مركز البيان للدراسات والتخطيط
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Iraq’s National Development Strategies: Exploring Weaknesses in Policy Planning and Investment

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Al-Bayan Center Studies Series

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Iraq’s National Development Strategies: Exploring Weaknesses in Policy Planning and Investment

Ali Al-Mawlawi *

INTRODUCTION

Few policymakers would disagree that central to any successful strategy to address Iraq’s pressing challenges should be a concerted effort to attract capital and expertise into the country through private investment as a means to create jobs and restore vital infrastructure and essential services. In order to do this, a series of major reforms within the country’s state institutions need to be undertaken to facilitate private sector growth and create conditions that are conducive to a vibrant investment climate.

At the strategic level, there has been a failure to prioritize reform measures that are realistic and achievable within the four-year term of a government. A review of numerous national development strategies over the past 15 years shows a consistent failure to achieve targets and meet deadlines, which calls into question the policy planning process and the capacity of state structures to bring about change.

Taking into consideration the prevailing political climate that is characterized by fragmentation, and where the government lacks a reliable political base to push through its agenda, it is clear that a systemic overhaul will not be achievable in the short term. Instead, the government needs to prioritize a handful of initiatives that have a direct impact on the livelihoods of ordinary citizens and can be achieved within a relatively short period of time. Successfully executed initiatives will create the impetus for more ambitious measures that require significant political capital and public goodwill.

This paper seeks to shed light on the weaknesses and constraints within the policy planning environment in Iraq by firstly presenting an overview of the existing landscape. It offers a practical guide to data sources and development

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strategies that are at the disposal of analysts and policymakers. The 5-year National Development Plan that was published in 2018 forms the basis for understanding the existing flaws and how national strategies could be enhanced in the future. The paper then takes a deeper look at the investment climate in Iraq, explaining the current structures and highlighting obstacles that have hampered private sector development. Ultimately, the goal is to explain how a more focused and measured approach to institutional reform will yield far better results than one that seeks to do too much.

UNDERSTANDING THE CONTEXT

After emerging from a costly war with the Islamic State in Iraq and Syria (ISIS) that resulted in great losses in human capital, devastated the country's infrastructure, and severely stunted Iraq's path to development, the country is now faced with an uphill challenge of rebuilding infrastructure in towns and cities that have been devastated by conflict and addressing the pressing economic and social needs of the population at large. Estimated at around USD 88 billion, the scale of the damage will require a significant role for the international community to help rehabilitate the country. There are still some 1.6 million Internally Displaced Persons (IDPs) who have yet to return home, many of whom are unable because their homes have been destroyed. Of the 4.3 million returnees, the United Nations (UN) estimates that some 2.5 million live in difficult conditions. Beyond the liberated provinces of northwestern Iraq, the government must urgently address the growing discontent in the rest of the country, where the lack of investment in public services and rising unemployment since the crash in oil prices in 2014 has created a crisis of legitimacy for political elites. The immense pressure on both central and local governments to deliver is compounded by the rapidly growing youth population. Iraq has one of the highest population growth rates in the region, estimated at just under 3%, meaning that every year, Iraq's population increases by nearly one million. While approximations vary, Iraqis under 35 now make up a majority of the population. Iraq's national poverty reduction strategy estimates that 800,000 jobs were lost due to mass displacement in 2014. Conservative estimates of unemployment place the national rate at 16%, but youth unemployment could be as high as 35%.

Few challenges are as pressing as the imperative to create more jobs. The public sector makes up some 40 percent of all jobs in the country, and almost all formal sector employment.[1] Over the past 15 years, public spending has grown

1. World Bank, Systemic Country Diagnosis for Iraq, Washington DC, p.72

manifold, creating massive waste and poor investment in the country's oil wealth. Most of the private sector is dominated by small-sized businesses that largely involve retail and trade, construction, restaurants, and transportation.[2] It is clear that Iraq can no longer afford to grow the public sector by the same levels as previous years and the only way to absorb unemployment is to create jobs in the private sector.

With oil prices rebounding, Iraq passed its second largest ever annual budget, set at around USD 110 billion.[3] Though the scarcity of financial resources is no longer a leading obstacle, the country suffers from major institutional impediments that prevent it from utilizing its vast oil wealth in an efficient and effective manner. The UN's special representative to Iraq noted that the lack of government capacity to follow up on executive decisions was a major problem.[4] The Fragile States Index ranks Iraq as one of its high alert states, denoting that it lacks the basic administrative capacities that are needed to govern effectively.[5] Government officials often cite this as a key weakness within the state bureaucracy. While cabinet and ministerial-level committee meetings have become fairly efficient at taking decisions, often the shortfall lies in ensuring that these decisions are implemented. While there are vested interests within the state bureaucracy that act as spoilers to undermine progress, mismanagement, incompetence and lack of accountability are also largely to blame for the systematic failures. It is this weakness in state institutions that has hamstrung the government's ability to push forward a reform agenda.[6] Furthermore, the projection of weakness at the highest levels has a cascade effect that emboldens those who seek to undermine the democratic and reform process in order to profiteer from disfunction and the culture of impunity.

