



## LAW OF GOVERNORATES NOT INCORPORATED INTO A REGION

As Amended by Law 15 of 2010 and Footnoted





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**TABLE OF AUTHORITIES FOR OTHER APPLICABLE LAWS**

In numerous instances throughout the text, Law 21 mentions the Iraqi Constitution and other applicable law as binding on the provinces. Such other law would include the following.

Law No.	Date	Central Government Body	Title
24	1960	COR	Civil Service Act, Law No. 24 of 1960
130	1963	COR	Municipality Revenues Law No. 130 of 1963
165	1964	COR	Municipal Administrative Law No. 165 of 1964
159	1969	COR	Decentralization Law No. 159 of 1969
25	1995	COR	Law of Popular Councils, Law No. 25 of 1995
71	2004	CPA	Order 71 (abrogated by Law 21 of 2008, upon seating of Provincial Councils in April of 2009)
95	2004	CPA	Order 95, Financial Management and Public Debt Law
39	1971	COR	National Retirement Law
27	2006	COR	Unified Retirement Law
69	2007	COR	First Amendment of the Unified Retirement Law
36	2008	COR	Law of Electing Provincial, Qada'a, and Nahiya Councils
44	2008	COR	Amendment of Law of Electing Provincial, Qada'a, and Nahiya Councils
37	2005	COR	Forming the National Ministries
16	1933	COR	Elections Law
36/44	2008	COR	Law of Election of Provincial and Local Councils
10	2008	COR	Accountability and Justice Commission Law
22	2008	COR	Law of Public Sector Salaries

Note: COR = Council of Representatives; CPA = Coalition Provisional Authority

## INTRODUCTORY NOTE

This document is a product of the Iraq Local Governance Program – Phase III (LGP III), funded by the United States Agency for International Development (USAID).

On the following pages, the text of Law 21 of 2008, entitled the *Law of Governorates Not Incorporated into a Region, As Amended by Law 15 of 2010*, is reproduced. Relying on the original Arabic text, this footnoted version of Law 21 updates and replaces a prior publication entitled *Law of Governorates Not Incorporated into a Region: An Annotated Text*. Published in July 2008, that pocket-sized edition anticipated how the law would (or ought to) be implemented. Although, by its own terms, Law 21 was then “in force,” it did not begin to be implemented until late spring 2009, after provincial elections had been held and some disputes surrounding their outcome had been settled.

Once the law began to be implemented, differing opinions emerged as to how it should be interpreted. Because governorate (provincial) and lower level councils are not organized under a Ministry of Local Government as is common in neighboring Arab countries (and the Minister of State for Provincial Affairs lacks rule-making authority), these differences are not capable of being resolved via administrative regulations. Instead, the provincial (governorate) councils have largely been left alone, to interpret as well as they could those laws that are binding on them.

Of course, the laws binding on them include more than just the Constitution of 2005 and Law 21 itself, and this document includes a Table of Authorities and relevant citations to some of that other law applicable to the provinces. The footnotes in this volume, therefore, strive to show how the law is being interpreted with reference to the Constitution and other applicable law, as well as actual practice. The notes attempt to be neutral and to avoid advocacy of how the law should be interpreted; instead, they explain how a footnoted word, phrase, or paragraph has come to be understood after almost two years of implementation.

The Law of Governorates itself applies to only 14 of Iraq’s 18 provinces. The Iraqi Constitution of 2005 recognized three provinces in the north of the country as being incorporated into the Kurdistan Regional Government (KRG). Law 21 has, therefore, never applied to those three provinces. It also does not presently apply to Kirkuk (Ta’meem) province because of an unresolved constitutional question of whether all or part of that province will be incorporated into the KRG.

The text of Law 21 and its amendment in Law 15 was originally written in Arabic. The English translation used here is the official translation of the U.S. Embassy in Iraq. In case of differences between the English translation and the Arabic original, the Arabic text governs. To encourage an appreciation of the sometimes very great differences between Arabic and English terms for governance concepts, and to encourage correct pronunciation of relevant words, a glossary of Arabic Terminology is also included with this document.

For more detailed information about the law in force in the provinces, please visit [www.iraq-lg-law.org](http://www.iraq-lg-law.org). For information on the Local Governance Program, please visit [www.lgp-iraq.org](http://www.lgp-iraq.org).

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## **ABBREVIATIONS**

<b>ARDP</b>	Accelerated Reconstruction and Development Program
<b>COMSEC</b>	Council of Ministers Secretariat
<b>COR</b>	Council of Representatives or national parliament
<b>CPA</b>	Coalition Provisional Authority (April 2003–June 2004)
<b>DG</b>	Director General
<b>GO</b>	Governor's Office
<b>HCCP</b>	High Commission for Coordination between Provinces (cf. Article 45)
<b>IHEC</b>	Independent High Electoral Commission
<b>ILGA</b>	Iraqi Local Government Association
<b>KRG</b>	Kurdistan Regional Government
<b>LGP III</b>	[Iraq] Local Governance Program–Phase III
<b>MMPW</b>	Ministry of Municipalities and Public Works
<b>MOF</b>	Ministry of Finance
<b>MOLSA</b>	Ministry of Labor and Social Affairs
<b>MOP</b>	Ministry of Planning
<b>O&amp;M</b>	operations and maintenance
<b>PDP</b>	Provincial Development Plan (1-year plan)
<b>PDS</b>	Provincial Development Strategy (5-year plan)
<b>PPA</b>	Provincial Powers Act, a misnomer for the Law of Governorates Not Incorporated into a Region, Law 21 of 2008
<b>PPL</b>	Prioritized Projects List/Proposed Projects List
<b>PPL</b>	Provincial Powers Law, another misnomer for Law 21
<b>SAB</b>	Supreme Audit Board
<b>SMS</b>	short message service
<b>U.S.</b>	United States
<b>USAID</b>	United States Agency for International Development
<b>USD</b>	United States dollars

## ARABIC TERMINOLOGY

The translation of Arabic governance terminology into English has confused what is already a challenging enough system. Therefore, the following list is intended to remove some of that confusion. It includes a few key Arabic terms as they appear in the Iraqi law/s. When appropriate, both the singular and plural form of nouns is given because plurals in Arabic are much more irregular than English nouns. Both singular and plural Arabic words are also shown with their vowel and diacritical markings to aid English readers, who are familiar with the Arabic script in the proper pronunciation. For English readers unfamiliar with the Arabic alphabet or its orthography, both the singular and the plural form of each word is spelled in Latin characters (i.e., transliterated). This transliteration is intended to help readers understand the proper pronunciation of the words. The phonetic spelling below includes elided definite articles indicated with hyphens, syllables differentiated by spaces, long vowels represented by doubled letters, and emphatic consonants represented by capitalized ones. Because this document is in the English language, the words are ordered alphabetically by their approximate English translation. They are translated only, however; they are not defined, because it is seldom possible to capture all the complex associations of such terms when translating from one language to another. Thus, this list of common governance terms is far from complete but is intended to increase understanding, both of the terms themselves and of their underlying meaning. To emphasize the uniqueness of that meaning and of the function of Iraqi institutions of government, terms in the Arabic language are, therefore, preferred to either the anglicized or the translated ones in the English text of the law and footnotes that follow.

**Table 1: Key Iraqi Governance Terminology**

English	Arabic	Transliteration
alderman (or neighborhood sheikh)	مُخْتَارٌ	mukh tar
authority/ies	سُلْطَة / سُلْطَات	sul Ta / su lu Taat
Baghdad Amanat	أمانة بغداد	a maa nat Bagh dad
budget	الموازنة	al-mu wa za na
Cabinet of Ministers	مَجْلِسُ الوُزراء	maj lis al-wu za ra'a
central	مَرْكَزِيَّة	mar ka zee yah
central government	الحكومة المَرْكَزِيَّة	al-hu koo ma al-mar ka zee yah
city-center	مَرْكَزُ المَدِينَة	mar kaz al-ma dee nah
commission/s	هَيْئَة / هَيْئَات	ha ya'a / ha ya'aat
constitution/s	دُسْتُور / دَسَائِير	dus toor / da saa teer
consultation	تَشَاوُر	ta shaa ur
Council of Representatives	مَجْلِسُ النُّواب	maj lis an-nu waab
decision/s	قَرَار / قَرَارَات	qarar / qa-ra-rat
department/s	قِسْم / أَقْسَام	qism / aq saam

English	Arabic	Transliteration
deputy/s	نائب / نواب	naa 'eb / nu waab
director/s	مدير / مدراء	mu deer / mu da raa'a
directorate/s	دائرة / دوائر	daa 'era / da waa 'er
district administration/s	قائمقامية / قائمقاميات	qaa 'im ma qaa mee yah / qaa 'im ma qaa mee yaat
district administrator/s	قائم مقام / قائم مقامين	qaa 'im ma qam / qaa 'im ma qaa meen
district council/s	مجلس القضاء	maj lis al-qa daa 'a
district/s	قضاء / أقضية	qa Daa 'a / aq Dee yah
endowment/s	وقف / اوقاف	waqf / aw qaaf
federal parliament	البرلمان الإتحادي	al-bar la maan al-i ti haa dee
general director/s	مدير عام / مدراء عامين	mu deer a'am / mu da ra'a a'amin
general directorate/s	مديرية / مديريات	mu dee ree yah / mu dee ree yaat
government/s	حكومة / حكومات	hu koo ma / hu koo maat
governor (old usage)	مُصرف	mu ta ser rif
governor/s	مُحافظ / مُحافظين	mu haa fiTH / mu haa fi THEen
identity card/s	جنسيات / جنسية	j in see yah / j in see yaat
inspection	تفتيش	tef teesh
lease of government property	مُساطحة	mu saa Ta ha
legislation	التشريع	at-tash ree 'a
local government/s	الحكومة المحلية / الحكومات المحلية	al-hu koo mat / al-hu koo maat al-mahaliya
ministers/s	وزراء / وزراء	wa zeer / wu za ra'a
ministry/ies	وزارة / وزارات	wa zaa ra / wa zaa rat
monitoring	الرقابة / مراقبة	ar-ri qaa ba / mu raa qa ba
municipal council/s	المجلس البلدي / المجلس البلدية	al-maj lis al-ba la dee / al-majaalis al-baladeeyah
municipality/ies	بلدية / بلديات	ba la dee yah / ba la dee yaat
national budget	الموازنة الوطنية	al-mu wa za na al-wa Ta nee yah
national government	الحكومة الإتحادية	al-hu koo mat al-i ti haa dee yah
national parliament	البرلمان الوطني	al-bar la maan al-wa Ta nee
neighborhood/s	حي / أحياء	hay / ah ya'a
opinion/s	رأي / آراء	ra ai / araa
overseer/s	مراقب / مشرف	mu raa qib / mu shrif

English	Arabic	Transliteration
oversight	إشراف	ish raff
planning	التخطيط	at-taKH TeeT
province/s or governorate/s	مُحافظة / مُحافظات	mu haa fa THa / mu haa fa THat
provincial council/s	مجلسُ المحافظة / مجالسُ المحافظات	maj lis al-mu haa fa THa / ma jaa lis al-mu haa fa THat
Shura Council	مجلسُ الشورى / مجالسُ الشورى.	maj lis ash-shu ra
subdistrict administrator/s	مُدير ناحية / مُدراء نواحي	mu deer naa hee yah / mu da r'aa na waa hee
subdistrict council/s	مجلسُ الناحية / مجالسُ النواحي	maj lis an-naa hee yah / ma jaa lis an-na waa hee
subdistrict/s	ناحية / نواحي	na hee yah / na waa hee
Supreme Court	المحكمة العُليا	al-mah ka ma al-'u lee yah



## LAW NO. 21 OF 2008

June 1, 2008

In the name of the People<sup>1</sup>  
The Presidency Council

Based on the approval of the Council of Representatives in accordance with the provisions of Article 61, “First,” of the *Constitution*, and due to the elapsing of legal duration of time stipulated in Article 138, “Fifth-A,” of the *Constitution*, the following Law was issued on March 19, 2008.<sup>2</sup>

Law of Governorates Not Incorporated into a Region<sup>3</sup>

No. 21 of 2008

Amended by Law No. 15 of 2010, approved by the Presidency Council on February 16, 2010.

