

# INVESTOR RIGHTS vs HUMAN RIGHTS

## The implications of oil contracts in the Kurdistan Region of Iraq

By Greg Muttitt

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### About the author

Greg Muttitt is a Co-Director of PLATFORM, an interdisciplinary, London-based organisation monitoring the human rights, development and environmental impacts of the oil and gas industry. Greg has been studying Iraqi oil policy since 2003, and has examined the economics, law and politics of oil investment contracts in a number of countries, including Azerbaijan, Kazakhstan and Russia, as well as Iraq.

### ABSTRACT

Since September 2007, the Kurdistan Regional Government (KRG) has signed oil development contracts covering nearly half of the land area of the Kurdistan Region. The so-called production sharing contracts give oil companies exclusive rights to extract the oil over a period of up to 32 years. This essay examines the consequences of these contracts for the human rights framework within Iraq and Kurdistan, and for access to water, land and other resources. It goes on to consider the role of KRG oil policy in the broader human rights situation.

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## **INTRODUCTION AND OVERVIEW**

"We're not saying Kurdistan is heaven," said Herish Muharam, chairman of KRG's Board of Investment. "But we're telling investors that Kurdistan can be that heaven."<sup>1</sup>

It has become a media cliché to run stories of Iraqi Kurdistan as an oasis of stability and democracy, attracting investment into its booming economy. It's an image the Kurdistan Regional Government (KRG) is keen to cultivate, hiring the California-based public relations firm Russo, Marsh & Rogers to coordinate a major advertising campaign under the slogan "the other Iraq".<sup>2</sup>

One of the most controversial sectors in this rush of investment is oil and gas, in which the KRG signed nearly 20 contracts between September and November 2007 to develop the fields, invoking the ire of the federal government. Argument has raged between Irbil and Baghdad over who has the constitutional authority to sign such deals, and over whether they give too much away to foreign companies.

These contracts, as well as a further five signed between 2003 and 2005, are almost all of a controversial type known as production sharing contracts (PSCs).<sup>3</sup>

The KRG's oil deals are striking for the speed with which they have been signed. In the space of just over two months, nearly half of the land area<sup>4</sup> of the Kurdistan Region was signed up, under contracts that will endure for up to 32 years.

But investors' heaven may not look so rosy for the people of the region, or indeed of Iraq. The aim of this essay is to examine whether investor interests are being prioritised over human rights.

Under occupation and subject to deepening internal conflict, Iraq suffers from a dire human rights situation. Some estimates put the death toll from the violence of the last five years at more than a million people.<sup>5</sup>

The legal framework for protection of rights remains weak, due to Iraq being only five years on from the dictatorship, and with little progress on human rights legislation during the occupation. The institutions of state have largely been either effectively dismantled, or taken over by political and sectarian interest groups.

However, the oil contracts are set to lock in this weak rights framework for their entire duration. The contracts contain "stabilisation clauses", which require the government to compensate investors for any costs incurred as a result of changes in law, including human rights and environmental law. This threat of economic compensation is likely to discourage future governments from using regulation to protect the rights of its citizens.

Just as the contracts will freeze the legal framework in its current form, so too the economic terms. Investors are demanding sizeable risk premia, to compensate them for the security, political and legal risks. Oil accounts for around 95% of government revenue in Iraq<sup>6</sup> (and by extension, the Kurdistan Region), and the perpetuation of profitable contracts reflecting the circumstances of 2007 until 2039 will have a serious impact on government's ability to fulfil human rights.

At a local level too, oil production will have a major impact on rights. Water is a resource in severe shortage in Kurdistan, as in the rest of Iraq – with some areas receiving as little as four hours' supply every three days. Yet, through unbalanced dispute procedures, the needs of oil companies could be prioritised over those of people – with decisions ultimately arbitrated not in the villages, or even in Iraq, but in London.

Land rights are also already severely disrupted in Iraq – due to the legacy of enforced displacement by the Ba'athist regime (such as the Arabisation of Kirkuk), and due to more than four million Iraqis driven from their homes by the conflict. Granting wide rights over land to oil investors is likely to add to these problems, and make their resolution all the more difficult.

Yet oil is not just an exacerbating factor to a bad situation; it plays a role both in conflict and in the broader rights context. Oil played a significant role in allowing decades of dictatorship to thrive in Iraq, through the 'rentier' effect, where economics and politics became excessively centralised due to the dominance of resource revenues. There are fears that the same effect may now be occurring in the Kurdistan Region, due to the way in which oil interests are pursued. Meanwhile, regionalised struggles for control of oil risk extending the internal conflict into a new dimension.

This essay aims to provoke much-needed discussion on the future of oil in Kurdistan and in Iraq.

## **PART I – LEGAL AND POLITICAL BACKGROUND**

### **Constitution and oil laws**

The constitutional basis for oil development in Iraq is both vague and contradictory, and has spawned numerous commentaries on its meaning and implications.

Whereas Article 111 of the 2005 Constitution<sup>7</sup> states that oil and gas are owned by “all the people of Iraq in all the regions and governorates”, Article 112 only specifies (and even then, ambiguously) how that ownership is manifested in relation to “current fields” (a term that is not explained): “The federal government with the producing governorates and regional governments shall undertake the management of oil and gas extracted from current fields”, and also shall formulate strategic policies. Nothing is said of the management of non-“current” fields.

Unsurprisingly, conflicting interpretations of these Articles quickly emerged. The Kurdish parties pointed to Article 115, which states that all powers not allocated to the federal government are by default allocated to regional governments<sup>8</sup>, and which further gives the regions precedence in case of conflicts relating to those shared powers.<sup>9</sup>

The Kurdish parties have argued that since Article 112 only refers to current fields<sup>10</sup>, the Kurdistan Regional Government (KRG) would be responsible for managing non-current fields. Furthermore, even on current fields and strategic policies, the federal government would only have a role as long as it did the regions' bidding; if there were any disagreement, the regions would effectively have sole powers in these areas.<sup>11</sup>

Broadly speaking, there is no doubt that the Constitution is a radically decentralist document – largely because its drafting was dominated and shaped by the three political parties in favour of powerful regions and a weak federal centre (the Supreme Council for the Islamic Revolution in Iraq (SCIRI)<sup>12</sup>, the Patriotic Union of Kurdistan (PUK) and the Kurdistan Democratic Party (KDP)).

Iraqis say that the Constitution was produced “in the kitchen” – in that it was cooked up behind closed doors by the leaders of those three parties, leaving the official Constitutional Committee just to drink tea in the front room.

Nonetheless, few others have supported as radical an interpretation of the Constitution as the KRG. The federal government rejected their interpretation, arguing that only the federal government is constitutionally able to act on behalf of all of the people of Iraq, and therefore should take the lead in managing the oil sector, in order to satisfy Article 111.<sup>13</sup>

Most Iraqi oil technocrats also took the view that a fully regionalised, and therefore fragmented oil industry, on the lines suggested by the KRG, would be unable to function successfully at a technical level.<sup>14</sup> They added that disputes over oil facilities and infrastructure could further divide the country, and generate new conflicts (this is discussed in Part IV, below).

After a Federal Oil Law was drafted in July 2006, the following six months were spent in disputes about the degree of regional versus central control over the oil industry.

Like most of Iraqi politics, the issue was eventually resolved through horse-trading between leaders of political parties, and by postponing another fight until later.

In February 2007, the Iraqi Cabinet approved a draft oil law<sup>15</sup>, in which regions would negotiate and initially sign contracts, subject to approval by a new Federal Oil and Gas Council (FOGC). Along with four Federal Ministers and the head of the Central Bank, the Council would comprise representatives of the regions (although it is not specified who would appoint them), of important oil companies (not listed) and three experts to be selected. Thus the composition of the FOGC, like every other Iraqi political body established since 2003, is likely to be subject to protracted haggling over identity-based quotas.

## **Opposition to the Oil Law**

But whilst these disputes were taking place “in the kitchen”, news of the content of their menu leaked out, sparking outrage among many Iraqis. Whilst many were unhappy with what they saw as the fracturing of the country through excessive regionalisation, a bigger issue became the role of foreign companies.

Until that point, it had simply been assumed among policymakers that foreign companies would take the main role in developing Iraq’s oil, through long-term contracts; the political negotiators focussed on who among them would have the authority to sign these contracts.

However most Iraqis would prefer oil production to remain in the Iraqi public sector. This includes those living in the Kurdistan Region: in a survey in summer 2007, 64% of respondents in Kurdistan expressed a preference for oil to be developed and produced by Iraqi state-owned companies, rather than foreign companies.<sup>16</sup>

The trade unions have led the opposition to the reversal of Iraq’s oil nationalisation. In a statement in December 2006, they said<sup>17</sup>

“We strongly reject the privatization of our oil wealth, as well as production sharing agreements, and there is no room for discussing this matter. This is the demand of the Iraqi street, and the privatization of oil is a red line that may not be crossed.”

This was echoed in milder terms by more than 60 of Iraq’s most senior oil experts, who wrote in a letter in February 2007 that “Long-term contracts with international companies are better avoided now.”<sup>18</sup> The technocrats added that with the Constitution still under review, and with the oil articles among those being addressed, it made no sense to proceed with an Oil Law until that process was complete.

This opposition soon spread into the Federal Parliament, making passage of the Law seem unlikely. The USA pressured hard for its passage, making it the top political “benchmark” alongside the “surge” in troop numbers announced in January 2007.<sup>19</sup> Whilst it set several deadlines for the Iraqi government to get the law passed, the most important of these for the Bush administration was the September report to Congress by General Petraeus and Ambassador Crocker, in which the administration stood to suffer actual political damage for lack of progress.

