Interview with constitutional building expert Zaid Al-Ali, October 21, 2016.

level. The amendments called for the devolution of powers in eight ministries within two years. The significance of the 2013 law lies in its reversal of the earlier centralization trend. For instance, article seven of the 2008 law stipulated that “the governorate councils drawing up of governorates public policies in coordination with concerned ministries.”<sup>33</sup> However, the 2013 law amended the text to read: Councils responsibility include to “draft public policies of the governorate and setting priorities in different fields and in coordination with the ministries and concerned parties, and in cases of disagreements the priority is for the decisions of the governorate council.”<sup>34</sup> The law also empowered the councils to monitor all activities by executive authorities in the governorate. Further, the amending legal act added an article explicitly stating that “local governments exercise the mandates allotted to it in the constitution and federal laws.”<sup>35</sup> And, the law controversially even designated the governor direct authority over all security agencies operating in the governorate, whereby federal authorities are required to coordinate with the governor.<sup>36</sup>

As for attempts by governorates to form regions, which were motivated by a variety of reasons, they were uniformly blocked by the religious parties that mobilized against the federal system and greater political decentralization. Notwithstanding important variations, there are shared underlying dynamics driving calls to form a federal region. These include: The central government’s inability to bring about the development of the governorates; sectarian and political fragmentation that Iraq has witnessed; the sharp divisions between the parties that formed ruling coalitions; “the unfair and provocative way in which the central government dealt with the governorates and personnel from the scientific establishment who belonged to sects other than those of the governing political parties; and the relative affluence of the Kurdistan region compared to the material poverty of the other governorates” (Jawad and Al-Assef, 2012: 4). Calls for granting governorates the status of autonomous regions were for the most part championed by politicians and parties that initially opposed the adoption of Federalism and the 2005 constitution. Rather than popular movements, these initiatives reflect the interest of politicians who feel that the central government pays them no heed, or members of local governments who wish to increase their authority (*Ibid.*: 6).

#### 4. Political Economy

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<sup>33</sup> “Law 21/2008 on Governorates Not Organized in Region” *Al waqae al Iraqia* 4070, March 31, 2008.

<sup>34</sup> “Law 19/2013 to amend the law on Governorates Not Organized in Region 21 for year 2008”, *Al waqae al Iraqia* 4284, August 5, 2013.

<sup>35</sup> *Ibid.*, Article 2.

<sup>36</sup> This was later struck down by the *Shura* Council which ruled that security is the exclusive domain of federal authorities.

One of the key obstacles to implementing decentralization in Iraq has been the failure to reach a broadly accepted accommodation, between the central government in Baghdad and the local authorities in the West and South, concerning decision-making in the vital oil and gas sector. Oil is Iraq's main export and international oil and gas companies increasingly represent the primary source of foreign investment in its economy. Control over this sector is deemed the key to broader political power and the evolution of the federal state's formation. According to analysts like Raad Alkadiri, "critically, it will determine the viability or otherwise of rival models of the state in the future." (2010: 13120) For proponents of the central government, granting licenses for production and exploration, as well as the collection and distribution of resources will aid the consolidation of Baghdad's role by helping it develop its coercive power and control national resources that will finance economic development, thereby tying the governorates closely to the center. Oil control is in this view also tied to larger concerns over equitable redistribution of national wealth to impoverished areas across the entire country in a more centralized federal system. In contrast, those in favor of decentralization view local control over this sector as critical to ensure the emergence of viable local authorities that can fulfill their constitutionally defined mandates. Advocates of this position thus highlight the uniquely decentralized nature of Iraq's federal system, as designed in the 2005 constitution, and view oil control by the center as counterproductive to the enactment of a decentralized governance system.

