

## **The Local Administration Law. The Independence of the Elected Councils is an Achievement of Goals and a Governance of Democracy**

A policy paper issued by the Karak Castle Center for Consultation and Training in cooperation with the Friedrich Ebert Foundation - Jordan and Iraq office.

### **Preamble**

Five months before the dissolution of the provincial and municipal councils in March 2021, the government of Dr. Bishr Al-Khasawneh withdrew the draft local administration law for the year 2020, from the nineteenth parliament, which was recently elected under exceptional circumstances on November 10 of the same year. The Draft was being submitted by the government of his predecessor, Dr. Omar Razzaz, to the previous parliament in early December 2020. This is done in order to re-examine and evaluate its content to achieve the positive reasons that were put forward, including framing the structural change of the Ministry of Municipal Affairs into a more comprehensive ministry specialized in managing and coordinating municipal councils and provincial councils in the name of the "Ministry of Local Administration". To this Ministry of Local Administration shall belong the legal subordination of the councils concerned with municipal and rural services, after they were divided between the Ministry of municipalities and the Ministry of Interior, in addition to the lack of clarity in the management structure of these councils for themselves and the legal centers for their financial and administrative affairs.

Karak Castle Center for Consultation and Training surveyed the opinions of legislators and local experts within the "Legislative Review of the Decentralization Law" project, in cooperation with the Jordan and Iraq office of the German Friedrich Ebert Foundation. The legislation and regulation in force for the work of these councils constitutes a violation of their independence and the will of the electoral rules, does not achieve representative and developmental justice, does not take into account gender in decision-making through those who represent them, and involves a difference in jurisdiction. The focus and analysis sessions carried out by the Center, distributed in 11 groups with the elected - male and female- members of the provincial councils, and 12 specialized interviews with the heads of the provincial councils, provided a set of recommendations, which were formulated in a final report that included a proposal for a draft law project for local administration, with adequate explanations to amend each article. Separately, this paper provides a summary of the required trends and policies in managing a sensitive file that affects the daily lives of Jordanians. This report containing the amendment proposals was issued in December 2018.

## Summary

The research study conducted by the Karak Center for Consultation and Training, within specialized interviews, focus groups and reviews with legislators, experts and people with experience in the decentralization and municipal councils in the governorates, concluded that the laws of municipalities and decentralization and the regulations issued according to them, require a radical alternative to the legislative text in force. This new alternative shall have the law of “local administration” incorporated between the two laws, preserve the independence and authority of the elected councils, clarify and coordinate among the competencies of each of the councils (local, municipal, governorate, and executive), provide a real representative framework that guarantees fair opportunities for participation of different groups of society and their desire in service decision-making, and achieve a governance, follow-up, and accountability mechanism for the entities in charge of implementing projects and plans, which in their basic inception go back to the local communities distributed over the administrative divisions in the Kingdom.

The proposed policy comes to allocate a comprehensive official umbrella represented by the “Ministry of Local Administration” for service work in municipalities and villages, to bridge a large legal and administrative gap that appeared during the first session of the provincial councils, since 2016, between their approval of projects and the allocation of budgets on the one hand and their implementation on the ground on the one hand. The conflict for the jurisdiction of implementation between the various government institutions whose regulating legislation constitutes an obstacle to the decentralized administrative reform “movement” that repeated royal wills have instructed, during the past years, on the need to move forward with in order to achieve sustainable development outside the “centralization of decision” in the capital as well as preserving the right of the governorates to determine their needs and harmonize their plans.

