Oil Contracts and Policy in Iraq
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‘Ten years on and Erbil has evolved from a backwater to a modern-day boomtown’ spoken of in laudatory profiles in the international press. Oil rich, stable and with its own military and government, Iraqi Kurdistan boasts a mix of both security and growth and attracts nowadays thousands of foreign and Kurdish-owned companies. Erbil is considered to be an investment friendly destination, a solid commercial and economic base and a gateway to the Iraqi market.

One of the central issues that enhanced the development of the Iraqi Kurdistan is the oil policy adopted in the region. Based on the Iraqi constitution enacted in January 2005, oil production and export is considered within the federal rights of the Kurdistan Region - hence the Kurdistan region is within the process of rapid transition to develop its natural resources. New export channels were opened and exports are expected to reach 1 million barrels per day by the end of 2015 and 2 million by the end of 2020. Gas exports are expected to start in 2016.

The underlying legal structure reflecting the Kurdish oil policy is the well-known production and sharing contract (PSC). A production and sharing contract is concluded between the Government and a company willing to conduct petroleum operations on a block granted exclusively by the government in Kurdistan. Such company, named the operator shall provide:

a) Technical Services

Implementation of all technical, human and material resources reasonably required for the execution of the Petroleum Operations, in accordance with standard practices prevailing in the international petroleum industry.

b) Financial Services

The responsibility for funding the Exploration Operations and, in the event of a Commercial Discovery, Development, Production and Decommissioning operations, pursuant to the Contract. For the funding of Petroleum Operations, the Operator shall be entitled to have recourse to external financing from either its affiliated companies or from any third parties.

c) Administrative Services

Implementation of all appropriate management and administration techniques for execution of the Petroleum Operations, in accordance with standard practices prevailing in the international petroleum industry.

The Government is responsible to provide all necessary licenses, authorizations and facilities in order for the company to provide its services locally.

The result of this agreement is the distribution of a share of the profit to the government once the exploration has led to a commercial discovery. In contrast to the production and sharing contract, the Iraq’s technical service contract (TSC) is the financial and legal framework adopted by the central government looking to engage with international oil companies (IOCs) for a long term oil exploration and development. The primary motivation for pursuing such legal framework is to benefit from the international oil companies cooperation and expertise without having to transfer the control of the reserves and extracted natural resources. The international companies will bear
all the costs of their petroleum operations but they will be allowed to recover the total capital expenditures including any cost overrun once the production reaches an agreed upon minimum production level.

The vital question which is currently debated on the international level and between the oil companies is to determine which contract is the legal one. Shall an international company enter into a production sharing contract with the Kurdish Government or a Technical service agreement with the Iraqi government?

The Iraqi Constitution of 2005 contains several provisions that address the control and distribution of natural resources. The Constitution states that all oil and gas is owned by all the people of Iraq in all regions and governorates. Such language does not admit to the ownership of any particular resource by any particular group or geographical or political region. It does not also vest oil and gas resources in the State, nor does it allocate the resources to particular regions or governorates. It only states that the federal government, with the producing governorates and regional governments, shall manage oil and gas extracted from present fields subject to a revenue distribution formula, and provides for equitable distribution of revenues in proportion to the population, and that distribution should be regulated by a law.

Besides the lack of clarity regarding the ownership and distribution of natural resources, the Constitution did not allocate proper roles and authorities between federal and regional authorities for equitably sharing oil and gas and managing the natural resources. This ambiguity created a deadlock between the Iraqi government and the Kurdistan Regional Governorate as the federal government denies the right for the KRG to adopt unilateral and permanent measures over the management of the oilfields and considers any contract signed directly by KRG as illegal.

On another hand, the Constitution does not expressly authorize the Ministry of Oil to award contracts to IOCs either. However, the Ministry of Oil maintains the legality of the contracts awarded to the IOCs on the grounds that (1) the constitutional requirement for the approval of the Councils of Representatives only applies to international treaties and agreements between the State of Iraq and other States, and so commercial contracts with IOCs do not need such approval; and (2) the TSCs were awarded under the proposed Hydrocarbons Law, although this has not yet been approved by the Council of Representatives.

This cloud of uncertainty surrounding the legal status of the TSCs and PSCs is hindering international companies from investing comfortably in Iraq. Moreover, in reality, the legality of those contracts is more dependent on the political situation rather than it is a purely legal issue.

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Expatriates in GCC to be certified based on skills

Arab News
GCC labor ministers have agreed to implement a skill assessment and certification project on expatriate workers in coordination with major manpower exporting countries such as India, Pakistan and the Philippines.

The UAE and Kuwait have implemented the system on an experimental basis on construction and service workers recruited by the private sector while other GCC countries would apply it gradually by the end of 2015.

The ministers reached the agreement following a consultative meeting in Kuwait. They have also decided to establish a website to assess skills of workers recruited from the three countries.

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Kafala system to top agenda of GCC talks

Arab News
The kafala system, which requires all workers in most Gulf States to have a sponsor responsible for their visa and legal status, will top the agenda of the meeting of labor ministers of the six-nation Gulf Cooperation Council in Kuwait, a GCC statement said. Adel Fakeih, labor minister, will lead the Saudi delegation to the GCC meeting.

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