In the backdrop lies a deeply fractured and volatile political environment where the prevailing populist rhetoric dominates political discourse in the country and undermines the potential to enact real reforms. There are few quick fixes to

2. Ibid.
3. For a detailed analysis of the 2019 federal budget, see A. Al-Mawlawi, Delays to Iraq's 2019 budget reflect growing political deadlock, LSE Middle East Center, January 2019 https://blogs.lse.ac.uk/mec/2019/01/14/delays-to-iraqs-2019-budget-reflect-growing-political-deadlock/
4. Speaking at the March 2019 Sulaimani Forum, Jeanine Hennis-Plasschaert noted that restoring public trust in state institutions was a primary imperative.
5. World Bank, Systemic Country Diagnosis for Iraq, p.19
6. This message was echoed at the March 2019 Sulaimani Forum by the prime minister's advisor, Laith Kubba, who asserted that state weakness was the biggest obstacle to development in the country. "If you're weak," Kubba said, "then of course people will take advantage of you."

Iraq's problems, and the government will need to take decisions to address root causes that would be deemed highly unpopular in this current climate, such as containing public sector spending, limiting growth in public employment, and introducing new tariffs and fees for public services. Without such measures, the government risks creating a vicious cycle where authorities consistently fail to live up to their promises, thereby further weakening public trust and confidence in the state.

UNDERSTANDING THE POLICY PLANNING ENVIRONMENT

For researchers and analysts who are interested in navigating the policy landscape in Iraq, an essential prerequisite is access to data and official documents that can inform the policy discourse. While improving government transparency continues to be a key aspiration, it is important to understand what type of information is currently accessible through open and online platforms. Below are some of the main resources that are available:

Council of Representatives[7] – the website provides a comprehensive archive of parliament's decisions and resolutions, and detailed summaries of discussions within parliamentary sessions. The full text of legislation that has been approved can also be accessed. Furthermore, draft bills that are under the consideration of parliament are largely available. Laws that predate the establishment of the Council of Representatives in 2006 can be found on a database managed by the Supreme Judicial Council.[8]

Official Gazette[9] – this is where laws that have been signed off by the President, and executive decisions are officially published. The Ministry of Justice is responsible for managing the Official Gazette, which is released every month. Most of the publications are available on the Ministry of Justice's website but there are often delays before they are posted online.

Federal Supreme Court[10] – as the sole authority responsible for interpreting the Constitution, the Supreme Court adjudicates on legal matters that involve constitutional debate and publishes all its rulings on its website. A search facility is available and new rulings are published in a timely fashion. For policymakers, this resource is particularly useful to understand the legal parameters of governance

7. Council of Representatives website: www.parliament.iq
8. Supreme Judicial Council website: http://iraqld.hjc.iq
9. Official Gazette website: https://moj.gov.iq/iraqmag
10. Federal Supreme Court website: https://www.iraqfsc.iq

issues such as decentralization, where contestations between national and sub-national authorities have been addressed by the Supreme Court.

Central Statistical Organization (CSO)[11] – Previously known as COSIT, this department is linked to the Ministry of Planning and is the primary authority responsible for collecting and disseminating data and statistics at the national level. CSO predates 2003 but over the past decade, it has received significant international support to build its data collection capacity. In past years, CSO's website was the premier government resource to access primary data on a range of fields including economic and financial trends, public health statistics, demographics, and social welfare. Most recently however, the website has deteriorated. Many of the hyperlinks are broken and data that is available is displayed in a manner that is not user friendly. Far more useful are the annual reports that CSO publishes. Its most recent Annual Statistical Abstract dates back to 2017 but offers nearly 1,000 pages of data.

Ministry of Finance (MoF)[12] – Responsible for managing and disbursing the federal budget, the MoF's website contains monthly budget execution reports that provide useful details on actual spending. However, the most recent reports tend to be at least five months old, meaning that it can be a valuable tool to understand longer term trends but lacks real-time utility. The website also contains copies of every budget law that has been passed since 2006. Developed with the support of the World Bank, the MoF introduced an interactive platform known as the Open Budget Survey that provides a breakdown on budgetary allocations and spending through graphs and charts.[13] This includes year-on-year comparisons for revenue generation, budget execution, public debt accumulation and a breakdown of expenditures for each ministry. Once again however, the data is not updated and the most recent figures date back to 2017.

Prime Minister's Office (PMO)[14] – As the highest executive authority in the country, the PMO releases all its official statements on its website including a summary of decisions from the weekly Council of Ministers (cabinet) meeting. The government's 4-year plan known as the Government Programme can also be found on the site, providing a detailed overview of the government's priorities and objectives.

11. Central Statistical Organization website: http://cosit.gov.iq
12. Ministry of Finance website: http://mof.gov.iq
13. Open Budget Survey website: http://mof.gov.iq/obs/en/pages/default.aspx
14. Prime Minister's Office website: http://pmo.iq

Council of Ministers Secretariat (COMSEC)[15] – This is the body responsible for managing the weekly agenda of the Council of Ministers and coordinates with state institutions to ensure the implementation and follow-up of cabinet decisions. Its website is dominated by press releases and meeting summaries, but decisions from weekly cabinet meetings can be found here, in addition to links to websites for other state institutions.