The study indicated the need to adopt a policy of enhancing coordination between the aforementioned councils and creating a consensual environment of dialogue among them in accordance with the proposed law, and building an institutionalization of work between these councils and executive departments at the local level in the governorates and at the national level with ministries and official bodies, which often did not cooperate enough with the elected provincial or municipal councils, in a way that the latter’s presence is considered as a formality only. Therefore, the relationship between them loses the participatory and complementary nature, starting from the decision-making to the minute operational details. Especially since the comprehensive role and broad powers of the administrative governors affiliated with the Ministry of Interior over those councils empties them of the goal of having independent elected civil bodies to manage service files. The proposed policy also recommends canceling the appointment completely from the provincial councils, in order to strengthen the popular will and democracy and to preserve the independence of the councils, while preserving

the right of women with a quota of no less than 25% of the number of provincial council members, ensuring their role in decision-making and political and economic participation.

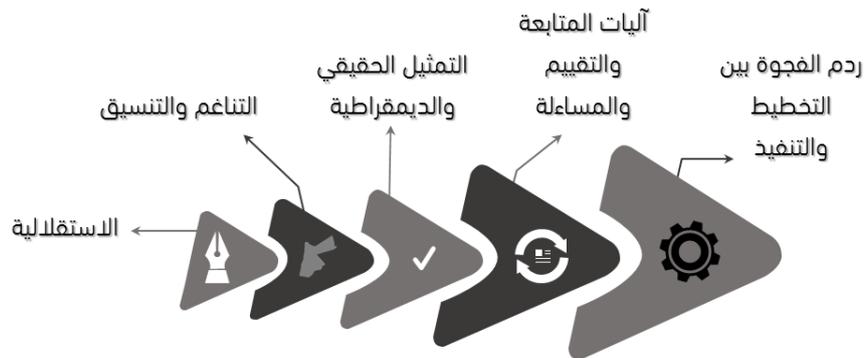
Karak Center for Consultation and Training also stressed, through its proposed policy, the importance of strengthening the relationship of the councils with civil society institutions to exchange experiences, empower council members and achieve gender empowerment standards in human resources in which women ensure greater, more effective and influential participation, in addition to building their capacities (women and men) to manage and govern service files in a systematic manner that avoids bureaucracy. This is done in order to avoid the National Assembly, both deputies and dignitaries, being preoccupied with service demands and focusing on its legislative and oversight role, as part of the political reform process that intersects with administrative reform in the bicentennial of the Jordanian state.

### Executive Policy Framework

According to the results of the study conducted by Karak Center for Consultation and Training, which was issued in December 2018, an integrative framework of identifying problems, assessing needs, developing solutions and presenting practical proposals, was presented to advance the process of administrative and political reform at the service level in local administration councils. Following are the details of the policy implementation framework:

#### ❖ Weaknesses and Challenges

According to the results of the study, Karak Center for Consultation and Training believes that the defect in the performance of the work of the local administration councils lies mainly in the legislative loopholes regulating the work of the Governorate Council in accordance with the provisions of the Decentralization Law No. 49 of 2015, which was limited to achieving the below main axes:



- ❖ **Independence:** It is represented in limiting the powers of the concerned ministry as a supportive and coordinating official umbrella, and transferring it from the Ministry of the Karak castle Center for Consultations and training – Karak / Amman Email: [info@karakcastle.org](mailto:info@karakcastle.org)

Interior, which is concerned with maintaining security and public order, to the newly created Ministry of Local Administration, to reduce interference in the decisions of the elected local administration councils, and to give a wider area of financial and administrative powers that achieve the goal of its existence, as well as clarifying the tasks assigned to each council separately, which enhances the axes of harmony and coordination on the one hand, and follow-up, evaluation and accountability on the other hand.