In the 2005 constitution, oil and gas resources are proclaimed as "owned by all the people of Iraq in all the regions and governorates", but the document does not actually stipulate the management of these critical resources. Article 112 in Iraq's constitution calls for the federal government, together with subnational authorities, to undertake management of oil and gas extracted from present fields, provided that it distributes its revenues in a fair manner in proportion to population distribution and to ensure balanced development across the country. (Kelly, 2010: 755) While some argue that this should be read as implying exclusive federal authority over gas and oil resources, others contend that the article depicts a shared obligation whereby all government levels have co-management responsibilities.<sup>37</sup> Further, advocates of the latter interpretation make the case that when it comes to regulating the sector regional legislation will trump federal law in the case of a conflict between the two. This legal debate has added inertia to efforts at enacting decentralization measures in Iraq. This is especially the case because the constitution does not explicitly spell out management of "future" oil fields (*Ibid.*: 756), and it is estimated that just 17 out of 80 oil fields in Iraq have been developed.

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<sup>37</sup> See discussion in Cameron, D. (2006), "Making Federalism Work in Iraq", in (2007) *Iraq: Preventing Another Generation of Conflict*, ed. Malone, D. M. et al.

(Kumins, 2005: 1) Disputes over the oil question, and the nature of Iraq's federalism, have come to a head several times in the repeated efforts to pass a new hydro-carbon law, as well as legal codes on revenue sharing.

Further complicating the question of oil control in Iraq, is the fact that it intersects with ethno-sectarian tensions and the regionalization agenda. As Alkadiri argues: "Disagreements about how the oil and gas sector is managed, where decision-making power on licensing and operations resides, and who has competent authority to shape policy have had an ethno-sectarian hue." (2010: 1318) These tensions were, for instance, particularly pronounced in Kirkuk and the Kurdish region. Nonetheless, the question of oil control also afflicted relations between the central government and the oil and gas rich provinces of Basra, Dhi Qar and Maysan, which are predominantly Shia areas. Further, attempts by the Shia Islamic Supreme Council in Iraq to form a Shia region in the Center and Southern areas of the country, modeled after the Kurdish one, were met by resistance the dominant Shia parties in Baghdad.

## **VII. *Policy Recommendations***

"All stakeholders understand that if regions are formed there is a heightened risk of state breakup and fragmentation, therefore there is momentum for decentralization at the level of governorates,"<sup>38</sup> explained a senior official when queried about driving dynamics of the second generation of reforms initiated at the federal level since 2013. In light of the emerging consensus that Iraq's national integrity currently hinges on effective pursuit of decentralization, this section addresses potential policy-framing, as well as institutional arrangements and mechanisms that can facilitate effective decentralized state power to be constituted in Iraq, with an eye at avoiding measures that can potentially further undermine its stability. Two important caveats are relevant here. First, these recommendations should be treated as necessary but not sufficient conditions for the success of democratic decentralized governance in Iraq. The latter hinges on larger macro-level changes at the level of central state institutions aimed at deepening their accountability, transparency and legitimacy, which ideally should include activating the constitutionally defined roles of federal institutions that have remained inactive, and can acquiesce demands for fuller representation of sub-national interests in the policymaking process. Second, effective decentralization may serve to limit instability in Iraq, by facilitating access to public services, increasing accountability, and

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<sup>38</sup> Interview with senior official Beirut, 16<sup>th</sup> August 2016.

strengthening links to the state. However, it is not enough to stabilize the country, a process that entails reintegrating the displaced, demobilizing and disarming groups, as well as implementing transitional justice mechanisms and security sector reforms aimed at integrating militias. In other words, decentralization is not a goal in itself but “should be combined with other overarching goals: safeguarding the proper and efficient functioning of the State as a whole; preventing its disintegration; and respecting the principle of the equality of all citizens within the State” (UNDESA, 2000: 1). The analysis draws on best practices from countries outside the region, to identify from a normative perspective the incentives for policymakers’ adoption of the reforms needed.

### 1. Framing Decentralization As “Win-Win”

In post-conflict contexts, “central-local (or regional) relations are typically sensitive and may be complicated by hidden agendas” (Wang, Suhrke and Tjonneland, 2005: 7). There are instances of decentralization programs being used to enhance control on the local level. For instance, in Afghanistan the central government hoped to establish ties of allegiance with local communities by directly allocating bloc grants to the villages, thereby bypassing midlevel ‘warlords’. Similarly, as aptly demonstrated by the transition experiences of some Latin American countries like Chile, decentralization reforms were in some instances geared towards better infiltrating society, monitoring opposition forces and enhancing authoritarian regimes stability (Oxhorn, 2010).