Central Bank of Iraq (CBI)[16] – The CBI is an independent state institution that is responsible for the country's monetary policy and managing the country's foreign reserves. Its website is rich in financial data including budget expenditures and surpluses that span from 2004 until the end of 2018. There is also historical data on GDP, economic growth, foreign trade, and exchange rates.

National Investment Commission (NIC)[17] – Responsible for promoting investment and issuing investment licenses, the NIC website contains a detailed guide on the legal and bureaucratic procedures for investors, and an investment map from 2018 that outlines most of the government projects that are open for investors. However, the information available for proposed investment projects is far too basic and reflects one of the major flaws in Iraq's investment strategy, which shall be expanded on later.

Ministry of Oil – Among the most useful data is monthly crude oil export figures, published by the State Oil Marketing Company (SOMO).[18] It details the total number of barrels exported for each month from Basra and Kirkuk, the total revenue generated from the sale of oil, and the average monthly price of each barrel of oil.

Before moving to discuss Iraq's national development strategies, it is important to address the issue of data collection and its credibility, since it forms the foundation of any strategic plan. The World Bank's review of Iraq's national statistical system reveals some discouraging results. Based on three criteria, namely, methodology, standards and classifications; dissemination practices and openness; and data products, the assessment found a low level of statistical capacity with a score of 32.44 out of 100. Although household surveys on income and expenditure are conducted to a relatively good standard, there is much space

15. COMSEC website: http://cabinet.iq
16. Central Bank of Iraq Economics and Statistics Data website: http://cbiraq.org
17. National Investment Commission website: http://investpromo.gov.iq
18. SOMO website: http://somooil.gov.iq

to improve quality control and raise the credibility and accuracy of official data. Specifically, demographic data is largely based on projections because a population census has not been conducted since 1989.

Since the formation of the first Iraqi government in 2005, the Ministry of Planning has worked closely with the UN and other international donors to develop a National Development Plan (NDP) that outlines a holistic roadmap for addressing the country's multitude of challenges. These strategies are formally submitted and adopted by the Council of Ministers. Iraq has published five NDPs covering the periods 2005-2007; 2007-2010; 2010-2014; 2013-2017; and finally, 2018-2022.

In addition to the NDP, Iraq has a number of other national strategies that are designed (in theory) to complement the NDP and provide greater clarity on an implementation roadmap. The most notable of these strategies are:

- **Government of Iraq Program (2018-2022)**[19] – this is a constitutional requirement that a new government must submit to parliament for approval by the prime minister-designate. The Program is supposed to set out the government's priorities and address how it intends to achieve them. This endeavor is the primary responsibility of the prime minister, with COMSEC playing an advisory role.
- **Iraq Reconstruction and Development Framework (2018)**[20] **–** developed prior to the 2018 Kuwait reconstruction conference, the framework proposes a roadmap for addressing the long -term reconstruction needs of liberated territories. It includes a damage and needs assessment that is broken down by sector.
- **Private Sector Development Strategy (2014-2030)**[21] – published in 2013 prior to the fiscal crisis and the war with ISIS, the strategy requires updating given the changes on the ground. It was developed in coordination with the United Nations Development Program (UNDP) and adopted by the Council of Ministers.

19. Prime Minister's Office http://pmo.iq/pdf/program19-22.pdf
20. Council of Ministers
http://www.cabinet.iq/uploads/Iraq%20Reconstruction/Iraq%20Recons%20&%20Inves.pdf
21. Council of Ministers http://cabinet.iq/uploads/pdf/2015-3/2.pdf

- **National Anti-Corruption Strategy (2016-2020)[22]** – devised by the Commission on Integrity, the country's primary anti-corruption watchdog, the document offers a comprehensive breakdown of the types of corrupt practices that exist in the country but fails to offer a convincing strategy to combat them.

Other relevant national strategies include:

- Poverty Reduction Strategy (2018-2022)[23]
- Integrated National Energy Strategy (2012)[24]
- Iraq National Security Strategy (2016)
- Performance and Fiscal Risks Report for State Owned Enterprises (2016)

In addition to government strategies, there are a number of notable reports produced by international agencies that offer detailed analysis and invaluable insights for policymakers and analysts. These include:

- World Bank: Jobs in Iraq – A Primer on Job Creation in the Short-Term (2018)
- World Bank: Systemic Country Diagnostic for Iraq (2017)
- World Bank: Public Expenditure Review (2013)
- World Health Organisation: Iraq Health Profile (2015)
- UNDP: Arab Human Development Report (2016)

22. Commission on Integrity http://www.nazaha.iq/pdf_up/3940/strat_2016-2020.pdf
23. Ministry of Planning, Poverty Reduction Strategy, 2018 https://mop.gov.iq/en/static/uploads/1/pdf/15192838546d2344468c97dc099300d987509ebf27--Summary.pdf
24. World Bank, Integrated National Energy Strategy for Iraq, Washington DC, 2012 http://documents.worldbank.org/curated/pt/406941467995791680/pdf/105893-WP-PUBLIC-INES-Summary-Final-Report-VF.pdf

REVIEWING THE NATIONAL DEVELOPMENT PLAN (NDP) 2018-2022

Approved by cabinet on 5th February 2019, the NDP identifies three institutional challenges, namely, low efficiency of institutional performance; overstaffing and low productivity of labour force; and financial and administrative corruption.[25] The NDP also lists eight economic challenges including poor investment climate; limited role of the private sector; imbalanced budget structure; underdeveloped banking system; and a large informal sector.