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1 Although most documents in the Muslim world begin with the formula “In the name of God, the merciful, the compassionate,” Law 21 begins with a different formulation. This assertion that the law has been passed in the name of the people connects Law 21 to the idea of popular sovereignty intimated by some of the articles in the Constitution of 2005. The Iraqi Constitution, however, begins with the traditional Muslim formula: “In the name of God.”

2 In Article 54, Law 21 expected the Council of Representatives (COR) to call provincial elections within 90 days of its passage. It also tried to enforce that timeline by imposing a deadline for elections to be held no later than October 1, 2008. However, elections were delayed until January 2009 and still have not been conducted for councils at the district or subdistrict level.

3 Article 116 of the Constitution describes the federal system as being composed of a capital, regions, and governorates, and Article 117 states that when the Constitution comes into force, the Kurdish provinces will constitute their own region. Article 119 further provides that one or more governorates shall have the right to organize into a region. At the present time, there is only one region within Iraq—the KRG. However, on September 7, 2010, Basrah’s provincial council passed a resolution seeking to become a region of its own. Until such time as a referendum can be organized and the population can vote on its status, Basrah remains subject to Law 21. Kirkuk (Ta’meem) is the only province outside the KRG that is not currently subject to the law. It remains to be seen whether it will be joined to the Kurdish region or given the full status of a province. For the time being, Law 21 does not apply to Kirkuk, but still applies to Basrah.

## PREAMBLE

### ARTICLE I:

The following terms shall have the meaning indicated opposite to each for the purposes of this law wherever they appear:

**The Law:** Law of Governorates Not Incorporated into a Region.<sup>4</sup>

**Council of Representatives:** Iraqi Council of Representatives.

**Governorate:** An administrative unit in its geographic boundaries consisting of *qada'as* (districts), *nahiyas* (subdistricts), and villages.<sup>5</sup>

**Council:** Governorate Council.

**Local Council:** qada'a council, nahiya council.

**Councils:** governorate councils, qada'a councils, nahiya councils.

**Administrative unit:** governorate, qada'a, nahiya.

**Head of an administrative unit:** governor, qada'a administrator (*qa'im maqam*), and nahiya administrator.

**Senior positions:** directors general and heads of security agencies, except university chancellors, judges, and army commanders.

**Absolute majority:** achieved with half plus one of the members.<sup>6</sup>

**Simple majority:** achieved with half plus one of the members present after a quorum is made.<sup>7</sup>

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<sup>4</sup> Although most commonly referred to in Arabic as Law 21, this law has been known by other, and sometimes confusing, names, such as the Provincial Powers Act (PPA) and the Provincial Powers Law (PPL). Both of these names can be misleading in that neither the words "province" nor "power" appear in the Arabic original. In addition, PPL is also a common name for the Prioritized Project Lists that are required by the Ministry of Planning (MOP) for investment projects requested from the Accelerated Reconstruction and Development Program (ARDP) fund.

<sup>5</sup> The word "governorate," rather than the word "province," is a more accurate translation of the Arabic original محافظة (*mubaafatha*). The word is a derivative of the word محافظ (*mubaafath*), which is the person of the governor, and is itself derived from the root حفظ (*bafatha*), which means to preserve. The sense of the word is that a territory and the peace in that territory are being preserved by an executive officer, a notion supported by the reflection of the governor's traditional function of keeping the peace, found in Article 31, *Tenth*. Use of the word "province" with its associations as an administrative unit in the Roman Empire connotes far more autonomy from the center than does the word *mubaafatha*. Either word, "governorate" or "province," however, is preferable to the word "state," because that connotes a degree of sovereignty not enjoyed by the governorates in Iraq.

<sup>6</sup> Absolute in this case means *all members*; therefore, an absolute majority is half of the total members of the council plus one.

<sup>7</sup> A simple majority, in contrast, is half plus one of the *members present*, not of the total number of councilors. However, the members present must at least equal a quorum. The number constituting a quorum, although usually half of the total members plus one, must be a reasonable number and is decided upon by the council members and stated in each council's bylaws. For example, Ninawa's provincial council has a total of 37 members; however, 12 members do not attend, leaving only 25 members who attend on a regular basis.

## PART I THE COUNCILS<sup>8</sup> AND PROCEDURES FOR THEIR FORMATION

### ARTICLE 2:

**First:** The governorate council is the highest legislative<sup>9</sup> and oversight<sup>10</sup> authority within the administrative boundaries of the governorate<sup>11</sup> and shall have the right to issue local legislation within the boundaries of the governorate so that it can carry out its affairs on the basis of the principle of administrative decentralization and in a manner that would not contradict the *Constitution* and federal laws.<sup>12</sup>

**Second:** The governorate council and the local councils are subject to monitoring by the Council of Representatives.

### ARTICLE 3:

**First:**

1. The governorate council shall comprise 25 seats with the addition of one seat for every 200,000 inhabitants, if the number of the governorate's inhabitants exceeds 500,000.<sup>13</sup>
2. The qada'a council shall comprise 10 seats with the addition of one seat for every 50,000 inhabitants.
3. The nahiya council shall comprise seven seats with the addition of one seat for every 25,000 inhabitants.
4. Members of the council shall be elected by direct secret ballot in accordance with the election law for councils.

<sup>8</sup> Law 21 has several antecedents, including laws formally abrogated by the passage and coming into force of this law. The most obvious of those laws include Law 159 of 1969 and the Coalition Provisional Authority (CPA) Order 71.

<sup>9</sup> Notwithstanding the specific provisions of Law 21, the authority of provincial councils to legislate is a matter of keen debate. See Note 26, *infra*.

<sup>10</sup> Although the governorate council is given authority to oversee and monitor—Article 7, *Sixth*—the governor is given authority to oversee and inspect. Article 31, *Fourth*. Compare Notes 30 and 58

<sup>11</sup> The governorate council is one of several government actors operating “within the administrative boundaries of the governorate” as described by Law 21, Article 2, First. The existence of other actors within a governorate's boundaries requires a distinction between two types of government power: territorial and subject matter jurisdiction. Territorial jurisdiction is the power that a governing body has over a discrete geographical area. Subject matter jurisdiction is the power of a governing body over a particular responsibility of government or over another governmental department, possibly within the same geographical area. What is true of the departments is also true of the governorate council. It is only one of several government bodies operating “within the administrative boundaries” of a governorate, and at the present time, although the territorial jurisdiction of the council is identical to that of most of the departments, its subject matter jurisdiction is not.

<sup>12</sup> This formula appears throughout Law 21. Governorate councils and their decisions are subordinate to the Constitution and central government law. This “other law” presumably includes decisions of the Supreme Court, the Council of Ministers, the Presidency Council, the Prime Minister, and most difficult for provincial councils to accept, the regulations and instructions of central government ministries.

<sup>13</sup> The base number for each governorate is 25 seats. An additional seat will be added for every 200,000 inhabitants that exceed the base of 500,000. The eligibility for the additional seat can be established when a governorate proves through official census or other required methods (such as ration cards, Ministry of Planning records, or others) that its inhabitants exceed 500,000.

For example, if a governorate has 700,000 inhabitants, it would be eligible for one additional seat. Currently, the population of Baghdad is estimated at 6.5 million, which means the governorate council should have 25 (base) plus 33 (additional) seats, for a total of 58 seats; currently, Baghdad has 51 seats. With the exception of Baghdad, the other 14 governorates may have less than the 41 seats currently allocated to every governorate.

**Second:** The latest official census<sup>14</sup> shall be adopted to specify the number of seats to be added pursuant to Paragraph “First” of this Article.

**ARTICLE 4:**

The electoral term of the councils shall be four calendar years commencing with its first session.<sup>15</sup>

## Chapter I Membership Requirements and Termination

### SECTION ONE MEMBERSHIP REQUIREMENTS

**ARTICLE 5:**

The candidates for the council membership shall meet the following:

**First:** Be an Iraqi citizen, fully eligible, and have attained 30 years of age at the time of candidacy.

**Second:** Hold, at the minimum, a secondary school certificate or its equivalent.<sup>16</sup>

**Third:** Be of good moral reputation and conduct and have not been convicted of a crime involving moral turpitude.<sup>17</sup>

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<sup>14</sup> Although the 2010 census was scheduled for October 24, it was postponed indefinitely. Among the reasons given for its postponement were a higher priority by the caretaker administration at the time in resolving the stalemate that had resulted from the national election held on March 7, 2010, and the formation of the government. Another issue of major concern was the status of Kirkuk (Ta'meem) province. It was expected that census takers in Kirkuk (Ta'meem) would possibly face armed opposition to getting an accurate count of the number of Kurds in the province, as that would likely determine whether the province would be divided or joined to the KRG. See Note 20, *infra*. As a consequence, elections in Iraq continue to be based on out-of-date census figures from before 2003.

<sup>15</sup> The drafters of Law 21 required the national parliament to call for elections by no later than October of the year in which the law was passed (2008). However, the election for provincial councils was not held until January 2009, and the original Article 54 that called for elections within six months of passage of Law 21 was removed by amendment in 2010 (Law 15).

<sup>16</sup> The Ministry of Higher Education and Scientific Research certifies academic credentials. Falsified credentials, nevertheless, remain a common accusation between political opponents; the lack of verifiable credentials was one of the major complaints against Salah ad Din province's first governorate council chairman, Ahmed Abdullah Abed al Jiboori (aka Abu Mazin). See Note 33 *infra*.

<sup>17</sup> The second part of this provision connects moral reputation and conduct to court orders and convictions. According to the Iraqi Penal Code, dishonorable offenses are defined as follows:

Article 21–(1) (a): “Dishonorable offenses such as theft, embezzlement, forgery, breach of trust, fraud, bribery, and rape.”

Article 23: “There are three categories of criminal offense: felony, misdemeanor, and infraction.”

Article 25: “A felony is an offense punishable by one of the following penalties:

- (1) Death
- (2) Life imprisonment
- (3) Five to 15 years imprisonment.”

Article 26: “A misdemeanor is an offense punishable by one of the following penalties:

- (1) Detention with hard labor or ordinary detention for a period of between three months and five years
- (2) A fine.”

Largely, the court record will be the basis for demonstrating good moral reputation and conduct.

**Fourth:** Be from the governorate according to the Civil Status Register,<sup>18</sup> or if originating from elsewhere, be a permanent resident therein for an uninterrupted<sup>19</sup> period not less than 10 years, provided that his residence is not for purposes of demographic change.<sup>20</sup>

**Fifth:** Not be a member of the security agencies or the armed forces at the time of his candidacy.

**Sixth:** Not be covered by the De-Ba'athification provisions and procedures or any other laws that replace them.<sup>21</sup>

**Seventh:** Not have illegally accumulated wealth at the expense of the national and public funds, according to a judicial decision.

## SECTION TWO TERMINATION OF MEMBERSHIP

### ARTICLE 6:

**First:** The membership of the councils shall terminate with the expiration of the electoral term or under the following conditions:

1. Death of the member, or his permanent disability, or a disability or a serious disease that prevents him from carrying out his responsibilities as a member, based on a decision from a specialized medical committee.
2. Resignation:
  - A. The council member or the local council member may submit his resignation from the respective councils in writing to the council head [chairman]; the latter shall present it at the next session so that the council may decide on it.
  - B. The resignation shall be considered accepted only if approved by the absolute majority of the council members or when he insists on his resignation even if the council rejects it by an absolute majority.
3. The member shall be considered removed if he fails to attend four successive sessions or a quarter of the total number of council sessions within a period of four months without legitimate reasons. In such cases, the council shall invite him to a hearing to be held at least seven days from the date of notification of the hearing. The council may consider him to be removed upon a decision taken by an absolute majority of the council members.

