Oil and Gas Law in Iraq- Comprehensive and Critical Assessment

By: Ahmed M. Jiyad
5725 Vaksdal, Norway
Phone: (+47) 5659 5699 Email: mou-jiya@online.no

Executive summary

The Draft Oil and Gas Law/DOGL of February 2007 was approved by the Cabinet on July same year, and was passed to the Council of Representatives for consideration. The said Council might deliberate the Law in its current session. This review aims at making timely contribution to the national debate on this crucial and controversial legislation, which deals with strategic natural resource. The assessment was done through a careful analysis of each article of the law, and was guided by a set of objective criteria. Both versions of DOGL, the Arabic and English, were used though the difference between the two texts is substantial in too many instances and could have serious ramifications.

The structure of the assessment follows largely the same structure, sequence and logical flow of the law itself. The nature of the issue decides the space, depth and effort given to its analysis and the way in which it was assessed.

The followings are the main findings of this comprehensive and critical assessment:

1- DOGL as it is suffers from serious structural weaknesses, inflicted with many ambiguities and contains too many flaws. In short it has more demerits than merits, and could generate serious and conflicting interpretations and exercise of authorities;
2- It seriously and effectively undermines the Constitutional role of the Council of Representatives in having the final say on Contracts that have direct consequences on the interest of all the Iraqi people. If the Council of Representatives approves DOGL in its current version, the Council will definitely do great injustice to itself and betrays the trust of the people they represent;
3- The Federal Oil and Gas Council /FOGC, un-elected organ of the Executive Branch, was granted sovereign powers and authority, which structurally and functionally, could be detrimental to the interests of the Iraq economy. Considering the possibility that FOGC depends on foreign advisors is very real, the risk could be extremely high;
4- The proposed Law suggest one-only Exploration and Production Contract, which has three Models. Though the DOGL dose not admit it, this type of Contract and its three models are in reality nothing but a version of the known Production Sharing Agreement;
5- By adopting one-only Exploration and Production Contract, DOGL imposes what seems to be a compulsory linkage between “exploration” and “production” phases as if they are mutually inclusive and essential for the validity of a concluded “Exploration and Production contract”. Such linkage produces disadvantageous long duration for the concluded contracts, which could reach 37 years;
6- The qualitative features put Iraqi oilfields amongst the most rewarding fields worldwide. Under the light of a hypothetical, but very possible and realistic, case Iraq would be able to pay for an investment of $30 billion and its accrued interests, needed to develop a production capacity of 5 *mbd*, within a period of 75 to 120 days if oil price ranges between $50 to $80 per barrel. One would question, therefore, the wisdom of not pursuing the development of oil production capacity through the national-execution option by Iraqi entities only, and also question why DOGL offers such a long duration to reward the foreign investors generously;
7- DOGL deals with INOC in an apparent confused and contradictory fashion. Unless the identified weaknesses are dealt with and give INOC the deserved priority and

exclusive rights over the fields listed in Annexes 1 and 2; the expected Laws for INOC and MoO and the "Regulation for Petroleum Operations" are properly drafted, it would be unrealistic to expect this DOGL to constitute suitable base for sound federal petroleum policy. Let alone contributing to sustainable development in the country, and the optimal utilization of these depletable and finite petroleum resources.

Introduction

Oil and Energy Committee/ Council of Ministers finalised, on February 15th, 2007 the Draft of Oil and Gas Law. On July 3rd, 2007, Iraqi Prime Minister Nouri al Maliki announced that the Council of Ministers had formally approved a final version of the framework law and had forwarded the bill to the Council of Representatives for consideration. The Council of Representatives might debate the law in its current session. The purpose and hope is that this review makes a timely contribution to the current discourse on this vital but controversial piece of legislation.

As a matter of methodology and approach this assessment was conducted after a thorough, article-by-article, analysis of the Draft Oil and Gas Law/ henceforth referred to as DOGL, dated 15th February 2007. While primarily using the English text I always refer to the Arabic in case of doubt or to check the accuracy of translation. Both texts are available on many websites including the following: www.iraqoillaw.com

For doing so I used and was guided by the following criteria:

1-The "internal consistency" of the law;

2- Operationalization of the articles and expected outcome;

3- "What if" questions and consequences;

4- The contribution of DOGL to the prime objectives of sustainable development and optimal utilization of hydrocarbon reserves.

Furthermore, my previous work, with the Iraqi Ministry of Oil/MoO and Iraqi National Oil Company/INOC, on feasibility studies of oil field development 1975-1981, and involvement in major oil projects and related agreements while working with the External Economic Relation Committee/EERC of the Council of Ministers, 1981-1987, had its impact in making the opinion hereunder.

DOGL has a Preamble, 43 Articles divided among eight Chapters, and 4 Annexes (Titles only. Both versions of the draft annexes were not published, and reportedly were dropped from the draft legislation prior to its approval by the Cabinet). For the benefit of the analysis it is necessary to mention the titles of these Annexes: Annex no. 1: Present producing fields allocated to the Iraq National Oil Company/INOC; Annex no. 2: Discovered (undeveloped) fields allocated to INOC; Annex no. 3: Discovered (undeveloped) fields outside the operations of INOC, and Annex no. 4: Exploration areas.

The structure of this assessment follows largely the same structure, sequence and logical flow of the law itself. The nature and importance of the issue decides the space and effort given to its analysis and the way in which it was assessed.

First: The role of the Parliament/ The Council of Representatives/CoR.

Under Article 5 (A) The Council of Representatives shall enact all Federal legislation on Crude Oil and Natural Gas, and shall approve all international petroleum treaties related to Petroleum Operations that Iraq signs with other countries.

This Article appears to be good and fair, however, in a close examination this Article could very well undermines the role, authority and responsibility of the CoR.

The words "**treaties**" and "**countries**" implies sovereign state to sovereign state(s) relationships as it is known under public international law (Vienna Convention on the Law of Treaties, entered into force 27 January 1980.) On the other hand the term "Petroleum Operations" as defined under Article 4 (19) includes "all or any of the activities related to Exploration, Development, Production, separation and treatment, storage, transportation and sale or delivery of Petroleum at the Delivery Point, Export Point or to the agreed Supply Point inside or outside Iraq, and includes Natural Gas treatment operations and the closure of all concluded activities;"
Obviously all the activities covered by the term "Petroleum Operations" are and could be the subject matter of commercial contracts more than State-to-State "treaties". Furthermore, is it possible to envisage that under current international environment of globalisation, privatisation and liberalization involve themselves in operational activities such as those mentioned under the term "Petroleum Operations", certainly not.
Throughout the DOGL the words "contract" or "contracts" not "treaty" or "treaties" were used with regards to the activities related to the petroleum operations. The implications would be that contracts signed pursuant to DOGL for "Exploration and Production" are not treaties and therefore, the approval of the CoR is not a requirement to validate and legalise these contracts. And if this is the case then the author(s) of DOGL meant, intentionally or not, to bypass the Council of Representatives and undermines its role knowing, or anticipating, beforehand that the CoR might not approve DOGL if the CoR was not mentioned at all in the Law.