These challenges among others are described in a fairly comprehensive and holistic manner. The plan looks at the economic, political, social, ecological and psychological dimensions and sets out goals that are framed within a result-based management (RBM) approach. There are four guiding pillars to the NDP approach. These are: laying the foundations for good governance; promoting private sector development as a key anchor for development; a focus on post-war reconstruction in liberated provinces; and reducing multidimensional poverty. The NDP claims to prioritise objectives and goals but it is not immediately clear from the document how this process was conducted.

The bulk of the NDP offers a situation analysis of existing challenges but suffers from the lack of up to date baseline data. This suggests major limitations in planning for the 2018-2022 period given that it is not possible to set achievable goals without first knowing the current levels. Much of the most recent data is from 2015 and 2016. Given that this period was marked by extreme volatility during the height of the war against ISIS, it is all the more necessary that baseline data for the NDP should be as recent as possible. Furthermore, the accuracy of the data is an area of contention. The report suggests that unemployment in 2014 was 10.6%, and only rose to 10.8% in 2016.[26] This seems highly implausible given the impact of the war and the mass displacement that ensued, in addition to the fiscal crisis and partial hiring freeze that the government enforced in the public sector from 2015 onwards.

One of the biggest discrepancies is the gap between set targets in the NDP 2013-17 and what was accomplished during that time period. Among the most notable examples is electricity production. The NDP set a production capacity goal of 24,000 MW, and increasing per capita share of electricity to 3700 kWh by 2017. However, production only reached 15,000 MW by 2017 and the per

25. Ministry of Planning, National Development Plan, 2018, p.17 https://bit.ly/2KRM9Mf
26. National Development Plan 2018-2022, p.49

capita share was not achieved either. The report says the targets were not met "because of the significant difference between design and available capacities".[27] This cuts to the heart of weaknesses within policy planning. Targets are often not grounded in realistic baseline assumptions and insufficient resources are invested in the implementation phase. Similarly, for private sector development, the NDP 2018-2022 predicted that foreign direct investment would grow from USD 18.5 billion in 2016 to USD 40 billion by 2022; and create 50% of new jobs though the private sector. If the conditions for growth are not actively pursued, there is no way that such aspirations can be met.

Within the education sector, the NDP 2018-2022 envisages the building of 3,000 schools during the plan's period in order to accommodate for the total number of students, eliminate the double-shift system, and reduce classroom sizes. Firstly, it is not clear whether this figure factors in projections of student growth rates during the same period, and what target the NDP expects to reach with regards to the average number of students per classroom. Furthermore, existing data on the current number of schools nationwide suggests that by 2017, there were just over 14,000 schools. The NDP's target envisages a 21% increase in 4 years. Comparative increases in the number of schools during the pre-war period shows that approximately 500 new schools were build year-on-year. Notably, this period experienced extremely healthy oil prices and stable budgets. It would therefore be reasonable to question whether the NDP's target is realistic given Iraq's current economic and political circumstances.

Inconsistencies between sector-specific NDP targets and those that have been set by relevant ministries indicates a lack of institutional alignment between the Ministry of Planning and other state agencies. For example, the NDP envisages crude oil production to reach 6.5m bbd by 2022 and exports to reach 5.25m bbd over the same period, however, this does not match with the Ministry of Oil's stated targets, nor do they track with the Integrated National Energy Strategy. Similarly, in the case of power generation, the NDP sets the improvement in quality of consumer services as one of its key objectives, and explains that it seeks to achieve this by increasing daily provision of electricity to 20 hours a day by 2022. This is again inconsistent with realistic forecasts of power generation that the Ministry of Electricity has signaled.

Much of the situation analysis within the NDP highlights the lack of sufficient budgetary allocation for critical sectors. It notes that in 2017, the budget share for military and security expenditure was 22.6%, compared to only 9.3% for

27. Ibid., p.29

education and 3.8% for health.[28] But while it calls for greater spending in these two sectors, it does not set any specific targets. These would be particularly useful given that they could form the basis for future policy planning within the Ministry of Finance when it draws up future budgets.

In addition to integrating spending plans that are inconsistent with budgetary allocations in the federal budget, the NDP fails to account for budgeting for public employees when determining some important targets. For example, within the health sector, the NDP envisages an increase in the number of doctors per 1000 people. The base value in 2016 is 0.84, and this is projected to increase to 0.98 by 2022. Factoring in the rapidly growing population, this would represent an increase in the number of doctors by some 10,000. Government data suggests that between 2015 and 2016, the number of doctors nationwide only grew by some 250 personnel to reach 27,200. The growth rates required would be unattainable without a major overhaul of the higher education system to accommodate for training of more healthcare professionals.

