This is part one of a research work commissioned by the Natural Resource Governance Institute-NRGI (USA) as part of the preparation for NRGI's strategic plan for interlinked and complementary interventions in Iraq during the upcoming three years.
The Executive Summary of the study was posted on this IBN website and accessible through the following link:
http://www.iraq-businessnews.com/2015/05/26/expert-blog-iraqi-extractive-industry/

The remaining three parts will be posted on this website at two weeks intervals.

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PART ONE
Legal and Institutional Framework Governing Extractive Industry Sector in Iraq

Introduction

The purpose of this part of the study is to:

- Review policies and laws that govern the extractive sector, their coherences and overlaps;
- Review the roles of institutions that implement the laws governing extractive sector, their consistencies and overlaps.

To do the above stated reviews many questions have to be explored thoroughly such as the structure of the extractive industry activities in the country; their significance for the national economy; their management within the sector ministries; what are the existing legal modalities and their status that govern these industries; what is the process for proposing, drafting, debating and promulgated the related legal instruments; what are the entities or institutions that play critical role in this legal process; how such entities interact with each other in the due process; to what extent and at what degree these entities cooperate or otherwise; are there any overlapping or inconsistencies and why; what are the implementation and oversight mechanisms to ensure coherence and compliance; what are the policies and the levels of decision making and how and whether these policies are harmonized to prevent conflict, mismatching and overlapping. These are only few question-areas which this study will attempt to address.

Legal frameworks, institutional structures and policies governing Iraqi extractive sector are complex, multi-layered, suffer from ambiguities and, more often than not, highly politicized. Expectedly, that had its bearings and implications on the policy formulation, coherence and

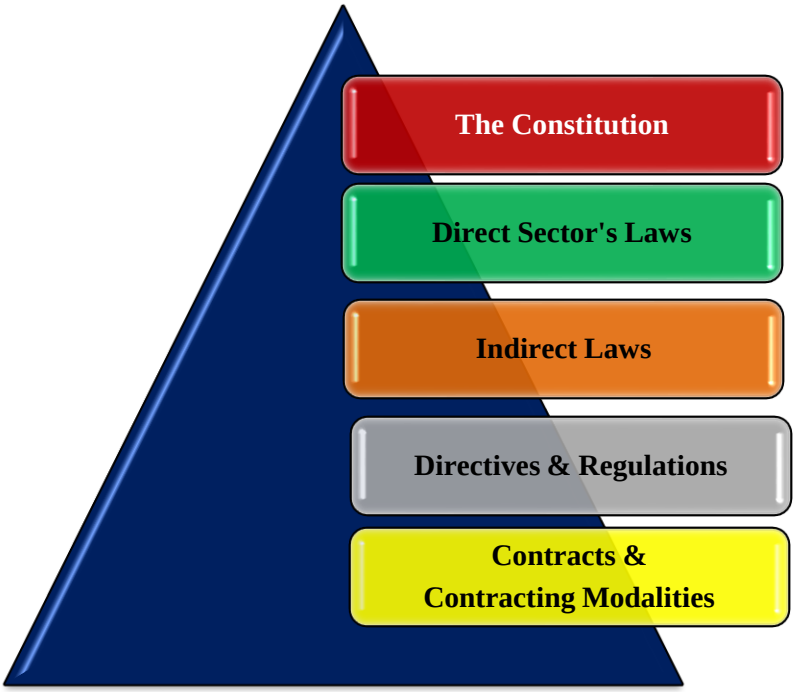
consistency on one hand and the inter-institutional relationship and cooperation, or lack of it, in the implementation and enforcing of legal instruments on the other.
Extractive activities in the country are divided between two sector ministries: Ministry of Oil-MoO and the Ministry of Industry and Minerals-MIM. Economically speaking, most of the extractive industry in the country falls within the domain and jurisdiction of the MoO. And within the MoO petroleum (oil and gas) upstream sub-sector (exploration, drilling, development and production) occupies, so far, both priority and importance for very obvious reasons. It has the dominant contribution to trade and balance of payments; it generates the needed revenues; it has significant share in state expenditures, and it attracts foreign direct investors/IOCs.
No surprise, therefore, that important segment of the legal regime governing the extractive industry is primarily about the extractive petroleum sub-sector.

For the purpose of clarity and proper understanding it is vital to make distinctions between and identification of legal instruments (laws, directives etc.,) institutions (formal/official entities) and policies (declared, assumed, adopted, etc.,) in the context of the Iraqi extractive sector.