This could be the case but one could argue that, in accordance with the same Article 5 (B-First), the "Council of Ministers shall be responsible for recommending proposed legislation to the Council of Representatives on the development of the country's Petroleum resources", and therefore, the CoR will always be informed of all and any development of the country's Petroleum resources.
Yes, it is a matter of fact that CoR, under Article 48 of the Iraqi Constitution, together with the Federation Council represent the highs federal legislative power in the country. And the Council of Ministers/CoM, under Article 60 (First) of the Constitution is obliged to presents draft laws to CoR, and CoR has the competent, under Article 61 (first) of the Constitution to enact federal laws.

What this Article (B-First) all about is "recommending proposed legislation" for enactment by the CoR. But, as shall be discussed soon, what DOGL talks about are "regulations", "guidelines", "instructions" not "legislations". Why? Simple: "regulations", "guidelines", "instructions" are within the competence of the Executive Branch- CoM, the Ministries and their subordinates. In this way DOGL had managed again to avoid and bypass the elected members, the Council of Representatives.

Nothing in the operative articles of this Law indicates or even implies that the validity and entering into force of any "contract" concluding pursuant to this Law is subject to the approval of the CoR.
It could be argued that the CoR has the power, under Article 61/ (Second) of the Constitution, to "Monitor the performance of the executive authority", such as the implementation of this Law.
This is true, however, it is recommended that the Council of Representatives exercise its monitoring role, function and responsibility before the executive authority inters into any contractual obligations regarding petroleum sector under this Law. The Iraqi negotiators could be in better negotiation stands and more careful when they know beforehand that the approval

of the Parliament is, finally, what matters. Furthermore, and from legal and practical matters the approval of the Parliament, through whatever Parliamentary mechanism, of a contract is more meaningful and less problematic if it occurs prior to the signing than after, especially when the contracting party is an international one.

But the exploration and production contracts are usually large in volume (could be well over 600 pages, usually in English), technically complex and very specialised, and linguistically sophisticated. It could be, therefore, unrealistic to expect that members of CoR examine, discuss and take a decision regarding each and every contract.
This could be the case especially under current conditions in the country. However, it is very feasible, for example, to design model forms and brief report for each category of contracts containing all relevant and fundamental data and information to be presented by the Prime Minister/PM- the president of the Federal Oil and Gas Council/FOGC, before CoR with the purpose of obtaining the authorisation to conclude the related contract.

We should remember that the Constitution, Article 111, and this DOGL, Article 1, declare "Oil and Gas are owned by all the people of Iraq in all the Regions and Governorates" The members of the CoR were elected by the rightful owners of this vital national asset. It is, therefore, legally and constitutionally impermissible to deprive these elected representatives from exercising their constitutional rights and duties to have the ultimate decisions regarding any contract on behalf of their electorates.

In conclusion, DOGL, in my view, seriously undermines the role and authority of the elected members of the Parliament. What is needed to deal with this matter is to devise proper mechanism through which the Parliament be fully, orderly and timely informed about all and every "Exploration and Production Contract", which could be concluded pursuant DOGL. If, on the other hand, the Council of Representatives passes this DOGL as it is, it will then do a great injustice to the Iraqi people and betrays the interest and confidence of their constituents.

Second: The Federal Oil and Gas Council/FOGC
FOGC is an important organ proposed by this piece of legislation and has vital and critical role not only in the implementation of the Law but on the future development of the country and the utilisation of the country's depleteable petroleum resources.

Article 5(C-) outlines the composition, the functions and the operational and procedural matters related to FOGC's work. The functions of FOGC are elaborated further in many other Articles throughout this legislation as shall be discussed.
Considering the significance of this council it deserves critical, in-depth and comprehensive assessment and analysis.
To begin with, institutionally and judging by its functions and authority, FOGC has a mini-council of ministers or super-ministry status. It could be similar to Energy Council, which replaced the Supreme Council for Oil Policy created in the aftermath of invasion. It is in fact more similar to an earlier bodies under the former regime of Sadam Hussain, namely the "Follow-up Committee for Oil Affairs and Agreements Implementation", known as the "Follow-up Committee", 1969-79/80 and its successor the "External Economic Relation Committee"/EERC, 1980-1987.
However, there are three basic differences between FOGC and the previous two Committees, which it seems that the author(s) of DOGL had overlooked when granting such significant and unique powers over Iraq's petroleum wealth.

1. Under previous political regime both legislative and executive powers were in the hand and under exclusive disposal of the same supreme authority, and this had granted the former Committees, which were connected to that supreme authority, very effective power over oil and gas. The current political order is significantly different with clear demarcation between the two branches of the state, the Legislative and the Executive. In other words FOGC, and should, not have, or should be mandated to have both these powers;
2. The former two Committees have their own legal identity. EERC, for example, had its own law, which defines all legal matters related to EERC: its establishment, mandate and authority, membership, permanent staff, rules for conducting its work, the approval of its decisions by higher authority, etc. FOGC, unlike the previous Committees especially ERCC, not have its own law base. It derives its legitimacy from DOGL and this could, constitutionally specking, make some of its decisions on or even involvements in oil and gas matters outside the cope of this law legally questionable and challengeable.
3. EERC had its own Iraqi-only permanent staff employed and appointed in accordance with its own law and its defined structure. This permanent staff headed by a Secretary General acted as the secretariat for the Committee, and they were who prepared all the logistical work for the EERC, whose "Members" were from outside the secretariat. FOGC, on the other hand, is not obliged to have its own supportive structure and can employ non-Iraqi advisors, as discussed below.

Composition and structure of FOGC

Members of FOGC are of two categories, representatives and appointees. Furthermore, FOGC has "Panel of Independent Advisors" and can create "entities" if it sees necessary.

The "representative" members of FOGC are specified in Article 5 (C-First). The "representative" members hold their membership in FOGC as long as they maintain the position in the entities they represents.

The total number of these members depends on the number of the "Producing Governorate not included in a Region", and on the number of "the Chief Executives of important related petroleum companies" in addition to the Iraq National Oil Company/INOC and the Oil Marketing Company.

The maximum number of the appointee members is three. They should be "Experts in petroleum, finance, and economy", "to be appointed for a period not exceeding five (5) years based on a resolution from the Council of Ministers." The Prime Minister or his nominee presides FOGC.

