

Policy Analysis Paper

Policy Name: Analysis on how the new municipalities and decentralization laws can support municipal LDUs to be institutionalized

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1- Problem Definition

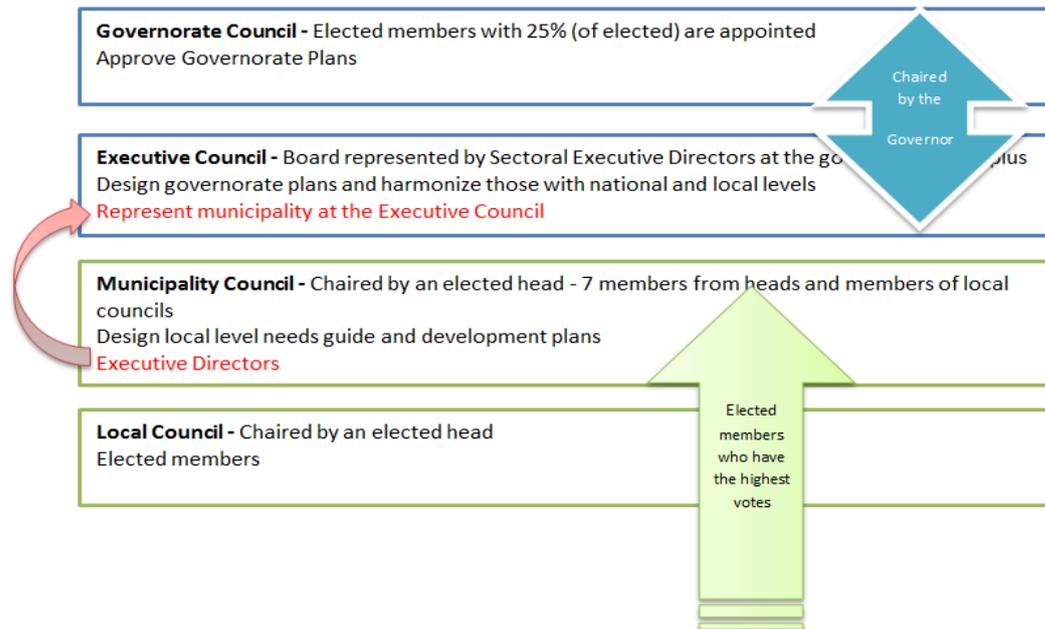
Background

Ever since his coronation at the turn of the century, His Majesty King Abdullah II Ibn Al Hussein led an integrated reform process that was translated into constitutional, legislative and institutional changes.

With regards to Public Sector, a decentralization policy direction was adopted focusing on a bottom-up approach for planning and execution. Thus, a legal framework in the form of two complementary laws was devised that shapes the decentralization structure in Jordan so far: a Decentralization Law and a new Municipalities Law¹.

The new decentralization structure articulated the composition and roles and responsibilities for each of the key players in the decentralization structure:

- Article 5 of Municipalities law stipulates responsibilities of the Municipal Councils,
- Article 7 of Municipalities law stipulates responsibilities of the Local Councils,
- Article 9 of Municipalities law stipulates responsibilities of the Executive Director
- Article 5 of Decentralization law stipulates the responsibilities of Executive Councils,
- Article 8 of Decentralization law stipulates responsibilities of Governorates Councils, and
- Article 3 of Decentralization law stipulates responsibilities of the Governors.



¹ As of today, the Municipalities Law was approved and published in the official Gazette in October 2015. The Decentralization Law however, was rejected by His Majesty the King and returned back to the Lower House of Parliament for amendments.