At the outset it is reasonable to assert that while it is rather possible to identify and highlight with high degree of confidence the existence of legal instruments and related institutional structures and frameworks, it might not be the case when it comes to policies. The reason can be explained by the fact that both instruments and institutions or entities possess the feature of material existence *de-jure*; while policies could be assumed or perceived or imagined unless they are formally formulated and documented by material evidence such as white paper, plan, strategy, official statement and alike. Hence, there is a reasonable degree of fluidity, impreciseness, overlapping and intertwines when it comes to identify and analyze policies of different layers of authority regarding the extractive industry in the country.

The Pyramid of the Governing Frameworks
The following chart exhibits the pyramid of various constitutional and legal instruments that constitute the main foundations for managing and governing the extractive industries in the country, with direct relevance mostly to petroleum.
The pyramid helps also to understand policies, development and regulatory frameworks impacting their formulation and execution which is composed of many levels each has distinct authority and related legal instruments and institutions.

Chart 1:
The Pyramid of Legal and Regulatory Frameworks for Upstream Petroleum



I- The National Federal Level

At the top of the pyramid stands the federal current Constitution 2005 which provides the fundamental principles and constitutes the heart of the mandatory framework. To begin with the Constitution asserts, in Article 13, it is the preeminent and supreme law in country and shall be binding in all its parts without exception. No law that contradicts this Constitution shall be enacted, and any text in any regional constitutions or any other legal text that contradicts this Constitution shall be considered void.

With regards to petroleum, the Constitution has specific provisions that should be observed fully and emphatically.

In Article 111 the Constitution asserts that, "Oil and gas are owned by all the people of Iraq in all the regions and governorates."

This article constitutes a powerful *collective ownership* principle, which has vital ramifications associated with property / ownership rights. But there is an extreme contravening different interpretation, which advocates *local ownership* (in the regions and governorates) of these natural resources wherever they exist.

Based on such different understandings of this article and other articles of the Constitution, as reviewed hereunder, there appears two distinct school of thoughts, each with different pursued and advocated policies ; the federalist, which interpret the Constitution to strengthen the federal state authorities (legislative, executive and judiciary) and the regionalist, which gives different and opposing interpretation aiming at weakening the federal authorities by giving more powers to regional and provincial authorities and make such authorities superior to the federal one.

Article (112: 2) comprises another core important principle, the 'highest benefit to the Iraqi people'. Again different interpretations have been advanced: one suggests sustainable development that serves the welfare functions for current and future generations of the Iraqi

people; while the other looks to the "revenue" stream regardless of the cost incurred or the magnitude of such revenue. This *highest benefit* principle constitutes another core principle enshrined in the Constitution that should be observed fully. But again contradicting interpretations produce contradicting polices on what constitutes the best interests to the Iraqi people; how to attain it and through what modality.
A third but an operational principle, which is explicit in (Article 112:2), mandates or obliges, "The federal government, with the producing regional and governorate governments, shall together formulate the necessary strategic policies to develop the oil and gas wealth ". This federal-Regional and Provincial-*FRP participatory co-management* principle meant to ensure national consensus for national policies and strategies for petroleum endowment in the country. In practice, the observance to and compliance with this principle has been very weak ranging from total disregards (by KRG) to much less than satisfactory (by MoO).

Other provisions in the constitution cause further rifts and sometimes very contradictory understandings and interpretations.
The term "present fields" (Article 112:1) has been intensively emphasized and was a center-focus of most writing on the applications and implications of this sub-article. The *regionalist view* argues for confining and limiting the role of the federal authority to "present fields" with a cut-off date associated with the date of adopting the Constitution. The *federalists*, on the other hand, hold much wider view by highlighting that the term "present fields" is only part of the federal authority prerogatives and it has a specific purpose to "ensures balanced development in different areas of the country" as stated in the said sub-article. The reference, in the same sub-article, to a specific law regulating these matters gives more credit and validity to the federalist view.

Article 110 lists the "exclusive authorities" of the federal government, Article 114, addresses the "shared competencies" between the federal authorities and regional authorities and gives priority to the law of the regions and governorates in case of dispute and Article 115 asserts that all powers not stipulated in the exclusive powers belong to the authorities of the regions and governorates. Finally, Article 121:2 grants regional power the right to amend the application of the national legislation within that region.
These articles constitute the main pillars for the regionalists since, basically, they do not mention petroleum (oil and gas). This linguistic and textual interpretation ignores, the federalists argue, the substance of some of the listed exclusive authorities that deals directly with petroleum matters such as "foreign sovereign economic and trade policy"; "the national budget of the State"; "the general and investment budget bill."; "fiscal and monetary policies" among others.