The following remarks are made on the issue of membership within FOGC:

1. The total final number of FOGC members cannot be fixed for the time-being, for the reasons mentioned above. However, a minimum of 15 members is not unreasonable. Parkinson's Law and experience tell that the larger is the number, the lest efficient, serious and comprehensive a council would be in conducting its business and performing its duties. Since the decisions of FOGC are taken on a 2/3 majority, according to Article 5 (C-Eleventh), then good deal of discussion is expected on any issue. With 15 members there will be many sessions and good deal of time to make a decision;
2. The fact that the "representative" members are not on a full-time base, they are expected to depends largely on the professional and specialised logistical support from within the FOGC, not from the entities they represents. Non-availability of such logistical support could very well hamper the work of FOGC and the time it needs to

accomplish its duties. Usually the turnover of membership for such representatives is high and politically sensitive, and this undoubtedly has its negative consequences and impacts on the competency of FOGC. Experience tells also that record of full-attendance is not encouraging due to their frequent missions outside the country. And without permanent alternate members, there would be a serious discontinuity problem.

3. The representation of "Producing Governorate not included in a Region" has technical and political aspects. Technically, Article 4 (24-) defines Producing Governorate as "any Iraqi Governorate that produces Crude Oil and natural gas continually on rates more than one hundred and fifty thousand (150,000) barrels a day;" By looking to the geographic location of the Iraqi oilfields, its easy to conclude that there will be too many Governorates represented on FOGC. However, the word "or" in the above definition is problematic. A strict interpretation could exclude Governorate(s), which produces natural gas only, a non-associated gas, no matter how large such a production over and above the qualifying production rate. A revision of the said article by inserting "and/or" instead of "and" could resolve this problem. On the political aspect, who will nominates the representative of a producing Governorate, the Prime Minister, since he is the president of FOGC, the Council of Ministers or the producing Governorate itself? And who decides in case of a dispute? DOGL provides no answer, the Federal Supreme Court, may be but this has to be included in the legislation. (The Federal Supreme Court, pursuant to Article 93/ (Fourth) of the Constitution, have jurisdiction over "Settling disputes that arise between the federal government and the governments of the regions and governorates, municipalities, and local administrations.")
4. The functions and responsibilities of FOGC require advanced competence in legal matters especially in the field of private international law of contracts. Yet there is no legal expert among the fixed-term appointee members. How could FOGC address the complicated legal matters of various contracts? Probably through the Panel of Independent Advisors. But this is contentious matter as shall be discussed below.
5. Article 5C (First) ends with the following "The formation of the Federal Oil and Gas Council shall take into consideration a fair representation of the basic components of the Iraqi society." This sentence is meaningless and redundant since the "representative" members are there by virtue of the entities they represent, and thus have nothing to do with the fair representation of the basic components of the Iraqi society. As for the three (though the number could be less) fixed-terms experts they are supposed to be appointed on the basis of their expertise in the fields of petroleum, finance, and economy. What should come first: expertise, specialisation and professional competence or societal representation? Probably this sentence was introduced as part of the political compromises that took place in order to finalise the draft of the Law and to approve it by the Council of Ministers. But this sentence could very well be the source of unnecessary conflict and generate inefficiency, and thus constitute a serious weakness of DOGL.

As mentioned above FOGC has "Panel of Independent Advisors" and can create "entities" if it sees necessary. We shall deal with the Panel first then discuss the creation of "entities" afterward.

<u>Panel of Independent Advisors</u>

Article 5 (C-Sixth) mandated the creation of a "Panel of Independent Advisors", it says "To assist the Federal Oil and Gas Council in reviewing Exploration and Production contracts and Petroleum Fields' Development plans, the Council relies on the assistance of a panel called the "Panel of Independent Advisors" that includes oil and gas experts, Iraqis or

foreigners. The Council shall decide their number. They should be qualified and have a good reputation and long practical experience in Exploration and Production operations and in Petroleum contracts, and they should be chosen by a unanimous decision of the Council and contracted for a year, which can be extended. The Panel of Independent Advisors gives its recommendations and advice to the Federal Oil and Gas Council on issues related to contracts, Field Development plans, and any other related issues requested by the Federal Oil and Gas Council."

The inclusion of this panel in the draft law is controversial and could generate resentment, rejection and cast serious doubt on the entire FOGC and the law itself.

First, what exactly an "independent advisor" could be in the context of this Law, the prime functions of FOGC and above all the importance of petroleum for the Iraqi economy and society? An independent, or indifferent, when addressing maters of interest to the Iraqi economy vis-à-vis a contractor at the time when DOGL and FOGC itself aim "to provide maximum returns to the people of Iraq". What are the objective criteria available to FOGC to assess the "independency" of the opinion expressed by the "Advisor" before relying on them when making vital decisions that have serious repercussions on Iraq' interests? Finally, how the advisor can be an independent to his employer and payroll master?

Second, the fact that these advisors can be either "Iraqis or foreigners" the possibility of FOGC is advised by foreigners-only is very high. If this occurs it will definitely erode the image and reputation of FOGC, question its integrity and patriotism and seriously tarnish the legitimacy of its decisions.

Even if this paragraph of the Law is amended by replacing the word "or" with "and" to allow for a joint panel of advisors, the probability of foreign dominance could be high. (The Arabic version also use "or") The conclusion, therefore, DOGL has furnished the possibility of having FOGC assisted wholly or largely by foreign advisors.

Third, the advisors "should be qualified and have a good reputation and long practical experience in Exploration and Production operations and in Petroleum contracts, and they should be chosen by a unanimous decision of the Council and contracted for a year, which can be extended."

Example of the operational questions that are relevant here are: who will and have the competence to check these qualifications of the foreign advisors and verify their credentials? Who will prepare the short list and conduct the interviews? Will it be a foreign recruitment agency, the Iraqi embassies, or FOGC itself? What are the precautions and safeguards against possible infiltration of advisors with hidden political agenda and/or financial interest? And with contracts for business worth billions of dollars how can FOGC be assured of the integrity of these advisors and their recommendations regarding related contracts? Finally, how feasible and productive is it to recruit such advisors for a short term of one year, though with a possibility of extension, and what are the consequences of such frequent turnover?

Forth, the "Panel", according to Article 5 (C-Sixth) as mentioned above, is "to assist" "gives its recommendations and advice to" FOGC. The Article states also that FOGC "relies on the assistance of " this Panel. Article 10 (D-First and Second) provides even further and substantive power to the Panel when it obliged FOGC to "Submit" the initial contracts to the Panel and "relying" on it when making a decision on the contract. Moreover, this advisory Panel becomes the ultimate decision maker with regards to all "Existing contracts" concluded by and in Kurdistan Region before this Law enters into force. Article 40 (A), which at its end states "The Panel of Independent Advisors will take responsibility to assess the contracts referred to in this Article, and their opinion shall be binding in relation to these contracts."