Crafters of decentralization should ideally be engaged in a process of striking a fine balance between local claims and central demands in such a way that the reform process is not embroiled in power struggles or perception of zero sum games by either side. “Purposeful , well planned, and controlled decentralization is not conceived in terms of power struggle between central and local governments, but rather as part of a framework for state and public administration reform aimed at empowering local governments and communities legally, technically, and financially to cater for their interests as the central government takes care of the higher missions of the State” (Kauzya, 2003:4). In Iraq, the first generation of decentralization reforms have been complicated by resistance from the centripetal forces, which has hampered its realization. These very same forces also threaten to derail currently ongoing reform initiatives.

Aside from legal reforms that more clearly distinguish short from long term vertical devolution of powers, and retain clear mandates for the center, which have been the focus of Iraqi decision-makers, it is imperative to focus on how the reforms are themselves framed in policy discourse. Policy-framing refers to the manner in which elites identify—and then emphasize—those

considerations that generate favorable opinions about their preferred policy alternative among members of the public (Jerit, 2008: 3). The question of how decentralization is framed by its proponents is also important to win support, or at least neutralize opposition, among dominant actors within the state's own apparatus. In the Iraqi context, decentralization policies need to be strategically communicated in such a way that actors at the federal level continue to perceive their role as significant and highly relevant, while also satisfying local ambitions for empowerment.

## 2. Strengthening Institutional Arrangements for Reforms

Studies indicate that the presence of a specialized entity mandated with promoting decentralization is essential for maintaining pressure of reform (Kauzya, 2003). In the case of Iraq, the HCCP has been established as an autonomous entity to streamline the devolution process, and has emerged as the lead agency for decentralization reforms. However, as discussed above it suffers from distinct shortcomings. In order for the HCCP to successfully create momentum for decentralization, there is a need to more clearly define its role. To this end, the passing of further legislation that clearly sets out the parameters, mechanisms and scope of devolution is necessary. Further, thus far, the Commission has relied on partnerships with international organizations and donors to provide meet capacity-building needs.<sup>39</sup> On the longer-run, however, there is a need for developing a sustainable capacity-building framework, in order to provide coherent systematic technical and operational advisory support to bureaucrats at both the federal and governorate levels. The Commission needs to have access to both legal experts as well as specialist technical advice in the various aspects of public sector management and decentralization, in order to initiate adequate standard procedures for the devolution of resources, personnel and mandates to the local level, and to establish effective public administration mechanisms for those policy areas designated as “shared powers”.

Aside from allocation of resources and competent human resources, the long-term effectiveness of the HCCP hinges on developing synergistic relations, particularly with the Ministry of Finance at the federal level. This is the case as the slow pace of fiscal decentralization can pose a threat of obviating the decentralization process of its purpose, and undermine public support for the reform process. Finally, based on the experiences of decentralization in Uganda and Rwanda, it is

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<sup>39</sup> Skype interview with head of the HCCP March 10<sup>th</sup> 2017.

necessary to build an exit strategy into the work of institutions charged with managing decentralization like the HCCP, in order to ensure a smooth phasing out when its job is done (*Ibid.*).

### 3. Deepening links to the citizenry

Our earlier analysis reveals that in order for decentralization reforms to take root, there needs to be not just an ideological consensus among key players, but also general support for devolution of power to lower tiers of governance among the populace. Hence, there is a need to raise awareness of the roles of local governance in Iraq and to promote enabling cultural norms among the citizenry. On the short-run, effective communication strategies by federal and local officials can help bring about the desired change by building support among the public for the expanding roles of local governments. Most crucial is the provision of public information on how to access local services in the immediate aftermath of devolution reforms that may not just alter accountability relations, but also shift access rules. Citizen education is as well important in this regard to ensure an active role for local governance structures and encourage bottom-up participation, based on the experiences of transition countries in Central and Eastern Europe (See discussion in UNDESA, 2000). “Citizens need to learn their rights, but also their obligations as members of a national society and of a community” (UNDESA, 2000: 3).