Yet all of these efforts were unsuccessful. When the law was not passed before the Petraeus/Crocker report, the KRG decided it did not want to wait any longer. In August, the Kurdistan Parliament passed its own Regional Oil and Gas Law<sup>20</sup>, and two days before the Petraeus/Crocker report, the KRG started signing its own contracts.

### **The sovereign right to surrender sovereignty?**

If KRG officials have been anxious to establish their sovereignty independent of central government in Baghdad, they have been remarkably keen to surrender it to foreign companies.

In explaining its policy of unilaterally signing contracts, the KRG points out that the Kurdistan Region has been passed over for investment, during decades of dictatorship. Whilst this is true, there is no benefit in terms of revenue for the KRG by having “its” fields developed rather than those elsewhere in Iraq, as either way, the KRG receives the same percentage of the revenues (currently 17%), after federal expenditures have been deducted. Broader economic benefits are also likely to be limited: for example, the oil sector employs notoriously few people for the scale of its investments (and many come in from outside as foreign contractors).

The contracts they have signed are almost all production sharing contracts (PSCs) – a form that is favoured by companies<sup>21</sup> for the way in which it fixes both fiscal and legal terms, rather than leaving them as sovereign matters to be determined by the government. For this reason, PSCs are only used in developing countries – industrialised countries simply would not accept that degree of encroachment on their ability to determine policy in the public interest.

Thus whereas the British government, for example, has adapted the fiscal framework for North Sea oil production on a number of occasions, and has introduced new environmental or safety laws from time to time, future Iraqi or KRG governments would be unable to do so. Effectively,

Iraq's legal and economic framework is being frozen in its state in 2007 – a time when the country has recently emerged from dictatorship, is still occupied by foreign troops, is deeply divided and is riven with violence.

None of the KRG contracts have been signed with oil 'majors' such as BP, Shell or ExxonMobil; all have involved relatively tiny independent oil companies.<sup>22</sup> Whilst the majors do not want to damage their chances of signing deals with Baghdad for development of the larger oilfields in the south of Iraq, and are cautious of the legal and political risks of signing with the KRG, they know that they can easily buy out the small companies later on if their investment becomes more secure. The small companies have obtained highly profitable contracts to compensate their risks, and would receive huge windfalls were the majors to buy them out.

British and American occupation officials have been central in setting the frame for foreign investment in Iraq's oil, and in pushing production sharing contracts.<sup>23</sup> But on the question of decentralisation, the US administration in particular has been divided<sup>24</sup> and has sent contradictory message on the KRG's signing of its own contracts.

However, by spring 2008, it seemed they'd settled on the more centralized approach. In a March 2008 meeting with KRG President Mas'oud Barzani, US Vice President Dick Cheney pressed Barzani to help pass the federal oil law.<sup>25</sup> Less than a month later KRG Prime Minister Nechirvan Barzani was in talks in Baghdad and announced progress towards agreement on the oil law.<sup>26</sup>

The solution being discussed – as ever – is to defer the decisions until later, leaving the allocation of contracts to regional or federal bodies to be addressed by the Federal Oil and Gas Council. This may do little to foster reconciliation in Iraq, by locking in future disputes, but would achieve a major US objective of getting an oil law on the statute books.

The next section will assess the terms of the KRG's Model Contract<sup>27</sup>, which was published in September 2007 as a starting point for negotiations with companies. The KRG has refused to disclose the contracts themselves (a point discussed in Part IV); thus some terms may even have greater implications than those discussed below.

## **PART II – CONSEQUENCES FOR HUMAN RIGHTS FRAMEWORK**

### **Stabilisation clauses – holding back the progressive realisation of human rights**

Under international human rights agreements, all states have a duty to enhance their human rights frameworks over time, in order to move towards the full protection and fulfilment<sup>28</sup> of human rights.<sup>29</sup>

There are three ways in which a state might expect to strengthen its human rights laws. Firstly, since no country has a perfect human rights framework, with limited resources, and sometimes political constraints, states need to prioritise certain actions related to human rights, and return

to others later.<sup>30</sup> Secondly, as new human rights treaties are negotiated in the future, states will need to incorporate them into their domestic laws. And thirdly, states may need to introduce measures to address new and unforeseen circumstances and threats.<sup>31</sup>

However, in common with many other production sharing contracts (PSCs) elsewhere, those signed by the Kurdistan Regional Government (KRG) contain “stabilisation clauses”, to protect the profitability of the projects from future changes in law or policy.

Under these clauses, if the state (either the Iraqi federal government or the KRG) introduces any new laws, taxes or economic policies that affect a project’s profitability, the investor will have the right to adjusted economic terms of the contract, so as to restore “the same overall economic position”.<sup>32</sup>

The result is that the state must pay the costs of any such change.

Not only does this compromise the sovereignty of the state<sup>33</sup> – it is likely to have what the UN High Commissioner on Human Rights has called a “chilling effect”,<sup>34</sup> discouraging both regional and federal governments from passing new legislation, for which they would have to pay in lost revenues.<sup>35</sup>

The stabilisation provisions thus create an immediate conflict with the state’s obligation to progressively realise human rights.<sup>36</sup>

This conflict is particularly troubling in the case of Iraq, where only five years from the end of dictatorship, and still under occupation, many elements of the human rights framework are weak or non-existent.

The situation has barely moved on since 2003. Very little legislation has passed since then, as a result of political chaos and extensive violence. That which has passed has largely reflected the priorities of the occupation or of sectarian political parties – including laws governing trade and investment, security and the powers of regions and governorates.

Whilst the Kurdistan Region has some human rights legislation beyond that existing in the rest of Iraq<sup>37</sup>, introduced since the region gained autonomy in 1992 and preserved under the 2005 Constitution, this is inevitably limited. The Kurdistan parliament did not sit between 1995 and 2000, as a result of the conflict between the PUK and KDP; and throughout the period 1992-2003, the region was under political pressure, and economically under-resourced.

The effect of “stabilisation” therefore will be to freeze Iraq in this situation of weak protections of human rights.

The stabilisation clauses used in the KRG’s model PSC are also unusually wide-ranging, relating to the entirety of the “legal, fiscal and economic framework”.<sup>38</sup>

Whereas stabilisation clauses often relate to laws and fiscal matters, the inclusion of the “economic framework” is uncommon. It is not clear whether this would include macroeconomic

policies of the Iraqi government: if so, this would be a significant intrusion on the government's ability to manage the economy.

Nor is the meaning of "framework" defined in the contract in relation to legal aspects: it is likely to include international agreements as well as domestic laws and regulations, but might be taken also to include administrative and institutional structures for delivering and enforcing those.

## **Locking in weak regulation of environment, health and safety**

A key tool with which a state should protect human rights in relation to investment is through environmental, health and safety regulation – in particular, to protect the rights to life and health of oil workers and local communities living near the operations.

As Andrea Shemberg points out in a recent report to the UN Secretary General's Special Representative on Business and Human Rights and the International Finance Corporation<sup>39</sup>:

"The state's ability to pass laws regulating the behaviour of private parties (including investors) is fundamental to human rights protection, because such measures are primary tools by which states implement their international human rights obligations – specifically the duty to protect rights."

However, unlike production sharing contracts (PSCs) in some other countries<sup>40</sup>, the stabilisation clauses in the KRG's model PSC make no exception for environmental or safety laws, and nor does the contract itself provide significant protection.

Such regulations are weak in Iraq, including the Kurdistan Region. A desk study by the United Nations Environment Programme in 2003 characterised Iraq's environmental framework as suffering from<sup>41</sup>:

- "no effective institutional or administrative infrastructure for environmental management or sustainable development;
- inadequate legislation;
- lack of participation in global and regional environmental agreements and processes".

Some work has taken place on drafting environmental laws at both federal and regional levels; however neither has yet been completed. Thus the environmental legislation at the time of signing the KRG's PSCs had not moved on since 2003, and the contracts' stabilisation clauses will lock in this weak regulatory framework.

On the positive side, the model PSC does require compliance with "any then applicable Kurdistan Region Law" on protection of the environment (that is, laws in force at the time of carrying the oil operations).<sup>42</sup> However, in the stabilisation provisions, no exception is made for development of environmental legislation. Reconciling these two provisions, we infer that the investor must comply with any future environmental laws, but that the government must compensate it for the cost of doing so.

This disincentive of compensation is likely to limit the scope of future environmental laws, in either drafting or interpretation, effectively freezing the current inadequate legislation.<sup>43</sup>

The specific provisions of the contracts on environment and safety confirm the regulatory vacuum.

Whilst the investor must submit an environmental impact assessment to the Regional Government<sup>44</sup>, there is no provision for its approval, non-approval or amendment by any regulator, nor for public disclosure – all of which are generally accepted practices in other oil-producing countries. Environmental planning thus becomes entirely a matter for the investor, with no reference to any external standard or check and balance.

Meanwhile, the model PSC contract places a duty on the KRG to provide permits, including environmental permits, when requested by the investor.<sup>45</sup> This legal duty could discourage government from carrying out its functions of environmental regulation, by requiring it to approve applications for works regardless of their environmental consequences.

In relation to workplace safety too, no provision is made in the model contract for monitoring, regulation or enforcement of independent standards. Instead, the investor is required to design its own system, with the only external reference point for standards being “prudent international petroleum industry practice”<sup>46</sup> – essentially a self-referential standard. Since investing oil companies are by definition better judges of what is prudent in the industry, they are effectively entitled to do what they like.

There is no requirement for this safety system to be approved by a regulator, no provision for inspections, and the only reporting requirement is where a serious injury has actually occurred.