- ❖ **Harmony and Coordination:** the laws of municipalities and decentralization and other laws regulating the work of executive administrations and the applicable regulations issued according to them witnessed a state of conflict of competencies, the multiplicity of legal and administrative reference, and the non-mandatory decisions of the elected boards of directors (such as the provincial council and the municipal and local councils). This led to the lack of participatory and realistic decision-making in the beginning, and obstruction of its implementation, ending with the failure to reflect any of the roles of those councils on the ground, the services provided to citizens and the development of infrastructure by their representatives in the sector.
- ❖ **Real Representation and Democracy:** The idea of decentralization and its councils is based on enabling citizens to participate in service decision-making in their areas without having to go through bureaucratic procedures that depend on the centralization of decision-making in the ministries located in the capital. However, the current law and the draft recently proposed did not actually enable these councils to determine their budgets and requirements, and did not involve them in the formulation of the general budget and the discussions of its annual draft law with the House of Representatives. These councils witnessed a government overrun on their financial allocations for development projects, exceeding 70% of them and returned such to the central budget in the years 2019-2020. The council members were also forced to return to the first central square and address the non-cooperative ministries in the capital to request the implementation of their decisions, due to the lack of clarity in the roles and spaces of the parties to the service equation, neither legally nor customary.
- ❖ **Follow-up, Evaluation and Accountability Mechanisms:** In addition to the lack of legality for the mandatory decisions taken by councils, the draft legislation did not provide any items related to following up on the progress of decisions and reaching the stages of detailed planning and implementation, due to the lack of tools for council members to hold the Executive Council accountable for not proceeding with its decisions or implementing its plans.

❖ **The Gap between Planning and Implementation:** All of the above imbalances were reflected in the societal and legal image of the local boards of directors as mere advisory bodies that do not participate in applicable and effective decision-making. The demands of the members of the elected councils have become a dead letter, which is normally not considered by the Executive Council - appointed among the cadres of government ministries - which is headed by the appointed administrative governor and is affiliated with the Ministry of Interior.

❖ **Determinants of the Last Proposed Draft:**

In order to complement the follow-up to the local administration law and the new draft that the government recently submitted to the House of Representatives, Karak Castle Consultation and Training Center draws attention to some of the points contained therein. The experts surveyed indicated that the latest drafts of the draft law presented included a set of determinants and obstacles that do not meet the aspirations of administrative and political reform that the Royal Will aspires to in the public administration structures of the modern Jordanian state in its second centenary, among them:

- The draft does not provide a fundamental solution to the problem of overlapping powers between the provincial councils and the municipal and executive councils, as it did not include an explanation of the tasks assigned to each party separately, in a detailed and measurable manner, and a clear legal and administrative reference between the two ministries (Local Administration and the Ministry of Interior Affairs). This is evident from the overlap of the Executive Council With the provincial council, each of which is affiliated to a different ministry.
- The draft kept using loose terminology in describing roles, such as (approval - suggestion - discussion - follow-up), which do not serve the purpose of the legislation and are difficult to reverse administratively.
- The draft law currently circulating gave the heads of “municipalities” the largest share of the membership of the provincial council, which constitutes a conflict in the role, mission and powers of both the municipal council and the provincial council and does not achieve the goal of increasing coordination among them. On the contrary, it leads to disputes between the mayors when determining priorities, as each mayor will seek to obtain the greatest benefit for their electoral base. In addition, this formation will increase the overlapping of powers and the dominance of municipal council decisions,

- which will prevent voters from obtaining more “specialized” seats in the tasks of the provincial council.
- Not to mention that this, of course, will negatively affect the percentage of women's participation in decision-making, as we all know how difficult it is for a woman to become mayor, and this has not happened in Jordan previously, except only once. This contradicts the commitment of the Hashemite Kingdom of Jordan to the 1995 Beijing Declaration and Platform for Action, where member states agreed to take all necessary measures to promote and ensure the participation of women in decision-making positions.
  - The successive drafts also indicate the abolition of the local councils of villages and towns, which weakens the idea of representing the parties and centralizes the decision in cities away from the countryside, the desert and the distant villages in general, and limits the percentages of total representation of women, which represented 25% of the proportion of members. Therefore, the representation of women within the municipal councils becomes limited to 25% of the representatives of the municipality of the center, which reduces the number of women in the municipal councils, and requires, in case of insistence, an increase in the percentage of women’s seats in the municipal councils to reach 30% as a minimum. This is of course because the limited participation rate for women is not clear in light of the assignment of determining the number of council members into a system, limiting their primary role in raising the elements of political and economic participation.
  - The absence of a transparent mechanism in appointing executive directors and assistants for the municipal and governorate councils, taking into account social roles and human resource standards in general, and the lack of guarantee for the presence of women in these positions in particular. This contradicts the achievement of strategic objective G/2 of the 1995 Beijing Agreement, which stated among the measures to be taken by governments and national bodies, which stipulates increasing the ability of women to participate in decision-making and leadership.
  - The draft did not give the powers of "follow-up and evaluation", and "accountability and liability" tools for the provincial council towards the Executive Council, but was limited to mentioning (discussing any members of the Executive Council) and did not specify

