

The United States should lead a multi-lateral international initiative to work hand-in-hand with the new Iraqi government to bring about effective anti-corruption reform



Door Knock

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POLICY ISSUE

The moment for effective anti-corruption reform in Iraq now is at hand.

The results of the 2018 Iraqi nationwide elections arguably have given the newly-elected Parliament, the new President of Iraq, Barhim Salah, and the new Prime Minister of Iraq, Adel Abdul Mahdi, a mandate to move aggressively to counter corruption by reform measures that are entirely within the power of the Prime Minister and the Council of Ministers to put in place and effectively operate.

However, international diplomatic initiatives, lead by the United States, are needed for this to become a reality.

Accordingly, the U.S. Government should immediately develop and launch a multi-lateral initiative with other like-minded governments (including those from the European Union), international anti-corruption organizations including the Organization for Economic Cooperation and Development (OECD), the International Monetary Fund (IMF) and the World Bank to work hand-in-hand with the new Iraqi government to make and apply such reforms to eliminate the corruption problem affecting American and international businesses.



DISCUSSION

Corruption in the public and private sectors in Iraq carries very high risks for American companies and other international businesses investing and operating in Iraq. Corruption in Iraqi public procurement competitions and the administration of Iraqi public contracts is especially problematic.¹

Iraqi public procurement remains predominantly non-transparent and riddled with corrupt practices. There are widespread and credible reports of bribery, kickbacks, and awards to companies connected to political leaders (ICS 2016). Investors reportedly also feel pressured to team with well

¹ GAN Business Anticorruption Portal, “Iraq Corruption Report”, June 2017 (“Iraq Corruption Report June 2017”), published at <https://www.business-anti-corruption.com/country-profiles/iraq/>.

connected locals to avoid systematic bureaucratic hurdles when doing business.² Contracts are often awarded to companies run by or connected to senior Iraqi politicians, who then receive large cash down-payments before the project begins.³

Subsequent complaints about the slow process or even absence of work are ignored or pushed aside by politicians who hold stakes in these companies. Inconsistent regulations, corruption, and bureaucratic bottlenecks represent major obstacles for companies bidding on public procurement contracts or investing in

² US Department of State, Investment Climate Statement – Iraq 2016 (ICS 2016).

³ 2013 study, “State and society in Iraq 10 years after regime change: the rise of a new authoritarianism”, Toby Dodge.



DISCUSSION (CONT'D)

large infrastructure projects.⁴ Companies may suffer long payment delays on some government contracts.⁵

Corruption undermines the opportunity for businesses to fully and fairly compete for award of almost all contracts (whether small, large or mega-large), unjustly enriching companies and officials engaging in criminal bribery, and criminally depleting the Iraqi public treasury through inflated contract prices that produce the proceeds for corrupt payments to public officials. Corruption in Iraqi contract administration – particularly as to contract payments – is endemic. Claims of “problems” with contract perform-

ance are concocted and willful misinterpretation of contract terms are interposed as guises for withholding contract payments until such time as the “problems” are solved by businesses acceding to bribes demanded by the public officials who created the “problems”.

Iraqi government anti-corruption measures implemented with hopeful fanfare by the newly-sovereign Iraqi government in 2004 (and thereafter) have proven to be mainly aspirational. The Iraqi Accountability Act criminalizes corrupt acts such as passive and active bribery, abuse of office and extortion.⁶

⁴ ICS 2016.

⁵ *Id.*

⁶ Iraq Corruption Report June 2017.



DISCUSSION (CONT'D)

However, each Iraqi government since 2004 has failed to implement anti-corruption laws effectively. Corrupt public officials thus act brazenly, and with impunity. Reports of corruption made by aggrieved businesses to Ministers, the Office of the Prime Ministers, the Iraqi Integrity Commission and the U.S. Embassy rarely result in a satisfactory fix of the particular instance of corruption, and routinely invite retaliation by corrupt officials who, for the most part, are left in place with their corrupt powers uncurtailed.

This widespread Iraqi corruption also damages the development of the Iraqi economy – particularly the development of private sector business – at a macro level. Corruption discourages the most highly-qualified and well-

capitalized American and international companies to avoid Iraq, thus losing out on essential business expertise and technical knowledge needed for the development of private sector business in Iraq.

As noted above, the moment for effective anti-corruption reform in Iraq now is at hand.

The Prime Minister and the Council of Ministers have the power to create and operate effective anti-corruption reform measures applicable to all Iraqi Ministries, State-Owned Enterprises (“SoEs”) and independent commissions and institutions (*i.e.*, the National Communications and Media Commission, Federal Board of Supreme Audit). No legislation is needed. To be effective, the reform measures must include



DISCUSSION (CONT'D)

reorganization of the Iraqi anti-corruption institutions to create a watch dog entity in the Office of the Prime Minister cloaked with real power to:

- immediately intervene with effective remedial administrative measures, including
- immediately freezing contract competitions and contract administration actions reportedly infected by corruption,
- immediately suspending and replacing reportedly corrupt officials,
- protecting companies that are aggrieved by reported corruption,
- fully investigating the reported corrupt activities,
- holding accountable through administrative actions (such as blacklisting from competing for public contracts and criminally prosecuting public officials, private individuals and companies when investigation substantiates reports of corruption.

As noted above, for successful anti-corruption reform to come about, multi-lateral international impetus is essential. The United States should take the lead in bringing about this multi-lateral anti-corruption effort, which has the best prospect of success.

In developing and implementing effective Iraqi government-wide anti-corruption reforms, the multi-lateral effort (including the Prime Minister and the Council of Ministers) should be guided by recently successful anti-corruption government-wide reforms in other countries – including, for example, the Czech Government Anti-Corruption Action Plan for 2016⁷.

⁷ Office of the Government of the Czech Republic, “The Anti-Corruption Action Plan for 2016”, December 2015, published at <http://www.korupce.cz/assets/protikorupcni-dokumenty-vlady/na-leta-2015-2017/The-Anti-Corruption-Action-Plan-for-2016.pdf> .



DISCUSSION (CONT'D)

The Czech Plan is instructive as to the type of comprehensive systemic anti-corruption reform measures (which go beyond the urgent immediate remedial measures addressed in this paper) that should be considered and evaluated for implementation in Iraq.

RECOMMENDED ACTION

The United States immediately take those actions necessary to develop and launch the multi-lateral anti-corruption initiative for Iraq, including gaining the commitment of: (1) the Prime Minister and the Council of Ministers to serious and effective anti-corruption reform; and (2) the commitment of other governments and international organizations to become part of the international Iraq anti-corruption initiative.