The only point at which there is an opportunity for regulatory approval or otherwise, on safety, environment or other issues, is at the stage of application and signing of the contract. The Regional Oil and Gas Law requires environmental, health and safety provisions to be submitted with applications<sup>47</sup>, which the KRG could refuse. However, these provisions were not made public, and are not apparently part of the contract, so not enforceable. The hurry with which the contracts were signed in autumn 2007 suggests that political considerations weighed more heavily than the details of optimum development in any case.

The Regional Oil and Gas Law provides that the Minister may make regulations on environment, health and safety, including reporting requirements<sup>48</sup> – however, as these were not in force at the time of signing the contracts, nor included in the contracts themselves, any such new regulations will be subject to the stabilisation provisions and thus to potential compensation payments.

The model contract explicitly confirms the regulatory impotence of the government by ruling out the use of punitive damages, and indeed restricting any liability of the investor to wilful misconduct or breach of contract.<sup>49</sup>

This would seem to imply that if the investor cut costs excessively on environmental protection or workplace safety – for example, by not installing available technology, by not providing safety equipment, or by not maintaining or inspecting facilities – and if this resulted in a devastating accident, then the investor could claim that the cost-cutting was simply a “mistake”, and the government would be unable to impose a fine or other penalty. Nor could the government terminate the contract. In fact, the only thing the “regulator” could do would be to require a change of practice, and for the government to pay the costs of carrying it out. The bizarre requirement of “wilful misconduct” would appear to hold the investor liable only if it actively and deliberately polluted a water course or injured its workers, for example.

With a minimal baseline of regulations at the time of signing, the investor is effectively given free reign to operate in any way it chooses.

There is ample evidence from around the world that left to their own devices, in spite of claims of progressive policies, oil companies systematically fall short of standards necessary to preserve the safety of their workforce and the environment. As such, the lack of regulatory mechanisms in the law or model contract constitutes a manifest neglect of the government’s obligation to protect the rights of oil industry workers and local communities.

### **International arbitration – enforcing investor rights**

If an investor claims that a change of law or policy affects its profits, the stabilisation clauses in the KRG’s model contract allow it to renegotiate the economic terms with the government, in order to compensate for the lost profits. If adjusted terms cannot be agreed, the investor has the right to take the case to arbitration by a tribunal in London, in the English language, under the rules of the London Court of International Arbitration (LCIA).<sup>50</sup>

The LCIA is an international commercial court, designed to resolve disputes between companies, but also used for investment disputes between companies and states. As such, it will consider only the purely commercial terms of the contract, extracting and isolating it from the body of Iraqi and Kurdistan Regional law. Thus the state becomes not an entity serving the public interest of its citizens, but simply a partner in a commercial arrangement. For these reasons, international investment arbitration tends to defend the interests of the foreign investor; indeed, it is extremely rare for a host government to take an investment to arbitration.

Susan Leibuscher, one of the first researchers to highlight to civil society the implications of international investment arbitration, identified the problem as follows<sup>51</sup>:

International commercial arbitration... assigns the State the role of just another commercial partner, ensures that non-commercial issues will not be aired, and excludes representation and redress for affected populations... It thereby creates a system of private justice which leads to a ‘compartmentalisation of the market that the state judicial system is powerless to control’ and ensures that each holder of economic power is ‘fortified with its own custom-made justice’.

The contract is governed by English law, “together with any relevant rules, customs and practices of international law, as well as by principles and practice generally accepted in petroleum producing countries and in the international petroleum industry”.<sup>52</sup>

The governing of the contract under English and international law, and its hearing in arbitration tribunals in London, removes it from considerations of public interest<sup>53</sup>, which domestic courts would be more likely to weigh.<sup>54</sup> For example, domestic courts might seek to balance an investor’s right to stable terms of its investment contracts with its workers’ rights to a safe workplace. The reference in the KRG’s model PSC to accepted practice of the international oil industry is likely to weight any arbitration of the contract further in the favour of the investor – a self-referential note akin to that on safety standards.

The LCIA’s rulings are binding, and give no right of appeal<sup>55</sup>, except in relation to “errors in computation, clerical or typographical errors or any errors of a similar nature.”<sup>56</sup> Any compensation award, as ruled by the LCIA tribunal, can be enforced through the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, allowing the winning party to seize assets of the losing party in any of the more than 140 countries that are parties to the Convention.

Furthermore, under LCIA rules<sup>57</sup>, no information is provided on cases, before, during or after the hearing. Thus, although the case may have a major bearing on wide areas of public law, citizens of Iraq and the Kurdistan Region would not even have the right to know that an arbitration is taking place, nor that the government might have had to pay compensation of potentially tens of millions of dollars.<sup>58</sup>

The result is that the rights of the investor are strongly protected, at the expense of the rights of the people of Iraq and the Kurdistan Region.

## **PART III – IMPACT ON ACCESS TO LAND, WATER AND SERVICES**

### **Restricting use of land and resources**

A further respect in which oil operations under the KRG’s PSC contracts may violate rights of local people is through potentially prioritising oil investors’ access to land and essential resources, including water.

The model PSC provides that the investor may freely use water, electricity and other natural resources.<sup>59</sup> The investor also has the right to construct a wide range of earthworks that will affect both the water table and access to other resources, including dams, canals and reservoirs.<sup>60</sup> Whilst in the case of water, the investor’s right is limited by a requirement not to damage or deprive use of irrigation and navigation systems,<sup>61</sup> no process is created for approval or planning of water extraction (for example, by application to a government regulator), or for addressing loss of water supplies.

No restriction is placed on the use of electricity, a resource that is already insufficient to meet people's needs in Iraq.

The BBC recently reported that residents of Sulaimaniya get running water for four hours every three days and electricity for three-to-four hours a day.<sup>62</sup> According to Voice of America, Irbil residents get only eight hours of electricity per day.<sup>63</sup>

The contracts also give investors wide rights to land, which in rural areas will have a major impact on livelihoods and on food production.

The investors have a right to use public lands without payment. Private lands may be expropriated by the KRG, at the request of the investor, subject to payment of compensation. There is no specific procedure for assessing, awarding or appealing payments for land expropriation; the only mechanism available is the general process for compensation for third party damages (see below). In the absence of a clear, land-specific procedure for expropriation of and compensation for land *per se*, there is a significant risk that landowners will be unaware of the means of defending their property rights.

The context of displacement within Iraq also worsens the prospect of landowners achieving their rights. Claims arising from seizure of land under the 'Arabisation' policy of the Ba'athist dictatorship are far from settled. The UN High Commission on Refugees estimates that there are at least 4.6 million displaced Iraqis, about half of them within Iraq and half abroad.<sup>64</sup> There is a danger that displaced people may eventually return to find their land has been granted to private investors in their absence.

Thus in the cases of water, electricity and land, the oil contracts could exacerbate, and make harder to resolve, an already dire human rights situation.

### **Limited rights of redress**

The KRG's Regional Oil and Gas Law requires that "fair and reasonable compensation" be paid in case of damage or loss to the property of third parties.<sup>65</sup> This is the only mechanism of redress, including in relation to land expropriation.

However, there are a number of weaknesses in this provision. Firstly, it is the KRG's Ministry of Natural Resources that will decide amounts of compensation.<sup>66</sup> The Ministry is also the body responsible for promoting development of the oil and gas resources, so will inevitably suffer from conflicts of interest, which may lead to lower compensation payments than would be decided by an independent body.

Secondly, the provision focuses on cases where oil activity "disturbs the rights of the owner of any Asset".<sup>67</sup> Whilst there is also reference to activity that "interferes with any other lawful activities", the basis for compensation is less clear in this case – raising potential threats to the rights of land users who do not own the land. The restrictions to use are very broad. Third parties, including local residents, will require government permission to gain access to the

contract area, on which the government will consult with the investor before granting.<sup>68</sup> Conversely, there is no requirement to consult other land users or affected people on access rights.

It should be noted that these areas of restricted access are not simply drilling compounds, but cover enormous areas, each of between 300 and 2,400 square kilometres.<sup>69</sup>

For example, a farmer taking his livestock to graze, even on land that has been used in that way for generations, might require oil company approval (which the company could deny), whereas the oil company could drive construction machinery through the land at any time, potentially disturbing the animals through noise or spread of disease, or damaging the land.

Thirdly, the rights of appeal are unbalanced. Whereas the investor is entitled to arbitration in London, under the rules of the LCIA, the locally affected person shall be entitled only to rely on the specialist courts in the region to object to a compensation decision.<sup>70</sup> This greatly limits the possibility of obtaining justice.

In any case, it will be difficult for any third party to obtain redress, given that the contracts themselves are not disclosed – this means that an affected person will not be able to discover their rights in case of damage, or the obligations of the investor. Even were contracts to be released, they are in English language, so not accessible to the majority of affected people.

## **The economic impacts of the oil contracts**

In a heavily oil-dependent economy like Iraq's, the economic terms of oil production will have a major bearing on government's budgetary capacity to fulfil the rights of its citizens – including through the provision of education, health services, justice and security.

However, extensive deals have been signed in a very short space of time: 32-year contracts covering almost half of the Kurdistan Region were signed between September and November 2007.

By offering all at once, the market dynamics will favour the investors, as they will not have to compete for limited acreage. None of the contracts were even tendered; instead all were awarded through direct one-to-one negotiations. In such circumstances, highly profitable terms (and the expense of the state and its people) are inevitable.

If the approach were replicated across Iraq, as the KRG clearly intends, regions and governorates would be the ones forced to compete with each other, to attract investment – resulting in a race to the bottom, where each offers more generous economic terms, weaker regulation and more inducements.