procedures for follow-up in the event of not being convinced, as suggested by Karak Castle Center in its report.

- The draft did not give the authority to amend the plans submitted by the Executive Council, as it limited the task of the provincial council to the “formal” approval, and referred the “disagreement” or “rejection” of the approval to a joint committee divided equally between the two councils and approved by the majority. In the event of failure to approve the submissions of any institution that is a member of the Executive Council, the plan is implemented in accordance with the procedures followed in the concerned ministry and according to the allocations for it from the general budget.
- The draft limited the power to dissolve the governorate council or suspend members in the hands of the concerned minister alone without a reasoned judicial decision in accordance with international best practices, while we hoped that the councils would be dissolved based on a judicial decision that guarantees the interest of all parties.
- According to the new draft law, the council's sessions are public unless the council deems it necessary to make them secret without clear criteria, which contradicts the principle of transparency and the right of follow-up and accountability for citizens.
- The absence of any indication of cooperation with local civil society institutions and community service rules to exchange experiences.

**According to the latest draft of the “Draft Law on Municipalities and Decentralization” for the year 2021, which was submitted by the government to the deputies and presented to the parliament in its legislative session on May 19, 2021, Karak Center presents an analytical matrix that shows the most prominent strengths and weaknesses in the legislation.**

Proposed Article	Analysis
Article 3: The composition of the governorate council	- Determining members and dividing districts through a system and not a law that gives the Council of Ministers wide authority to influence the will of the voters and the instability of the service map, which may be continuously modified by the executive authority

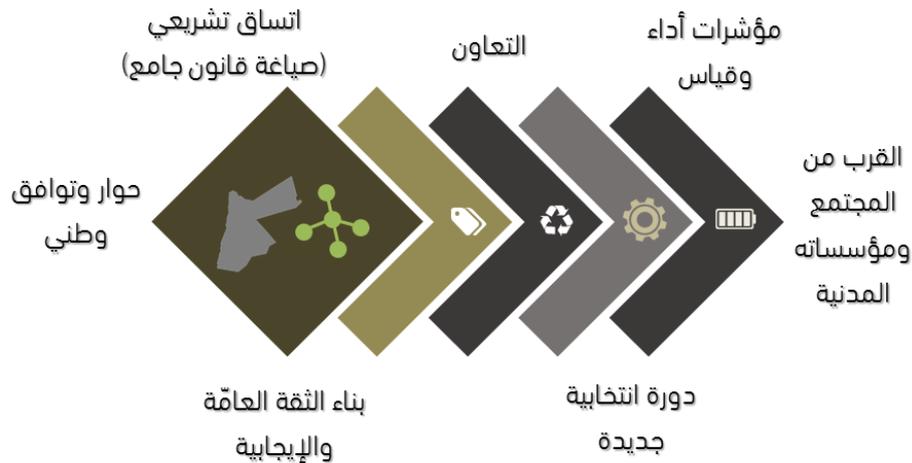
	<p>alone.</p> <ul style="list-style-type: none"> <li>- The inclusion of mayors in the provincial and district centers means an overlap between the provincial and municipal councils, and the denial of voters to identify specialized representatives in the provincial council with an effective representative weight.</li> <li>- Failure to include civil society organizations in membership deprives the governorate of harmony, coordination and advice.</li> <li>- Depriving youth and women of access to the council due to limited opportunities and directly elected seats.</li> <li>- The lack of a clear standard for assigning women to maintain the number, the percentage that is not specified in the first place.</li> </ul>
<p>Articles 3 and 35: Term of the Governorate and Municipal Council</p>	<ul style="list-style-type: none"> <li>- The article counts the period of postponing the election of any council session from the legal period of the new elected council.</li> <li>- The absence of a real, measurable and participating role in the service decision-making and oversight of the Council, due to the fact that the tasks are limited to approval, confirmation and discussion without the authority to post-discussion.</li> <li>- The draft did not refer to committees specialized in women and youth affairs, which makes the formation of these committees subject to the mood of some councils and their denial in many cases.</li> </ul>
<p>Article 5: Duties of the Governorate Council</p>	<ul style="list-style-type: none"> <li>-</li> </ul>
<p>Articles 6 and 14: Board Meetings</p>	<ul style="list-style-type: none"> <li>- Depriving society of the publicity of decision sessions and the absence of a clear standard for the "necessary issues" that the Council has the right to turn its sessions into secret.</li> <li>- The addition of electronic means constitutes a positive case in the development of communication.</li> <li>- Giving a notice period in advance to attend the meetings of the governorate council by two days and the municipality by 24 hours, an important positive point that helps to organize the work of the members and ensure their effective participation.</li> </ul>