> What are the justifications for providing this advisory body with ultimate power to make decisions? Why this additional authority to make binding opinion was granted? What are the consequences of this Article on the political behaviour in Kurdistan Region by concluding and signing as many contracts as possible before this Law enters into force?

The matter of this Panel raises good deal of suspicion and many questions, which cast serious doubt on its feasibility, usefulness and who were behind it to begin with. The possibility of total dependency on these advisors is real and high and this represents detrimental and sever regulatory capture.

FOGC, according to Article 5 (C-Tenth) "may create entities necessary for the implementation of its duties."
This paragraph is rather weak due to the word "may" and absence of any reference to what types of entities can be created by the Council: full time or ad hoc, permanent or temporary, within FOGC or outside it.
Considering the seriousness and diversity of the functions and responsibilities of FOGC, as shall be discussed below, on one hand, and the proposed structure of the Council, as discussed above, on the other hand, make it evident that the absence of specialized, professional and permanent staff within well defined institutional structure could definitely undermine FOGC and leave it dependent upon very few advisors.
The structure of the former EERC could be relevant reference and starting point to create permanent entities to provide the logistical support to and do the day-to-day work of the Council.
The creations of this full time permanent structure include the three experts, referred to earlier, but they should be a permanent instead of a fixed term appointment. A well-established permanent structure replaces the "Panel of Independent Advisors", which should be avoided definitely.

Role, responsibilities and functions of FOGC
DOGL entrusted FOGC with a wide range of and substantial responsibilities, authorities and powers. Hence, it has critical role in the future development of the petroleum sector, the prospects of the national economy and the degree of effective national control over these significant and depleting finite natural resources. In effect FOGC possesses excessive authority and powers. Political scientists and regime analysts would say power corrupts, and absolute and excessive power corrupt absolutely.
Briefly, FOGC according to Article 5 C- (Second) through (Fifth), (Seventh) and (Eighth) "holds the responsibility of putting Federal Petroleum policies, Exploration plans, Development of Fields and main pipeline plans inside Iraq, and …to approve any major changes in such plans and policies.", "reviews and changes the Exploration and Production contracts that give the rights of Petroleum Operations", "approves the types of, and changes to, model Exploration and Production contracts,", "and selects appropriate model contract types according to the nature of the Field or Exploration area to provide maximum returns to the people of Iraq.", "sets the special instructions for negotiations pertaining to granting rights or signing Development and Production contracts, and setting qualification criteria for companies." Furthermore, FOGC "is the competent authority to approve the transfer of rights among holders of Exploration and Production rights and associated amendment of contracts" and with the Ministry of Oil are "responsible for ensuring that Petroleum discovered resources are developed, and produced in an optimal manner and in the best interest of the people in accordance with legislation, regulations and contractual conditions as well as recognised international standards."

Obviously, entrusting FOGC with these significant responsibilities shoulders heavy burden on and daunting tasks before the Council. Considering the structural and institutional weaknesses of the Council, as discussed above, it could be very optimistic to anticipate effective performance of the Council. It is too risky also.
Furthermore, Article 13 (F-) mandates FOGC to determine the period during which the holders of an Exploration and Production right may retain the exclusive right to develop and produce petroleum within the limits of a Development and Production Area for a period varying from fifteen (15) to, but not exceeding, twenty (20) years, and on newly negotiated terms to grant an extension not exceeding five (5) years. (The Arabic text is substantially different from the English version mentioned above. In the Arabic text no mention was made to the 15 years but make it one period not exceeding 20 years. And the extension of 5 years is subject to the approval of the Council of Ministers not FOGC)

To begin with the Iraqi oilfields are, in a comparative sense, characterised with low production cost per unit, high productivity wells, big reserves, geographically conveniently located, and good quality oil. Oilfields of such qualitative advantages under current international oil market and prices should be developed through total, effective, real and direct national sovereign control and execution. The above contract durations are totally not justified for the Iraqi oilfields, as shall be discussed later on.

Moreover, authorising this non-elected organ to grant such a long duration for development and production contract, without a prior approval from any other entity in the country is unjustifiable on what so ever ground. Knowing the gigantic magnitude of the financial returns of oil contracts of such duration, this make FOGC in its entirety or any member therein a target for corruptible attitude. Without proper, strong and vigilant checks and balances surveillance system of good and effective governance, DOGL could in effect create a corruption-enabling environment. International oil activities, as its well known, are full of incidents of financial irregularities, corruption and bribes. They are, after arms deals, the most corruption-induced business.
FOGC under the proposed Law has sovereign powers since it is not answerable to any higher authority. This should not be permitted and the interventions and involvement of the Parliament become an imperative and fundamentally crucial. DOGL, therefore, should be modified by suggesting real, effective, timely, and functional Parliamentary intervention mechanisms.

In the midst of granting so much authority to FOGC, DOGL contains some flaws, contradictory and controversial provisions, which are probably overlooked by its authors.

1- Although FOGC is who “reviews and changes the Exploration and Production contracts that give the rights of Petroleum Operations” according to Article 5 (C-Third), the Designated Authority/DA, not FOGC, who is actually mandated to grant extensions to the Exploration and Production contracts, under Article 13 B (2-) and (C-). According to Article 13 B (2-) and (C-) the duration of Exploration and Production contract can be prolonged from an initial period of 4 years by two extensions of two years each. Strangely enough no reference is there to FOGC regarding such extensions before the Designated Authority grants them. This legal ambiguity could generate conflict between FOGC and the Designated Authority. The potential of conflict is real especially in northern region since the DOGL defines, in Article 4 (35), the Designated Authority to mean “the Ministry of Oil, the Iraq

National Oil Company, or the Regional Authority." (Regional Authority is the authorized ministry in the Regional Government (Article 4 (35)))
Worst still, under Article 13 (E-), a third extension of two years, and 4 years in case of non-associated natural gas discovery, can be granted without even referring to who grant this extension, neither FOGC nor the Designated Authority. The absence of an authorising entity is another weakness of this Law.
Apart from this rather long duration and repeated prolongation, what is even more disturbing is that serious and fundamental matters such as land relinquishment are not sufficiently dealt with by the Law. Article 13 (D-) states "All extensions shall be subject to the provisions concerning the relinquishment of Contract Areas in adherent to the Petroleum regulations." But what are these "Petroleum regulations" and who will issue them, and when? Further elaboration on this "regulation" issue is provided later on.