18 In reality, the جنسية (*jinsiya*) or national identity card is the accepted evidence of residency. Birthplace in the governorate must be demonstrated and approved by the Civil Status Registry, or a candidate must demonstrate that he/she has lived in the governorate for a period of 10 years. The status can be confirmed through certification by the qada'a and nahiya councils, the current governorate council, or the مُختار (*mukhtar*) or alderman, as well as through the Civil Status Registry, which shows changes of physical location.

19 Citizens with dual nationalities cannot assume high profile positions, according to the Constitution, Article 18, *Fourth*.

20 "Demographic change" refers primarily to Kirkuk (Ta'meem) (see Article 140, *Second*, of the Constitution). The article states that there must be a normalization and census, concluding with a referendum in Kirkuk and other disputed territories to determine the will of their citizens, by a date not to exceed the 31st of December 2007. To date, the census in Kirkuk has not been taken, and therefore, no referendum has taken place.

21 De-Ba'athification of Iraqi Society (CPA Order 1 of May 2003), later annulled by the Accountability and Justice Commission Law 10 of 2008. The de-Ba'athification order was one of the grounds for removal in September 2009 of the first governor of Salah ad Din, Mutashar Hussein al Sammara'ee, who had been elected after implementation of Law 21. Although individuals sentenced under the De-Ba'athification Law (CPA Order 1 of May 2003), or covered by the procedures before reaching a verdict, may have their sentences reduced or changed, they remain ineligible for election to councils.

If a candidate is covered by the De-Ba'athification Law, but was not sentenced or had not started the procedures before the dismissal of the law, then he/she is eligible for membership in the council.

4. The council may terminate the membership by an absolute majority if any of the conditions stated in Article 7, "Eighth," of this Law is met.
5. If he ceases to possess any of the membership requirements.

**Second:** The replacement upon the termination of the membership under conditions stipulated in this Article shall be from the same list,<sup>22</sup> if the elections are conducted in accordance with the list system, or by the candidate who obtains most of the votes in compliance with the applicable system of election.

**Third:** A member of the council may contest the membership termination decision before the Administrative Causes Court<sup>23</sup> within (15) days from his notification. The court shall decide on his challenge within 30 days from its filing with the court. The court decision shall be final.<sup>24</sup>

**Fourth:** The provisions of membership termination stipulated in this Article shall be applicable to the local councils.

## Chapter 2

### Competencies of the Governorate Council and the Local Councils

#### SECTION ONE

#### COMPETENCIES OF THE GOVERNORATE COUNCIL

##### ARTICLE 7:

The governorate council shall assume the following functions:

**First:** Elect the council head and his deputy by an absolute majority of the council members at the first session of the council called for by the governor within 15 days from the date of the certification of the election results. The session shall be chaired by the oldest member.

**Second:** Remove, upon the request of one third of the members, the council head or the deputy by an absolute majority of the council members in cases where one of the conditions stipulated in Paragraph "Eighth" of this Article has been met.

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<sup>22</sup> Two rounds of elections for provincial councils have taken place. The first round was held in January 2006, shortly after the 2005 adoption of the Iraqi Constitution, and well before the passage of Law 21 in 2008. Because of the level of violence at the time, candidates for elective office did not feel comfortable revealing their identities. As a result, most if not all candidates ran on so-called closed party lists. A party was assigned a number by the Independent High Electoral Commission (IHEC), and it was that number that appeared on campaign posters, in campaign advertising, and ultimately the ballot. After people went to the polls and the ballots were tabulated, the seats of a council were distributed based on the relative strength of the parties' showing. In other words, those parties that received the most votes were allowed to choose the most members from their party lists. This allowed party leaders to choose individuals from the top or the bottom of the list, as they felt necessary, because there were no individual candidates.

In contrast, Law 36 of 2008, the Provincial Councils Election Law, permitted a hybrid method of voting in which both open and closed lists were possible, and individual candidates felt comfortable enough to show their faces and their names in campaign posters. As a result, voters went to the polls and voted for individuals, along with, and maybe in addition to, numbered parties. This limited some of the discretion of party leaders in assigning individuals because the votes were tabulated by candidate as well as by party. This reference in Law 21 to "party list" requires that in the event a council member resigns or is removed, the individual who received the next most votes on the departing member's party list should fill the vacancy. This procedure is typical of a parliamentary system and preserves the relative party strength on a council by keeping constant the number of seats won at the general election.

<sup>23</sup> Not the Federal Supreme Court.

<sup>24</sup> Before being amended by Article 8 of Law No. 15 of 2010, Law 21 gave members 30 days to challenge their removal and left open the number of days allowed the court to issue a decision. The Article 8 amendment has decreased the number of days council members are allotted to object to their removal, and imposed a deadline on the court for the issuance of a ruling, presumably to increase certainty and discourage protracted removal disputes.

**Third:** Issue local laws, instructions, bylaws<sup>25</sup>, and regulations<sup>26</sup> to organize the administrative and financial affairs so that it can conduct its affairs based upon the principle of administrative decentralization<sup>27</sup> in a manner that does not contradict the provisions of the *Constitution* and federal laws.<sup>28</sup>

25 On January 26, 2010, the Shura Council issued model bylaws for adoption by provincial councils. By that time, however, all provincial councils had bylaws of their own as required by this paragraph. Although cautioning the provincial councils that they are “subject to the Council of Representatives’ monitoring,” the Shura Council stated in Chapter VI, Article 34, of their model bylaws that standing committees shall “develop local legislation, decisions, and administrative orders” in apparent contradiction to their opinion of September 2009, stating that provincial councils lacked the authority to legislate because the word “legislation” was omitted from the notice requirement of council “opinions” and “decisions” in Article 12 of Law 21. See Note 26, *infra*.

26 The authority of provincial councils to issue legislation is in dispute. Although Article 2, *First*, of Law 21 declares the councils to be “the highest legislative . . . authority” and affords them “the right to issue local legislation” (provided that legislation does not “contradict the Constitution and federal laws”), the exercise of this legislative authority has been challenged. In September 2009, for instance, the Shura Council offered its opinion that provincial councils had no authority to legislate because Article 12 of Law 21 only obligated them to publish their opinions and decisions in a provincial gazette. Because the text of the law did not include an explicit mention of “legislation” along with “opinions” and “decisions,” the Shura Council concluded that the councils lacked that authority. The opinion did not mention or distinguish Article 2, *First*, or Article 7, *Third*, which each suggest that provincial councils are empowered to issue local laws. On June 21, 2010, the legal committee of the Council of Ministers issued their own opinion, arguing that the provincial councils had not been given the authority to issue legislation, citing the Constitution and concluding: “Article 61, *First*, of the Iraqi Constitution defines the COR as the party in charge of enacting laws and legislation. This power also has been given to the regional authorities as stated in Article 121, *First*, but has never been given to authorities of provinces not incorporated into a region.”

27 Article 116 of the Constitution describes the regions and provinces as being “decentralized,” but Article 122, *Second*, qualifies the kind of decentralization in Iraq as “administrative.”

Because the drafters of Law 21 qualified the type of decentralization, it can be concluded that they intentionally used the word “administrative” before the word “decentralization.” Especially considering that each of the two references in the law occurs before a reiteration of the supremacy of (1) the Constitution and (2) Federal Law, “administrative” decentralization would be correctly understood as subordination of governmental bodies in the provinces to the central government.

That subordination is a starting point, however, and as Article 122, *Second* of the Constitution states that the provinces shall be regulated by law, the national government could alter or expand the authorities of the provincial councils, change their jurisdiction, and ultimately change the character of the decentralization they enjoy by changing the law. Such changes appeared to be happening in 2010.

On January 25, 2010, the Presidency Council approved Law 20 of 2010 that purported to devolve the Ministry of Municipalities and Public Works (MMPW) and transfer its staff, property, budget, and responsibilities to provincial governors. Then on February 16, 2010, the Presidency Council likewise approved Law 18 of 2010 that purported to dissociate the social affairs responsibilities of the Ministry of Labor and Social Affairs (MOLSA) and transfer them to the governors as well. Each of these two laws was identical in that each obligated the provincial councils to write local ordinances that reorganized the former ministry staff of the dissociated and devolved departments as now being under the jurisdiction of the governor’s office. On May 25, 2010, Karbala province succeeded in completing a new, provincial structure for its department of Public Works, but on June 14 of the same year, the Supreme Court “froze” further implementation of Laws 18 and 20, and on July 15, 2010, declared both laws to be unconstitutional.

In holdings Number 43 and 44 of 2010, the Supreme Court concluded that the laws were unconstitutional because they originated in the national parliament (COR) itself and not with the Council of Ministers. In reaching his conclusion, Chief Justice Medhat al Mahmood repeated a distinction the Constitution makes between “draft” and “proposed” laws in Article 60. On his reading, the national parliament may “propose” but may not “draft” laws, and because Laws 18 and 20 had been drafted by the COR, rather than drafted by the Council of Ministers, the laws were void. Although his opinion left open the possibility that, once formed, a new government (i.e., a new Council of Ministers) could draft new “decentralization” legislation and introduce it to the parliament for passage, the ruling ended expansion of the jurisdiction of provincial elected officials for the time being.

28 Because Iraq’s system of government is fundamentally a ministerial one, there is scarcely any aspect of life that is not the subject of a central government ministry and covered by a ministerial regulation. Such regulations can severely restrict the provincial councils and governors from exercising their authority. Recognizing this conflict between the competencies given to them by Law 21 and the apparently contradictory authority maintained by the central ministries, the Dhi Qar provincial council in southern Iraq submitted the issue to the highest ranking judicial authority for the resolution of constitutional disputes, the Shura Council. Unfortunately for the province, the Shura Council refused to hear their claim on the grounds that (essentially) the provincial council lacked “standing” to sue.

The Shura Council is a deliberative body within the Ministry of Justice, created by Law 65 of 1979, to resolve disputes of a constitutional nature between governmental entities. Although provincial and subprovincial councils existed at the time of the law’s passage (such councils having been created by a law dating from 1969), they were not explicitly mentioned as within the Shura Council’s jurisdiction in the 1979 law. Instead, the Shura Council was created to resolve

**Fourth:** Outline, in the development of the plans for the governorate, the general policies in coordination with the competent ministries.

**Fifth:**

1. Prepare the council budget to be included in the general budget of the governorate.
2. Approve the governorate draft general budget plan referred to the council by the governor, and transfer funds between its chapters with the approval of the absolute majority of the council members,<sup>29</sup> provided that the constitutional criteria shall be observed, and submit to the Ministry of Finance of the federal government to ensure its uniformity with the federal budget.

**Sixth:** Monitor all the activities of the local executive authority excluding the courts, military units, colleges, and institutes in order to ensure its good performance with the exception of offices under federal jurisdiction.<sup>30</sup>

**Seventh:**

1. Elect the governor and his two deputies by an absolute majority of the members within a maximum of 30 days from the date of its first session.<sup>31</sup>

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disputes between governmental entities in which a ministry was a party. The law creating the Shura Council did not give it jurisdiction over the provincial councils at that time, and although the character of those councils has changed since ratification of the 2005 Constitution and Law 21, the law determining the jurisdiction of the Shura Council has not. In addition to lacking standing, the Dhi Qar provincial council also lacked a dispute. They were asking the Shura Council for an advisory opinion, not a ruling.

According to the jurisdiction statute of the Federal Supreme Court, Law No. 30 of 2005, it is the Supreme Court that is empowered to resolve conflicts “between the federal government, regional governments, provincial governments, municipalities, and local administrations.” Raising doubt as to whether the provincial council is equivalent to the “provincial government” described in the Supreme Court’s statute of jurisdiction, between August 16 and September 1, 2010, the Court refused to hear cases number 39, 54, 57, 58, 61, and 63, submitted to them by various provincial councils, encouraging the litigants to inquire of the Shura Council instead.