Articles 8 and 49: Loss of Membership	<ul style="list-style-type: none"> <li>- An elected member of the provincial or municipal council loses his seat if he refrains from signing the council's decisions three times, which deprives him of his free will to object or approve the council's decisions.</li> </ul>
Article 12: Disagreements and Delayed Acknowledgment	<ul style="list-style-type: none"> <li>- If the provincial council does not approve or delay any of the Executive Council projects, it is implemented without regard to the reasons for rejection, in accordance with the mechanism used for disbursement from the state's general budget.</li> </ul>
Articles 13 and 21: Division of Municipalities, their Seats and Boundaries	<ul style="list-style-type: none"> <li>- The power to define and divide municipalities and their seats was given to the concerned Minister alone, without taking into account the political and social dimensions of that, and without consulting the Parliament.</li> <li>- Women representation in municipal councils is limited to 25% as a minimum, despite calls to raise the percentage to 30% to protect women from losing their representation.</li> <li>- The criteria for selecting the appointed women were not specified if the quota vacancies were not filled by female candidates.</li> <li>- The local councils in the municipalities were abolished, which deprives the residents of remote and outlying areas as marginalized and less fortunate groups, including women, from representing themselves in the service decision.</li> </ul>
Article 26: Jerusalem City Buildings Tax	<ul style="list-style-type: none"> <li>-</li> </ul>
Article 40: Condition for Candidacy	<ul style="list-style-type: none"> <li>- A candidate for the mayor of a governorate center must hold a first university degree "bachelor", while no such condition was specified for the provincial council president who has the most comprehensive role in planning local service policies.</li> </ul>
Article 52: Government Appointment	<ul style="list-style-type: none"> <li>- The draft gave the Minister the right, with the approval of the Council of Ministers, to appoint two additional members in each provincial or municipal council, which contradicts the idea of democratic representation of local service councils.</li> </ul>

<p>Article 55: The Right to Inspect</p>	<p>- The draft gave the right to the Minister or his authorized representative to suddenly inspect financial funds, workplaces and offices, without clarifying the roles of internal control in the ministry and its working mechanisms, and conflicting with the audit of the Audit Bureau, as indicated in Article 57, as well as affecting the independence of those councils.</p>
<p>Article 56: Training Institute</p>	<p>- The establishment of an institute for training, capacity-building and developing the skills of heads and members of provincial and municipal councils and their workers achieves an important recommendation of Karak Consulting and Training Center 2018 report to enable the councils to carry out their work. The Center recommended strengthening the role of civil society institutions in those training programs and planning according to the system related to them.</p>

### ❖ Opportunities and Re-Decentralization

The spirit of decentralization and the goal of establishing provincial councils can be restored through:



- **National Consensual Dialogue:** Presenting a draft law for the local administration to the House of Representatives constitutes an important and necessary opportunity to conduct a consensual national dialogue that includes all parties to the service equation, and capable of laying a common ground from integrative work, achieving the goal of decentralization and

local administration councils, and seeing the Royal Will for reform on the administrative and political levels, because all the discussions that are currently taking place are public and devoid of precise details of the draft law.

