

# Analysis of Iraq's draft oil law

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Iraq's Cabinet has approved a Hydrocarbon Law which will allow foreign companies control over Iraq's oil for the first time in 35 years.

Foreign oil companies and the British and US governments have been reviewing and commenting on the law for the past 8 months, since July 2006. Iraqi Parliamentarians are seeing it for the first time this month.

The law allows Iraqi oil to be developed by foreign companies under long term contracts which will give them exclusive rights. These are likely to be contracts known as Production Sharing Agreements. Due to the surrounding controversy, the term Production Sharing Agreement has been dropped in favour of Exploration and Risk Contracts. ERCs are thought to be the equivalent of PSAs under a different name.

The following concerns have been raised:

- **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 – overriding domestic law. Iraq will not have the power to intervene using its own judicial system.
- **Parliament By-passed** With revenues (article 11) as with contracts, there is no provision for Parliamentary scrutiny. Fields such as West Qurna and Majnoon could each alone account for up to 10% of all government revenue. As such, the terms of these developments should be subject to Parliamentary debate as they are in many other countries.
- **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 newly created Federal Oil and Gas Council will decide which contracts are accepted. The Prime Minister, in consultation with the main parties is likely to decide its composition. All decisions on the fairness of the contracts and whether they serve Iraqis' interests will be completely removed from public or 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 be sectarianised, leading to regional and sectarian agendas impacting on national economic policy. Iraqi oil union leader Hassan

Jumaa comments: 'We believe this law to be more political than economic; it threatens to set governorate against governorate and region against region'.

- **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.
- **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 .