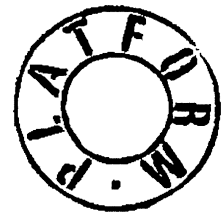


## IRAQ: JUSTICE AND WITHDRAWAL

### The Iraqi Oil Law and PSAs – a Prescription for Conflict?

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The Iraqi Hydrocarbon Law was written over an eight month period, in closed-door consultation with international oil companies including Shell and BP, the International Monetary Fund and the UK and US governments. The final draft of the law was only seen by Iraqi MPs in February 2007 after Iraqi Cabinet ratification. Parliament has as yet not passed the law, despite intensive military, diplomatic and economic pressure on the part of the Bush administration.

The Oil Law is the legal bedrock under which International Oil Companies (IOCs) can sign long-term contracts – the preferred being Production Sharing Agreements – with the Iraqi government. Without the Oil Law, the companies would lack the stable legal, fiscal and regulatory framework necessary for securing investments and assets in the country.

Passing the law and signing long-term contracts whilst Iraq is occupied would have long-term, negative consequences on the country's economy, political systems, territorial integrity and identity. The legacy of contracts and legislation signed into law threatens to permanently undermine democracy, development, transparency and public oversight in Iraq. As such, no legislation or long-term contracts governing Iraqi resources should be signed whilst the country is still occupied.

Likely consequences of the law are as follows:

- **A Surrender of Sovereignty:** Article 41 legislates for any disputes between foreign companies and Iraqi authorities which cannot be resolved through negotiation to be resolved 'through arbitration or the competent authority'. In practice this means through a secretive and remote international arbitration tribunal – over riding domestic law. Iraq would not have the power to intervene using its own judicial system.
- **Iraq locked into generous terms for a generation** -The economic and legal terms of contracts will be fixed for 30 years, even though negotiated and agreed at a time when Iraq is weak, unstable and occupied. IOCs will also gain very profitable terms, to reflect the risks at the time of signing, but long outlasting those risks.
- **Parliament By-passed** With revenues (article 11) as with contracts, there is no provision for Parliamentary scrutiny. The Oil Law allows the Iraqi cabinet to take decisions over which contracts will be signed and with whom and on what terms - without parliamentary scrutiny. In many other countries the terms of these developments are subject to Parliamentary debate - especially important in Iraq, where oil accounts for over 90% of government revenue.
- **No Guarantee of State Participation:** No minimum level has been set for state participation in contracts. For a country as well endowed with resources and technical skills as Iraq, a high minimum threshold would have been expected. Article 35 allows companies unlimited transfer of profits outside of Iraq. This could restrict the government's ability to manage financial crises.
- **Sectarianised Decision-Making:** The law allows for the creation of a Federal Oil and Gas Council which will decide which contracts are accepted. The Prime Minister, in consultation with the main parties will decide its composition. All decisions on the fairness of the contracts and whether they serve Iraqis' interests will be completely removed from public or

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parliamentary scrutiny. As with the structure of the current government, grown from the original sectarian composition of the Governing Council of June 2003, the Federal Oil and Gas Council will also be sectarianised, leading to regional and sectarian agendas impacting on national economic policy.

- **Iraqi Companies Undermined:** Foreign companies are only ‘encouraged’ to co-operate with Iraqi companies and purchase goods and services from them ‘whenever they are competitive’ (Art 9) Iraqis should only be employed ‘to a reasonable extent’. Normally contracts specify minimum Iraqi content and employment and minimum levels of training and technology transfer.
- **Lack of Transparency:** The requirement, present in earlier drafts of the law to have contracts published 2 months after signing has been dropped, requiring only ‘financially significant’ contracts to be published, with no time limit.
- **Limited Regulatory Space:** The definition of ‘good oil field practices’ (Art 4. Def 4) including relating to health and safety and environmental standards is equated to what oil companies think is right. This could seriously restrict the regulatory influence of the Iraqi government.

### **Technical Service Agreements – opening the door to PSAs?**

Technical Service Agreements or Contracts (TSA/TSC), those most commonly used by major oil producers around the world are currently on offer in Iraq. TSAs treat companies as contractors paid to fulfill a service rather than as reserve-owners. The two-year no-bid deals, have been offered to Shell for Kirkuk, a joint project for Shell and BHP Billiton for the Misan field, Rumeilla for BP, West Qurna phase 1 for Chevron and Total, the Zubair field for ExxonMobil and a consortium of Dome, Andarko and Vitol for the Luhais field. The contracts are aimed at increasing production by a minimum of 100,000 bpd for each field.

Further contracts are to be tendered this summer or autumn.

Outstanding questions however remain: the contracts have been written by the Oil Companies rather than the Iraqi Ministry of Oil. This is highly unusual for any public sector tendering process. Standard practice is for the government to write contracts detailing the work and services required which are then open to competitive bidding for interested companies. So why has the process been turned on its’ head? Why are the IOCs defining the terms and conditions of public sector contracts?

Also, TSAs are not commonly used by IOCs such as Shell and BP but are normally the province of field service and technology companies such as Schlumberger or Baker Hughes. Some analysts believe that PSAs - the ‘long-term substantive pieces of business’ so hard-lobbied for by the IOCs are still on the agenda and that extension clauses would be written into the TSAs to allow companies to effectively convert their existing contracts into PSAs, without open bidding, democratic oversight, or public scrutiny of the process.

However, the Iraqi Oil Minister has rejected this scenario, arguing that all post-TSA work will be offered for competitive and transparent bidding and that contracts would be published after they are signed. This has lead to calls for the contracts to be published before they are signed, and subjected to democratic scrutiny before they can become a ‘fact on the ground’.

The Ministry of Oil has set June 30<sup>th</sup> as the deadline for signing the current TSAs. Whether they will mark the foot in the door for long-term IOC re-entry into Iraq remains to be seen.