- **Legislative Consistency:** Framing the roles of each of the councils (provincial, municipal, executive) - in the event of insisting on abolishing local councils - in a way that ensures the distribution of tasks, independence of performance and the empowerment of community will in decision-making. Additionally, it guarantees the legal and administrative legality of each council by providing it with effective tools for follow-up, evaluation and accountability and implementation. In addition to the absence of a conflict of jurisdiction, the decentralization of coordination and harmony between the various official institutions, and the setting of periods for the enforcement of decisions.
- **Cooperation:** Stable legislation and the political will emanating from an integrated and participatory national dialogue give sustainable support for coordination between the institutions representing society on the one hand and the institutions implementing its decisions on the other hand, and to prevent clashes between them. The comprehensive and unifying law between municipalities and provincial councils must clearly and accurately define the form of the relationship between them, without using loose terminology.
- **Performance Indicators:** Service projects launched by provincial councils in response to the needs of their communities cannot be based on performance indicators that are measurable at the time, operational and tasks assigned to each party. This is done to identify areas of delay, obstruction or failure, and to provide the councils with professional administrative cadres that enable them to work on applying these indicators and creating a space for competition for the best performance in the Kingdom among local boards of directors.
- **Cooperation with Civil Society Institutions:** The national dialogue and the sustainability of the relationship of local administration councils with civil society institutions that provide them with readings, advice, and proposals creates a state of gaining and continuous support for the popular bases of their representatives and a re-crystallization of the democratic roles of each member of the provincial council, the municipality, the House of Representatives, notables, as well as, the executive officials in the provinces. It is preferable to involve civil society institutions in identifying needs and making decisions, especially institutions concerned with women's affairs, to ensure that women have access to decision-making.

- **Public and Positive Trust:** All of the above provides solutions and opportunities to support popular confidence in executive decisions and bridge the communication gap between the authorities and citizens, who will feel their voice and their role in decision-making on the ground, which addresses the crisis of trust and negativity that has recently spread, due to the absence of governance policies.

### Reference Recommendations

- Where it was stated in the report of the Higher Population Council for the year 2021 that the proportion of women in the Kingdom is 47%, it is necessary to ensure effective participation of women through allocated seats of not less than 30% in municipal and provincial councils. This is in order to achieve the goal approved by the Economic and Social Council at the United Nations which was also affirmed by the 1995 Beijing Agreement and as a commitment to the Cairo Declaration for Arab Women, which included the high-level meeting on the Millennium Development Goals on Women and Girls, Gender Equality and Women's Empowerment in the Arab Region. A: The Post-2015 Development Agenda - Opportunities and Challenges, which stated the commitment of the participating countries (including Jordan), B: Working on developing national electoral systems to ensure the political participation of marginalized groups (women - the poor).
- Providing integrated legislation based on administrative and practical foundations with clear roles between planning, implementation, measurement capacity, accountability and governance, preventing conflict of interests and legal positions for legislation, and the adequacy of national plans related to development, human resources, human rights, women and gender.
- Providing legal materials for guarantees to preserve the privacy of (elected) councils and representation frameworks and to preserve the quota of women, youth, and areas farthest from the centers of governorates or major municipalities.
- Providing an effective mechanism of cooperation with civil society institutions, as advisory bodies supporting experiences and communicating with communities and their groups, through the proposed training institute, in order to enhance the standards of the social role and ensure its achievement.

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