2- Similar overlapping occurs, under Article 14, between the powers of FOGC and the Designated Authority regarding the Field Development Plan. Again this could be a source of conflict, which could have impact on the contractual obligations and the interest of Iraq.

3- Another examples of a confused and weak drafting which generates multi-source approvals between the Ministry of Oil and FOGC are present, for example, in Articles 22 and 26. Article 22 (B-) and Article 26 (A-) mandate the approval of the Ministry of Oil when such approvals are the authority of FOGC.

4- Uniformity of approval procedure and approving authority is lacking in DOGL. And this could generate conflict of authority, which could have serious legal and contractual consequences. As mentioned above Article 13, for example, indicates to three different approvals by three bodies in order of hierarchy: DA, FOGC and CoM. Yet the lower in the hierarchy was not mandated to seek authorization from the next higher level! Another example is related to Article 32 (C-), which states, "An outline Decommissioning Plan shall be included in the Field Development Plan submitted by the Contractor to the Council of Ministers." But as was said earlier all types of plans are to be submitted to and approved by FOGC, not CoM. Moreover, what is the purpose that such plans be submitted to CoM? And would the "Contractor" submit them directly to CoM or through which entity: FOGC or a Designated Authority? Article 26 (A-) provides another case of double approvals. It says "The Development and Production of Natural Gas or liquid components thereof from a Non-associated Natural Gas Discovery shall be subject to the approval of the Ministry of a Field Development Plan supported by signed agreement(s) for the sale of Natural Gas from the Discovery and approved by the Council of Ministers." Again MoO and FOGC approves the same Field Development Plan. Furthermore, CoM approves the agreement(s) for the sale of Natural Gas. Why CoM approves these agreements only not all other contracts is not clear or justified through DOGL, though in terms of magnitude and significance Iraqi fields are oilfields than non-associated gas fields.

Third: Types of Contracts, legal and fiscal régimes

DOGL identifies and gives substantial space and attention to Exploration and Production Contract only. This is evident by the repeated mention of this contract and its rights holder throughout DOGL. The term "Exploration and Production Contracts" was mentioned ten times and the term "Exploration and Production Contract" was mentioned four times throughout DOGL. However, DOGL mentions once another term "Exploration and Development Contracts" in Article 5 (D-Eighth), which says "The Ministry has the right to execute contracts related to Oil and Gas supply services other than those covered by

Exploration and Development Contracts". (Most likely this was a typing error, since the Arabic version refers to Exploration and Production Contracts. Hence in the following parts we shall address the Exploration and Production Contracts.) In this way DOGL has, in all practicalities, trapped FOGC, the Parliament and the entire economy to this one-only Exploration and Production Contract and its three Models, as shall be discussed later-on.

Article 9 (A-) states "The rights for conducting Petroleum Operations shall be granted on the basis of an Exploration and Production contract", and Article 9 (B- Fifth) says that the Model contracts "may be based upon Service Contract, Field Development and Production Contract, or Risk Exploration Contract.." Article 10 deals with the negotiation stages of the Exploration and Production Contract. Furthermore, any field development could be done through Exploration and Production Contract only if one strictly applies the definition of field development plan provided by DOGL. Article 4 (14) defines "Field Development Plan" as "a scheduled programme and cost estimate specifying the appraisal and Development activities required to develop and produce Petroleum from a specific Field or group of Fields by the holder of an Exploration and Production contract, prepared in accordance with this law and the relevant provisions in the Regulations for Petroleum Operations and the Exploration and Production Contract covering that contract Area;"

At this stage we would like to deal with some of the difficulties, ambiguities and problems regarding this Exploration and Production Contract.

1- DOGL, as mentioned earlier, has four Annexes. Fields listed in Annex 1 are presently producing, those in Annexes 2 and 3 are "Discovered" but not yet developed and Annex 4 is for "Exploration areas". This would imply that all "not discovered" fields should be listed in Annex 4. Logically, this means that fields in Annex 4, not those in Annexes 2 and 3, should be the subject matter for all Exploration and Production Contracts. Otherwise what is the rational, or the interest of the people of Iraq, to offer an already discovered field for Exploration and Production Contracts? In the substance Annexes 1, 2 and 3 where mentioned in Articles 5 and 6, however, no reference was made to Annex 4, which one expect to see it as the main focus of the exploration contracts. DOGL does not provide explicit definition of a "Discovered" field, however, with the assistance of the definitions of "Discovery" and "Exploration" under Article 4 (1-) and (9-) respectively one can safely conclude that such discovery was established by seismic, geological, geophysical and other means including drilling of exploration, delineation and appraisal wells. In other words, fields that are discovered but not yet developed (i.e., those listed in Annexes 2 and 3) should not be offered at all for Exploration and Production Contracts. It is technically illogical and legally contradictory to look at a discovered field as a matter for exploration. If needs be the Law should consider two types of contracts: Exploration and Production Contracts, which are specifically for the "Exploration areas" in Annex 4, and Development and Production Contracts, which are specifically for discovered but not yet developed fields that are listed in Annexes 2 and 3. Then the Law should mandates FOGC to select "Model Contract" for each of these two types and clearly defines the fundamental parameters of the legal, fiscal and technical regimes of each "Model Contract".
2- DOGL creates contradictory situations regarding the discovered but not developed oilfields, which are allocated to INOC. Article 9 (A-) states "The contract shall be entered between the Ministry (or the Regional Authority) and an Iraqi or Foreign Person, natural or legal,.."

This means that only the Ministry of Oil and/or the Regional Authority are authorised to conclude exploration and production contracts for the fields listed in annexes 3 and 4. It could also imply that INOC is exempted from or not permitted to enter into such exploration and production contracts to develop the filed listed within Annex 2. However, Article 10 (A-) indicates to totally different implications by stating "The Ministry, the INOC, or the Regional Authority, based on their respective specialties and responsibilities, and after completing initial procedures for granting rights as indicated in Article 9 there will be an initial signing of Exploration and Production contracts with the selected contractor." So this Article 10 (A-) obliges INOC also to conclude these Exploration and Production contracts. Another cause of concern and confusion could be created, by Article 6 (B- Second), regarding the fields allocated to INOC according to Annex 2. Article 6 (B- Second), which states that INOC " Participation in the Development and Production of discovered and yet not developed Fields mentioned in Annex No. 2", clearly implies that the oilfields listed in Annex 2 are not exclusive for INOC, though they are allocated to it as the title of the annex indicates. And if this is the case why then these fields in Annex 2 were allocated to INOC? It should be mentioned that the Arabic version of this Article 6 (B- Second) is substantially different from this English text. The proper translation of this Article 6 (B- Second) from Arabic into English would read "Develop, administer and operate the discovered and not developed fields, which are allocated to it and mentioned in Annex no. 2" The difference between the two texts is enormous in implication!
But again, Article 12 (B-) keeps the confusion by stating "The Exploration and Production rights with regard to existing producing Fields are hereby given to INOC, and also the granting of additional Exploration and Production regarding not yet developed Fields to be implemented by the Federal Oil and Gas Council in accordance with Article 6 and Annex No. 2 of this Law"