29 Law 21 gives the governorate council the authority to review, change, and transfer funds among chapters of the draft governorate general budget. The draft general budget includes budgets of the محافظة (*mubaafatha*) or governorate council, قضاء (*qada’a*) or district and ناحية (*nabiya*) or subdistrict councils, governor’s office, and offices of heads of administrative units, قائم مقامين (*qa’im maqameen*). These are operating budgets only. Operating and capital budgets of the provincial level departments of the central government, such as the Ministry of Municipalities and Public Works (MMPW), are not included in the governorate general budget.

30 Because Article 24 describes the governor as “the highest ranking executive officer in the governorate,” the power given to the governorate council in Article 2, *Sixth*, to “[m]onitor all the activities of the local executive authority,” certainly includes the governor. That power is even more certain given its placement before paragraphs *Seventh*—“elect the governor” and *Eighth*—“question the governor,” “remove” him, and “elect a new governor.” But the councils’ power over other executives outside of the governor’s office—specifically the staff of central government ministries working in the same province—is less certain. While Article 2, *Sixth*, sounds comprehensive, the power it grants to monitor all executive activities comes with an exception.

“[O]ffices under federal jurisdiction” are specifically excepted from the councils’ power to monitor. Although Law 21 does not make it clear, practice suggests that offices engaged in one of the exclusive powers of the central government, as defined in Article 110 of the Constitution, are excluded from scrutiny by the provincial councils. Offices engaged in activities described in Article 114 of the Constitution as “shared” with the central government may be subject to council scrutiny, and in practice, the councils’ power to “[a]pprove the nomination of three” candidates for “senior positions” proposed by the governor and “relieve . . . senior officials” from their departments supports this interpretation.

31 Although Article 47 of the Iraqi Constitution makes reference to “the principle of separation of powers,” the “branches” of government are not co-equal. In reality, the system of government described by the Iraqi Constitution is parliamentary or ministerial; it is not presidential. This means that (1) the executive branch is lead by a Prime Minister, who forms “the government” by choosing ministers with the consent of the national parliament, and that (2) the Prime Minister is himself selected from the membership of the national parliament.

Governors, like the Prime Minister, are chosen by the members of a council and not elected directly by the people, but the analogy ends there. Unlike a Prime Minister, a governor does not form a “government” for the province by nominating directors to head the provincial level departments of central government ministries (the way a Prime Minister chooses ministers). Instead, directors are appointed by the ministries and have “subject matter” jurisdiction separate from that of either the provincial council or the governor. See Note 11, *supra*.

2. If any of the candidates to these offices fails to win the absolute majority of the members, the candidates with the highest number of votes shall compete in a run-off ballot, and the candidate who wins the highest number of votes then shall be elected to the office.

**Eighth:**

1. Question the governor or one of his two deputies based upon a request from one third of the members. In case the simple majority is not satisfied with his answers, then his removal is put to vote at another session and he is deemed removed with the consent of the absolute majority of the council members. The request to remove or recommend his removal shall be based on one of the following exclusive causes:
  - A. Lack of integrity or abuse of position
  - B. Causing waste of public funds
  - C. Loss of one of the membership requirements
  - D. Willful negligence and dereliction of his duties.
2. The Council of Representatives may remove the governor by the absolute majority<sup>32</sup> of its members upon the proposal of the prime minister for the above stated reasons.
3. The governor shall be considered to be removed if he ceases to possess any of the requirements stipulated in Article 5 of this Law.
4. The governor may object to his removal decision before the Administrative Causes Court within 15 days from the notification of his removal. The court shall decide on his objection within one month from the date of its filing with the court. In such case, he shall continue to conduct the daily affairs of the governorate until his objection is decided.<sup>33</sup>
5. The governorate council shall, at the end of the challenge period referred to in Paragraph "Fourth" of this Article or when the removal decision is upheld by the competent court, elect a new governor within a period not exceeding 15 days.<sup>34</sup>

**Ninth:**

1. Approve the nomination of three out of at least five candidates proposed by the governor for the senior positions in the governorate by the absolute majority of the council members and the competent minister shall [appoint] one of them.

<sup>32</sup> Since provincial councils elected governors by the terms of Law 21 in the late spring of 2009, removal proceedings have been started in Babil, Basrah, Muthanna, Ninawa, Salah ad Din, and Wasit, and the governors of Salah ad Din (September 2009 and again in October 2010), Wasit (September 2010), and Muthanna (January 2011) were removed from office.

In the southern provinces, in every province except Basrah, the proceedings were initiated by Sadrist party council members against governors thought to be allied with the Law and State (old Dawa'a) party of Prime Minister, Nouri al-Maliki. In Basrah, the struggle was between members of the State of Law party. That most of these attempted removals had to do with national politics is proven by the fact that all of them were dismissed, and the governor of Wasit restored to his office after appeal to the Administrative Tribunal, once it was clear that Maliki would secure a second term as Prime Minister. On October 31, the Administrative Tribunal passed a verdict on the appeal made by the Wasit governor about his September 7, 2010, removal. The Administrative Tribunal ruled in favor of the governor and stated that the decision of the Wasit provincial council to remove the governor was illegal; they also stated that the corruption, cited by the provincial council as one reason for the removal, had occurred prior to the governor's term in office. Law 15 of 2010 (an amendment to Law 21 of 2008) states that the Administrative Tribunal has the power to rule on such cases and not the Federal Supreme Court (as originally stated in Law 21, 2008).

In Salah ad Din, however, the council has so far successfully removed two governors. The first governor of Salah ad Din province elected under Law 21 was Mutashar Hussein al Samara'ee of the al-Tawafeq party, and the first chairman of the provincial council was Ahmed Abdullah Abed al-Jiboori of the Iraqiya party. In September 2009, the council voted to remove Governor Mutashar and replaced him with a compromise candidate, Khalid ad Daraji, who was neither affiliated with one of the two major party lists, nor with the dominant al Jiboori tribe. He remained five months in office until November 2010, when Governor Khalid was also removed and, after a protracted dispute, replaced by Ahmed Abdullah Abed al-Jiboori (aka Abu Mazin).

<sup>33</sup> Amended by Law 15 of 2010. In the 2008 version of the law, a governor challenged his removal by a governorate council before the Federal Supreme Court.

<sup>34</sup> Added by Law 15 of 2010.

2. Relieve, by the absolute majority of its members, senior officials<sup>35</sup> in the governorate from their duties upon the request of one fifth of the council members or the governor in accordance with Paragraph “Eighth” of this Article. The Council of Ministers may also relieve the senior officials upon a proposal from the competent minister.

**Tenth:** Approve the local security plans submitted by the security agencies in the governorate through the governor in coordination with the federal security agencies with due consideration of their security plans.

**Eleventh:** Approve by absolute majority, upon the proposal of the governor, administrative changes to the qada’as, nahiyas, and villages<sup>36</sup> in terms of merger, creation and renaming, including the name of the center, and the consequential administrative formations within the boundaries of the governorate upon the request of the governor or one third of the council members.

**Twelfth:** Issue a gazette wherein the council’s decisions and orders shall be published.<sup>37</sup>

**Thirteenth:** Select a logo for the governorate embodying its cultural and historical heritage.

**Fourteenth:** Approve a bylaw for the council within one month from the date of the first session.<sup>38</sup> The bylaw shall be approved by the absolute majority.

<sup>35</sup> Senior officials are defined in Article 1 of Law 21 as “directors general and heads of security agencies, except university chancellors, judges, and army commanders.”

Iraq’s security agencies are: the National Intelligence Service (administered by the Council of Ministers), the military (administered by the Ministry of Defense), and the police (administered by the Ministry of Interior). Intelligence and the military are the exclusive jurisdiction of the federal government (Constitution, Article 110), and provincial authorities are explicitly excluded (Constitution, Article 31, *Tenth*, 1, and throughout Law 21). Therefore, “heads of security agencies” likely means only chiefs of police.

<sup>36</sup> In parallel to the national parliament’s authority to redraw the boundaries of provinces (Law 159 of 1969), this paragraph gives to governorate councils a similar authority to redraw the boundaries of the administrative units, (أفضية [aqdiyab] or districts and نواحي [nawabi] or subdistricts) within that province. They do not have any incentive, however, because council members are not elected from geographic constituencies. Without a political need to win votes, no direct jurisdiction over service delivery, and a limited ability to direct resources to the districts or subdistricts (via ARDP monies), councils are not very likely to change the administrative boundaries in their province any time soon.

The one major exception is Baghdad. Article 124, *Second*, of the Constitution obligated the national government to give the capital city a separate, legal character. A committee, under the direction of the Shura Council, has collected four competing versions of a capital law, but the differences between them remain unresolved. Although, like in other provinces, council members of the Baghdad governorate council are not elected from districts or subdistricts, the issue bearing on the delay in adopting a capital law is the question of where the geographical lines will be drawn between Baghdad city and Baghdad province. Unique in Iraq, Baghdad is the one city that has a separate government entity (in addition to the governor and governorate council) with its Amanat. The Baghdad Amanat, distinct from a provincial council, does exercise direct jurisdiction over basic services delivery—water, wastewater, garbage—within the territory of the city. Therefore, the crux of the dispute between the governor, the Baghdad governorate council, and the Amanat is where the territorial boundaries of that city will be drawn, or in the language of Article 124, *First*, “its municipal borders.”

<sup>37</sup> In September of 2009, the Shura Council issued an advisory opinion in which they concluded that because Article 12 of Law 21 imposed a notice requirement on governorate councils to publish their *ara’a* (opinions) and *qararat* (decisions), but did not explicitly reference nor include the word التشريع *at-tashree’a* (legislation), that governorate councils, therefore, enjoyed no authority whatsoever to legislate. The notice requirement is for decisions and opinions, only. See Note 26, *supra*.

<sup>38</sup> Bylaws are internal council regulations that are intended to help councils organize the work of the provincial council and its members’ roles. Bylaws are frequently supplemented by detailed procedures and possibly bylaws of individual standing or ad hoc committees. The point of all these internal regulations is order and transparency, in that it makes the business of the council more conspicuous and better organized, given all the members know and follow the rules. Councils have made immense strides in improving the quality of official proceedings, in part due to the adoption of bylaws, and in large part due to experience. The often chaotic early meetings have become calm as council members have grown more secure in their positions and more certain of how business should be conducted.

**Fifteenth:** Identify the governorate's priorities in all fields and outline its policies and strategic development plans<sup>39</sup> in a manner that does not contradict with the overall national development.

**Sixteenth:** Approve by an absolute majority of the council members the acceptance or rejection of donations and gifts received by the governorate.

**Seventeenth:** Exercise any other competences stipulated in the *Constitution* or applicable laws.<sup>40</sup>

## SECTION TWO COMPETENCIES OF LOCAL COUNCILS<sup>41</sup>

### FIRST: Competencies of the Qada'a Council<sup>42</sup>

#### ARTICLE 8:

**First:** Elect the head of the qada'a council by the absolute majority of the members of the council at the first session called for by the qada'a administrator within 15 days from the date of the certification of the elections results. The session shall be chaired by the oldest member.

**Second:** Remove the head of the qada'a council by the absolute majority of the members upon the request of one third of the members if one of the conditions stated in Paragraph "Eighth" of Article 7 of this Law is met.