Even more problematic is the lack of details to explain how the NDP plans to achieve its objectives. To tackle unemployment, it outlines four approaches:

1. "Introduce an economic policy that creates jobs and promotes the private sector;
2. Link education outputs to labour market requirements;
3. Implement vocational training and education programmes to encourage work in the private sector;
4. Direct economic resources toward labour-intensive activities."[29]

The crucial role of the private sector is underscored here but addressing the obstacles to its development needs to be among the government's biggest priorities. Here it is important to discuss the current status of the business and investment environment. Generating private capital is the key to reducing Iraq's reliance on oil and it will have a multiplier effect on the private sector.

28. Ibid., p.197
29. Ibid., p.50

UNDERSTANDING THE INVESTMENT ENVIRONMENT

To begin with, it is important to highlight how the term "investment" is defined in Iraq compared to its conventional understanding. Typically, an investment project involves the infusion of capital from a private entity with the anticipation of a return on its investment through a negotiated profit-sharing mechanism, but in Iraq this is not necessarily the case. Government projects such as building schools, hospitals and bridges that are entirely funded by the state treasury are often classed as investment projects, simply because they involve private developers. In reality, these sorts of activities would conventionally be classed as tendered contracts. Indeed, the country's Investment Law defines investment as "utilizing capital in any activity or economic project that yields benefits to the national economy", without making the distinction between public and private capital.

This is arguably a key cause of the country's poor investment climate. There is far little effort exerted to attract private capital to fund reconstruction projects so many so-called investment projects that Iraq promotes lack the basic ingredients of a viable and attractive investment opportunity.

Moreover, it is worth noting that capital expenditures within successive federal annual budgets (often described erroneously as "investment spending") typically amount for less than one-quarter of total spending. This is the portion of the budget that allocates government funds for reconstruction and upgrading essential services and infrastructure. The 2019 budget allocates some USD 27.6 billion to capital spending, which represents a 32% increase compared to 2018 but still amounts to just under 25% of total spending.

The two most important pieces of legislation that concern investment are:

1. **Investment Law 13 of 2006,** which was amended with Law 2 of 2010 and Law 50 of 2015.[30] The Investment Law covers all sectors except for oil and gas, banking and insurance. The Investment Statute No. 2 of 2009 also makes important clarifications to key articles within the Investment Law.[31]

30. National Investment Commission, Investment Law No (13) of 2006 (amended) http://www.investpromo.gov.iq/wp-content/uploads/2016/10/Invest_Law_En-1.pdf
31. National Investment Commission, Investment Statute No. 2 of 2009 http://investpromo.gov.iq/wp-content/uploads/2013/06/Number-2-for-2009-Investment-Regulation-EN.pdf

2. **Companies Law 21 of 1997[32] and Registration Instructions No. 196 of 2004**. This regulates the process for registering a company in Iraq, which is a fundamental requirement for both local and foreign investors. As long as foreign investors register a company inside the country, they are not required to have a local partner.

Additionally, the Kurdistan Region of Iraq has the Kurdistan Regional Investment Law 4 of 2006.[33]

Overview of the Investment Law

As noted above, the amended Investment Law applies to all sectors with the exception of oil and gas, banking and insurance. Composed of seven chapters and 37 articles, the law's most recent iteration was approved by parliament in November 2015.

In essence, the law establishes an institutional framework for private investment in the country, offers guarantees, protections and incentives to investors, and sets the conditions for obtaining an investment license. Chapter one deals with definitions and outlines the aims of the law, including "to encourage the Iraqi and foreign private sector to invest in Iraq by providing the required facilities for establishing investment projects". The chapter notes that "additional" privileges are conferred on investors that obtain an investment license.

Chapter two of the investment law discusses governance issues pertaining to the NIC and the Provincial Investment Commissions (PIC). While the law delineates between the mandates of these two bodies and details the mechanisms for the selection of board members, it does not go far enough in clarifying the boundaries of their remits. In many cases, the law suggests significant overlap in the roles and responsibilities of the NIC and PICs. While this may not necessarily be problematic in principle, the experience of the past decade has shown that without a clear mechanism for coordination and decision-making, disputes and competition between the NIC and PICs can be extremely debilitating.

32. Companies Law 21 of 1997 (amended 2004) and Registration Instructions No. 196 of 2004 http://investpromo.gov.iq/wp-content/uploads/2013/06/Company-Law-21-of-1997_-Registration-Instructions-No1.-196-2004-En.pdf

33. National Investment Commission, Kurdistan Regional Investment Law No. 4 of 2006 http://investpromo.gov.iq/wp-content/uploads/2013/06/kurdistant-regional-investment-law-no-4-of-2006-En.pdf

Chapter three outlines the privileges and guarantees for investors. The most notable clause is Article 10 (1), which notes that Iraqi and foreign investors enjoy the same “privileges, facilities and guarantees”. This sends a strong positive message to foreign investors, who are entitled to 100% ownership of investment projects. This feature is absent in many emerging markets. However, there are some discrepancies, which can be seen in the same chapter. For example, while both Iraqi and foreign investors are entitled to own state land that is allocated for housing projects, only Iraqi investors can purchase land that has been allocated for industrial projects. Furthermore, the law falls short of offering added protections to foreign investors, given the inherent risks associated with investing in a foreign country. These include the risks of nationalization and expropriation, although the Iraqi Constitution explicitly prohibits the latter.