The ambiguities surrounding INOC are not limited to the oilfields listed in Annex 2, but also to presently producing oilfields listed in Annex 1. The ambiguities are related to the application of Article 8 (A-). This Article states "restoring and increasing Production related to existing Fields, INOC is the Operator and is authorized to directly sign services contracts or administrative contracts with appropriate oil or services companies" the sentence "is authorized to directly sign" mean by this Law without further authorization from FOGC or not? If yes then the referred to "services contracts or administrative contracts" are different from those Model contracts, which are supposed to be approved by FOGC as envisaged under Article 9 (B- Fifth), and INOC has to formulate its own model for these two types of contract. But if not, and INOC needs to have the authorization of FOGC then INOC will have two problems: the first is how legal and logical is it to apply a Model service contract of an Exploration and Production contract to an already producing oilfield? And second the "administrative contract" mentioned above is not among the three Model contracts, as the following paragraph (3) illustrates. Another serious legal flaw of this Law is identified in the above mentioned Article 8 (A-) when it states "INOC is the Operator". But the "Operator" was defined in Article 4 (23-) to mean "the entity designated by the Designated Authority, in consultation with the holder of Exploration and Production right, to conduct Petroleum Operations on behalf of the latter;" The relevant question here is if INOC is the "Operator" for the presently producing oilfields who is then "the holder of Exploration and Production right" for these oilfields?

Article 8 (B-) adds another flaw of DOGL by ignoring INOC when it says "The Ministry, and after coordinating with Regions and Producing Governorates, and in adherence to Article 9 of this Law, is to propose to the Federal Oil and Gas Council the best methods to develop the discovered but yet not developed Fields." Again strict interpretation and application of this paragraph of the said article excludes INOC from such an important coordination.

3- The Models for Exploration and Production contracts are limited to three only. According to Article 9 (B-) Fifth, the model contracts "may be based upon Service Contract, Field Development and Production Contract, or Risk Exploration Contract" DOGL, though, does not provide any specific information on the characteristics of these three models and their applicability, or even define them. This is left to FOGC and the Ministry of Oil. According to Article 8 (C-) "The Ministry prepares model Exploration and Production contracts to be approved by the Federal Oil and Gas Council and to be appended to this law"
Article 8 (C-) is good and posses significant importance. Once these model Exploration and Production contracts are approved by FOGC they have "to be appended to" to this Law. This has two important implications: the first is that the Parliament will have the chance to review, debate and, if find them suitable, approves these model contracts since they become integrated part-and-parcel of the Law. The second is that these models become known so that one can assess and evaluate them critically and properly. The worrying thing though is that the Arabic version of this Article 8 (C-) not contain "and to be appended to this law"

It should be mentioned at the outset that the legal and fiscal régimes for each of these three model contracts could vary substantially. Accordingly, the administrative, negotiation, implementation, monitoring, auditing and other requirements are also different. Under Service Contracts, oil companies are engaged as contractors to provide technical, financial and commercial services and in return are entitled, in the event of a discovery, to cost recovery and a fee. The fee may be payable in the form of a guaranteed supply of a quantity of oil at a discount price or a share of the sale proceeds of the oil. In the Development and Production Contract, a foreign company would develop and operate an oilfield for a fixed period. After that, operational management would be taken-over by the state oil company, but with the same foreign company providing services under a Technical Service Agreement for an agreed-upon duration, during which the company also has a right to buy oil – either at market price or at an agreed discounted rate. Finally, in a Risk Exploration Contract model, a foreign company invests capital in exploration activities in a defined area, and when a petroleum discovered, the company develop the field and when production begins reimbursing its invested capital (from oil sales), plus a fixed fee (in cash or product) per barrel of oil/gas produced during an agreed-upon periods. The company can thus increase its revenues and profits by increasing the rate of production; on the other hand, the company carries the risk in case no petroleum was commercially discovered. Regardless of the name and type of the model the fact that they are for an Exploration and Production Contract, this by itself could provide strong indication that this Exploration and Production Contract is nothing but a form of Production Sharing Agreement/PSA, though the authors DOGL had cleverly avoided making reference to this type of agreements. A typical economic comparative assessment of Production Sharing Agreements with other régimes would indicates to how detrimental they are to the national interest of the host countries no matter how favorable the financial terms

of these agreements such as the royalty, the bonuses, the government share in the "profit oil", the magnitude of taxes on the company share of the "profit oil", etc.

DOGL, in Articles 33 and 34, outlines the fiscal régimes, which the holder of Exploration and Production rights adhere to and pay accordingly. These include royalty, Property Contribution and the Property Transfer Tax (SISA), municipal and local taxes, and the taxes provided for in the Income Tax Code. Surprisingly though two financial items, signing bonuses and production bonuses of Petroleum contracts, were not included in these fiscal components but mentioned somewhere else- in Article 11 (B-).
Among these financial variables royalty is the only item, which is quantified, by Article 34, at (12.5%) of Gross Petroleum produced from the Development and Production Area. These two articles do not provide any information on the financial entitlements or returns to the investor (the holder of Exploration and Production rights). These will be quantified in all model contracts as mentioned in Article 9 (Fourth: 4-An appropriate return on investment to the investor; and 5-Reasonable incentives to the investor for ensuring solutions which are optimal to the country in the long-term related to a-improved and enhanced recovery, b-technology transfer, c-training and development of Iraqi personnel, d-optimal utilisation of the infrastructure, and e-environmentally friendly solutions and plans.)

The first issue regarding the above mentioned components of the fiscal régimes is related to why DOGL has quantified the royalty at the stated fixed amount, and what are the foundations of selecting this magical number of (12.5%)? that indicates that the author(s) of DOGL had in their mind the Production Sharing Agreement/PSA as the base for all the three model contracts? As it is well known oilfields differ in their economic value due to their potential: size and productivity of the field, the type and timing of the enhance recovery mechanisms, geography and location, geological and geophysical characteristics of the reservoir, the quality of the crude in terms of API, sulphur and metal contents, pour point, etc. Furthermore, fields in Annexes 2 and 3 are, as mentioned above, already discovered and their particulars are presumably known, while those would be discovered in the Exploration areas (Annex 4) are not known. How then the same royalty apply to all?