<sup>39</sup> The language of the law that requires a strategic plan for the province is general. In most provinces, however, "provincial development strategy" has come to mean a process and a document. The Provincial Development Strategy (PDS) process consists of three main phases: Phase 1: Formulation, Phase 2: Implementation, and Phase 3: Institutionalization. Each phase consists of several steps with specific outcomes. The PDS document articulates a community vision, priorities, objectives, and strategies to guide the planning and development of projects, programs, and other investments within the governorate. The PDS is *not* a list of specific projects or financial plans. The projects are developed subsequently during Phase 2: Implementation. To ensure Phase 3: Institutionalization, the process needs to continue with a functional analysis. It would determine required functions and corresponding units that need to be established within each branch, with clear roles and responsibilities to conduct, on a continuous basis, the required tasks for formulation, review, and implementation of the PDS. The Ministry of Planning supported the use of the PDS methodology, and the Ministry of Finance, in its 2007 budget circular, required the completion of PDS documents by all governorates. Although instructions issued by the ministries in subsequent years have not made the process mandatory, it has come to be the practice in all governorates, except Ninawa, which began working on a 20-year plan in 2010 that it has yet to finish.

<sup>40</sup> Article 61 of the Iraqi Constitution states that the provinces shall be regulated by a law. That article expressly acknowledges the COR responsibility to regulate the provinces. The Constitution gives to the national parliament latitude to expand or contract the authorities of the provinces, and of course as the national parliament enjoys both territorial and subject matter jurisdiction over the provinces, they can change, amend, update, revise, or repeal the laws applicable to them. This is in conformity to the hierarchy of the laws established by the Constitution and the subordination of subnational administrative units to national ones.

<sup>41</sup> Although there have been two rounds of elections for provincial councils and two rounds of national elections since the adoption of the 2005 Constitution, elections for district or subdistrict councils have never been held. This is in spite of a separation of provincial and subprovincial council elections into two stages by Article 6 of the Law on Provincial Elections of September 24, 2008: "Provincial council elections shall be held in the first stage, and district and subdistrict council elections shall be held in a second stage within six months after the date of holding the first-stage elections." Because provincial council elections were held in January 2009, district and subdistrict council elections should have been held by August of the same year, but they were not; elections for councils below the provincial level are not expected any time soon.

<sup>42</sup> One of the more peculiar debates since the adoption of Law 21 has been whether it applied to district and subdistrict councils. The source of the difficulty was a line in the original Article 55, *First*, which provided that the law "shall be applicable . . . after the conducting of the next council elections." Because the drafter did not specify which council's elections, it was widely asserted that Law 21 only applied to provincial councils, because only provincial council members had been chosen by election in January 2009. According to this reasoning, CPA Order 71 still applied to the district and subdistrict councils. This reading fails to take into consideration that Article 53 of Law 21 "abrogates" prior law, and the *Fourth* paragraph specifically names CPA Order 71. Synonyms for "abrogate" are "annul," "officially abolish," and "repeal." Article 53 entirely abolished CPA Order 71. It ceased to exist, and not only for provincial councils but for all councils, whether or not elections are ever held. Therefore, in all 14 governorates not incorporated into a region, and not otherwise subject to a constitutional dispute (e.g., Kirkuk [Ta'meem]), Law 21 applies to provincial, district, and subdistrict councils. If that were not enough, Law 15 of 2010, the first amendment to Law 21, completely replaced the language of the original Article 55, but left the abrogation of CPA Order 71 in Article 53 intact.

**Third:**

1. Elect the qada'a administrator by the absolute majority of the members, and if any of the candidates fails to win the required majority, the candidates with the highest number of votes shall compete in the second ballot, and the candidate who wins the highest number of votes then shall be elected to the office.
2. Remove the qada'a administrator by the absolute majority of the members upon the request of either one third of the members or the governor based on any of the reasons stated in Paragraph "Eighth" of Article 7.

**Fourth:** Monitor the progress of the work of the local administration in the qada'a.

Local administration includes nahiya and beladiya councils; heads of local administration units include qa'im maqams and mudeers.

**Fifth:**

1. Prepare the qada'a council's draft budget.
2. Approve the budget plans of the qada'a offices and refer them to the governor.

**Sixth:** Approve naming of streets and planning of roads.

**Seventh:** Approve the basic designs of the qada'a in coordination with the governorate council and consistent with the general plans of the federal government.

**Eighth:** Monitor and evaluate the educational activities within the boundaries of the qada'a and submit relevant recommendations through the governorate council.

**Ninth:** Monitor and organize the utilization of public lands within the geographic location of the qada'a and endeavor to develop agriculture and irrigation.

**Tenth:** Approve the security plan presented by the heads of the local security agencies through the qada'a administrator.

**Eleventh:** Any other competencies delegated by the governorate council that would not contradict applicable laws.

**Twelfth:** Draft the bylaw of the qada'a council.

**ARTICLE 9:**

The qada'a council, for successful performance, shall:

**First:** Present scientific studies and research for the development of the qada'a, and refer them to the governorate council.

**Second:** Cooperate and consult with the nahiya councils of the qada'a so as to ensure the welfare of the community.

**ARTICLE 10:**

The heads of the administrative unit, heads of the security agencies, and the directors of offices shall have the right to attend the council's ordinary meetings as nonvoting members at the invitation of the council.

**ARTICLE 11:**

In the event that the qada'a council's decisions are contrary to the governorate council's decisions, priority shall be given to the latter if the decision concerns the governorate in general.

## **SECOND: Competencies of the Nahiya Councils**

### **ARTICLE 12:**

The nahiya council shall assume the following functions:

**First:** Elect the head of the nahiya council by the absolute majority of the members at the council's first session called for by the nahiya administrator within 15 days from the date of the certification of the elections results. The session shall be chaired by the oldest member.

**Second:** Remove the head of the nahiya council by the absolute majority of the members upon the request of one third of the members if one of the conditions stated in Article 7, Paragraph "Eighth," of this law is met.

#### **Third:**

1. Elect the nahiya administrator by the absolute majority of the members, and if any of the candidates fails to win the required majority, the candidates with the highest number of votes shall compete in the second ballot, and the candidate who wins the highest number of votes then shall be elected to the office.
2. Remove the nahiya administrator by the absolute majority of the members upon the request of either one fifth of the members or the qada'a administrator based on any of the reasons stated in Paragraph "Eighth" of Article 7.

**Fourth:** Monitor the work of the local administration in the nahiya.

**Fifth:** Monitor the local offices and forward the necessary recommendations in this regard to the qada'a council.

#### **Sixth:**

1. Prepare the nahiya council's draft budget.
2. Approve the budget plans of the nahiya's offices and refer them to the qada'a council.

**Seventh:** Approve the local security plan submitted by the nahiya police through the nahiya administrator.

**Eighth:** Present scientific studies and research for the development of the nahiya, and refer them to the qada'a council.

**Ninth:** Cooperate and consult with the other nahiya councils of the qada'a so as to ensure the welfare of the community.

**Tenth:** Draft the bylaw of the nahiya council.

**Eleventh:** The governorate or the qada'a council may delegate any other competencies to the nahiya council in a manner that would not contradict applicable laws.

### **ARTICLE 13:**

The nahiya administrator shall have the right to attend the nahiya council's ordinary meetings at the invitation of the latter, as a nonvoting member.

### **ARTICLE 14:**

In the event that the nahiya council's decisions are contrary to the qada'a council's decisions, priority shall be given to the latter if the decision concerns the qada'a in general.

**SECTION THREE  
RIGHTS AND PRIVILEGES**

**ARTICLE 15:**

1. The members of the councils shall be free to express their opinions in the deliberations.
2. The councils may decide, by a majority of the members present, to deny a member from attending one or more sessions if his conduct in the council or his general conduct has brought discredit to the council in which he is a member.

**ARTICLE 16:**

During their membership tenure, council and local council members shall be deemed members of the public service and are subject to the Penal Code.

**ARTICLE 17:**

**First:** In return for his service in the council, the member of the council shall receive a monthly remuneration and allowances equivalent to that of a director general.

**Second:** In return for his service in the council, the member of the local council shall receive a monthly remuneration and allowances equivalent to a deputy director general.

**Third:** The provisions of this Article shall be applicable to the members of the councils who took up their positions after April 9, 2003.<sup>43</sup>

**ARTICLE 18:**

**First:** The members of the council shall not be permitted to combine their council membership with any other official position, and shall have the right to resume their original employment upon the termination of their membership. The competent authorities shall facilitate the approval of the full-time service of the member to the council and his resumption of the original position upon the termination of his tenure of membership.

**Second:** The duration of the service in the council of a member shall be taken into account for the purposes of increment, promotion, and retirement.

**Third:**

1.
  - A. Members of the councils, heads of the administrative units, and the two governor's deputies who took up their positions after April 9, 2003, shall be paid pensions no less than 80% of the monthly remuneration prescribed under this Law provided that the active service be no less than six months<sup>44</sup> or in the event they suffer a disability that prevents them from discharging their duties during their membership tenure.

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<sup>43</sup> According to this article, all individuals who have served on a council during the CPA administration, the Interim Iraqi Government, or subsequent governments for a period of six months shall receive pension benefits and allowances equivalent to 80% of their salary as a council member. See Note 84 *infra*

<sup>44</sup> Amended by Law 15 of 2010. The period of service was originally "one year" but was reduced to "six months" by amendment and applies retroactively.

Following are the qualifying criteria for a pension (80% of the monthly remuneration prescribed under the Law of Governorates):

- Be a council member
- Be a head of an administrative unit (governor, qa'im maqam, mudeer nahiya)
- Be a deputy governor
- Serve at least a six-month employment term
- Took up the position after April 9, 2003
- Served at least a year or suffered a disability during the period less than a year.

Articles 17, "Third," and Article 18, "Third" (A), take effect immediately. All other provisions of the Law of Governorates are not in effect until governorate and local elections are held.

B. Members of the councils, heads of the administrative units and the two governor's deputies who assume their positions in accordance with this Law shall be paid pensions no less than 80% of the monthly remuneration prescribed under this Law after the termination of the electoral term or if they suffer a disability that prevents them from discharging their duties during their tenure.

2. The legal heirs of the members of the councils, heads of the administrative units, and the two governor's deputies, according to the *Unified Retirement Law*, shall receive the pension of the member in the event of his death or martyrdom during his membership tenure.

#### **ARTICLE 19:**

**First:** The quorum for sessions of the councils shall be met with the attendance of the absolute majority of the council's members.

**Second:** The decisions shall be taken at the sessions of the governorate council and the local councils by a simple majority unless otherwise stated.

#### **ARTICLE 20:**

**First:** The council and local councils shall be dissolved by an absolute majority of the members based upon a request of one third of the members under the following conditions:

1. Gross dereliction of duties and functions assigned to them
2. Contradicting the *Constitution* and laws.
3. If one third of the members no longer meet the membership requirements.

#### **Second:**

- a. The Council of Representatives may object to a decision issued by the Governorate Council if it contradicts the Constitution or applicable laws. If the violation is not removed, the Council of Representatives may cancel the decision by a simple majority vote.
- b. The Council of Representatives may dissolve the council by an absolute majority of its members based upon the request of the governor or one third of the governorate council members if one of the conditions stipulated above is met.<sup>45</sup>

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<sup>45</sup> Amended by Law 15 of 2010. The previous version allowed the COR to dissolve a governorate council. This version requires a two-step process in which the COR first objects and gives the council an opportunity to cure its objection before cancelling the decision. In this respect, it parallels the "veto" power afforded to the governor in Article 31, *Eleventh*. The grounds for objection—contravening the Constitution or other applicable laws—are also parallel.

**Third:**

1. The governorate council may dissolve a local council by an absolute majority of its members upon a request from the qada'a administrator, as regards the qada'a council, or the nahiya administrator, as regards the nahiya council, or one third of the local council members if one of the conditions stipulated above is met.
2. The dissolved council or one third of its members may contest the dissolution decision before the Federal Supreme Court within 15 days from the date of its issuance. The court shall decide on the challenge within 30 days from the date of receiving it.

**ARTICLE 21:**

**First:** In case the decision to dissolve the council is approved or the legal period of the contest expires, the governor shall call for the governorate council to conduct elections.