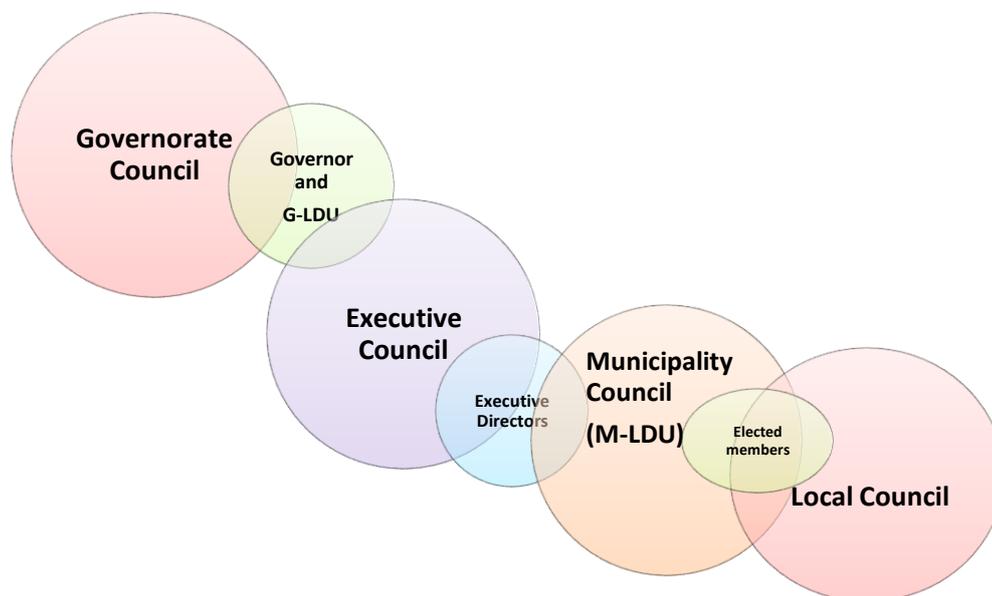
The division of authorities described above seems to be complementary. However, due to the current shape of municipalities in Jordan, the structure as it stands maintains the sizable amount of powers with the central authorities with very little margin for local level governing bodies to design and implement impactful socio-economic interventions at the local level:

- The current financial situation of all municipalities in Jordan is characterized by fiscal deficit. It will take years before municipalities can be able to generate own budget sufficient to implement serious economic growth plans. The only available means for local level governing bodies to deliver socio-economic development interventions reflecting local priorities is to influence central government's sectoral plans to meet local needs. To achieve that strong outreach and planning capacity need to exist at the municipal level to enable reflecting actual citizens' needs at related geographical areas. However, there is an evident lack of capacity at the municipal level to programmatically identify priorities put aside capacity to design socio-economic development plans that correspond to the actual needs.
- *"Based on 2007 amendments to the Municipalities Law, the Ministry of Municipal Affairs (MOMA) and municipal councils recommended the establishment of Municipal Local Development Units (MLDUs) at the municipal level to enable municipalities to lead economic growth efforts within their communities."*² However, the majority of MLDUs are practically dysfunctional and un-empowered to perform any planning or implementation effort at all.
- Article 5 of the Municipalities Law assigned the responsibility for local level planning to the Municipal Council while article 5.a/1 of the Decentralization Law provides that the main roles of the Executive Council are strategic planning for the Governorate and the preparation of governorate needs guide and annual budget³. In doing so, the article requires the Executive Council to harmonize governorate plans with the plans prepared by the municipal councils and ensure compliance with national plans and strategies.
- The Executive Council is composed of executive directors employed by the central government including executive directors (employed by MOI), local heads (directors) of line ministries (employed by line ministries) and executive directors of the municipalities (appointed by a decision from the Minister of Municipal Affairs).
- In light of a weak planning capacity of municipalities and at the same time the nature of representation at the Executive Council, the natural consequence of the above argument would be that the Executive Council will adopt central government (or sectoral line ministries') development plans.

² Extracts from LENS Policy Agenda August 2015 – 2017

³ Those strategic plans are then sent to the Governorate Council for approval

- Furthermore, since Governorates do not have special budgets to execute governorate-specific socio-economic developmental plans, it will *naturally* be the sectoral ministries budget that will finance developmental programs at the related governorate.
- Additionally, not only that the two laws did not provide for the methodology for LDUs to perform local level planning, the laws did not provide for the mechanism to process and share those plans to be reflected onto the governorate and national agenda. The only linkage between the municipal councils and governorate councils is the Executive Officer's representation at the Executive Council. Since the Executive Officer is appointed by the Minister of Municipal Affairs, the former will remain an affiliate to the central government. Thus, there will be no real representation of the municipal council and the Governorate councils to advocate for local level priorities.



Worth highlighting that, neither the Decentralization Law nor the Municipalities Law specified guidelines for a methodology to be adopted by the Executive Council or the Municipal Councils in producing socio-economic development plans and subsequent implementation/delivery of those plans.

In fact, there was almost no reference to the technical mandate of the LDUs in either Law; in the Decentralization Law, G-LDU is mentioned only once in article 10 with reference to its role as the secretariat of both the Governorate and Executive Councils. While in the Municipalities Law, M-LDU is mentioned only once and very casually in article 14.a/2 with reference to the role of the head of LDU as a member of 'Investment Committee'.

Problem Definition

- Lack of planning capacity at the municipal level. The majority of Municipal Local Development Units (MLDUs) are practically dysfunctional and un-empowered to perform any planning or implementation effort at all; put aside economic growth initiatives.
- The main reason hindering their performance is the lack of institutional arrangements for MLDUs to carry out their tasks. This includes lack of financial support, lack of structured mandates and lack of institutional channels to synchronize local level needs with governorate priorities.