The second issue is related to the items mentioned in Article 9 (Fourth 5-). All of these items represent typical and ordinary contractual obligations on the part of the foreign investor. Why DOGL then provides incentives to the foreign investor to adhere to and comply with its own contractual obligations? A provision such as this is very counterproductive indeed and detrimental to the oilfields and the Iraqi economy. In this sense this Article 9 (Fourth 5-) contravenes the provisions of Article 17, which deals with conservation matters and good business practices, and Article 15 (D-) regarding training and transfer of technology, Article 9 (C-) and Article 31 on matters related to the environment.

The third issue relates to what seems to be a compulsory linkage between "exploration" and "production" phases as if they are mutually inclusive and essential for the validity of a concluded "Exploration and Production contract". This rather rigid and one-only type of contract had created two very serious problems. The first problem, since DOGL permits three Model contracts for the "Exploration and Production contract", it in fact prevents the Iraqi contracting side (as defined in Article

10 (A-), save the ambiguities and contradiction referred to earlier) from seeking separate contracts with separate contractors for each of the two phases, exploration and production. Furthermore, the Iraqi concerned party cannot conclude, for example, a "Buyback Contract " or/and "Risk Service Contract", which are generally provide more favourable terms to the host country, Iraq, than the proposed three Models of the "Exploration and Production contract". Theoretically, by limiting the options for developing Iraq's petroleum production sector leave the country with "nationalisation" as the only viable way-out from disadvantageous "Exploration and Production contract" regardless of the adopted "Model". And this brings us to deal with the second problem facing such contract, namely their duration.

DOGL, Article 13, provides a surprisingly long duration for an "Exploration and Production contract" by practically splitting such duration into two phases. Exploration phase, which has initial period of maximum four years extendable to 10 years, in case of a commercial oil discovery, and 12 years, in case of a non-associated natural gas commercial discovery. The second phase is for development and production, which could vary from 20 to 25 years. (There is substantial difference between Arabic and English texts regarding the duration and extension approval) As mentioned earlier, except the "Exploration areas" in Annex 4, all other fields listed in Annexes 2 and 3 are already discovered. In this case why and what are the justification to granting such a long period for conducting exploration activities in the areas covered by Annexes 2 and 3? And what precautions FOGC has in case one foreign company has more than one "Exploration and Production contract" in different parts of the country, schedules or even manipulates its exploration programs to serve its interest other than the requirements "for ensuring that Petroleum discovered resources are developed, and produced in an optimal manner and in the best interest of the people.." referred to in Article 5 C (Eighth)?

Another serious concern is related to the unjustified, unreasonable and "investors' biased" length of the production period (Article 13 (F-)). As mentioned earlier the qualitative features put the Iraqi oilfields amongst the most rewarding fields worldwide. From our own experience in feasibility studies at INOC, most oilfields recover their capital investments in a very short period of time. Hypothetically, if we assume that Iraq needs $30 billions of investment to increase its petroleum production to a level of 5 *mbd* (million barrels per day), and is able to borrow this amount at 10% interest payable over 20 years, then the annual (year end) cost of repaying that amount and the accrued interest would be $3,5 billion. If we assume further a similar annual amount to cover other operating and transport cost then the total annual cost would be $7,0 billion. A production capacity of 5 *mbd* gives production of 1.75 billion barrels per year (of 350 working days leaving the remaining as shut-downs for maintenance), and FOB production cost of $4 per barrel. The difference between the prevailing price of oil and the stated cost per barrel represent net earning, or call it economic rent if you wish. The higher is the price the higher is the rent. With $50 per barrel the entire borrowed amount would be repaid by four months production, plus few days to cover accrued interest. At $80 per barrel a production of 75 days would be enough to repay the borrowed amount. So if the loan agreement of the borrowed $30 billions contains an acceleration clause, which permits early payments with or without penalties Iraq would be able to repay its debt during the first six months after it had develop the production capacity to 5 *mbd*.

Therefore, with the current price of oil and such a low production cost one can easily arrive at two conclusions: how profitable are the Iraqi oilfields, and how fast an investment in the Iraqi oilfields could be recovered. Under the light of this hypothetical, but very possible and realistic, situation one would question the wisdom of not pursuing the development of oil production capacity through the national-execution option by Iraqi entities only, and also question why DOGL offers such a long production period that could reach 25 years to reward the foreign investors generously for what!

Fourth- Efficiency, Conservation and Environmental considerations

In more than one occasion DOGL refers to the mentioned above considerations. Article 17 (A-), for example, refers to the "Good Oilfield Practices and Good Pipeline Practices". However, Article 4 (4-) defines Good Oilfield Practices in a rather weak and diluted way, to say "all those practices related to Petroleum Operations that are generally accepted by the international petroleum industry as good, safe, environmentally friendly, economic and efficient in exploring for and producing Petroleum;" The words " that are generally accepted" do not necessarily mean "best practices", which should be used in this type of business. With the increasing emphases on and attention to the environment protection measures on one hand and the repeated serious polluting incidences of the oil exploration and production activities on the other, the tendency is to adopt the "best" and the "latest" measures. Unfortunately, there is a discrepancy between the Arabic and English versions. While the definition in both texts are compatible and alike, the Arabic version uses "Optimal methods in the oil industry" and the English version uses "Good Oilfield Practices", and in Article 4 (5-) the Arabic version uses "Optimal methods in pipeline-network management" and the English version uses "Good Pipeline Practices"

Flaring gas is an issue, which involves considerations of the efficiency of the operation, the conservation of this vital resource and the damage it causes to the environment. In fact the Law correctly calls for optimal utilization of natural gas, in Article 24 (B-). However, it fails, under Article 25 (B-), to compel for the optimal utilization.

Article 25 (B-) states "The flaring of Associated Natural Gas shall be kept to a minimum. It shall not be permitted beyond a maximum period of one (1) year during which measures shall be completed to utilise the gas or deliver it to a nominated government entity"

Let us put this article in operation. Instead of investing in gas utilization the holder of the Exploration and Production rights "deliver it to a nominated government entity" pursuant to the referred to article. In this case there are two options: either the investment and cost of optimal gas utilization is practically transferred to the Iraqi government or the gas would be flared. In both options the adherence to this article relived the holder of the Exploration and Production rights from what should constitutes a contractual obligation.

Article 31outlines what the holders of Exploration and Production rights should do regarding the "Environmental Protection and Safety". Nevertheless, the said article does not spell-out the monitoring mechanisms or the monitoring entity to ensure compliance, or what are the legal measures or remedies in case of non-compliance. Most likely, and hopefully, the Model contracts and actual contracts would deal with these matters, but this remains to be seen!