**Second:** The work of the council shall terminate on the date the competent court approves the decision of dissolution or the challenge period has elapsed and no challenge to the decision has been mounted. The head of the administrative unit shall conduct the daily affairs of the governorate until a new council is elected.<sup>46</sup>

**Third:** The provisions of this Article are applicable to the local councils provided that the call for new elections for the qada'a councils shall be made by the qada'a administrator and the call for the elections for the nahiya shall be made by the nahiya administrator.

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<sup>46</sup> Amended by Law 15 of 2010. Although the Arabic original does not use the word "governor," the head of the administrative unit in this instance would be the governor, because the section concerns the dissolution of a governorate council.

## PART II HEADS OF ADMINISTRATIVE UNITS

### **ARTICLE 22:**

Each administrative unit shall have a juridical character<sup>47</sup> and financial and administrative independence. In the performance of its functions, it may:

**First:** Collect taxes, duties, and fees in accordance with the federal laws.<sup>48</sup>

**Second:** Exercise the competencies granted to it in accordance with the *Constitution*.

**Third:** Fulfill the duties and functions it is entrusted with in accordance with the laws and in a manner that will not contradict the *Constitution*.

### **ARTICLE 23:**

The governor and the qada'a and nahiya administrators are the highest executive employees in their respective administrative units and shall have authority over staff of each, and subject to the *Civil Service Law*<sup>49</sup> in terms of their rights and employment in a manner that would not contradict this law.

## Chapter I The Governor

### **ARTICLE 24:**

The governor shall be considered the highest-ranking executive officer in the governorate at the rank of a deputy minister as regards rights and service.

### **ARTICLE 25:**

1. The candidates for the position of the governor shall meet the requirements stipulated for membership of the governorate council and shall hold a university degree or its equivalent.
2. The requirement referred to in Paragraph "First" of this Article shall be applicable to the two deputy governors.

<sup>47</sup> The legal personality afforded to the administrative unit of a province does not appear to be identical to that of a provincial council. In other words, provincial councils have not been recognized as provincial governments. Instead, they appear to be treated as one of several governmental bodies operating in the territory of a province. Their territorial jurisdiction may be the same, but the subject matter jurisdiction of those bodies remains separate. See Note 11, *supra*. This distinction explains why the Federal Supreme Court could refuse to hear cases from provincial councils between August and September of 2010, despite a grant of authority to resolve disputes between the "central" and "provincial governments" in its statute of jurisdiction, Law 30 of 2005. See Note 29 *supra*. It also explains why the Nongovernmental Organization Bureau could refuse to recognize the Iraqi Local Government Association (ILGA) as a parastatal organization, because its constituent members, the provincial councils themselves, were deemed to lack legal personality and, therefore, the legal capacity to constitute an organization. So, while the Supreme Court recognizes the legal personality of the provincial council because it is one of the several government bodies operating in the territory of the province, the Court does not consider the provincial council to be an aspect of or an equivalent of the provincial government.

<sup>48</sup> Whatever the drafters of Law 21 anticipated as being the authority of provincial councils to collect taxes, the central government has consistently denied provincial councils that ability. Since the restoration of sovereignty in 2004, each Prime Minister has denied provinces the authority to collect taxes. In addition, in July 2010, the Council of Ministers' legal committee stated that Basrah provincial council was not within its rights in attempting to impose a surcharge on the issuance of passports and national identity cards because the Constitution, in Article 28, *First*, states that no such tax shall be imposed "except by law." The denial of taxation by successive Prime Ministers and the Council of Ministers Secretariat (COMSEC) notwithstanding, shortly after Law 21 had been adopted but before it had been implemented, the Supreme Court issued an advisory opinion, No. 16, recognizing the authority of provincial councils to raise local revenues. It is perhaps significant that the question was presented to the court by Najaf province, where at least one form of tax seems to be imposed without central government challenge. That is a pilgrims' tax on religious tourists, something formally recognized in Article 2, *Second*, of the annual, national budget law, No. 10 of 2010. A similar provision is to be found in the draft budget law for 2011.

<sup>49</sup> Law No. 24 of 1960, as amended.

**ARTICLE 26:**

**First:** The appointment of the governor shall be under a republican decree<sup>50</sup> issued within 15 days from the date of his election, and he shall commence his duties from the moment of his appointment.

**Second:** The governorate council may elect the governor from within or outside the council.<sup>51</sup>

**ARTICLE 27:**

**First:** Each governor shall have two deputies<sup>52</sup> elected by the council. Their orders of appointment shall be issued by the governor within 15 days from the date of their election by the council. Each of the deputy governors shall hold the rank of director general and they may be elected from within or outside the council.

**Second:** Each deputy shall be required to meet the requirements for membership of the governorate council stipulated in Article 5 of this Law and shall hold a university degree.

**ARTICLE 28:**

If the governor fails to fulfill his duties for reasons of health for a period exceeding three months, he shall be superannuated and the council shall elect a new governor pursuant to Paragraph "Seventh" of Article 7 of this Law, and the governor's first deputy shall be the acting governor until such election is conducted.

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50 Law 159 of 1969 granted the provinces extensive authorities, including security, public services, the protection of freedoms and properties, and even controlling the borders and the agreements related to them, because the governor used to bear the title of *مُصَرِّفٌ* (*mutaserrif*). The term *mutaserrif*, current until 1969 and the implementation of Law 159, was an approximate synonym of the term governor, our current term. According to the Provinces Administration Law No 58 of 1927, the *mutaserrif* was in charge of various affairs in the province. During the era of dictatorship, however, the central government gradually began to take away the provincial powers until the governor was merely an employee who followed the orders and prohibitions of the central government with regard to provincial affairs. After the fall of the regime in 2003, the demands for decentralization, and the desire to award the provinces with extensive authorities, returned to the political forefront. Provincial council elections were held, and it was intended for those councils to handle the function legally entrusted to them and according to the Constitution

51 Law 21 required that the provincial councils choose a governor within 30 days of their first session. Due to the number of challenges to the results of the elections in January 2009, several councils were not finally seated until April, resulting in the process of governor selection not being concluded until May.

52 Although the law authorizes the governor to have two deputies, it does not designate the priority relationship between them. In other words, the law does not specify that one is to be the "first deputy" and the other the "second deputy." More than just a problem of semantics or of status, this absence of distinction opens the way to a succession crisis if a governor is incapacitated.

On December 30, 2009, a car bomb exploded near the police station and government building in Ramadi, the provincial seat of Anbar province. Following the blasts, the governor, his top security advisor, and several provincial council members went outside the building to inspect the site of the blast. A man in a uniform walked up to them and detonated a concealed suicide vest. The second blast killed the security chief and one provincial council member and caused serious injury to the governor himself. The governor was medevaced out and surgery performed to try to save his hand, but in his absence, the law left it unclear who was to rule. Although the governor of Anbar had two deputies, each had the same status as the other, leaving it to the provincial council to decide which of the two men should temporarily assume the duties of governor, and possibly the full responsibilities should the governor die or not be able to return to work. Although the council and deputies reached an amicable solution, with the Deputy for Technical Affairs becoming acting governor rather than his colleague, the Deputy for Administrative Affairs, the absence of a clear order of succession forced the issue to be resolved by a political process rather than a legal process. Had the province been experiencing a widespread security crisis, for instance, or had the two deputies been political rivals, the succession question could have destabilized the province.

**ARTICLE 29:**

The heads of administrative units, the two deputy governors, and the head and members of local councils shall take the following oath before the highest provincial judiciary authority before assuming their duties: “I swear by Allah the Almighty to sincerely safeguard the federal republican system, guard the public interest and the safety of the homeland, uphold the Constitution and the law, and discharge my duties sincerely, faithfully, and impartially, and may Allah be my witness.”<sup>53</sup>

**ARTICLE 30:**

The governor, his two deputies, and the heads of the administrative units shall continue to discharge their daily responsibilities after the expiration of the electoral term of the councils until their respective successors are elected by the new councils.<sup>54</sup>

**ARTICLE 31:**

The governor shall exercise the following powers:

**First:** Draft the general budget of the governorate<sup>55</sup> in accordance with the constitutional standards, except for those which fall within the jurisdiction of the federal government, and submit the budget to the governorate council.

**Second:** Execute the decisions of the governorate council<sup>56</sup> as long as they are consistent with the applicable laws and the provisions of the *Constitution*.

**Third:** Execute federal general policy within the boundaries of the governorate.<sup>57</sup>

53 (Amended by Law 15 of 2010.) As in Article 21, the use of “head of the administrative unit” here refers to the governor.

Although the text of the oath prescribed was not changed, the number of elected officials expected to take it expanded from just the governor and his two deputies to include all council members and their corresponding executives, the *مُدِيرُ نَاحِيَةٍ* (*mudeer nahiya*), and the *قَائِمُ مَقَامٍ* (*qa'im maqam*).

54 Legally, a province can have only one governor at a time. Since coming into force, Law 21 has been tested on this principle in three different ways. The first way this principle was tested, in the spring of 2009, was after the last round of provincial elections, when outgoing governors continued in office until the new councils could choose new ones. This is remarkable, given an average turnover rate of over 80% of council members. The second test occurred as a result of the incapacitation of the governor of Anbar by a would-be assassin in December 2009. That attempt on the governor's life sent him to the hospital and put the province into a brief succession crisis until one of the two deputy governors could be elevated by the provincial council. See Note 52 *supra*. Following the governor's convalescence, however, he returned to his duties and the deputy to his, without controversy. The third way the principle has been tested involved removal proceedings. The most complicated of these proceedings took place in Salah ad Din province. Here, one governor, who had been formally removed by the council but had appealed; a replacement governor, designated by the governorate council; and eventually a military officer sent from Baghdad, all claimed the governor's office at the same time.

55 The law gives the governor responsibility for preparing the general budget and for submitting it to the provincial council. The above suggests that the governorate is one government body with jurisdiction over the entire province, but the budget that the governor prepares is only the operations budget for the provincial council and the governor's office (GO), plus a so-called capital budget or investment budget used for mini projects executed by the GO and known as the Accelerated Reconstruction and Development Program (ARDP).

56 Article 2 gives the provincial council the authority to legislate and “issue” local laws. Article 12 obligates the provincial council to publish its “decisions” and “opinions” in a provincial gazette. See Note 26, *supra*. Article 31 only obligates the governor to enforce the decisions of the council and makes no mention of either “legislation” or “opinions.” The qualification on the governor's obligation to execute decisions of the council—that they are consistent with the Constitution and other applicable laws—is consistent with the supremacy clause of the Iraqi Constitution—Article 13, *First*—as well as with the council's obligation to conform to higher order laws in Article 2, *First*, and the Council of Ministers' authority to object to decisions of the provincial council in Article 2, *Second*.

57 This obligation extends from the era of Ba'athist control in which the governor bore overall responsibility for central government policies and execution of decisions within the province.

**Fourth:** Oversee and inspect<sup>58</sup> public facilities in the governorate except for courts, military units, universities, colleges, and institutions.

**Fifth:** Represent the governorate at the conferences, symposia, and general forums to which he is invited and which are relevant to the governorate affairs and local administrations. He may delegate any of the governorate employees to carry out these functions in accordance with the law and applicable rules and regulations.

**Sixth:** Establish universities, colleges, and institutes in the governorate in coordination with the Ministry of Higher Education and Scientific Research within the governorate budget and with the approval of the council by an absolute majority of the council members.

**Seventh:**

1. Issue official letters of appointment for local employees in the governorate from grade 5 and below<sup>59</sup> in the employment scale stated in the *Federal Civil Service Law* upon the recommendations of the offices concerned and in accordance with the staffing plan approved by the council.
2. Appoint local employees in the governorate on a permanent basis from grade 4 upward in the employment scale stated in the *Federal Civil Service Law* except for the senior positions upon the recommendations of the offices concerned and in accordance with the guidelines prepared by the council.

**Eighth:** Take legal and administrative measures against the directors general and employees<sup>60</sup> in the governorate with the approval of the council by a simple majority.