Salman Banaei, writing in the journal of the Association of International Petroleum Negotiators, writes approvingly<sup>71</sup>,

“Competition among key decision makers may lead to regulatory competition, allowing for contractors to obtain relatively favorable terms.”

Furthermore, by signing the contracts before either the constitutional review or the oil law are concluded, and especially while there is dispute over the latter, far greater risk premia will be factored into the economic terms: higher profits to compensate companies for the legal and political uncertainties of whether the contracts will even stand up as valid, given the murky constitutional situation. This will result in lower revenues to the KRG, even after the legal and political situation has been clarified, as the terms are fixed by the contracts and their stabilisation clauses.

The major international oil companies are not signing up to the KRG’s deals; instead, small companies are taking on those risks, like a form of venture capital, aiming to make great windfalls by later selling their stakes to the majors if the risk pays off. "The Kurds are offering attractive terms to companies that are willing to take a gamble on the legal situation, and some small oil companies are prepared to take the bait " says Rafiq Latta, of Argus Oil and Gas report.<sup>72</sup>

Like the legal and regulatory situation, the economic terms will be fixed for 32 years in a way that reflects the circumstances of violence, division and occupation in 2007.

The people of Iraq might ask whether this approach will give them a fair return for depletion of their non-renewable natural resources. Unfortunately, that question cannot be answered, as none of the contracts have been published.

## **PART IV – IMPACTS ON BROADER RIGHTS CONTEXT**

### **The rentier sub-state**

Whereas the oil contracts themselves undermine the legal and economic framework of rights protection, oil policy more broadly may be worsening the human rights context, by circumventing the rule of law, and weakening the institutions of state. This has created a climate in which civil and political rights are increasingly violated, and in which conflict has worsened.

There are widespread accusations of corruption and patronage within the Kurdistan Region. For example, there have been allegations that officials require that any business venture must involve contracts with companies associated with KRG political leaders, and that public funds have been diverted into the political parties and to their senior members.<sup>73</sup>

Corruption is a major focus of public protests within the region. Many protesters have been arrested and intimidated, primarily by the KRG’s *Asayish* internal security forces, and in some cases, security forces have opened fire on peaceful demonstrations, killing at least two people in 2006.<sup>74</sup> The UN Assistance Mission to Iraq (UNAMI) also reports widespread torture and

abuse of prisoners detained by the *Asayish*, and a failure to bring perpetrators to justice.<sup>75</sup> In part, this is because the courts are part of the Ministry of Justice, and not independent of the executive branch of government.

Citizens are regularly pressured to join one of the two parties, and there are reports that the parties prevent employment of non-party members, and that courts favour party members.<sup>76</sup>

Most media outlets are controlled by one of the two parties, and follow party lines in their programmes and articles. Independent journalists who have criticised the parties have frequently been arrested and detained. The Committee to Protect Journalists reported a “rising number of physical attacks on the press” and “politicized lawsuits against outspoken newspapers” in 2007.<sup>77</sup>

Many of these problems are common features of ‘rentier’ states, which rely heavily on natural resource wealth, such that the extractive sector becomes isolated from the rest of the economy, and the government becomes distant from the interests of its people. Politics is centralised, as what happens in the rest of the country or the rest of the economy is less significant to the rulers. Government takes place through allocation of resource proceeds, alongside repression of dissenters.

With politics haggled out at the centre between party leaderships and occupation officials, such views are simply not given space to be discussed. At an Iraq-wide level, at least one senior civil servant in the British Foreign Office saw this exclusion as an advantage, commenting to the author of this essay that

“We need to be careful about asking Iraqis whether they want foreign companies to develop the oil; the danger is that you’d get a knee-jerk response rejecting the foreign companies, and that wouldn’t be in anyone’s interests”.<sup>78</sup>

The result however is a crisis of legitimacy in the policies, and by extension, within the political systems themselves. As noted in Part I, most people in the Kurdistan Region, as in the rest of Iraq, oppose the handing of oil development to foreign companies. But whilst all politics takes place “in the kitchen”, civil society is left out on the pavement.

In August 2006, the KRG published a draft of its Regional Oil and Gas Law for consultation. Illustrating clearly the problematic political dynamic behind oil policy, it appears that the consultation was aimed at international oil companies, and not at the people of Kurdistan or Iraq. In his reflections on the comments received, the KRG’s Minister for Natural Resources mentioned seven comments from international oil companies, and none from people or civil society groups in Kurdistan.<sup>79</sup> He also said that *all* respondents supported the draft law – which would be very unlikely in a genuine public consultation. When the KRG’s spokesman was asked how many of the respondents were in Kurdistan, the rest of Iraq and abroad, he declined to respond.<sup>80</sup>

With no debate on the structures for managing oil development, the role of oil is reduced to that of providing revenues, which in turn are pursued according to the interests seeking to gain control of them. As Kamil Mahdi explains<sup>81</sup>,

“In essence, many politicians now engaged in backroom bargaining are ultimately embroiled in a resource conflict – rather than a conflict of ideas and visions. What has been lost is even a minimal sense of a common national interest, or for that matter any sense of what are the ‘communal’ interests.”

This environment of self-interest lends itself to a rentier-style economy, where patronage dominates politics, and where political self-interest is the guiding factor of official behaviour. This problem is at least as prevalent in Kurdistan as in the rest of Iraq, as evidenced by the rapidity with which oil contracts have been signed, at the expense of human rights and economic development, and against the wishes of most Kurds. Kamil Mahdi adds,

“Despotism has indeed left a mark on Iraqi politics, and won’t be prevented by creating smaller rentier institutions.”

## **Oil and conflict**

The five years since 2003 have seen a bloody competition for control of the institutions of state, for the most part by groups organised around ethnic or sectarian identity. This control has in turn been used to reward a group’s supporters, attack opponents and entrench power.<sup>82</sup>

Sectarianisation at the political level is part and parcel of the sectarianism that now poisons Iraq’s streets and drives ethnic cleansing. Not only do all the political parties in Iraq have their militias (with varying but low degrees of respect for human rights), it is along ethnic and sectarian lines that armed groups – and also criminal gangs – seek to advance their interests.

The competition is now intensifying, as the economy too becomes an area of contestation. Oil is thus seen not as an integral part of the state and its economic policy, but simply as a generator of revenue, to be appropriated by sub-national groups. Regionalised ownership over oil revenues, and over the right to sign contracts, quickly translates into ownership by identity-based political parties.

With this devolved ownership, the battle for oil-rich disputed territories (including Kirkuk and Mosul) is intensifying. There are many documented cases of intimidation and unlawful detention without trial of Arabs and Turkmen by Kurdish security and intelligence forces,<sup>83</sup> denial of non-Kurds’ voting rights, and enforced migration of Kurds from the KRG region to Kirkuk.<sup>84</sup> Already those disputed areas have been the site of worsening violence<sup>85</sup>, and are projected to be a serious flashpoint in the future.

Even once internal boundaries are settled, geology will continue to have other intentions, and the management of shared fields could also become an issue of dispute. It should be remembered that one of the issues that led to Iraq’s 1990 invasion of Kuwait was the accusation

that Kuwait was over-producing from the portion of Iraq's Rumaila oilfield that stretched across the border, undermining the reservoir's geology on the Iraqi side.

Furthermore, foreign oil installations would be very likely to be attacked in Iraq by resistance groups, especially as fields near the edge of the Kurdistan region (or even beyond it) begin to be developed. Both Iraqi oil facilities, and foreigners, have already (separately) been 'insurgent' targets; the existence of highly profitable contracts that are seen as impinging directly on the state's sovereignty and violating human rights could deepen and strengthen that resistance.

Michael Wareing, appointed by the UK government to head the Basra Economic Development Commission, has commented that oil companies are not so concerned about these threats, as they are quite used to deal with physically insecure environments. He gave the specific example of the Niger Delta<sup>86</sup>, giving a troubling foretaste of what is likely to come if oil companies enter Iraq: neither the public security forces (armed police and the military) nor the companies' own private security contractors have stopped at defending oil assets from physical attack, but have proactively targeted anyone who is seen as a threat to the companies, including peaceful protests.<sup>87</sup>

## **Facts on the ground**

Rather than attempt to resolve the legal uncertainty about the authority to sign contracts, the KRG's approach has been to establish facts on the ground. The neglect of the rule of law risks intensifying internal conflicts within Iraq.

Since September 2007, the KRG has signed at least 18 contracts for exploration and development of oil and gas fields, without even consulting the federal government, whilst Baghdad's objections to the constitutionality of the move were met by the KRG with an instruction to "shut up".<sup>88</sup>

The first draft of the KRG's regional oil law in 2006 gave the KRG the right to sign contracts not only in the territory it controls – the three governorates of Sulaimaniya, Irbil and Dohuk – but also within "disputed territories" outside them, including Kirkuk and parts of Ninevah governorate (Mosul). Although following criticism, this provision was removed from the final version of the regional law passed in 2007, in practice it is still being pursued nonetheless.

The first contract signed after passage of the Regional Law was with the Texan independent Hunt Oil, for an area in Ninevah governorate, outside the Kurdistan Region.<sup>89</sup>

The KRG also granted a contract to develop the Khurmala Dome structure (part of the Kirkuk oilfield) in November 2007. Not only is Khurmala Dome outside the KRG's territory, it is also under almost any definition a "current field", producing 35,000 barrels per day, according to the US Energy Information Administration.<sup>90</sup> The federal Oil Ministry had already tried to develop Khurmala Dome, signing an EPC (Engineering, Procurement and Construction) contract with a Turkish company in 2004. According to officials, they were prevented from working on the field by Kurdish *Peshmerga* forces.<sup>91</sup>

The KRG's Natural Resources Minister reportedly justified the move by saying

"There is no hard line drawn somewhere that says this is KRG controlled territory and these are disputed territories, it is all gray areas. We provide the security; administratively we run the towns and villages in that area. It is and has always been under control of KRG, under our security."<sup>92</sup>

The approach of proceeding regardless of the law has already undermined trust between political parties within the federal parliament, and is likely to inflame tensions on the ground. More broadly, operating outside clear legal authority undermines the rule of law in the longer term, and weakens opportunities for using it to defend rights.