On the longer run, this cultural shift should also be effected by deepening links between local governments and the citizens, or pursuing horizontal decentralization reforms. Indeed, the establishment of participatory mechanisms with grass-root local actors will allow local decision-makers to appropriately assess local economic, environmental and social conditions in the design and implementation of public policies. Consultation with local actors should not be done on an ad-hoc basis. Aside from the representative local councils, building structural arrangements that bring together the stakeholders in the private sector, in civil society and the local governments themselves, is necessary (Kauzya, 2003).

In addition, establishing accountability mechanisms is vital to enable the public to express satisfaction and identify priorities for services. The adoption of citizen or community scorecards to assess public services, as well as participatory budgeting and expenditure tracking are relevant examples of social accountability models. Monitoring mechanisms should also be put in place to allow local decision-makers to trace the impact of services provided to the local population, thereby maximizing efficiency and responsiveness.



Finally, the adoption of carefully designed Community Driven Development Projects at the local level can be conducive to cementing effective decentralization in post-conflict countries, like Iraq. However, the experiences of Indonesia and Afghanistan show that these projects work only when appropriate structures of dispute mediation, cooperation and reconciliation are simultaneously established at the local level, thereby guarding against the re-creation of prevailing hierarchies of dominance and the exclusion of vulnerable social groups (Wang, Suhrke and Tjonneland, 2005: 8).

#### 4. Moderating the System's Asymmetry

The a-symmetrical nature of Iraq's prevailing federal model is uniquely the result of its state institutions' recent historical development. It combines legacies of high degree of centralization in the public administration of governorates, which have effectively blocked the evolution of federal structures, with a significant margin of autonomy for the Kurdish areas. While this has preserved the rights of the Kurdish minority, it has resulted in a central cleavage between the Kurdish areas and the rest of Iraq by creating two classes of citizens.<sup>40</sup> As a result, the system lends itself to potential risks of instability as governorates question the allocation of powers and resources to the KRG.

Moderating the asymmetrical distribution of power across sub-national layers of governance is important for the country's long-term political development. This can be obviously achieved by devolving powers to the governorates, as discussed in this paper. However, it should also entail deliberate efforts at building a degree of compartmentalization into the federal system, whereby separate administrative silos are institutionalized in the federal government's relationship with individual governorates<sup>41</sup>. This is to serve as a political safeguard against having policy initiatives in one part of the country triggering counter-reactions in others. Such a dynamic can potentially spiral into a vicious cycle of competitive claims and mobilizations for autonomy. As discussed below, this strategy should also be combined with an equitable formula for the distribution of the country's resources, particularly gas and oil revenues.

As illustrated by the case of Belgium, asymmetrical systems can be stabilized through a variety of institutional innovations and mechanisms. Most notably, the design of electoral law based on proportional representation, a low threshold of representation, and preferential within list voting,

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<sup>40</sup> For a discussion of asymmetry and multi-ethnic federations see Swenden, 2002.

<sup>41</sup> I am indebted to Karlo Basta for this idea.

as well as the drawing up of electoral colleges are both significant (See OSCE/ ODIHR, 2007). By building incentives for strong regional, rather than national, parties as well as elite accommodation through coalition-building at the federal-level, electoral institutions can facilitate congruent government coalitions at the different levels of governance, thereby minimizing the possibilities of exclusion and deadlock (See Box 1).<sup>42</sup> In addition, the activation of federal institutions is essential for stabilizing asymmetrical federations. More specifically, the creation of a strong second chamber, which equally embodies regional interests, as well as a Constitutional court that can specify competencies across the various tiers of the state and resolve inter-regional disputes, can serve as essential safety-valves.