Moreover, the Constitution gives each region, according to its Article 120, the right to "adopt a constitution of its own that defines the structure of powers of the region, its authorities, and the mechanisms for exercising such authorities, provided that it does not contradict this Constitution." (Underlined added by this author).
The conformity with the federal Constitution that is emphasized at the end of the said article carry significant weight though it has been overlooked by regionalism advocates.

Available information indicates that KRG prepared its draft constitution and that was presented to the KR parliament in its previous term. The draft was debated but no agreement was reached.[1]

The above narratives clearly indicate to serious differences of opinion that could be attributed to the following reasons:

First, out of omission or intention the way in which the Constitution was drafted offers good degree of vagueness and ambiguity that permit different and even contradictory interpretations;

Second, the attitude, selective vs. holistic, and scope of interpretation could also deliver different understanding.

Third, political orientations, federalism vs. regionalism, and system of government, centralization vs. de-centralization, have their effective impacts on how to interpret the Constitution to serve specific political objectives;

Finally, ethnic aspirations, especially from the KRG side, for separation from Iraq or changing its political order from federation to confederation could have even much deeper drive for biased interpretations and implications.[2]

The very apparent and publically known diverged understanding and interpretation of the supreme law of the country, the Constitution, has left its marks on other legal instruments, on the related institutions and also on the policies for the extractive upstream petroleum activities.

At this federal /national level, three distinct institutions have vital role in the development, policies and legal frameworks governing the extractive industry activities. These institutions are related to the three branches of authority:

- the Executive- represented by the Council of Ministers-CoM and related sector ministries;
- the Legislative-represented by the Federal Parliament and its specialized Committees;
- the Legislative- represented by Federal Supreme Court-FSC.

The role of the Executive and Legislative authorities and their relationship shall be dealt with further below when discussing legal instruments at sectoral and operational levels, while the following space is to address the role of FSC.

The Constitution asserts that FSC is independent judicial body, financially and administratively (Article 92); has jurisdiction over **"**Interpreting the provisions of the Constitution", "Settling matters that arise from the application of the federal laws, decisions, regulations, instructions, and procedures issued by the federal authority", "Settling disputes that arise between the federal government and the governments of the regions and

[1] As per the time of writing (30 March 2015), no reference to KRG constitution appears on KRG website.

[2] KRG, through Clifford Chance LLP-London, hired Professor James Crawford, who delivered legal opinion on "The Authority of the Kurdistan Regional Government over Oil and Gas under Constitution of Iraq" on 29 January 2008.

governorates, municipalities, and local administrations", "Settling disputes that arise between the governments of the regions and governments of the governorates», "Settling competency disputes between the federal judiciary and the judicial institutions of the regions and governorates that are not organized in a region" and "Settling competency disputes between judicial institutions of the regions or governorates that are not organized in a region" (Article 93).
The composition of FSC members, their number and method of their selection and Court work shall be determined by a law enacted by a two-thirds majority of the members of the Council of Representatives (Article 92:2).

It is worth noting that FSC has been functioning though its draft law is still pending in the Parliament; the first reading of the draft law by the Parliament was only done on 21 January 2015.[3]
Three cases of direct relevance to our subject matter are briefed hereunder as examples on the Court deliberations and how it was perceived.
In December 2009, FSC was asked by the then Member of Parliament-MP, Shetha Musawi, to invalidate the Rumaila oilfield contract that was signed earlier.[4] After many postponements the case was dismissed in August 2010 because the plaintiff did not appear before the Court for not been able to pay an estimated $257,000 to cover the cost for independent oil experts to be brought in from abroad, to assess the contract, as requested by the Court.[5]
Though the case was dismissed on technical grounds- not on the substance and merits of the case, it and other efforts-including this author articles, have forced the ministry of oil to change the signature bonus for the first bid round from interest-bearing loans into unrecoverable amounts though at reduced value.

A second case was filed by the government to disapprove amendment to Provincial Law No. 21 of 2008 that was voted by the Parliament on 23 June 2013. The amendment to the said law have not be promulgated yet, but again politics played its role when the current new Prime Minister, Dr. Haider Al-Ebadi, ordered to "take the necessary measures" to end the appeal submitted by the former PM and "to re-examine" the amendments. Accordingly, the Council of Ministers -CoM decided on 3 Feb 2015 forming a special committee chaired by the PM, or whom he delegates, to prepare a "draft amendment to Law 21" and requests the provinces to refrain from taking any action until the new amendments enter-into-force.[6]
The third case was brought by the oil ministry in August 2012 on the legality of the KRG's oil activities, but KRG failed to attend or make submission before the Court. In May 2014 the MoO launched another legal action against the KRG independent export of oil. The Federal Court made a statement in June 2014 saying it cannot grant the oil ministry an injunction to ban Kurdish exports through Ceyhan because KRG still refrains from attending the 2012 case.