### **Lack of transparency**

The KRG's Minister for Natural Resources has said "The principles of transparency and accountability will be rock solid."<sup>93</sup>

However, whilst these principles have been referred to from time to time, they have not been applied in practice – in potential violation of the KRG's own Regional Oil and Gas Law. The Law does provide for details of contracts to be made available to the public, along with summary details of other key data, such as development plans.<sup>94</sup> In principle, this appears to be a progressive position.<sup>95</sup> However, no such details have been made available<sup>96</sup>.

When asked about the Minister's commitment to transparency, a KRG official replied<sup>97</sup>:

"I think that the point about transparency in the article related to transparency of officials and procedures, rather than providing full public access for what are essentially confidential commercial contracts – I am not sure of any company in any region that would wish to have such access granted."

In fact, she was wrong, as various countries do now release their contracts – including Azerbaijan, Timor Leste and Ghana. The International Monetary Fund recommends full publication of contracts as best practice on transparency, and dismisses the confidentiality arguments by noting that since in practice contract terms tend to be widely known within the industry soon after signing, there is no commercial advantage lost by publication of contracts.<sup>98</sup> The US Treasury Department also calls for "ex ante presumption of disclosure of such documents as Host Government Agreements, Concession Agreements, and bidding documents".<sup>99</sup>

The history of the last eighteen months has shown that these considerations of best practice have not influenced KRG policy, and that the principles of transparency have been far from rock solid.

In an apparent reversal in March 2007, the Minister announced that contracts already signed by the KRG would indeed be published.<sup>100</sup> He was responding to extensive criticism that the terms of those contracts were too generous to the companies. However, more than a year on, still no contracts have been published.

In October 2007, the Minister was asked by a journalist how much had been paid in signing bonuses to the KRG. He refused to answer, declaring the amounts “confidential”.<sup>101</sup> As one-off cash payments, such bonuses are usually disclosed; that they are not in the KRG case raises significant fears of abuse.

All the problems examined in this essay are likely to be exacerbated by the fact that the contracts have not been disclosed. Not knowing the legal basis of investment, affected people will find it difficult to assess their rights and how to defend them. Lack of accountability is the central factor in creating the rentier economy. And the widespread suspicions that the KRG has ‘sold off’ the natural resources on extremely generous terms will only deepen resentments, and the potential for conflict.

Some may suspect that if the contracts are not economically favourable for Iraq or Kurdistan, they may have been motivated by benefits for the officials that negotiated them, or their parties and networks. The accusations of corruption were noted above.

That the contracts were directly negotiated rather than tendered is not reassuring. Tendering public contracts and selecting the bidder offering the best economic terms is standard practice around the world, as it provides a degree of transparency, makes it harder for contractors to be selected on the basis of illegitimate personal benefits, and ensures the best outcome for the public purse.

Even more worrying is an unusual provision in the model contract that “A Public Company may assign part or all of its Government Interest to a third party or parties (not being a Public Company)”.<sup>102</sup> This is wide open to abuse, as officials could transfer oil rights to private companies in which they had an interest.<sup>103</sup>

Not only should citizens of Iraq, and of the Kurdistan Region, expect to see the contracts that have been signed, it would seem to be in the KRG’s interests to release them, in order to refute suspicions of impropriety, and indeed of undermining the country’s interests for political ends.

## **PART V – CONCLUSION**

Oil accounts for about 95% of government revenue in Iraq, and indeed in the Kurdistan Region. If Iraq or the KRG are to make any claim to democracy, civil society should clearly have an input into decisions on such a vital natural resource. In reality however, people have been disenfranchised on these questions of the future of the economy.

The rapidity of contract signing reflects the political self-interest that has driven oil policy, at the expense of national or even regional legitimacy. The result is to create a rentier sub-state at the

regional level, in which government remains divorced from systems of accountability, and human rights are violated for political ends. Furthermore, this approach undermines the rule of law, and is inflaming tensions, especially in relation to disputed areas, and exacerbating Iraq's internal conflict.

Meanwhile, the contracts themselves stand to freeze Iraq and Kurdistan for 32 years within the legal and economic situation that existed in 2007, at a time of occupation, conflict and political divisions. From a virtual absence of environmental, safety or other relevant human rights laws, the contracts prevent any new regulation being introduced throughout their duration, unless the state pays for it.

Far from realising the KRG's self-portrayal as a modern and democratic beacon, "the other Iraq", they emasculate regulatory structures to an extent that would be unthinkable in almost every other country, actively preventing government from meeting its obligations to protect and fulfil human rights.

This may be heaven for investors, but for people living in the region, it is more likely to resemble the other place.

Yet, for all the generous terms offered to foreign investors, the legal position remains unclear, and there is no sign of either the KRG or the federal government backing down from its interpretation of the Constitution.

This leaves open the possibility that the KRG's contracts may be struck down, or at least be indefensible in arbitration tribunals. Given the worrying consequences of the contracts for human rights, that may be an outcome many Iraqis, including Kurds, would hope for.

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<sup>1</sup> New York Times, 'Pointing to Stability, Kurds in Iraq Lure Investors', 27 June 2007, <http://www.nytimes.com/2007/06/27/world/middleeast/27kurds.html?ex=1340596800&en=5e36027ca95c2e2d&ei=5088&partner=rssnyt&emc=rss>

<sup>2</sup> Michael E. Ross, 'Iraqi Kurdistan says it's open for business - Semi-autonomous region woos the West with high-profile ad campaign', MSNBC, 14 November 2006, <http://www.msnbc.msn.com/id/14689169/>

<sup>3</sup> Also known as production sharing agreements, PSAs

<sup>4</sup> See the map of contract areas at <http://www.krg.org/s/?s=11>

<sup>5</sup> ORB survey, based on representative sample of 1,499 adults. ORB press release, 'More than 1,000,000 Iraqis murdered', 14 September 2007, [http://www.opinion.co.uk/Newsroom\\_details.aspx?NewsId=78](http://www.opinion.co.uk/Newsroom_details.aspx?NewsId=78)

<sup>6</sup> International Monetary Fund, Request for Stand-By Arrangement, December 2005, pp.19,27, <http://www.imf.org/external/pubs/ft/scr/2006/cr0615.pdf>

<sup>7</sup> In part because the text of the Constitution was repeatedly amended even after parliamentary approval, and right up to the referendum, there are various versions available on the web, many of them with differing numbering of articles. The most accurate, reflecting the final version as approved, appears to be the translation by the UN Assistance Mission for Iraq, available at [http://www.usip.org/ruleoflaw/projects/unami\\_iraq\\_constitution.pdf](http://www.usip.org/ruleoflaw/projects/unami_iraq_constitution.pdf)

<sup>8</sup> At present, Kurdistan is the only Federal Region within Iraq, although the Law on the Establishment of Federal Regions of October 2006 allowed others to be formed after April 2008.

<sup>9</sup> "All powers not stipulated in the exclusive powers of the federal government belong to the authorities of the regions and governorates that are not organized in a region. With regard to other powers shared between the federal government and the regional government, priority shall be given to the law of the regions and governorates not organized in a region in case of dispute."

<sup>10</sup> And the list of exclusive federal powers in Article 110 does not include oil (although it does include economic, trade and commercial policy – which also makes that article ambiguous in relation to oil)

<sup>11</sup> Q&A with Ashti Hawrami, KRG website, 'Oil and gas rights of regions and governorates', 13 June 2006,

<http://www.krg.org/articles/detail.asp?nr=95&lngnr=12&anr=11678&smap>.

The KRG recently commissioned a more detailed legal opinion from London-based solicitors Clifford Chance, [http://www.krg.org/uploads/documents/James\\_R\\_Crawford\\_Legal\\_Opinion\\_English\\_2008\\_02\\_05\\_h19m39s24.pdf](http://www.krg.org/uploads/documents/James_R_Crawford_Legal_Opinion_English_2008_02_05_h19m39s24.pdf)

<sup>12</sup> Renamed the Islamic Supreme Council of Iraq (ISCI) in 2007

<sup>13</sup> For a more detailed legal analysis favouring a centralised system, see Memorandum, July 7, 2006, from Joseph C. Bell (Hogan & Hartson LLP) and Professor Cheryl Saunders (University of Melbourne Australia), RE: Iraqi Oil Policy -- Constitutional Issues Regarding Federal and Regional Authority, [http://www.revenuewatch.org/news/MEMORANDUM\\_Constitutional\\_Interpretation.doc](http://www.revenuewatch.org/news/MEMORANDUM_Constitutional_Interpretation.doc)

<sup>14</sup> They argued that much oil infrastructure (such as pipelines, refineries and export terminals) is necessarily shared between regions, and so requires central management; that effective economic, geological and industrial management requires central coordination (rather than competition between Regions); and that the Regions simply do not have the technical expertise or capacity to develop their oil industries independently.