**Ninth:**

The governor may:

1. Order the police to investigate the crimes that take place within the administrative boundaries of the governorate according to the law and to present the investigation reports to the concerned judge, provided that the governor has been informed of the investigation outcome.
2. Establish or abolish police stations with the approval of the council by the absolute majority of the council members in accordance with the relevant laws and guidelines of the Ministry of Interior.

**Tenth:**

1. The governor shall have direct authority over the local security agencies and all authorities tasked with protection duties relating to peace and order within the governorate, except for the armed forces (army units).
2. If the governor is convinced that the security agencies in the governorate are unable to fulfill their duties in maintaining peace and order on account of insufficient numbers, he shall promptly inform the Minister of Interior with a recommendation as to the size of the numbers required to fulfill their responsibilities.

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<sup>58</sup> In this paragraph the governor is given arguably more power over public facilities than the provincial council. The council is instructed by the law to “monitor,” and the local executive, according to Article 76—the governor—is given the authority to “oversee and inspect.” In practice, provincial councils have exercised an authority to inspect, frequently paying visits to the locations of investment projects. Complicating matters, the Arabic terms for monitoring and oversight (الرقابة [riqaba] and إشراف [ishraff]) are not clearly distinguished in meaning. What appears clear, however, is that the governor, as chief executive, inherently bears responsibility for ensuring that both the decisions of the provincial council and the decisions of the central government are enforced, and that enforcement implies a responsibility to inspect.

<sup>59</sup> Law of Public Sector Salaries, No. 22 of 2008, rescinded CPA Order 30 of 2003, and included a revised schedule of grades.

<sup>60</sup> At the provincial level, several government bodies are operating with concurrent territorial jurisdiction but separate subject matter jurisdiction.

**Eleventh:**

1. The governor shall have the right to object<sup>61</sup> to the decisions of the governorate council or the local council in the following cases:
  - A. If they contradict the Constitution or applicable laws
  - B. If they are not within the competence of the council
  - C. If they contradict the general plan of the federal government or the budget.
2. The governor shall communicate to the council concerning the reasons for his objection together with the decision of the council within 15 days of the notification of the decision.
3. If the council concerned affirms its decision or amends it without removing the violation communicated by the governor, the matter shall be referred to the Federal Supreme Court for conclusive decision.

**ARTICLE 32:**

The ministries and offices not affiliated with ministries shall notify the governor of their correspondence with their offices and public utilities within the governorate so that the governor may monitor the implementation of the instructions in such correspondence. The heads of the offices and public utilities in the governorate shall abide by the following:

**First:** Notify<sup>62</sup> the governor of official correspondence with their respective offices.

**Second:** File reports to the governor on matters that he has referred to them.

**Third:** Notify the governor of their activity on matters that relate to security and important issues as well as on matters that relate to more than one office within the governorate or the conduct of their personnel.

**Fourth:** Notify the governor when they commence and end their work.

**Fifth:** Fulfill the functions that the governor assigns and the work of the committees that the governor requires to be formed.

**ARTICLE 33:**

**First:** The governor shall have a maximum of five assistants<sup>63</sup> for administrative and technical affairs and they shall fulfill the tasks assigned by the governor and work under his supervision and guidance.

**Second:** The assistants shall have at least 10 years of experience in their specialization and shall meet the requirements stipulated for deputy governors.

**Third:** The assistants shall hold the rank of deputy director general.

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61 Though given responsibility to execute the decisions of the provincial council by Article 31, *Second*, the governor retains discretion to exercise his best judgment and can object to decisions that he finds violate the Constitution or other applicable laws, or are outside the subject matter jurisdiction of the council. Interestingly, only the decisions of the council are referenced. Notwithstanding, this paragraph has been understood by provincial councils to outline a legislative process in which the governor either approves of legislation or essentially vetoes it by filing his objections, thereby setting in motion a process by which the council can amend their legislation to conform to the governor's objections, or in the absence of resolution, refer the matter to the Supreme Court.

62 This paragraph imposes a notice requirement on ministerial departments in the provinces over the performance of their duties, but does not involve submitting to the governor's jurisdiction. Presumably, routine correspondence within the department or between a department head and his superiors in Baghdad would not be shared with the governor, only notice of the communication would be. To obtain detailed information as to department business, the law places an affirmative obligation on the governor to request it.

63 Law 21 provides for a staff of five assistants for administrative and technical support, without specifying their expertise.

**ARTICLE 34:**

**First:** An advisory board consisting of not more than seven advisors<sup>64</sup> specialized in legal, technical, and financial affairs chosen by the governor shall be formed in each governorate. The advisory board shall report directly to the governor and shall function under his supervision and guidance.

**Second:** The advisors shall have 10 years of experience in the areas of their specialization. Each of them shall hold the rank of assistant director general.

**Third:** The board referred to in Paragraph “First” of this Article shall assume the responsibility of studying matters referred to it by the governor, each according to his area of specialization, and shall submit relevant written recommendations.

**ARTICLE 35:**

The governor may delegate some of his powers to his deputies and assistants. The governor shall not delegate powers exclusively vested in him.

**ARTICLE 36:**

The services of the governor’s experts of the advisory board, assistants, and heads of administrative units who are permanent public employees shall be transferred to the staff of the administrative units in which they are elected or appointed for such positions for the duration of their tenure.

**ARTICLE 37:**

**First:** The governor, his two deputies, and heads of administrative units may submit their resignation to the councils that elected them. The resignations are deemed accepted as of the date of their submission.<sup>65</sup>

**Second:** Their replacements shall be elected pursuant to the procedures stipulated in this Law.

These procedures are stipulated in the following articles of the Law of Governorates:

- Article 5
- Article 8, “Third”
- Article 12
- Article 25
- Article 26.

**ARTICLE 38:**

The provisions for removing the governor stipulated in this Law shall be applicable to the two deputies of the governor.

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<sup>64</sup> In addition to the five assistants accorded to the governor, he may also appoint up to seven advisors, specialized in areas of the governor’s choosing. This advisory board can change composition and specialties as required. Both the assistants of Article 33 and the advisors in Article 34 must be included in the governor’s operations and maintenance budget to be paid. Because the operations and maintenance (O&M) budget was due to the Ministry of Finance shortly after councils were seated and governors selected in 2009, very few governors’ offices had a full complement of assistants and advisors in 2010 because they had not been included in the budget.

<sup>65</sup> Three southern provinces of Iraq have recently experienced political turmoil, two of them directly as a result of recent political demonstrations, which have been popularly described as “Days of Rage.” The three governorates are Babil, Basrah, and Wasit. In each governorate, the governor has been replaced or is in the process of being replaced.

## Chapter 2 Qada'a and Nahiya Administrators

### **ARTICLE 39:**

**First:** The qada'a and nahiya administrators are the highest executive employees in their administrative units to be elected in accordance with Paragraph 3 of Articles 8 and 12 of this Law.

**Second:** The qada'a and nahiya administrators are required to meet the conditions stipulated for the governorate council member in Article 5 of this Law and hold a university degree.

**Third:** The governor shall issue an official letter of appointment to the qada'a and nahiya administrators, who shall be under his guidance and supervision.

**Fourth:** The qada'a administrator holds the rank of director general and the nahiya administrator holds the rank of deputy director general.

### **ARTICLE 40:**

**First:** In the absence of the qada'a administrator, the governor shall assign the administrator of a nahiya affiliated to the qada'a to function in his place.

**Second:** In the absence of a nahiya administrator, the qada'a administrator shall assign the administrator of a nahiya affiliated to the qada'a to function in his place.

**Third:** The qada'a administrator shall notify the governor and the nahiya administrator shall notify the qada'a administrator of their absence sufficiently in advance so that the governor may appoint a replacement for the duration.

## SECTION ONE POWERS OF THE QADA'A ADMINISTRATOR

### **ARTICLE 41:**

The qada'a administrator shall exercise the following powers:

**First:** Execute the decisions of the qada'a council that are consistent with the Constitution and applicable laws.

**Second:**

1. Directly supervise and inspect the public offices in the qada'a and their employees excluding the army, courts, universities, and institutes and to impose legally sanctioned punishments on the violators with the approval of the qada'a council.
2. The qada'a administrator may order the police to investigate the crimes that take place within the boundaries of the qada'a and to present the investigation reports to the investigative judge concerned, and must be informed about the investigation outcome.

**Third:**

1. Maintain security and order and protect citizen's rights, lives, and property.
2. Preserve the rights and public property and collect the revenues in accordance with the law.

**Fourth:** Prepare the draft budget of the qada'a and submit it to the qada'a council.

**Fifth:** When necessary, the qada'a administrator may order police patrols and posts to be established on a temporary basis within the qada'a in order to maintain security.

**ARTICLE 42:**

The heads of government offices within the governorate shall submit to the qada'a administrator, where they are relevant to the qada'a concerned, copies of their communications and decisions to their respective branch offices so that the qada'a administrator may follow up on the actions taken.

**SECTION TWO  
POWERS OF THE NAHIYA ADMINISTRATOR**

**ARTICLE 43:**

The nahiya administrator shall exercise the following powers:

**First:**

1. Directly supervise and inspect the public offices in the nahiya and their employees, but excluding the army, courts, universities, and institutes.
2. The nahiya administrator may order the police to investigate the crimes that take place within the boundaries of the nahiya and to present the investigation reports to the investigative judge concerned. The nahiya administrator shall be informed of the investigation findings.

**Second:**

1. Maintain security and order within the boundaries of the nahiya.
2. Preserve the rights and public property and collect the revenues in accordance with the law.

## PART III FINANCIAL RESOURCES

### ARTICLE 44:

The financial resources of the governorate shall consist of the following:

**First:** The budget transfers to the governorate from the federal government<sup>66</sup> in accordance with the constitutional criteria prepared by the Ministry of Finance and approved by the Council of Representatives.<sup>67</sup>

**Second:** Revenues<sup>68</sup> generated from the governorate services and investment projects.

**Third:** Proceeds<sup>69</sup> from taxes, duties, and local fines in accordance with the Constitution and the applicable federal laws.

<sup>66</sup> Almost all the money received by a provincial council and provincial governor comes from the central Ministry of Finance, from the federal government.

<sup>67</sup> Article 80, *Fourth*, of the Constitution obligates the Council of Ministers to introduce a draft budget to the national parliament, and Article 57 requires the parliament to pass a budget before it can recess its second of two annual sessions. In reality, the draft budget is prepared by the Ministry of Finance, and rather than form a permanent “ways and means” committee, the national parliament forms an ad hoc committee to review and comment on the draft. The chairman of the Ad Hoc Committee reviewing the 2011 budget is Sheikh Khalid al Atiyah of Diwaniyah. The process of preparation and review is set out in CPA Order 95, one of the very few U.S.-era laws not to have been replaced with Iraqi legislation. Even though Order 95 requires budgets for the following year to be passed before the end of the current one, in practice, this deadline has never been met. Instead, annual budget laws are usually passed sometime within the first quarter of the budget year (although they have been as late as the second quarter). In the period of deliberations over the budget, government expenses are paid on the basis of a “continuing resolution” or 1/12 of the prior year’s budget, in order to maintain salaries and basic operating expenses. Once passed, the approved annual budget is elaborated with instructions published by the Ministry of Finance, usually within the second quarter of the budget year. Both the budget law and the ministry’s instructions are binding on the provinces and provincial councils, but the most pressing obligation for elected officials at the provincial level is the deadline for submission of their O&M budgets. It bears repeating that the provincial councils and governors are each responsible for preparing an operating budget, which mostly comprises salaries. They do not prepare the budgets for ministerial departments operating in the provinces. In each of the years since Law 21 has been in force, the deadline published by the Ministry of Finance for preparation and submission of O&M budgets has been short. In the summer of 2009, it was literally 24 hours; on June 17, 2010, the ministry issued instructions for the implementation of the 2010 budget law, setting June 30 as the deadline for submissions from the provinces. Because budget formulation is a process, councils should know to begin preparing their budgets for the subsequent year as soon as they have closed the books on the one just concluded. For instance, the 2010 final reconciliation is due to the ministry by January 31, 2011. From February 2011, a council should be at work preparing its submission for 2012.