## 5. Financial Decentralization

One of the most important conditions for decentralization success, is ensuring that a sustainable financial resource base commensurate with the devolved functions of various levels of government, is actually secured. While the 2013 amendments have addressed some of the stumbling blocks to the process of financial decentralization, by earmarking specific revenue sources for local-level authorities, lack of financial flows to the governorates has continued to hamper local development efforts. Indeed, the World Bank estimates that the 2016 investment budget allocation to the KRG and the Governorates is less than 6 percent of total investments. In addition, the budget includes a prohibition against the Governorates using any of the allocation to start new investment projects (World Bank, 2016).

Financial decentralization, based on adequate institutional frameworks, should foster efficient use of resources for socio-economic development and public services delivery. In the case of Iraq, given the breadth of local government powers, the ability to levy taxes, and raise revenues is vital for the success of its decentralized governance model. Responsiveness of local public services to evolving needs on the ground, necessitates adequate flexibility in expenditure powers. Financing systems ideally should also place funds at the local level such that, the needs of the local communities are not just met, but also opportunities are provided to develop revenue generation and financial management capacity. These steps do not obviate the role of the central government, in monitoring

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<sup>42</sup> Up to 2003 elections for the regional and national parliaments were held on the same day, which cemented coalition congruence across the various tiers of government.

local fiscal policies to ensure adherence to macro-economic goals, non-expansion of budget deficits or inflation, or the essential functions of auditing and anti-corruption bodies at the local level.

Last, appropriate mechanisms to ensure fair distribution of shared revenues among Governorates are as well much needed. This is particularly the case as the distribution of resources thus far, including the official designation of 17% of the federal budget to the KRG, seems to have been based on estimates and political bargains rather than accurate population census or sub-national spatial data on deprivation levels (See Yehia, 2016: 47-48). To some extent, these mechanisms should perhaps follow the origin principle, which is attractive to oil producing areas. In addition, the current per capita basis of intergovernmental transfers could be revised to allow for a new equalization system for intergovernmental transfers, based on a balance between expenditure needs and revenue capacities (UNHABITAT, 2011: 31). UN recommendations on natural resource revenue sharing are pertinent to Iraq given the country's high dependence on oil. They include: Establishing clear objectives for revenue sharing regimes, which should guide the allocation rules of resource revenues, alignment of transfers with the costs of public service delivery given sub-national expenditure assignment, developing a simple formula that is codified into a law, achieving national consensus on the regime, and making revenue sharing transparent through instituting independent oversight (NRGI and UNDP, 2016: 3-4). An initial step towards developing an equalization or revenue sharing system is the creation of an independent intergovernmental commission that includes both federal and local actors and is charged with proposing a formula for Iraq. The Commission would also lay the foundations for a comprehensive government financial management system, based on transparent budgeting and management of resources (UNHABITAT, 2011: 31).

## ***VIII. Conclusion***

Against the backdrop of political, economic and security crises, there is an emerging consensus in Iraq that it is imperative to reform the country's centralized state structure. Despite significant differences in reform visions, this consensus marks a qualitative shift in decision-makers' view of decentralization and its potential impact on peacebuilding and the territorial integrity of the state. In this paper, we have analyzed two generations of reforms since 2005 to propose normative and institutional steps for successfully implementing decentralization. The discussion highlighted the failure of the initial Governorates led reforms to plant the seeds of decentralized governance, despite the broad powers accorded to the Governorates in the Constitution. The analysis inductively identified the following underlying dynamics as challenges that impeded the reform process: Gaps in the legal-

institutional framework as outlined in the Constitution, centralist norms and lack of ideological consensus, power struggles as well as continuing disagreements over the management of the oil and gas sector. Following a period of retrenchment 2008-2013, the central government has started to push deeper decentralization reforms oriented towards delegation of powers, rather than mere de-concentration of the state's administrative function. These reforms sought to ensure better access to services, and to stem the tide of regionalization. However, reforms are tenuous, reversible and the subject of struggles. They may be derailed by the opaqueness of the legal framework, lack of ideological consensus, as well as struggles over power and access to oil revenues. Drawing on international best-practices and the theoretical literature, the study put forward policy recommendations aimed at shifting the policy-framing of decentralization in Iraq, strengthening the role of the HCCP, deepening links to the citizenry, moderating the asymmetrical nature of Iraq's federalism, as well as implementing sound financial decentralization.