See eg Kamil Mhaidi et al (12 signatories), Open letter on the Oil and Gas wealth in the Draft Iraqi Constitution, Baghdad 18/10/2005, <http://www.iraqrevenuewatch.org/reading/101805.pdf>

Also Tariq Shafiq, 'Iraq's Petroleum Law: Politicized Management Vis-à-Vis Optimal Resource Management', Middle East Economic Survey, VOL. XLIX, No 18, 30 April 2007, <http://www.mees.com/postedarticles/oped/v50n18-SOD01.htm>

<sup>15</sup> Draft of the Oil and Gas Law of The Iraq Republic, 26 February 2007, translated by Raed Jarrar, <http://www.box.net/public/ehdzt13d71>

<sup>16</sup> Iraqi Oil Law Poll: June-July 2007, carried out by KA Research, and coordinated and analyzed by Custom Strategic Research. It was based on face-to-face interviews with 2,200 Iraqis in all 18 provinces. Charts available at [http://priceofoil.org/wp-content/uploads/2007/08/iraq\\_oil\\_chartsJuly\\_1-4.pdf](http://priceofoil.org/wp-content/uploads/2007/08/iraq_oil_chartsJuly_1-4.pdf)

<sup>17</sup> Hassan Jouma'a Awaad et al (18 signatories) (2006), 'Statement issued by the Iraqi Labor Union Leadership at a Seminar held from 10 to 14 December 2006, in Amman, Jordan to discuss the draft Iraqi Oil Law', <http://www.carbonweb.org/showitem.asp?article=223&parent=39>

<sup>18</sup> al-Rasheed et al (61 signatories), Open letter to Members of Iraqi Parliament –Iraqi Oil Experts Seminar held in Amman, 17 February 2007  
Tariq Shafiq, one of the experts, later commented that "Privatization, however, runs against the grain of the great majority of the oil technocrats and the Iraqi nation. A strong state-owned national oil industry and unified central plan, policy and resource management, with a liberal attitude towards cooperation with the regions and governorates, have become the unchallenged principles of the overwhelming majority of Iraqi oil technocrats." (Tariq Shafiq, 'Iraq Petroleum Law Re-visited', paper presented At Centre for Strategic & International Studies, Washington DC, 12 June, 2007, p.4 [http://www.al-ghad.org/wordpress/wp-content/uploads/2007/06/tes\\_csis\\_paper\\_-tariq-shafiq.doc](http://www.al-ghad.org/wordpress/wp-content/uploads/2007/06/tes_csis_paper_-tariq-shafiq.doc))

<sup>19</sup> George W Bush, President's Address to the Nation, 10 January 2007, <http://www.whitehouse.gov/news/releases/2007/01/20070110-7.html>

<sup>20</sup> Oil and Gas Law of the Kurdistan Region – Iraq, Law No. (22) - 2007 (hereafter KRG Regional Oil and Gas Law), [http://www.krg.org/uploads/documents/Kurdistan%20Oil%20and%20Gas%20Law%20English\\_2007\\_09\\_06\\_h14m0s42.pdf](http://www.krg.org/uploads/documents/Kurdistan%20Oil%20and%20Gas%20Law%20English_2007_09_06_h14m0s42.pdf)

<sup>21</sup> See International Tax and Investment Centre, 'Petroleum and Iraq's Future:

Fiscal Options and Challenges', fall 2004, <http://www.iticnet.org/publications/Iraq-book.pdf>

<sup>22</sup> Of the 25 companies that have signed, the author of this essay – a keen oil industry watcher – had only previously heard of six

<sup>23</sup> See eg PLATFORM, 'The Iraqi oil sector, privatisation and the UK's role', Submission to the Iraq Commission, 14 June 2007, [http://www.carbonweb.org/documents/iraq\\_commission.pdf](http://www.carbonweb.org/documents/iraq_commission.pdf); and Erik Leaver and Greg Muttitt, 'Slick Connections: U.S. Influence on Iraqi Oil', in Foreign Policy in Focus, 17 July 2007, <http://www.fpi.org/fpifxt/4399>

<sup>24</sup> The reason for this division lies in conflicting agendas within the US administration, which can broadly be divided into two camps, at least in so far as their agendas relate to oil. On one hand, the more ideological neoconservatives, who sought the spread of US values of democracy and economic liberalism in Iraq and the Middle East, seeing oil as simply the largest of many sectors to be privatised and liberalised. On the other side, the "power pragmatists" saw oil as the strategic interest in the region. The combination of these two strains of thought, together with the attacks of September 11 2001, created the political conditions that led to the war with Iraq. The two groups however differ in their vision for Iraq's oil, the former favouring a rapid and outright privatisation of the sector, open to all players in a free market, and the latter preferring dominance by the American and European oil super-majors through long-term contracts. Hence, differing responses to the KRG's rapid signing of deals with many small independent oil companies.

<sup>25</sup> Tabassum Zakaria, 'U.S. will complete mission in Iraq – Cheney', Reuters, 18 Mar 2008,

<http://www.alertnet.org/thenews/newsdesk/L18823307.htm>

Cheney had previously met in November 2007 with two KRG Deputy Prime Minister and Natural Resources Minister. Following the meeting, the KRG's legal adviser Jonathan Morrow commented, "Far from the US taking it as an opportunity to lean on the Kurds and ask them to withdraw from their position on Iraqi federalism in the oil sector, they're brainstorming with the Kurds on how to break the impasse in Baghdad". (Steven Mufson, 'Cheney and Kurds Meet About Oil', Washington Post, 1 December, 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/11/30/AR2007113002178.html>)

<sup>26</sup> Ben Lando, 'KRG PM: 'Progress' on oil law with Baghdad', 21 April, 2008,

[http://www.upi.com/International\\_Security/Energy/Briefing/2008/04/21/krg\\_pm\\_progress\\_on\\_oil\\_law\\_with\\_baghdad/2414/](http://www.upi.com/International_Security/Energy/Briefing/2008/04/21/krg_pm_progress_on_oil_law_with_baghdad/2414/)

<sup>27</sup> KRG Model PSC, published 6 September 2007, [http://www.krg.org/uploads/documents/KRG%20Model%20PSC\\_2007\\_09\\_06\\_h14m3s46.pdf](http://www.krg.org/uploads/documents/KRG%20Model%20PSC_2007_09_06_h14m3s46.pdf)

<sup>28</sup> Governments have three obligations in relation to human rights:

- To **respect** human rights: to refrain from violating rights;
- To **protect** human rights: to prevent violations of rights by third parties;
- To **fulfil** human rights: to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realisation of rights.

<sup>29</sup> For example, in the International Covenant on Economic, Social and Cultural Rights: "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures." (Article 2.1), [http://www.unhcr.ch/html/menu3/b/a\\_cescr.htm](http://www.unhcr.ch/html/menu3/b/a_cescr.htm)

<sup>30</sup> Prioritising actions does not involving prioritising certain rights over others

<sup>31</sup> Laws relevant to human rights and investment include those relating to labour, workplace safety, environmental protection, land, non-discrimination and other areas.

<sup>32</sup> "The GOVERNMENT guarantees to the CONTRACTOR, for the entire duration of this Contract, that it will maintain the stability of the legal, fiscal and economic conditions of this Contract, as they result from this Contract and as they result from the laws and regulations in force on the date of signature of this Contract. The CONTRACTOR has entered into this Contract on the basis of the legal, fiscal and economic framework prevailing at the Effective Date. If, at any time after the Effective Date, there is any change in the legal, fiscal and/or economic framework under the Kurdistan Region Law or other Law applicable in or to the Kurdistan Region which detrimentally affects the CONTRACTOR, the CONTRACTOR Entities or any other Person entitled to benefits under this Contract, the terms and conditions of the Contract shall be altered so as to restore the CONTRACTOR, the CONTRACTOR Entities and any other Person entitled to benefits under this Contract to the same overall economic position (taking into account home country taxes) as that which such Person would have been in, had no such change in the legal, fiscal and/or economic framework occurred". (KRG Model PSC, Article 43.3)

<sup>33</sup> The United Nations Commission on International Trade Law notes: ‘All business organizations, in the private and public sectors alike, are subject to changes in law and generally have to deal with the consequences that such changes may have for business [...] General changes in law may be regarded as an ordinary business risk [...]’. (UNCITRAL, ‘Legislative Guide on Privately Financed Infrastructure Projects’, New York, 2001, p.141, <http://www.uncitral.org/pdf/english/texts/procurem/pfip/guide/pfip-e.pdf>)

In OECD countries, stabilisation clauses are generally based on the principle that compliance with some new laws should be at the cost of the investor; OECD stabilisation clauses generally only relate to laws that are discriminatory toward the investor, and even in project-specific laws the costs and risks may be shared between government and investor. (Andrea Shemberg, ‘Stabilisation Clauses and Human Rights’, research project conducted for IFC and the United Nations Special Representative to the Secretary General on Business and Human Rights, 11 March 2008, p.29, <http://www.reports-and-materials.org/Stabilization-Clauses-and-Human-Rights-11-Mar-2008.pdf>)

<sup>34</sup> UN Commission on Human Rights, ‘Human Rights, Trade and Investment’, report of the High Commissioner for Human Rights, E/CN.4/Sub.2/2003/9, July 2003, p.21 [http://ap.ohchr.org/documents/dpage\\_e.aspx?s=115](http://ap.ohchr.org/documents/dpage_e.aspx?s=115)

<sup>35</sup> The stabilisation is not however symmetrical: the contracts provide that if future legislative changes benefit the investor, then the investor will be entitled to enjoy that benefit (KRG Model PSC, Article 43.5)

<sup>36</sup> The chilling effect may be especially significant in Iraq, where oil accounts for about 95% of government revenue - so that any compensatory adjustment in the economic terms of oil contracts could have a large impact on government budgets.