Chapter six deals with the process of granting investment licenses and offers a mechanism to resolve cases where there is disagreement between the NIC and other government bodies over the granting of a license. Article 20(3) suggests that any such disagreement should be brought before the Prime Minister for settlement, however, this seems rather impractical given the sheer volume of license applications that are currently under review.

Among the biggest areas of contention for investors is Article 27 in chapter seven, which addresses the issue of arbitration. While the 2015 amendment offers recourse to international arbitration, the wording of the clause is rather vague and refers to “an agreement concluded between the two parties” to determine arbitration procedures. This leaves too much space for discretion and does not offer sufficient reassurances to investors who expect disputes to be settled through international arbitration.

Despite these issues, the investment law in its current state is generally considered to be in line with global good practices.[34] Most of the obstacles to investment lie in implementation of the law, rather than the law itself.

Registering a company and obtaining an investment license

A number of government departments, agencies and committees are involved in registering companies and issuing investment licenses. These are:

34. OECD, Promoting Investment in a Fragile Context, The OECD Iraq Project, 2016 https://www.oecd.org/mena/competitiveness/2016_06_Project_Insight_final.pdf

- Federation of Chambers of Commerce
- Provincial Chamber of Commerce
- Iraqi Bar Association
- Company Registrar Department at the Ministry of Trade
- National Investment Commission (NIC), based in Baghdad
- Provincial Investment Commissions (PIC), comprising of 15 in total, located in all the provinces
- Kurdish Board of Investment (BOI), which has the authority to issue investment licenses in the three Kurdish provinces
- Higher Committee for Investment and Construction. In essence, this was established as a means to bypass the inefficient and corrupt practices of the NIC in order to streamline the implementation of vital strategic projects. The committee was established in August 2017 but only convened 5 times over the course of 12 months. Chaired by the prime minister, the committee includes the head of the NIC, the governor of the Central Bank of Iraq, the Secretary General of the Council of Ministers, the Minister of Finance, the Minister of Industry, the Minister of Trade, the Minister of Housing and Construction, and the Prime Minister's Chief of Staff. Final decisions made by the committee are equivalent to resolutions issued by the Council of Ministers. In effect, the committee can force the NIC to take swift actions in support of an investment project.

Additionally, labour unions and professional associations also have an important role to play. Depending on the sector of the investment, businesses are required to register with their relevant union. For example, medical centers must be registered with the doctors' union. While the case can be made for why this process is necessary as a regulatory or supervisory mechanism, in reality, unions exercise very little oversight, are susceptible to bribery, and their core interest is in extracting fees from their members.

As per the investment law, the NIC is responsible for managing the overall direction of investment in the country including policy and regulations. It focuses on projects that are of "strategic significance", whereas the PICs focus on smaller, local projects. Furthermore, projects that exceed USD 250 million in value are referred to the Council of Ministers for approval. Despite the clear division in mandates, in reality, many projects are processed depending on which body the investor approaches.

The core administrative functions of the NIC are to promote and facilitate investment including negotiating and signing of contracts and agreements, and issuing investment licenses. The NIC is also expected to advise the Council of Ministers on priority investments.

While PICs also have the authority to issues licenses and promote provincial investment, only the NIC has the authority to work on strategic projects. These are defined in the Investment Statute 2 of 2009 as the following:

- Infrastructure projects with capital greater than USD 50 million;
- Projects that are shared by more than one region or province;
- Projects involving the extraction of natural resources other than those limited by article 29 of the Investment Law;
- Projects established in an agreement to which the Republic of Iraq is a party;
- Engineering, mineral, petrochemical, pharmaceutical and diverse vehicle manufacture and production industry projects, where the capital is more than USD 50 million;
- Projects for the development of archaeological and historical areas;
- Transportation projects such as roads, ports, airports and railways with capital no less than USD 30 million;
- Electric power projects with production capacity no less than 20 megawatts;
- Projects involving reservoirs, dams, and irrigation greater than 50 million square meters;
- Projects related to telecommunications;
- All projects with a capital greater than USD 1 billion;
- Any other projects considered strategic or federal by the Council of Ministers.

The World Bank's Doing Business annual country report outlines the key steps to registering a business in Iraq.[35] While those steps are comprehensively covered, there are some key discrepancies and gaps in the reporting that will be highlighted in this paper.

Though it is possible for a foreign or local business to invest in Iraq without a license, it becomes extremely difficult for foreign firms to operate without obtaining an investment license. The license essentially grants the investor a number of privileges that would not ordinarily apply, namely:

- Ten-year exemption from taxes and fees;
- Three-year exemption on import fees for equipment;
- The right to buy and sell stocks and treasury securities listed on the Iraq Stock Exchange;
- The ability to create investment portfolios of stocks and bonds;
- The ability to open bank accounts in local and foreign currencies in Iraq;
- The ability to register a patent for an investment project;
- The right to repatriate investment and profits from investments;
- The right to employ foreign workers;
- The guarantee that the government will not nationalize or confiscate investments;
- Access to arbitration.