[3] http://www.parliament.iq/Laws.aspx
[4] http://www.iraqoilreport.com/politics/oil-policy/new-iraqi-oil-deals-challenged-in-court-3422/?utm_source=Email Update Subscribers accessed 16 December 2009
[5] http://www.iraqoilreport.com/oil/production-exports/rumaila-deal-clears-legal-hurdle-4916/?utm_source=rss accessed 20 August 2010
[6] http://cabinet.iq/ArticleShow.aspx?ID=5758 accessed 3 February 2015.

Ironically, while KRG accuses the Federal Court for been "politicized" and thus refused to make any submission to the Courte, it celebrated the Court' June decision as declared victory for KRG.[7]

II- Direct Sectoral Laws

The second level includes instruments/ laws specific to the extractive industry sector, which mostly cover petroleum upstream subsector and comprise two broad categories of laws.
The first category comprises all laws that existed prior to the adoption of the Constitution but remain 'in force', until such laws are annulled or amended (Article 130); hence this article is considered as important transitional validation principle.
These laws are Law 80 of 1961 (promulgated 99.5% of concessions areas); laws number 97, 123 and 130 of 1967 regarding Iraqi National Oil Company-INOC (which was dissolved in 1987); MoO Law 101 of 1976 and its amendments, and Law 84 of 1985 for Preservation and Protection of the Hydrocarbon Endowment. The latter Law provides important detailed procedural and operational provisions pertaining to planning, policy and contractual modality for upstream development projects.

While the federal government observes the above laws, though it does not adhere fully to them, KRG consider them outdated and irrelevant despite their constitutionality and validity status.

This second category comprises "drafts" of laws that have been proposed post adoption of the Constitution and, in fact, some are mandated by the Constitution. This category includes the federal oil and gas law- FOGL[8], INOC law[9], MoO new law, Revenue Sharing law/ and the Public Commission to Audit and Appropriate Federal Revenues law.

Different political agendas had contributed to producing, since early 2007 at least four different versions of FOGL, which itself comprise elaborated provisions relating to other laws creating what became known the "package of laws".
Accordingly and consequently all of such laws were captured by political gridlock since early 2007, thus none of them enacted yet; and much has been written about them. In the mean-time both federal government and KRG each went on its own way by concluding numerous contracts and deals unhindered by FOGL stalemate, yet they, especially KRG, call for the necessity to promulgating it!!.
It is worth noting in this juncture that while KRG had resisted the conclusion of FOGL, it drafted its own regional oil and gas law in 2006 and enacted it in 2007 (Oil and Gas Law of

[7] MEES, Vol. 57. No. 27, 04 July 2014
[8] For further analysis of FOGL Feb 2007 draft see Ahmed Mousa Jiyad, "Key questions over the Oil and Gas Law in Iraq", International Journal of Contemporary Iraqi Studies (IJCIS) 2:1, pp.7-30, doi:10.1386/ ijcis.2.1.7/1. 2008 (Intellect books, UK)
[9] More analysis on INOC Law, see Ahmed Mousa Jiyad, "Remarks on the Proposed INOC Law", MEES v52:n40, 5 October 2009. Ahmed Mousa Jiyad, "INOC Law: Shaky Premises and Doubtful Prospect", MEES v54:n20, Monday 16 May 2011.

Kurdistan Region- Iraq Law No. (22) 2007; hereinafter refer to as KOGL)[10]. Moreover, actions and policies pertaining to petroleum matters in KRG are premised on the regions legal instruments not the federal ones. While the KRG Minister of Natural Resources asserts its law is "fully in line with Iraq's permanent federal Constitution of 2005"[11], but again, the constitutionality of the KRG oil and gas law has not been formally recognized by the federal authority since some provisions in the said law contravene the Constitution.

The above clearly indicates that the extractive petroleum in the country is managed by two different legal regimes, causing further fragmentation, overlapping and disharmony.