<sup>37</sup> Including on workers’ rights and women’s rights

<sup>38</sup> KRG Model PSC, Article 43.3

<sup>39</sup> Shemberg, *supra* note 33, p.11

<sup>40</sup> For example, Republic of Kazakhstan, Agip/BP/et al. Production Sharing Agreement dated 18 November 1997 in respect of the North Caspian Sea (Kashagan oilfield), Clause 40.2. See also Shemberg, *supra* note 33

<sup>41</sup> UNEP, Desk Study on the Environment in Iraq, 2003, p.49, [http://postconflict.unep.ch/publications/Iraq\\_DS.pdf](http://postconflict.unep.ch/publications/Iraq_DS.pdf)

<sup>42</sup> KRG Model PSC, Article 37.1

<sup>43</sup> The model contract (Article 23.9) also requires contributions by investors to an Environment Fund “for the benefit of the natural environment of the Kurdistan Region”. Whilst this will provide for positive investments in environmental improvement, it does not restrict the negative environmental damage of petroleum operations themselves.

<sup>44</sup> KRG Model PSC, Article 37.5

<sup>45</sup> “Upon the CONTRACTOR’s request, the GOVERNMENT shall provide and/or procure all Permits relating to the Petroleum Operations required by the CONTRACTOR to fulfil its obligations under this Contract” (KRG Model PSC, Articles 2.2); “The GOVERNMENT shall facilitate the performance of the Petroleum Operations by promptly granting to the CONTRACTOR any necessary authorisation, permit, licence or access right” (Article 43.6)

<sup>46</sup> KRG Model PSC, Article 16.11.

<sup>47</sup> KRG Regional Oil and Gas Law, Article 26 Third

<sup>48</sup> KRG Regional Oil and Gas Law, Article 53

<sup>49</sup> “Notwithstanding the other provisions of this Contract, the CONTRACTOR and the CONTRACTOR Entities shall not be liable to the GOVERNMENT or the Public Company or other government agencies, authorities or bodies, courts or political subdivisions for any damage or loss or claims of any kind resulting from its conduct of the Petroleum Operations unless such damage or loss is the result of wilful misconduct or a material failure to conduct Petroleum Operations in accordance with the terms of this Contract; provided, however, that such liability cannot result in the event of any omissions, errors or mistakes committed in good faith by the CONTRACTOR in the exercise of the powers and authorisations conferred upon the CONTRACTOR by virtue of this Contract, and further provided that in no event shall the CONTRACTOR and the CONTRACTOR Entities be liable for ... any loss, damages, costs, expenses or liabilities caused (directly or indirectly) by any of the following ...: (iv) special or punitive damages; or (v) other indirect damages or losses whether or not similar to the foregoing.” KRG Model PSC, Article 35.2

<sup>50</sup> KRG Model PSC, Article 42.1

<sup>51</sup> Susan Leubuscher, ‘The privatisation of law: International investment agreements as acts of pretended legislation’, *Transnational Dispute Management*, Vol.3, No.2, April 2006, pp.15-16

<sup>52</sup> KRG Model PSC, Article 43.1

<sup>53</sup> Arbitration tribunals tend to take the view that a foreign investor – as foreign ‘person’ – does not participate in or benefit from the public interest, or from the broader actions of the state, so must be protected by international law instead; in other words, the concept of public interest could be used to arbitrate between two nationals of the host state, but not between a national (or the state itself) and a foreigner. Stefan Kröll, ‘The Renegotiation and Adaptation of Investment Contracts’, *OGEL – Oil, Gas & Energy Law Intelligence*, vol.2, no.1, February 2004, p.36

<sup>54</sup> While international arbitration is used in the majority of cases, there are exceptions – including Iraq’s model contract of 1995, which specified Iraq as the ‘country place of arbitration’<sup>54</sup> (Frank Alexander, ‘Production sharing contracts and other host government contracts’, *Annual Institutes*, 46, 2000, chapter 20, Rocky Mountain Mineral Law Institute, reproduced in *OGEL – Oil, Gas & Energy Law Intelligence*, 3: 3, October 2005).

China’s 1982 (revised in 2001) offshore oil regulations (Article 24) specify that in case of disputes, ‘mediation and arbitration may be conducted by an arbitration body of the People’s Republic of China’ (Regulations of the People’s Republic of China on the Exploitation of Offshore Petroleum Resources in Cooperation with Foreign Enterprises, 23 September, revision of Regulations of 30 January 1982, reproduced in *World Petroleum Arrangements – Asia & Australasia*, 2004, Barrows, pp. 203–09).

Venezuela’s Organic Law of Hydrocarbons (Article 34) states that ‘All disputes shall be decided by the competent courts of the Republic, and no foreign claims shall arise for any reason’ (enacted 2 November 2002).

<sup>55</sup> “All awards shall be final and binding on the parties. By agreeing to arbitration under these Rules, the parties undertake to carry out any award immediately and without any delay (subject only to Article 27); and the parties also waive irrevocably their right to any form of appeal, review or recourse to any state court or other judicial authority” (LCIA Rules, Article 26.9, [http://www.lcia.org/ARB\\_folder/arb\\_english\\_main.htm#article26](http://www.lcia.org/ARB_folder/arb_english_main.htm#article26))

<sup>56</sup> LCIA Rules, Article 26.9

This is even more restrictive than the International Centre for Settlement of investment Disputes (ICSID), a purpose-built investment arbitration body, which also allows no appeal on points of law or interpretation, but does allow appeal on grounds of procedural violations (such as that the tribunal did not observe ICSID’s rules).

<sup>57</sup> Article 30.1 of the LCIA Rules states that “Unless the parties expressly agree in writing to the contrary, the parties undertake as a general principle to keep confidential all awards in their arbitration, together with all materials in the proceedings created for the purpose of the arbitration and all other documents produced by another party in the proceedings not otherwise in the public domain - save and to the extent that disclosure

may be required of a party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority.”

<sup>58</sup> According to the FAQ section of LCIA’s website ([http://www.lcia.org/FAQ\\_folder/faq\\_main.htm#lcia15](http://www.lcia.org/FAQ_folder/faq_main.htm#lcia15)): “Confidentiality is still generally regarded as one of the primary underpinnings of arbitration. Nobody who is not a proper party to an arbitration, or a legal representative of a party, may obtain information about pending or completed arbitrations from the LCIA. Our response to any such request will be that we cannot comment, irrespective of whether we have any knowledge of the matter about which we are being asked.”

<sup>59</sup> KRG Model PSC, Article 2.8 (c)

<sup>60</sup> “For its Petroleum Operations, the CONTRACTOR shall have the right in the Kurdistan Region to clear land, excavate, drill, bore, construct, erect, place, procure, operate, emit and discharge, manage and maintain ditches, tanks, wells, trenches, access roads, excavations, dams, canals, water mains, plants, reservoirs, basins, storage and disposal facilities, primary distillation units, extraction and processing units, separation units, sulphur plants and any other facilities or installations for the Petroleum Operations ... The CONTRACTOR shall have the right to select the location for these facilities.” KRG Model PSC, Article 17.5

<sup>61</sup> “The CONTRACTOR shall have the right in the Kurdistan Region to take or use any water necessary for the Petroleum Operations provided it does not damage any existing irrigation or navigation systems and that land, houses or watering points belonging to third parties are not deprived of their use.” (KRG Model PSC, Article 17.6)

This clause is somewhat ambiguous. The qualifier “their” (rather than “its”) implies that it refers to use of irrigation and navigation systems, rather than of water itself. Thus it appears that there is no restriction on depriving houses of drinking water.

<sup>62</sup> Kate Clark, ‘Corruption in Iraqi Kurdistan’, BBC News, 10 January 2008,

[http://news.bbc.co.uk/1/hi/programmes/crossing\\_continents/7178820.stm](http://news.bbc.co.uk/1/hi/programmes/crossing_continents/7178820.stm)

<sup>63</sup> Brian Padden, ‘Iraq’s Kurdish region struggles with power shortages’, Voice of America, 24 August 2007,

<http://www.krg.org/articles/detail.asp?lngnr=12&smap=02010200&mr=73&nr=19837>

<sup>64</sup> UNHCR, Statistics on Displaced Iraqis around the World, September 2007, [http://www.unhcr.org/cgi-](http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=SUBSITES&id=461f7cb92)

[bin/texis/vtx/home/opendoc.pdf?tbl=SUBSITES&id=461f7cb92](http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=SUBSITES&id=461f7cb92)

<sup>65</sup> KRG Regional Oil and Gas Law, Article 29 Third

<sup>66</sup> KRG Regional Oil and Gas Law, Article 29 Third

<sup>67</sup> KRG Regional Oil and Gas Law, Article 29 Second

<sup>68</sup> “The GOVERNMENT shall give the CONTRACTOR adequate advance notice of any Access Authorisation in respect of the Contract Area and shall not grant any Access Authorisation in respect of the Contract Area until it has taken into account any submissions made by the CONTRACTOR nor in such a way that there is undue interference with or hindrance of the rights and activities of the CONTRACTOR.” KRG Model PSC, Article 17.9

<sup>69</sup> For example, the Sindi/Amedi Block, awarded to Perenco in September 2007, covers 2,358 square kilometres (KRG press release, ‘KRG Natural Resources Ministry announces new Kurdistan Region petroleum contracts’, 2 October 2007)

<sup>70</sup> KRG Regional Oil and Gas Law, Article 29 Third

<sup>71</sup> Salman Banaci, ‘The Draft Iraqi Oil and Gas Law Analyzed’, Advisor (journal of the Association of International Petroleum Negotiators),

March 2007, No. 274, pp.10-12, <http://www.aipn.org/documents/advisor/AdvisorMarchfinal.pdf>

<sup>72</sup> James Brandon, ‘Oil revenue may provide more economic independence to Iraq’s Kurds’, Christian Science Monitor, 26 April 2006,