However, the re-sale of licenses has emerged as an illicit market particularly on the provincial level. Companies will obtain an investment license from a PIC, and effectively sell it to another company by incorporating it as a partner in the investment. Many of these investment projects subsequently never make it to completion.

Obtaining an investment license is an arduous and lengthy process. There is no average waiting time, and for some investors it can take years to obtain a license. The process begins when the investor submits an application that includes a feasibility study, financial plan, statement of previous experience and a project

35. World Bank, Doing Business 2018, Iraq Country Report http://www.doingbusiness.org/data/exploreeconomies/iraq

timetable. The application is processed by the national or provincial investment commission's One-Stop Shop (OSS), which will study the proposal and consult with the legal department, in addition to relevant ministries to determine whether the project is in the national interest. Both the Ministry of Finance and Ministry of Health and Environment often have input, and if there are any firm objections, the application is rejected. If there are no objections, the chairman of the NIC must sign off on the application. If the project capital exceeds USD 250 million, it must be approved by the Council of Ministers. Following approval, a request is made for allocation of land for the project. Often, a separate application must be submitted by the investor to the land owner, which is usually the Ministry of Finance. Only after land has been allocated is the investment license issued.

Barriers for foreign investors

Understanding the magnitude of the challenge can be illustrated by describing the major obstacles that foreign and domestic investors often cite. These barriers are symptomatic of excessive red tape, corruption and mismanagement or lack of expertise.

1. No clear return on investment

Investment projects that are promoted by the NIC are often poorly advertised and lack basic information needed for investors to decide whether they are interested. It is unclear how projects are valued and the return on investment is rarely defined. Market data tends to be patchy and outdated, so investors often struggle to put together a feasibility study without sufficient information. The problem derives from a fundamental cultural misunderstanding of what it means to invest. For that reason, very little effort is expended by NIC officials in packaging investment opportunities in a way that makes business sense to foreign firms.

2. Land allocation problems

Studies have shown that the majority of investment projects that have stalled or failed in Iraq are due to failures to allocate land. This is a major problem that is only usually resolved by a cabinet-level intervention. Companies will spend millions to obtain an investment license, only to find themselves stuck in this final hurdle.

3. Poor infrastructure and logistics

The poor availability of adequate storage facilities in Iraq means that foreign businesses find it particularly difficult to acquire reliable and sufficient storage space for their goods. For that reason, companies often seek out local logistical networks to facilitate the distribution of their goods. This makes it particularly costly to do business in the country, and often the logistical burdens are enough to dissuade investors from working in the country.

4. No trust in arbitration

Iraq ratified the International Convention on the Settlement of Investment Disputes (ICSID) in 2015, which is reflected in the second amendment to the Investment Law. However, many companies do not have confidence in the arbitration process, despite the fact that international arbitration is available as an option. Specifically, there is uncertainty about whether Iraqi authorities would comply with a court judgement if it was obtained through international arbitration. This is compounded by the fact that payment timelines for projects are often unclear or not respected.

Iraq is not yet a party to the New York Convention of 1958 on foreign arbitration. While the Iraqi Council of Ministers recently agreed in principle on the need to seek membership, the country must fulfill a number of legislative obligations before it can apply. As of yet, parliament has not tabled this issue on its agenda.

Commercial courts do exist in Iraq but they are not specialized in trade and investment disputes. For that reason, they lack the capacity and expertise to deal with major disputes that involve a complex set of circumstances.

5. Unqualified labour force

There are numerous reasons why Iraq lacks a vibrant and skilled labour force that can play a central role in investment projects. In part due to the brain drain that occurred during the Iran-Iraq war in the 1980s, compounded by the debilitating sanctions of the 1990s and the violence that ensued after 2003, many of Iraq's best and brightest have either chosen to leave the country or have been forced to flee. Furthermore, the dominance of the public sector has had a profoundly negative effect on work culture.[36] A legacy of Iraq's Soviet-style command economy, employment in the public sector not only makes up the lion's share, but civil service jobs are highly sought after. Iraq maintained a partial hiring freeze during the fiscal crisis from 2015 to 2018, forcing unemployed people to seek out jobs in the private sector. Furthermore, the government introduced an initiative in 2016 that offered public sector employees 4 years' paid leave (now 5 years) as a way to encourage more people to find jobs in the private sector. Those enrolled in the scheme receive only their base salary and are not be eligible to return to work before the expiry of the term. However, they would be entitled to seek employment outside of the public sector. Although official figures are not available, many experts suggest that there has been limited interest in this initiative.

6. Corruption and mismanagement

There have been numerous efforts from the international community to support the professionalisation of the NIC. This includes training from the US Commercial Law Development Program, which trained NIC employees on investment promotion. However, the NIC's official website is illustrative of the fact that progress has been slow.

Informal business activity in Iraq also poses unfair competition to registered private firms. A 2011 World Bank Survey[37] suggested that some 40% of start-ups in the country were not formally registered. The informal sector also entrenches corrupt practices and makes it more difficult for legitimate businesses to operate without resorting to illicit means.