<sup>68</sup> Although the law contemplates resources coming into the provinces from both central and local sources, the overwhelming majority of money spent on operations and capital projects comes through the central government budget.

<sup>69</sup> Despite the clear grant of authority to receive proceeds from taxes, duties, or fines, to date, provincial councils and governors have been prevented from officially collecting them. Despite an advisory opinion of the Supreme Court, Number 16 of 2008, which interpreted the law as allowing provincial councils to impose taxes, that anticipated power has been consistently denied by Prime Ministers and the Ministry of Finance since the implementation of Law 21 and since sovereignty was returned in 2004. Consequently, there is no clear procedure for how to impose, collect, or spend local revenues. Moreover, the Ministry of Finance has placed impediments in the way of provinces that attempt to open provincial bank accounts.

The appointment of a special commission is called for in the Constitution, Article 106: “A public commission shall be established by a law to audit and appropriate federal revenues. The commission shall be composed of experts from the federal government, the regions, the governorates, and its representatives.” That commission has not yet been appointed. Further legislation detailing revenue is likely to be required. Currently, numerous provinces generate revenue on their own through fees for services and other transactions, such as the revenue generated from religious tourism in Najaf. In addition, annual budget laws, such as those of 2010 and the draft 2011 budget law, have provided for additional revenues, including formally approving the religious tourism tax for any province affected by such tourism, and shares of oil revenues for provinces where oil is produced and refined.

**Fourth:** Donations and gifts<sup>70</sup> that may be received by the governorate in a manner that would not contradict the Constitution and the applicable federal laws.

**Fifth:** Proceeds from the sale and lease of public movable<sup>71</sup> and immovable assets in accordance with the Law on Sale and Lease of Public Properties and other applicable laws.

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<sup>70</sup> Revenues from holy shrines and other endowed properties stay with the shrines' trustees (not in the federal treasury). These endowments are known as *أوقاف* (*awqaaf*). However, donations and gifts that each province collects are transferred to the federal treasury, according to Budget Law Number 10, Articles 1 and 3 (2010).

<sup>71</sup> A major question of title stands before the provincial councils in the exercise of this paragraph. Because the governor was formerly an employee of the Ministry of Interior, government properties that were controlled by the governor may still belong to that ministry. Sales and property laws are governed by Law 32 of 1986.

## PART IV FINAL PROVISIONS

### **ARTICLE 45:**

**First:** A high commission for coordination between the governorates<sup>72</sup> headed by the Prime Minister shall be formed and shall include as members the governors. This commission shall specialize in reviewing the affairs of the governorates, their local administrations and means of coordination between them, and shall address problems, obstacles that it faces, and common issues between the governorates.

**Second:** The commission shall meet at the invitation of its head every 60 days or when necessary.

**Third:** The head may invite those whose presence is required and necessary for the commission meetings.

### **ARTICLE 46:**

The governorate council and administration shall adopt recognized accounting systems.<sup>73</sup>

### **ARTICLE 47:**

The governorate offices and councils shall together be subject to monitoring and auditing of the Supreme Audit Board and branches of the independent commissions formed in accordance with the constitutional provisions.<sup>74</sup>

### **ARTICLE 48:**

The period of real service of the governor, his two deputies, his assistants, his advisors, and the heads of the administrative units shall be taken into consideration for the purposes of increment, promotion, and retirement.

### **ARTICLE 49:**

Rescinded<sup>75</sup>

<sup>72</sup> The commission contemplated by the drafters of Law 21 would operate like a governors' club under the direction of the Prime Minister. Although the law anticipates periodic meetings every 60 days, in practice, the commission has met whenever the Prime Minister has decided it was necessary. Since 2009, there have been three such meetings. The first was an informal governors' meeting held in July 2009, to take steps towards organizing the commission and a Secretariat. The subsequent organization conference was then held in January 2010 in Wasit, during which the commission was formally announced and the Minister of State for Provincial Affairs at the time, Khulood al Majoon, was designated as its head. The commission never met again in 2010. After a new government was formed in December 2010, however, a new Minister was named: Turhan Abdullah, a Turkoman member of the Kirkuk (Ta'meem) provincial council. Although the Minister of State for Provincial Affairs currently has no rule-making authority and an inadequate professional staff, he may perhaps be able to revive the commission and realize its purpose under Article 45. Hopes were raised when the Commission met again in January 2011.

<sup>73</sup> The Ministry of Finance specifies what constitutes recognized accounting systems.

<sup>74</sup> According to Article 100, *First* and *Second* of the Iraqi Constitution, the Supreme Audit Board (SAB) is an independent federal entity under the national parliament (or Council of Representatives). The amended Board Law 6 of 1990 organizes its functions of auditing the legitimacy of public spending and evaluating the performance of public administrations, including the ministries' departments in the provinces. Provincial councils have no power over the SAB, and they cannot interfere with its audit plans and programs. After conducting audits, the SAB submits reports with their findings to their president.

<sup>75</sup> Previously, Article 49 obligated council members and the corresponding executives of the *qada'a* and *nabiya* councils to take the same oath as prescribed for the governor and his two deputies in Article 29. Law 15 of 2010 amended Article 29 to include all in the same article, removing the necessity of a separate requirement in Article 49.

**ARTICLE 50:**

The council and the local councils shall authenticate the membership<sup>76</sup> in the respective councils by absolute majority of the members within 30 days of the date of the first session.

**ARTICLE 51:**

Every removal or relieving of duties referred in this Law shall be preceded by a hearing<sup>77</sup> for the individual concerned.

**ARTICLE 52:**

The budget allocated to the governorate<sup>78</sup> from the federal budget shall be submitted directly to the governorate by the Ministry of Finance after subtracting the strategic expenditures.<sup>79</sup>

**ARTICLE 53:**

The following shall be abrogated:<sup>80</sup>

**First:** The Governorates Law No. 159 of 1969 as amended.

**Second:** The Law on Peoples' Councils No. 25 of 1995 as amended.

**Third:** References to the formation and competencies of the municipal councils in the revised Law of the Municipalities Administration No. 165 of 1964.<sup>81</sup>

**Fourth:** Coalition Provisional Authority Order No. 71 of April 6, 2004, as amended.

**Fifth:** Laws, regulations, and decisions that contradict with the provisions of this Law.

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76 Usually, the authentication (eligibility for the position) should be completed by the Independent High Electoral Commission (IHEC) during the election process. In their first meeting, the council members are to vote for the member's authentication.

77 In the summer of 2010, Article 51 was cited in the Basrah provincial council's questioning of the chief of police there. Although the chief of police insisted that the council had no jurisdiction in the case because he works directly under the Ministry of the Interior, he eventually agreed to attend a hearing where he was questioned for over seven hours by the provincial council about bombings in the province. To date, further action has not been taken to remove him.

78 Article 31 obligates the governor to draft a general budget for the province and submit it to the scrutiny of the provincial council. Article 44 mentions transfers to the governor from the federal government. This paragraph suggests that the total amount allocated is to be transferred to the control of an unnamed authority within the province, most likely the governor. This article could not be implemented prior to the summer of 2010, when provincial councils or governors were not authorized to open a bank account in the name of the province. Although the Ministry of Finance (MOF) eventually relented and allowed the opening of bank accounts in the provinces, it still requires that all provinces follow a standard chart of accounts, limiting their ability to move money between chapters or to create different chapters.

79 Almost all the money received by a provincial council and governor come from the central Ministry of Finance (MOF). An important distinction needs to be made between "allocations" as mentioned in Article 52 and "transfers" as mentioned in Article 44. An allocation is an amount budgeted, whereas the amount transferred is the amount received.

80 When the provincial councils, which were elected in the spring of 2009, were finally seated, Law 21 came into effect. At that time, a number of laws that formerly defined the relationship between the provinces and the central government went out of existence. The laws abrogated or voided by Article 53 continue in influence, however. In the first and most obvious way, many of the concepts (and in fact, in some instances also the language) of those prior laws were copied into Law 21. Two examples include (1) the governor's power over security and his responsibility to the Ministry of Interior in Article 31 and (2) the repetition of the phrase "administrative decentralization" in Article 2, *First* and Article 7, *Third*. In a second and more broad way, Law 21 does not exist in a political and legal vacuum, but in a legal and political context. The words of the law will be interpreted in light of that context, meaning that how government functioned in the past may be the strongest predictor of how it functions in the present.

81 Other than the section/chapter on the formation and competencies of the municipal councils, the rest of the Law of the Municipalities Administration No. 165 of 1964 remains in effect.

**ARTICLE 54:**

Villages and neighborhoods shall be run by a Nahiya council<sup>82</sup> and Administrator through an alderman (Mukhtar) who exercises his work according to the law.<sup>83</sup>

**ARTICLE 55:**

**First:** The provisions of the positions and rights to pension cited in this Law are applied to heads of administrative units, the two governor's deputies, and heads and members of councils and shall come into effect as of April 9, 2003.<sup>84</sup>

**Second:** Members of Municipality councils assumed office after April 9, 2003 shall enjoy the same rights to pension of that of a Nahiya council member under the same terms.

**Third:** Heads of administrative units and heads and members of local council shall resume duties until replacement are chosen according to the law.<sup>85</sup>

## Justifying Reasons

This Law has been enacted pursuant to the scope of the competencies and powers granted by the *Constitution of the Republic of Iraq* to the governorates and their administrations and for the purpose of organizing these competencies and powers in a manner that is in harmony with the new state that is based on the federal and decentralized system, and taking into account the fact that existing legislation is inadequate.<sup>86</sup>

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82 Since the adoption of Law 21 in the spring of 2008, the question of which law applies to district and subdistrict councils has been frequently debated. Although district and subdistrict councils existed prior to the events of 2003, they, like the provincial councils themselves, were subject to the oversight of the Ministry of Interior. After the U.S. entered Iraq, the character of these councils was changed to become representative bodies. Their membership was selected, in some instances by Army commanders, or informally elected by hastily assembled groups of concerned citizens.

Despite the fact that provincial elections have been conducted twice since adoption of the Iraqi Constitution of 2005, there has never been a formal, High Electoral Commission-conducted election for district or subdistrict councils. It is this absence of elections that has been the issue for those who look at Law 21 and conclude that it does not apply to the district or subdistrict councils. See Note 15 *supra*. Not being elected has also negatively affected subprovincial councils' legitimacy.

83 This has been amended by Law 15 of 2010, Article 8. The previous article obligated the national parliament to organize elections and was the source of confusion as to whether Law 21 could apply to district or subdistrict councils until elections had been held there. See Note 42 *supra*.

84 April 9 is the date that U.S.-led forces entered Baghdad. The capital city was under U.S. control on April 13. This provision rewards council members at the provincial, district, and subdistrict level, regardless of how they came to serve, with a pension equivalent to 80% of their salary while they were council members, provided they served at least six months of the term (in conformity with the amendment to the law, No. 15 of 2010). As a practical matter, this temporary incentive to public service will become a major burden on future administrations, because the number of persons who have served on councils is likely to increase, and with it the rolls of pensioners. This administrative burden would have been one of the complications shed by the central government had the Social Affairs department of the Ministry of Labor been devolved to the governors, as attempted in Law 18 of 2010, but it was held unconstitutional by the Supreme Court in its Holding No. 44 of 2010.

85 This has been amended by Law 15 of 2010. The previous article stated that Law 21 came "into force" from the date of its publication, but would only be applicable to the governorates after the election.

86 The justification for the amendment was given as: "This Law has been enacted to address problems that have emerged during the implementation of Law 21 related to challenges against the termination of council membership, to ensure the accuracy of council decisions, and to extend the right to a pension to members of councils formed after April 9, 2003."

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