Revenue sharing matters and related law have fallen victims of political stalemate and lack of cooperation between the executive and legislative authorities within the federal government. The government through CoM approved in September 2011 a draft law for the "Public Commission to Audit and Appropriate Federal Revenues", which was verified by the State Consultative Council-SCC (*Majliss Shaura Aldawlah-MSA).* The draft law was referred to Parliament in compliance with the Constitution' Articles 61:1 and 80:2, but so far that draft law has not been dealt with by the Parliament.[12]

Entities responsible for and having role in legislating, executing and overseeing petroleum upstream (extractive) activities are many dividing between federal and regional levels on one hand and between the legislative and executive branches of authority on the other hand.
On the federal executive level the hierarchy of involved entities comprises the Council of Minister-CoM at the top, with its own ad-hoc "Energy Committee" and Prime Ministers' Advisory Commissions- PMAC, and the Ministry of Oil. According to the Constitution and official process the MoO prepares draft laws and submits them to the Cabinet for approval. The Cabinet usually refers the approved draft to the SCC/*MSA* for legal examination and review; and then sends it to the Parliament for enactment in accordance with the parliamentary process.
At the federal legislative level the involved entities are the Parliament, its Oil and Energy Committee-OEC and to some extent the Legal Committee. Draft of laws received from the Cabinet are usually tabled for the first reading (without debating the draft law itself); afterward it is referred to the OEC (and to the Legal Committee if needs be) for an in-depth analysis and assessment. When OEC completes its review a second reading is tabled, and voting on the draft law takes place upon the completion of the second reading. The approved law is then referred to the President of the Republic and the law enters-into-force from the date of its publication on the Official Gazette (*AlWaqee aliraqia*.)

The relationship between the two branches of government, the executive and legislative, is very critical in the enactment process of the laws. Many draft laws and after few years are still pending with the Parliament due to the acrimonious relationship between these two branches

[10] Fouad Al-Ameer has written extensively in Arabic on KRG oil issues such as: KRG and Oil and Gas Law, January 2008; What is new in KRG oil and gas contracts and the Region's oil policy, June 2013
[11] http://mnr.krg.org/images/FinancialReports/MNR-KRG%20Annual%20Financial%20Report%202013.pdf
[12] CoM meeting nr 44 dated 6 Sept 2011 http://www.goi-s.com/view.1164/ accessed 6 September 2011

of government, to the stalemate and the dysfunctional political order, and to the organizational procedures inside the Parliament.
The above demarcation between the authorities, roles and functions of both the executive and legislative branches pertaining to laws are not without ambiguities. The cause of such confusing affairs is the wordings and terms used in Article 60 of the Constitution. The said article in its (first sub-paragraph) mandates the President of the Republic and CoM to present 'draft laws', and (in its second sub-paragraph) authorizes 'ten members of the Council of Representatives or by one of its specialized committees' to present 'proposed laws'.
The terms '*draft laws*' and '*proposed laws*' created rift and different interpretation between the executive and legislative branches, which were used to camouflage the positions and attitude of the main political blocks in the country.
The above differences in interpreting Article 60 became so apparent in July-August 2011 when two different versions of FOGL were submitted, one was suggested by OEC and the other by MoO adopted by CoM[13], adding further confusing and causing more rifts in the political environment that persisted until the time of writing this paper.

More often than not, the relationship between the two most important regulatory bodies- the MoO and OEC is affected by the political situation in the country since the chairman of the latter should, according to the established political order, not be from the same political block of the former. Therefore it is normal to hear very different views among the members of OEC on the same issue, reflecting their political affiliations. Moreover, the same members sometimes express contradictory positions depending where their political block stands on the same issue at different times, such as election times or tensions between these dominating political blocks.
Therefore, within post 2003 political order oil related laws are treated and perceived by the politicians as "political" instead of "legal" instruments, hence without compromises and "political horse-trading" the possibility of promulgating upstream petroleum law becomes complex.

III- Indirect Sector-Related Laws

This group comprises other laws of particular relevance and could have direct and indirect implications for upstream petroleum sub-sector. Among them are: the annual State Budget laws; Law 3 of 1997 for the Protection of the Environment; Income Tax Law 113 of 1983 (and its amendment by Law 19 of 2010) and Provincial Law 21 of 2008 (and its 2013 amendment, though not legally final yet).
The above mentioned laws deal with fiscal and revenue issues, which are addressed in other parts outside this study. Also Public Company Law 22 of 1997 has relevance for state oil