7. Access to finance

For local investors, one of the biggest obstacles is access to finance. State-owned and private banks do offer loans at very high interest rates and are often fully securitised, requiring a guarantor.

In recent years, the government has sought to encourage private enterprise and entrepreneurship by unveiling an IQD 5 trillion fund (approximately USD 4.2 billion) for small and medium-sized businesses. The fund is administered by

36. Ali Al-Mawlawi, Analysing Growth Trends in Public Sector Employment in Iraq, LSE Middle East Center, July 2018 http://blogs.lse.ac.uk/mec/2018/07/31/analysing-growth-trends-in-public-sector-employment-in-iraq/
37. World Bank Enterprise Surveys 2011, Iraq Country Profile http://www.enterprisesurveys.org/~/media/GIAWB/EnterpriseSurveys/Documents/Profiles/English/Iraq-2011.pdf

the Central Bank of Iraq through a number of state-owned banks that offer loans to start-up businesses with a special focus on the agriculture and housing sectors.

8. Visas

This has been a continuous source of frustration for foreign businesspeople. Strictly speaking, ambassadors have the authority to issue multi-entry visas at their discretion, however, very few ambassadors are willing to take on that responsibility. Until now, prospective investors must contend with the reality of delays in visa issuing, although it is possible to obtain a visa on arrival in the Kurdistan Region.[38]

The Kuwait conference as a case study

Designed to mark a turning point for post-war Iraq that could set the country on a path to recovery and long-term prosperity, the Kuwait International Conference for Reconstruction of Iraq was held in February 2018, two months after Iraq formally announced victory over ISIS. Organized jointly by the Iraqi government, the World Bank, the European Union and with the support of the United Nations and the Kuwait Chamber of Commerce and Industry, the event was initially conceived as a donor conference, however, anticipating that there would be little appetite for donor funds among the international community, it was rebranded as an investment conference that would incentivise foreign investors to play a leading role in Iraq's reconstruction.

The conference generated some USD 30 billion in mainly loans and credit commitments from participating countries, falling short of the stated USD 88 billion that was needed. Over one year on, very few of those commitments have been honoured, and almost no new funds have been disbursed to the Iraqi authorities. The conference's lackluster performance can be explained in light of the prevailing conditions in Iraq that have been described above. One of the key mistakes was the decision to showcase more than 200 investment projects within the conference's brochure. What this meant was that details about each project were very sparse, with little information on feasibility studies or profit sharing that could entice private investors to take interest. A far more effective approach would have been to shortlist only a handful of projects that offered the most strategic value to Iraq and would be of interest to foreign investors. The other aspect that dissuaded investors was the perception that few improvements had

38. For a list of nationalities entitled to visa on arrival within the KRG, see https://us.gov.krd/en/services/visa-information/

been made to Iraq's business environment, and there was little effort on the part of the organizers to explain why the situation was any different to before. In the end, not a single deal was signed during the conference and investors went away largely unsatisfied by what was on offer.

RECOMMENDATIONS

Based on an analysis of the key obstacles that are stifling development and reform in Iraq, and considering the existing body of work that has been developed by government authorities as part of the national development strategy, the following recommendations offer a path to achieving realistic gains in the near term:

- Addressing weaknesses in the state's ability to follow through on executive decisions should be a priority. The government needs to establish an executive authority whose only responsibility is to follow up on the implementation of cabinet decisions and ensure that strategic development plans are being adopted. This role has been traditionally left for COMSEC, but the institution is overstaffed, outdated and lacks the dynamism and knowhow to prioritise its work. As part of the government's national program, it established a commission linked to the Prime Minister's Office that would carry out the required functions but its current scope and authority are limited. It is understaffed and lacks sufficient legal authority to hold ministries and government agencies to account.

- Iraq needs to address weaknesses in data collection and dissemination. This is a fundamental prerequisite to creating an environment where policymaking is informed by facts. Technology needs to be embraced to ensure that the data collection process meets international standards and can be automated in a manner that ensures that data is up to date. Moreover, the Central Statistics Organisation (CSO) requires a major overhaul in how it disseminates data within the public and government domains. The NDP implicitly recognizes this weakness, and on several occasions incorporates the need to conduct "accurate statistical surveys" in order to determine needs.

- The country's existing national strategies try to achieve too much, and inevitably fail. Objectives need to be prioritized, and these priorities need to be justified and based on credible data and a clear roadmap for achieving them. Stakeholders also need to be incentivized to meet these targets. It is not entirely clear how development targets are determined, whether they are simply aspirational or based on tested economic models and projections. This issue is also linked to the availability (or lack thereof) of accurate and timely data that can inform the setting of targets.

- Greater coordination is required between the Ministry of Planning and other government agencies to ensure consistency and alignment with priorities, objectives and targets. Often there are discrepancies which suggests the lack of a unified and integrated strategic plan.
- There appears to be little appreciation for the great burden that a rapidly growing population places on development. The targets that the NDP sets are far too optimistic, particularly with regards to increasing per capita numbers of healthcare professionals and teachers, as well as schools and hospitals. Much more work is needed to address how the country intends to manage population growth.