

The Federal Oil and Gas Law in Iraq

A sudden alarming move that calls for caution and readiness to encounter*

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In a very surprising and sudden move it was announced that the “Opinion Board” (Hayaatul raay هيئة الرأي) of the Ministry of Oil-MoO discussed and approved the final version of the Federal Oil and Gas Law-FOGL at its meeting on Wednesday, February 24, 2021. In a statement by Ministry’s Press Office, Minister of Oil Ihsan A. Ismail confirms this final version will be referred to the Council of Ministers-CoM for approval after it was reviewed by the “concerned authorities in the Ministry”, and then CoM will review this text, and in turn refer it to the House of Representatives-HoR for enacting it as law.

The Press Office did not provide, in its brief statement, any important or new information about the components and contents of this final version of the bill, or on its similarity to any of the previously presented drafts (a minimum of three), or to what prompted the Ministry to take this action at this particular timing in this way!!

The real reasons behind this "suddenness" at this particular time could be explained by or related to many issues or events that are dominating the current political environment. It could be linked to the stalled approval of 2021 budget law, or to the ongoing back and forth dialogue between the federal government and KRG (including efforts by some politicians and heads of some politico-religious groups), or with the end of the current government’s mandate and the HoR term- as the national election is rescheduled from June to October this year, or with the current debate at HoR regarding the 15 year old Federal Supreme Court Law- FSCL, or with the coordination efforts (covert or overt) between the

announcement of this bill and the proposed first amendment to the Iraqi National Oil Company-INOC law, which seems to be expedited by the Head of the Oil and Energy Committee in the House of Representatives (Haybat Al-Halbousi) ... or all of these ... or a combination of them ... or maybe even others.

Each of the previously presented versions of FOGL is complex, incoherent, long and highly politicized; all has been under consideration for more than fifteen years, and much was written about the law throughout that period.

Because of the urgency, importance and necessity for discussing this "final version" of the law seriously and professionally to protect the country's hydrocarbon wealth in serving the Iraq interest and the rights of future generations, I find it imperative to make very brief assessment on the background and what has been revealed on this abrupt move.

First: Through the statements by the Minister it appears that this "final version" of the law was discussed and approved by the Opinion Board, which is ad hoc advisory body, before or even without knowledge or even the participation by and contribution of "the concerned authorities in the Ministry"!

It appears the same old formality is still dominant, as the final version was approved in a top-down manner in the administrative hierarchy. Top-Down approach suggests, to the concerned authorities in the ministry, what the ministry leadership (represented by the Opinion Board) wants is this. Also this could prompt those "concerned authorities" either to agree reluctantly or not to express any serious opinion or make formal remarks just to record a position and to avoid damaging retaliation (all of this to avoid problems with the leadership of the ministry).

My continued direct contact with many oil experts and professionals inside Iraq (some of whom are still in service and others outside the ministry) indicates two interrelated positions: the first reflects a state of despair and frustration, and the

second is, "they do not listen to us and do not take our views seriously". This vicious circle, enthusiasm fatigue and lack of effective participation do not lead to drafting good functional law with operational effectiveness that strengthens the oil sector and safeguards the interests of the Iraqi economy.

Actual examples and evidences of the failure of such superimposed way in decision-making and in drafting and enacting of laws are numerous; including the dismantling of the Muftiya refinery and petroleum products' depo, this particular law, the law on private investment in refineries (Law 64 of 2007) , the provincial law (Law 21 of 2008) , and INOC law (Law 4 of 2018) to cite a few. This apparent futile top-down approach had either inflicted serious damage to the petroleum sector or derailed and delayed serious legislations for years; so why the authorities pursue same path of dysfunctionality? Bad habit dies hard, lessons never learned!

Second: Since the beginning of 2007, there has been many drafts for FOGL, three of which have entered the official channels between the executive (government) and the legislative (Parliament) branches. During this entire period, much was written about these drafts (and I personally published many articles and commentaries and made PowerPoint presentations on these drafts). In short and without hesitation, I can confirm that all these drafts have become obsolete, completely impractical and un-implementable; that is due to the existence of serious structural defects, many gaps, flaws and contradictions in the law itself. Moreover, all of these drafts have been overtaken by many important and very influential serious developments.

The urgent and important question relates to the proximity of this "final version" to any of the previous drafts, how and why!!

Third: The Three Alternatives

In January 2015, the Council of Ministers-CoM decided to form a "specialized team" to deal with oil and gas law. On March 16 of that year, the team presented

three alternatives: drafting a new law, amending the 2007 draft law, or negotiating with the KRG on the controversial issues of the law. No position was taken, but the cabinet information indicates that the matter was referred, in October of that year, to the MoO for further considerations and assessment! It is possible that the final version discussed recently was either a completely new law, according to the first alternative, or an amendment to the 2007 draft law, according to the second option. Given the impossibility of the second alternative, for the reasons mentioned above, the likelihood of a completely new law remains high.

But in this case, the new bill must be totally and radically different from any of the old versions of the law. However, the experience of the past years since 2007 indicates that drafting a new law requires very intensive and persistent efforts for a considerable period of time at different levels of authority, and might not succeed in the end, given that the timeframe and mandate of the current government and parliament is limited to the upcoming elections in October this year; absolutely, there isn't enough time for such tedious and taxing undertaking.