[13] For discussions of both versions of FOGL see Ahmed Mousa Jiyad, "Brief Review of the Federal Oil and Gas Law Proposed by the Ministry of Oil." http://www.iraq-businessnews.com/2011/08/30/new-draft-oil-law-expert-analysis/ posted 30 August 2011; Ahmed Mousa Jiyad, "Preliminary Remarks on the New Version of Oil Law (Proposed by the OEC)", http://iraqog.com/oil/oillaw/jiyadaug2011.htm posted 20 August 2011. The Arabic version published on *Tareeq AlSha'ab* Newspaper-Baghdad 3 Sept 2011 http://www.iraqicp.com/2010-11-21-18-06-01/6515-2011-09-03-21-09-30.html

producing regional companies under the tent or the domain of the oil ministry such as SOC, NOC, MdOC, and MOC.
Moreover, the following laws have some implications on non-petroleum extractive activities: Public Company Law 22 of 1997 and Investment Law 13 of 2006, which created the National Investment Commission-NIC and the Provincial Investment Commissions.

Entities involved here are many but basically includes the Council of Ministers, Ministry of Finance, Ministry of Planning, Ministry of the Environment and the Ministry of Industry and Minerals-MIM.
On the legislative side the involved entities are the Parliament and its committees for Finance, Legal, Region and Provinces/Governorates, Economy and Investment, Health and Environment.

As shall be dealt with in other parts of this study annual State Budget laws and Provincial Law 21 of 2008 (and its 2013 amendment, though not legally final yet) have been causing much infighting that caused serious delays in promulgate them.

IV- Directives, Instructions and Regulations

These are usually fall within the prerogatives of and issued by the executive authorities for operational and implementation purposes. Though they do not need the formal approval of the legislative power, the latter has, through its oversight function, the authority to impact these directives.
So far very little controversies surfaced concerning any specific directives.

Two important directives have significant fiscal implications worth mentioning here though will be addressed further in other parts of this study; the first is related to the application of corporate income tax on IOCs and the second is related to earmarking additional funds for local purposes and consider them as petroleum cost.
State Consultative Council/ *Majliss Shaura Aldawlah'* Instruction No. 5 of 2011, 'Instruction for Facilitating the Enforcement of Law of Income Tax Imposition on Foreign Oil Companies to Work in Iraq' applies the 35% tax rate.

The second important development is the directives by the Energy Committee/ Council of Ministers to allocate $5 million annually for each service contract to the hosting governorate.[14]

V- The Contracts

[14]This was circulated by MoO/ PCLD directive on funding provinces number 226 dated 3 February 2014 referring to decision taken by the Energy Committee/CoM meeting number 23 on 23 December 2013 to allocate $5 million annually for each service contract to the hosting governorate, and this amount is part of the recoverable petroleum cost. The governorates use this fund for their social and services purposes; and there is no need for a new financial allocation.

Upstream petroleum contracts are important and significant legal instrument governing the relationship between the host government and the foreign oil companies.
The federal government adopted a long term service contract model and so far it utilized five versions. Analytically, this basic model is hybrid in structure and nature through accommodating some features of the traditional conventional service contracts combined with some features from the production sharing contracts.
From operational and transparency perspectives all such contracts, except one, were concluded through elaborated four bid rounds with a considerable degree of transparency of the biding process which takes a year of preparation for each bid round.
Entities involved in the biding process leading to concluding these contracts are the state oil companies, the ministry of oil and the Cabinet. The ministry of oil claims that representatives from the concerned provincial governments had been consulted and also participated in the phases of the bid rounds.
Also oil ministers made elaborated submissions before the Federal Parliament especially during the first two bid rounds to explain the main components of the contract, the concerned petroleum fields, the fiscal terms, the expected revenues etc.,.
The final approval and validation of the concluded contracts commence when the Cabinet approves them. The Parliament plays no role in the validation process; such practice, in the view of this author, is unconstitutional as these contracts should be approved by the Parliament.[15]

The government appeared to have adopted a big-push policy for the upstream petroleum aiming at increasing the country's oil production from the contracted oilfields to 12.3 million barrels per day (mbd) by 2017. Proven reserves of these fields are estimated to be 67 billion barrels.
The above policy was criticized on many grounds that eventually compelled the ministry of oil to renegotiate the production targets significantly and amended the related contracts.