2- Policy Goals

The policy goal is to support the decentralization efforts through improving local level planning capacity. The impact of that would be: 1) to better utilize municipal budget to plan and implement medium and long term economic growth efforts, and 2) to influence governorate and national priorities in line with local level socio-economic priorities.

With reference to USAID LENS Policy Agenda in Jordan, a key intervention is to support the institutionalization of LDUs in all municipalities with clear roles and relationships. This policy agenda targets operational aspects of institutionalizing MLDUs in terms of organizational structure, personnel and human resources capacities and stakeholders' management. The specific intervention suggested in this Policy Analysis tackles the legal framework in support to the institutionalization of MLDUs and complementing the LENS previously identified interventions.

“Institutionalization” is defined as ‘making into’ an institution. With relation to MLDUs and since the key roles of MLDUs are planning and monitoring process, institutionalization additionally pertains to making their role integral to the process as a fundamental stage within the bigger institutional arrangement for planning and monitoring. Consequently, the auspices legal framework should target clearly defining the following:

- Roles and responsibilities of MLDUs,
- Management and internal relationships: with Municipal Council, Governorate LDUs and other stakeholders (i.e. Executive Officer)
- Financial and other resources, and
- SOPs and counterparts relations.

Based on the comprehensive analysis to the two Municipalities and Decentralization laws that was performed earlier under this project, **the objective of this Policy Agenda is to propose entry points within the laws to design a legal framework to support the institutionalization of MLDUs.**

3- Policy Options

Option 1: Institutionalize Governorate LDU and their relationship with Municipalities LDU through incorporating an article in the draft Decentralization Law governing the planning process and the relationship between GLDUs and MLDUs.

By the time the analysis was performed the new Municipalities Law had been approved and published in the official gazette. However, the Decentralization Law after having been approved by both chambers of the Parliament (the Lower House and the Upper House), was rejected by His Majesty the King⁴. The reason for His Majesty's rejection is the fact that the Decentralization Law did not provide for a legal personality for the Governorates Councils and thus they remain lacking administrative and financial independence⁵. Consequently the Decentralization Law was referred back to the Parliament and it is currently in the custody of the Lower House to take action during the net ordinary sessions when it will convene.

Option 2: Bylaws that regulate the roles of MLDUs

Those can either be in the form of Regulations issued by the Council of Ministers or by means of Orders issued by the Minister.

Article 75 of the Municipalities Law stipulates that: "the Council of Minister shall issue Regulations required for the implementation of the provisions of this law, including: a. empowering Municipal Councils and Local Councils to perform duties and authorities as stipulated by this law...".

Article 45 of the Decentralization Law that stipulates that: "the Council of Minister shall issue Regulations necessary for the implementation of the provisions of this Law".

Option 3: Producing SOP in the form of a 'guide' to delineate the stipulated roles and responsibilities of all stakeholders as described in the two Laws, but focusing on the roles and responsibilities of the Chairpersons of Municipal Councils and the MLDUs.

Option 4: A combination of option 2 & 3

⁴ <http://www.jordantimes.com/news/local/king-rejects-decentralization-bill-unconstitutionality>

⁵ The conclusion of the analysis performed earlier to the two laws (drafts at the time) indicated lack of financial and administrative independence of the Governorate councils which is the main reason for His Majesty's rejection to the Law.

4- Policy Assessment

Each of the options presented above has its pros and cons. These are detailed below:

Option 1: Amending the Decentralization Law

The draft law is now referred back by His Majesty the King to the Lower House of Parliament. Constitutionally speaking, there are two options: 1) the Lower House insists on its position and thus the Law will pass as is, and 2) perform amendments to the Law as per the Royal Decree.

If the latter case scenario prevails, one can argue that an opportunity would be available to advocate for incorporating a reference to the role of GLDUs and subsequently their relationship with MLDUs in terms of planning and thus institutionalizing the work of GLDUs and MLDUs as integral part of the local level planning process.

The Jordanian legal system dictates that in case a law is referred from His Majesty the King back to the Lower House, the latter should act upon the *specific* reasoning for this referral as stipulated in the Royal Decree. In this case, the Lower House is supposed to tackle only article 6 of the Decentralization law with reference to the administrative and financial independence. However, amending this article would necessitate amending other provisions of the law to make the entire law compatible with the financial and administrative independence of Governorate Councils.