### **Box 1: Federalism in Belgium**

Despite existing as an ethnically and linguistically diverse population, Belgium was established as a unitary State in 1830. In the second half of the 20<sup>th</sup> century however, growing tensions between the Dutch-speaking and French-speaking communities forced the State to decentralize and ultimately become a federal system. In what is dubbed “federalization by disaggregation”, Belgium was federalized top-down in order to ‘hold it together’ through six waves of reforms between 1970 and 2011. Established as a parliamentary federation in 1993, the complex architecture of Belgium is the result of the interplay between the distinct Flemish and Walloon nationalisms. Emphasizing cultural autonomy, Flemish nationalism led to the formation of three language-based communities with no territorial boundaries: a Flemish-speaking community, a French-speaking community and a German-speaking community. Meanwhile, the less structured Walloon nationalism was articulated along socio-economic autonomy and led to the creation of three territorially-based Regions: the Flemish Region, the Walloon Region and the Brussels-Capital Region.

The Belgium federation was consequently disaggregated into six sub-national units, but rapidly evolved into a *de facto* bipolar and asymmetrical system. As the Flemish and French communities strongly overlap with the Flemish and Walloon Regions, they form two powerful blocks that leave little space to the German-speaking community and the Brussels-Capital Region. The legislation of the Flemish and French community for instance takes precedence over that of the Brussels-Capital Region when it concerns the latter’s Flemish-speaking and French-speaking populations. Similarly, the Brussels-Capital Region does not have the same legislative autonomy as that enjoyed by the Flemish and Walloon Regions (Alen and Ergec, 1993). The asymmetry of the system is further enhanced by the Flemish emphasis on the principle of communities, which has led to the merging of the Flemish community and Region into one single ‘community’ governed by a common parliament and executive, while the Walloon Community and Region remain governed by two separate parliaments and executives.

Throughout its history, the Belgian federation has faced recurrent political crises, most recently leaving the country without a government for 589 days in 2010-2011. Despite this power vacuum at the federal level, analysts have argued that “things mostly went on as usual” (Smith, 2011). Aside from the country’s unique political culture, Belgium’s success in managing day-to-day duties without a federal government has been attributed to its institutional design. More specifically, its vertical and horizontal compartmentalization and the extreme devolution of powers to sub-national units (Palmer, 2011; Smith, 2011, Cendrowicz, 2011; Mulvey, 2011). Belgian federalism was in fact designed to require little cooperation between the federal and sub-national governments (Swenden and Jans, 2006: 886). The portfolio of the federal government is limited to the sovereign functions of defense, foreign relations, justice and social security. Meanwhile, Communities exercise authority over cultural issues, education and the use of language, and Regions manage all that pertain to regional economic development (Palmer, 2011). To perform those tasks, Communities and Regions possess their own institutions, and sub-national legislation does not require federal approval. It is subject to the Constitution only. During the 2010-2011 political crisis, this allowed sub-national governments to deal with day-to-day responsibilities while the federal government acted as a “caretaker”.

The capacity of Communities and Regions to effectively address public affairs is also derived from the strong horizontal compartmentalization of the Belgian federation, most notably through its party system. As a result of the ethno-linguistic divides of the country, political representation is centered on the sub-national level. Belgium lost its last federation-wide political party in 1978. Since then, the country has been consistently governed by a coalition of sub-national parties. As federal and sub-national elections were uncoupled in 2003, federal and sub-national governments have become incongruent. This means that disagreements within the federal government are unlikely to lead to a deadlock of the entire system: “the federal government may collapse but the regional governments are not necessarily directly affected by federal immobilism” (*Ibid.*: 888). As the federal government cannot enact a law that would impact sub-national governments without consulting with them first, an estimated 16 Inter-ministerial Conferences take place annually, to bring together ministers with related portfolios from the different levels of governments. In addition, a Deliberation Committee can be called upon specific issues by the federal PM and sub-national ministers.

*Box was prepared by Mr. Valentin d’Hauthuille, Governance and State-building Section*

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