KRG did also adopt similar big-bush policy by signing more than 50 production sharing contracts within relatively short period. Currently there are 42 operating fields in the Region.[16] The target (published in August 2013) is to reach a production capacity of 1 mbd in 2015 and 2 mbd in 2019.[17]
Unlike the open bidding process used by the federal government, KRG went for direct negotiation with selected IOCs in absence of transparency for the public before concluding the related contracts. The selected IOC (or consortium) for each block is made by the Regional Oil and Gas Council- a five man senior team from KR Council of Ministers.[18]

[15]For further review and analysis of the Iraqi service contracts see Ahmed Mousa Jiyad, The Iraqi Chapter in Eduardo Pereira and Kim Talus: Upstream Law and Regulation: A Global Guide. Globe Law and Business, UK. May 2013. PP. 445-467, http://www.globelawandbusiness.com/ULR/sample.pdf ; Ahmed Mousa Jiyad, Preliminary Assessment of the GSDPC. MEES-v52n30, July 2009.
[16] http://mnr.krg.org/index.php/en/the-ministry/contracts/pscs-signed accessed 4 February 2015
[17] http://mnr.krg.org/index.php/en/oil/vision accessed 4 February 2015.
[18]TO & GY, The Oil & Gas Year- Kurdistan Region of Iraq 2009. P. 28; and according to Article 4 of KOGL.

The above KRG oil expansion, policy and contracts were pursued without any coordination with the federal government, contrary to the constitutional prerequisites; thus, federal government considers all KRG contracts are illegal and acted accordingly.[19] The MoO, in May 2009, refuted strongly the opinion of Mr. Van Meurs by outlining its basic flaws and irrelevance to the actually adopted long term service contracts.)

This has been a source of continuous contention between the two governments for years, with no feasible solution on the horizon! Moreover, the security and political situation following 9 June 2014 when ISIS (better known in Arabic as Da'esh) took control of Mosul city prompted many top senior KRG to issue statements emphasizing "new" political, economic and territorial realities favoring Kurdish claims and political stands.[20]

The current collapse in oil prices and resulting sharp decline in oil export revenues push Iraq deep into a more serious fiscal crisis of the state. Instead of adopting relevant policy by properly phasing oilfields development and reducing significantly state expenditures, the Minister of Oil expressed views contemplating or advocating changing the federal long term service contracts into production/ revenue sharing contracts. Such thinking could make the situation even worse and introduce a high degree of uncertainty.[21]

Non-Petroleum Extractive Industry Activities

Non-petroleum extractive industry activities are many; some of such activities are within the private sector while the most advanced and larger operation scale of them falls within the domain of the Ministry of Industry and Minerals through known State Owned Enterprises-SOEs such as the State Company for Mining Industries-SCMI.[22]

The insignificance of other extractive activities comparative to that of petroleum can be exhibited by data provided by MIM, which indicates these extractive industry activities in 2013 cover 17 commodities, their total production is 395 thousand tons-kt, mostly Phosphate (193kt) and industrial salt (182kt).[23]

This above identification of the current economic insignificance of these industries indicates the imbalance within the extractive industry in the country. But from structural view and diversification of the economic activity perspectives it is very important to highlight the importance of these activities, including the role and involvement of the private sector.

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[19] In fact KRG hired, through Clifford Chance LLP-London, a consultant who concluded that KRG PSCs are better than the MoO service contract. Pedro Van Meurs, P; 'Comparative Analysis of Ministry of Oil and Kurdistan fiscal terms as applied to the Kurdistan Region' (15 June 2008).

[20] Example of such claims is what Masoud Barzani, President of the KR told Al-Hayat newspaper (7 February 2015) that "in Iraq boarders are drawn with blood"; delivering alarming signal for a possible devastating prolonged conflict with the rest of the country and could present very serious threats to its sovereignty and territorial integrity and prosperity of the Iraqi people, http://alhayat.com/Articles/VNWluHx72UQ.gmail accessed 7 February 2015

[21] On this issue see Ahmed Mousa Jiyad, "PSCs – wrong idea, wrong time." Energy Economist- Platts, Issue 402 / April 2015 www.platts.com and "Remarks on Recent Statements from the Ministry of Oil." Posted 3 March 2015 http://www.iraq-businessnews.com/2015/03/03/remarks-on-recent-statements-from-the-ministry-of-oil/ the Arabic translation was done by and posted on http://www.iraqicp.com/index.php/sections/objekt/26001-2015-03-09-21-25-03

[22] SCMI is modest in its production and revenues. http://www.industry.gov.iq/index.php?name=News&file=article&sid=1359 accessed 13 Feb 2015.