And accordingly, why the hurry to pass a complex law so quickly and suddenly without a broad national and specialized dialogue?

I am afraid of the, once again, politicization of the issue and the legalization and legitimization of KRG production-sharing contracts that serve the interests of foreign oil companies at the expense of the interests of the Iraqi people, especially the region's residents, and which contradict the Iraqi constitution.

Fourth: Cases before the Federal Supreme Court and international arbitration
The legal case, filed by the Federal Ministry of Oil against KRG and its relevant ministry about ten years ago, is still before the Federal Supreme Court-FSC; the delay was primarily due to KRG' failure to attend and present its case before the Court on one hand and the lack of seriousness, for political reasons, of the heads

of Iraqi governments, especially Adel Abdul Mahdi, in proceeding with and resolving the case.

In my opinion, it is not correct (and not necessarily illegal) to present the federal oil and gas bill before FSC issues its verdict on the case before it. But when this final version of FOGL was enacting it will certainly be subject to appeal before FSC, particularly if the law legalizes KRG' production-sharing contracts. Hence, come the call to be ready, vigilant and alerted!

The same applies to the international arbitration lawsuit before the International Chambers of Commerce-ICC in Paris. The case was filed by MoO several years ago against related Turkish companies and the government for their violation of international agreements signed between Iraq and Turkey, especially those related to the Kirkuk-Ceyhan oil pipeline (which the MoO and available information predict an imminent verdict in favour of Iraq and with considerable compensation sum). Hence, any move or law legalizing KRG contracts will surely compromises Iraq's interests by this lawsuit in favour of Turkey and cause Iraq greater long-term and catastrophic damages. Thus, MoO should be careful not shoot its foot!

Fifth: The directives of the Council of Ministers

On October 1, 2019, the Council of Ministers recommended the House of Representatives to wait for the approval of the oil and gas bill, "until the draft law amending the National Oil Company Law is finalized and the State Council finalized its review of the oil and gas bill."

According to the latest information to date, not all issues relating to the draft law of the first amendment to INOC Law have been finally and formally resolved in the House of Representatives (this is what I will discuss in detail in my next contribution soonest), which implies that MoO should wait until INOCL' first

amendment is enacted, due to the strong interdependence between the two laws and to ensure no overlapping, contradiction or competition between them.

Of course, the same applies to the State (Advisory) Council; the Council is supposed to review FOGL only after INOCL First Amendment is enacted. It should be noted that the draft law of INOCL First Amendment came in implementation of the Federal Supreme Court's acceptance of an appeal against several basic articles in INOC Law No. 4 of 2018.

In light of the foregoing I recommend the following:

- 1- All MoO staff, especially the leaders of the "concerned authorities" in the ministry, undertake serious analysis and evaluation of the "final version" of the law, keeping in mind Iraq' interests and preserving its territorial integrity and entity from the implicit covert calls for disintegrating the country;
- 2- Oil experts, professionals, stakeholders, observers, and citizens to prepare for confronting the proposed law if it works against the supreme national interest in favor of any part of Iraq at the expense of other parts and / or that it legalizes KRG production-sharing contracts and / or contradicts the 2005 Constitution;
- 3- The members of the House of Representatives to exercise extreme caution and diligence when discussing FOGL draft as well as the draft of INOCL First Amendment;

I am ready to provide a professional independent opinion and support on all or any part of the proposed "final version" of FOGL. Also, I have written and published many articles on these two laws, FOGL and INOC, in Arabic and English, and I am ready to provide them to anyone if needs be.

*This article was written originally in Arabic, circulated widely and posted on many websites including the following:

<https://akhbaar.org/home/2021/2/280588.html>

<http://www.tellskuf.com/index.php/mq/95858-ef279.html>

<http://www.alnoor.se/article.asp?id=374787>

<http://www.sahat-altahreer.com/?p=75884>

[:https://kitabab.com/2021/02/28/%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D9%84%D9%86%D9%81%D8%B7-%D9%88%D8%A7%D9%84%D8%BA%D8%A7%D8%B2-%D8%A7%D9%84%D8%A7%D8%AA%D8%AD%D8%A7%D8%AF%D9%8A%D8%8C-%D8%AA%D8%AD%D8%B1%D9%83-%D9%85%D9%81%D8%A7/](https://kitabab.com/2021/02/28/%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D9%84%D9%86%D9%81%D8%B7-%D9%88%D8%A7%D9%84%D8%BA%D8%A7%D8%B2-%D8%A7%D9%84%D8%A7%D8%AA%D8%AD%D8%A7%D8%AF%D9%8A%D8%8C-%D8%AA%D8%AD%D8%B1%D9%83-%D9%85%D9%81%D8%A7/)

<https://almasalahkitabab.com/%d9%82%d8%a7%d9%86%d9%88%d9%86-%d8%a7%d9%84%d9%86%d9%81%d8%b7-%d9%88%d8%a7%d9%84%d8%ba%d8%a7%d8%b2-%d8%a7%d9%84%d8%a7%d8%aa%d8%ad%d8%a7%d8%af%d9%8a%d8%8c-%d8%aa%d8%ad%d8%b1%d9%83-%d9%85%d9%81%d8%a7/>

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