So far, there is no clear position on how the Parliament will respond to the Royal Decree. Nonetheless, it is anticipated that the Parliament will respond agreeably to the Royal Decree and solely amend article 6 of the Law.

Conclusion: considering the novelty and political sensitivity of the issue, it seems that this option would be least feasible and thus un-recommended.

Option 2: Bylaws that regulate the roles of MLDUs

With reference to article 75 of the Municipalities Law and article 45 of the Decentralization Law mentioned above and in light if the pressure/trend to move forward with the reform process and decentralization, this option is very feasible.

Regulations are generally drafted by line ministries and issued by the Council of Ministers. The legislative drafting process provides that Regulations specifies the general aspects of subject matter within a law while leaving the details of the same subject matter to be regulated by Orders issued by the line minister.

By comprehensively reviewing the two laws, it is evident that the two laws did not give weight to the planning process and the workable mechanisms for attaining proper socio-economic planning: in the Decentralization Law, GLDU is mentioned only once in article 10 with reference to its role as the secretariat of both the Governorate and Executive Councils, while in the Municipalities Law, MLDU is mentioned only once and very casually in article 14.a/2 with reference to the role of the head of LDU as a member of 'Investment Committee'.

Regulations can be issued to regulate the planning process starting from Local Councils and ending with Governorates Councils. Those Regulations would outline the relationship with regards to planning including relationships with central government's line ministries and their sectoral plans.

Orders can then be issued from the Minister of Municipalities Affairs by virtue of the passed Regulations focusing on MLDUs in terms of guidelines for their planning and monitoring work, mandate and relationships; thus making them an institutional component of the planning process.

This would correspond to the spirit of the endeavor of a bottom-up approach for by making planning correspond to the actual needs of citizens.

Option 3: Producing SOP booklet in the form of a 'guide' to delineate the stipulated roles and responsibilities of all stakeholders.

Both Laws detail the roles and responsibilities of the different players, mainly the different councils (local councils, municipal councils, executive council and governorate council). However, neither draft detail instruments on 'how' the different players are expected to perform their responsibilities. Consequently, a Standard Operating Procedure (SOP) guide seems required to educate key players on relationships between the different stakeholders including MLDUs.

Similarly to all administrations, staff and/or institutional empowerment are the basis for performance. MLDUs cannot and will not become effective without proper empowerment; from the Chairmanship of the municipality. In order to ensure proper support to MLDUs work, chairpersons and members of Municipal Councils should have clear understanding of MLDUs roles and mandate. This understanding should be only part of a more comprehensive understanding of their roles within the entire 'new' administrative structure and the general roles and responsibilities of municipalities and councils.

Experience in working with elected forum proved that induction programs are very important for the inception and future performance of elected members. This policy option suggest designing a comprehensive SOP guide that is reflected into a training program produced and delivered by MOMA for elected members at the local level after each round of elections. This training program should be institutionalized as an induction course within the mandate of MOMA. *It could also be jointly done with MOI targeting also Governorate Council elected members.*

Once elected members comprehend their broad tasks and responsibilities; hey will come to realize the significance of MLDUs in their main role of planning and thus will extend administrative support as needed. However, a simple guide of SOPs would not have binding powers and thus would not encourage adherence to its content.

Option 4: a combination of options 2 & 3

A combination of Option 2 and Option 3 above would lead to the following:

1. Regulations that describes the roles and responsibilities of each player of the process with particular focus on planning.
2. Orders that details the specific role of MLDUs and the methodology to perform their planning tasks and guide relationships with internal and external counterparts.
3. SOP guide for elected members at the municipal level, delivered as an induction program after each round of elections. The induction program will focus on economic growth with special attention to the roles of MLDUs. The SOP booklet will serve as a reference guide for municipal councils' members to perform their tasks.

The combination of the above will institutionalize the work of MLDUs and support them to more effectively serve as an enabler of economic growth.

5- Recommended Option

The recommended option would obviously be option 4. In addition to the technical aspects of the proposed option described above, this option goes parallel with investment USAID LENS is planning to put in to support institutionalizing MLDUs as articulated in the Policy Agenda-Aug 12.

“We aim to institutionalize the role of the municipal LDUs in order to effectively serve as an enabler of economic growth for the private sector. Such policies should govern the following:

- *Institutionalize the LDUs in all municipalities with clear roles and responsibilities and organizational structure.*
- *Organize the employment of the LDU staff based on clear rules, eliminate seconded staff in order not to be overwhelmed and focus on the main role of the LDU.*
- *Minimize the employees transfer from one unit to another in order to capitalize on the staff and sustainability.*
- *Improved and sustain coordination among LDUs and stakeholders.”*