[23] See IEITI Report 2012 (IEITI, December 2014, Baghdad)

The legal instruments at the federal level of direct relevance are the Constitution (especially provisions encouraging the private investment, market economy among others); MIM Law nr.38 for 2011; Minerals Investment Law nr.91 for 1988 and its amendments;[24] Public Company Law 22 of 1997 and Investment Law 13 of 2006, which created the National Investment Commission-NIC and the Provincial Investment Commissions.
Entities responsible for executing and observing these laws are the Cabinet, MIM and NIC.[25] For the legislative authority the Parliamentarian Committees for Legal, Finance and Economic and Investment are the entities with direct and indirect involvement role.
There is no specific policy for non-petroleum extractive industries as such. But the measures outlined in MIM & PMAC', Industrial Strategy in Iraq to 2030 (July 2013) and NIC', Iraq Investment Map 2014 could very well apply to non-petroleum extractive industries

Key Highlights, Challenges and Opportunities
Legal instruments relating to and governing of extractive industry, particularly for the upstream petroleum in the country do exist on different levels from national level down to field or block level. Also they exist on federal and regional layers. Throughout the paper all such instruments were appropriately addressed.
Many serious challenges and difficulties are identified and explained; some are resulted from the instruments themselves (such as the Constitution and FOGL), other challenges are due to how different parties perceive these instruments (such as KRG interpretation of the Constitution and its own KOGL) and others are the outcome of lack of harmonization, overlapping and incoherencies among them (such as FOGL, Provinces Law and Public Commission to Audit and Appropriate Federal Revenues Law).

The existing involved institutions play critical and vital role in all phases relating to these instruments: legislating, executing and oversight. Again, these entities are structurally many: on the federal, regional and sectoral levels.
In exercising their authority and function the relationship between these different entities is very important to ensure proper and effective implementation of the laws and regulations. The study highlights cases when lack of coordination and cooperation between these entities had created a gridlock and dysfunctional government. The divergence between federal and regional entities has been the most obvious challenge with very visible and repetitive occurrence.

Entities or institutions are not only vital for the promulgating and implementing legal instruments; they also draw, formulate and adopt policies. But more often than not, and within the current Iraqi political order it is not easy to identify coherent, clear and formal policies. However, if we consider petroleum contracts as manifestations of broad policies then it is safe to suggest two very different policies and again on federal (MoO) and regional (KRG) levels.

[24] On MIM law and MIL see http://www.industry.gov.iq/index.php?name=Pages&op=page&pid=94 latest accessed 13 Feb 2015.
[25] Technically NIC promotes non-petroleum extractive industries as opportunities for foreign investors. See NIC, Iraq Investment Map 2014.

The above analysis suggests strong inseparable linkages and mutually enforcing relationship between the three issues: institution (entities), instruments (laws and regulations) and policies (despite their vagueness). Accordingly, the challenges they face are interconnected and the same applies to opportunities.

Federalism vs. Regionalism has been effectively impacting the three issues, especially on the KRG level. Gradually, this political orientation has prompted the emergence and strengthening the calls for establishing other regions in the country, which is mandated under the current Constitution. So far, more powers to provincial authorities are contemplated in the centralization vs. decentralization with the exclusion of upstream petroleum extractive activities; the debate about the Provincial Law 21 of 2008 and its amendments are the manifestation of this thinking. The resolution of these amendments will have serious ramification on the delegation of powers.

In all the above, politicization has been and remains the common and very serious challenge facing the effectiveness of the legal and institutional framework in the extractive petroleum industry.

Consequently, de-politicization efforts, modalities and measures could offer a window of opportunity. But within the prevailing political conditions in the country order de-politicization is, unfortunately, easier said than done. It is a matter of attitude, mind-set and rigidity.

Nevertheless, with concerted comprehensive and forward looking efforts focusing on capacity analysis (specific capacity gap identification and capacity development roadmap) relating the three main issues (and related sub-issues) could contribute to create a viable and enabling environment. For these efforts to be effective, successful and functional there needs to undertake professional, objective, independent and target-oriented research work. The involvement of the concerned civil society organization, professional associations, academia, and research institutions among others is vital, especially when such involvement is non-partisan.
But again, there are no quick fixes and ready recipes!

Finally, non-petroleum extractive industry activities are many; some of such activities are within the private sector while the most advanced and larger operation scale of them falls within the domain of the MIM through known SOEs.
For governing these non-petroleum extractive industry activities there are also formal entities and legal instruments but with not very specific policies.
IEITI attempts to cover these activities in its annual reports but fails to cover them as so required by EITI new Standard. Challenges are not as strong, deep-rooted or complex as those for upstream petroleum extractive industry. Thus opportunities to cover better non-petroleum extractive industry activities are more feasible through good coordination, inclusion and capacity enhancement.

End of Part One