<http://www.gasandoil.com/goc/news/ntm62063.htm>

<sup>73</sup> For example: Kyle Madigan, ‘Iraq: Corruption Restricts Development In Iraqi Kurdistan’, Radio Free Europe / Radio Liberty, 29 April 2005,

<http://www.rferl.org/featuresarticle/2005/4/DA9D366C-C2C2-486F-A4D7-2EEBC0BB507E.html>; Michael Rubin, ‘Is Iraqi Kurdistan a Good

Ally?’, American Enterprise Institute Online, January 7, 2008, [http://www.aei.org/publications/filter.all.pubID.27327/pub\\_detail.asp](http://www.aei.org/publications/filter.all.pubID.27327/pub_detail.asp); Clark, *supra* note 62

<sup>74</sup> US State Department, Country Reports on Human Rights Practices - Iraq, 2006, Released by the Bureau of Democracy, Human Rights, and Labor, 6 March 2007, <http://www.state.gov/g/drl/rls/hrrpt/2006/78853.htm>

<sup>75</sup> UN Assistance Mission for Iraq, Human Rights Report, 1 April – 30 June 2007, pp.30-31,

[www.uniraq.org/FileLib/misc/HR%20Report%20Apr%20Jun%202007%20EN.pdf](http://www.uniraq.org/FileLib/misc/HR%20Report%20Apr%20Jun%202007%20EN.pdf)

<sup>76</sup> US State Department, Country Reports on Human Rights Practices – Iraq, 2007, released 11 March 2008,

[www.state.gov/g/drl/rls/hrrpt/2007/100596.htm](http://www.state.gov/g/drl/rls/hrrpt/2007/100596.htm)

<sup>77</sup> UN Assistance Mission for Iraq, Human Rights Reports: 1 January – 31 March 2007, pp.11-13,

[www.uniraq.org/FileLib/misc/HR%20Report%20Jan%20Mar%202007%20EN.pdf](http://www.uniraq.org/FileLib/misc/HR%20Report%20Jan%20Mar%202007%20EN.pdf); 1 April – 30 June 2007, p.12,

[www.uniraq.org/FileLib/misc/HR%20Report%20Apr%20Jun%202007%20EN.pdf](http://www.uniraq.org/FileLib/misc/HR%20Report%20Apr%20Jun%202007%20EN.pdf); 1 July - 31 December 2007, p.19

<http://www.uniraq.org/FileLib/misc/HR%20Report%20Jul%20Dec%202007%20EN.pdf>

<sup>78</sup> Meeting at Foreign and Commonwealth Office with PLATFORM and War on Want, 11 January 2007

<sup>79</sup> Q&A with Ashti Hawrami. KRG website, ‘KRG Natural Resources Minister responds to comments on draft Kurdistan Petroleum Act’, 22

August 2006, <http://web.krg.org/articles/detail.asp?mr=95&lngnr=12&nr=13070&smap>

<sup>80</sup> Email from Khaled Salih, 18 April 2008

<sup>81</sup> Kamil Mahdi, ‘Iraq’s Oil Law: Parsing the fine print’, in World Policy Journal, summer 2007, p.17,

[www.mitpressjournals.org/doi/pdf/10.1162/wopj.2007.24.2.11](http://www.mitpressjournals.org/doi/pdf/10.1162/wopj.2007.24.2.11)

<sup>82</sup> See eg Eric Herring and Glen Rangwala, *Iraq in Fragments: The Occupation and its Legacy*, London: Hurst & Co, 2006, p.97

<sup>83</sup> UN Assistance Mission for Iraq, Human Rights Report, 1 November - 31 December 2006,

<http://www.uniraq.org/FileLib/misc/HR%20Report%20Nov%20Dec%202006%20EN.pdf>

<sup>84</sup> International Crisis Group, ‘Iraq and the Kurds: Resolving the Kirkuk crisis’, Middle East Report No.64, 19 April 2007, p.4

<sup>85</sup> UNAMI July-December 2007, *supra* note 77

<sup>86</sup> “If you look at many other economies in the world, particularly the oil-rich economies, many of these places are quite challenging countries in which to do business. Frankly, if you can successfully operate in the Niger Delta, that is a very different benchmark from imagining that Basra needs to be like London or Paris. My sense is that many of the oil companies are very eager to come in now, and actually what they’re waiting for is the hydrocarbon law to be passed and various projects to be signed off. That is what is causing them to pause, rather than the security position.” (David Smith, ‘Oil giants are poised to move into Basra’, *The Observer*, 24 February 2008, <http://www.guardian.co.uk/world/2008/feb/24/iraq.oil>)

<sup>87</sup> In the Niger Delta, oil companies have devastated the local environment, including fishing and farming grounds, and poisoned the air with constant gas flares just metres from villages. Peaceful protests by local communities have repeatedly been met with violence by Nigerian forces, often called in for assistance by the oil companies. During the early 1990s, thousands of the Ogoni people were killed, following their high-profile campaign against Shell. An infamous leaked memo from an army commander talked of plans to carry out “wasting operations” to allow Shell operations to recommence. The oil companies have also been implicated in supplying weapons, transport and other equipment to the armed forces,

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who used them against protesters. As government and oil companies have failed to improve the situation in the Delta, protests have shifted from unarmed to armed, and now there is a murky borderline between political and criminal armed groups, as the Delta has descended into anarchic violence. See eg Human Rights Watch, 'The Price of Oil - Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities', January 1999, <http://www.hrw.org/reports/1999/nigeria/>; Ike Okonta and Oronto Douglas, *Where Vultures Feast – Shell, Human Rights and Oil in the Niger Delta*, Sierra Club, 2001; Andrew Rowell, James Marriott and Lorne Stockman, *The Next Gulf – London, Washington and Oil Conflict in Nigeria*, Constable & Robinson, 2005.

<sup>88</sup> "For people who are shouting that this is illegal, our advice to them is, 'Shut up.'" (Jim Landers, 'Hunt Oil deal could help shape Kurds' future', The Dallas Morning News, 24 October 2007,

<http://www.dallasnews.com/sharedcontent/dws/news/world/stories/102107dnintkurdoil.3850ac1.html>)

<sup>89</sup> Middle East Economic Survey, 15 October 2007, 'KRG □ Baghdad Oil Licensing Standoff Shifts Up A Gear Over Geography Of Hunt Oil PSC', <http://www.al-ghad.org/wordpress/wp-content/uploads/2007/10/071011-interview-with-issam-chalabi-on-krh-hunt-oil-mees.pdf>; Landers, *supra* note 88

<sup>90</sup> US Department of Energy, Energy Information Administration, Country Analysis Brief – Iraq, June 2006

<sup>91</sup> 'The New Anatolian,' Kurds challenge Kirkuk oil rights', 30 November 2007, [www.thenewanatolian.com/tna-29855.html](http://www.thenewanatolian.com/tna-29855.html); Ben Lando, 'Kirkuk project battle heats up', UPI, 28 November 2007,

[www.upi.com/International\\_Security/Energy/Analysis/2007/11/28/analysis\\_kirkuk\\_project\\_battle\\_heats\\_up/7804](http://www.upi.com/International_Security/Energy/Analysis/2007/11/28/analysis_kirkuk_project_battle_heats_up/7804)

<sup>92</sup> Lando, *supra* note 91

<sup>93</sup> Revenue Management and KRG Draft Petroleum Act, KURDISTAN REGIONAL GOVERNMENT - Office of the KRG Minister for Natural Resources, 22 October 2006, <http://www.krg.org/articles/detail.asp?smap=02010100&lngnr=12&asn=&anr=18699&rmr=223>

<sup>94</sup> KRG Regional Oil and Gas Law, Article 52 First

<sup>95</sup> Just as best practice is now that it is necessary to publish contracts, to allow verification of amounts of payments, the publication also of details of development plans would be the logical next step, as they contain economic data vital to modelling project cashflows

<sup>96</sup> Unless "details" is interpreted in an extremely narrow way. When asked for the details specified in the law, the KRG's official spokesman said in an email that "the KRG has published information required by law on our official website". (Email from Khaled Salih, 3 April 2008) All that is given on the website are announcements of the signing of contracts, together with some vague economic principles.

<sup>97</sup> Email from Mia Early (Head of Investment Promotion, Kurdistan Development Corporation), 14 June 2006

<sup>98</sup> IMF, 'Guide to Resource Revenue Transparency, 2007', p.14, <http://www.imf.org/external/pubs/ft/grrt/eng/060705.htm>

<sup>99</sup> U.S. Department of Treasury, 'Statement Concerning the Extractive Industries Review', JS-1841, August 2, 2004,

<http://www.treasury.gov/press/releases/js1841.htm>

<sup>100</sup> Dow Jones, 'Iraq Kurdish Government To Publish Details Of 5 Oil Deals Soon Min', 3/22/2007

<sup>101</sup> UPI, 'Reliance Iraq oil signing bonus \$15M', 7 November 2007,

[http://www.upi.com/International\\_Security/Energy/Briefing/2007/11/07/reliance\\_iraq\\_oil\\_signing\\_bonus\\_15m/8330/](http://www.upi.com/International_Security/Energy/Briefing/2007/11/07/reliance_iraq_oil_signing_bonus_15m/8330/)

<sup>102</sup> KRG Model PSC, Article 4.5

<sup>103</sup> Article 55 of the KRG Regional Oil and Gas Law bars public officers (and their spouses and children) from holding shares in companies with interests in oil and gas fields. The fear is that such interests may be acquired indirectly, covertly or through other allies, friends and relatives. Indeed, there seems to be little other possible motivation for including such a clause in the contract.