Fifth: **The Petroleum Revenues**

In Article 11 DOGL deals, in a rather superficial way, with petroleum revenues. The inclusion of this article, which might have been a result of political pressure, is irrelevant, unnecessary

and adds more confusion to an already weakly structured law. It is more appropriate to delete this article from DOGL than keeping it, for the following reasons:

1- In paragraph (A-) of the said article, DOGL re-iterates what have already been established in and by the Constitution regarding the ownership of Oil and Gas resources, the distribution of its revenues, and the monitoring of federal revenue allocation, as the same paragraph admits. Since the Constitution is, legally and constitutionally, supreme to DOGL so what are the merits of such repetition;
2- From a "division of labour" perspectives and relevancy of the subject matter, petroleum revenues as well as any other federal revenues falls under, regulated by and governed through an another more relevant federal legislation. Namely Financial Revenue/ Resources Law, which is currently under consideration;
3- Politically speaking and for the benefit of an emerging young democracy a good (federal) citizenship cannot be constructed on the revenue only. Taxation is as important as entitlement to have an effective, democratic and functional representation. DOGL is not construed to deal with such rights and obligations;
4- DOGL, under Article 11, dose not provides any implementation or monitoring mechanisms of its own to ensure effective compliance. Even the two "Funds" (the Oil Revenue Fund and the Future Fund) referred to in paragraphs (C- and D-) of Article 11 they will be regulated by the forthcoming financial law, as the same article indicates. Furthermore, macro-economy, developmental considerations and the International Compact with Iraq/ICI, as well as pending international obligations such as debt and war reparations could have their impacts on how much revenues Iraq could eventually have at it disposal. Obviously, DOGL is not the correct or suitable avenue to deal with these issues.

Sixth: Petroleum regulations or "Regulations for Petroleum Operations"?

Throughout DOGL repeated reference was made to "Petroleum regulations" dealing with substantive and important matters. Article 34 (C-), for example, deals with the payment of "Royalty" in cash and states "it shall be calculated according to the prevailing Market Price in accordance with Petroleum Regulations". Therefore all maters relating to what market price, spot or forward, for what type of crude, in what currency USD or Euro etc will all be dealt with in accordance with these petroleum regulations.

The principle of area relinquishment during the exploration phase of an Exploration and Production contract is also left to the petroleum regulations according to Article 13 (D-), which says "All extensions shall be subject to the provisions concerning the relinquishment of Contract Areas in adherent to the Petroleum regulations."

Relinquishment of contract areas, whether it is mandatory or voluntary, has a crucial role for the government in ensuring that the holder of exploration contract do not hold onto acreage unnecessarily, depending on the size of the contract area, the duration of contract rights, and other provisions of the related contract.

Article 14 (K-) obligated the holders of Exploration and Production Rights to "Collect, organise and maintain in good condition usable data from all phases and on all aspects of Petroleum Operations in accordance with this Law and with Petroleum regulations,"

Having said all the above, the questions now are these "Petroleum regulations" referred to in the mentioned above articles the same "Regulations for Petroleum Operations", which according Article 27 are to be issued by MoO, and was referred to in Articles 14 (A- and D-), and Article 39 (A-) or not? If they are the same then why DOGL did not use a unified terminology instead of two or even more to refer to the same regulations? But if they are not the same, then what are they, who issue them and they regulate what?

Monitoring is an important regulatory function by the MoO. The monitoring of all petroleum operations to ensure compliance to laws, regulations and contractual obligations is a very broad and specialized function, which covers many aspects and terms. DOGL entrusts the MoO with this task according to Article 5 (D- Seventh). This paragraph says, "The Ministry is responsible for monitoring Petroleum Operations to ensure adherence with the laws, regulations, and contracting terms. In addition to its administrative and technical monitoring duties, the Ministry shall carry out verification of costs and expenditures incurred by the holders of rights to ensure correct and justified cost recoveries for the purpose of determining revenues accruing to the Government. The Ministry shall through inspection, technical audits and other appropriate actions verify conformance with legislation, regulations, contractual terms and internationally recognised practices. The Ministry must coordinate with Regional Governments and Producing Governorates to create specialized entities that carry out the above responsibilities instead of the Ministry"
Leaving aside the potential conflict with the CoM as referred to earlier regarding monitoring or administering Petroleum Operations, the last sentence in the mentioned above paragraph is worrisome. Considering the diversity, complexity and technicality of these monitoring responsibilities, how feasible is it "to create specialized entities that carry out the above responsibilities instead of the Ministry"? Would such "specialized entities" be created in all "Regional Governments and Producing Governorates"? What are the precautions against tampering with vital matters such as cost and expenditures verification, revenue determination etc, which has national interest implication? Would the monitoring role of the MoO be decentralised or totally eliminated? And if it will be totally eliminated who will deal with these matters on the macro-unified level? Could the word "must" prompts Regional Government(s) to set deadlines before the MoO to create these specialized entities otherwise they go their own way to create them? (Though the Arabic text does not imply "The Ministry must coordinate" rather "and the Ministry coordinate", the former question remains legitimate)

Seventh: National participation
DOGL deals with the principle of national participation on two interrelated matters in a rather dubious and cynical way
FOGC according to Article 5 (C- Seventh) "is the competent authority to approve the transfer of rights among holders of Exploration and Production rights and associated amendment of contracts provided this does not adversely affect the national content including the percentage of national participation." What exactly the meaning of "the national content including the percentage of national participation"? Are these Exploration and Production contracts joint ventures? Or they are Production Sharing Agreements/PSAs with specified percentages for the government and for the foreign right holders? Obviously the answers to these questions will be known once the Model contracts are ready and made public!

By Article 12 (A-) "The Republic of Iraq shall aim at achieving real national participation in the management and Development of its Petroleum resources.."
DOGL, in fact, is all about opening the Iraqi petroleum sector before foreign investors and international oil companies. The logical consequence is a real, effective and prolonged reduction in the national management of the country's petroleum resources. Therefore, this Article 12 (A-) is nothing but an empty rhetoric.
The effective national control on petroleum resources, which DOGL defiantly erodes, was consolidated through three political régimes: Law 80 of 1961, under Qasim régime, reclaiming the unexploited areas of the Iraq Petroleum Company's concession; Laws Nos. 97

and 123 of 1967, under Arif régime, which gave INOC (established in 1964) wider powers and the exclusive right to develop the giant North Rumaila oilfield; and, under Al-Baker-Saddam régime, the complete "nationalization" of oil during 1972-75 and the subsequent consolidation of national control over all petroleum related activities.

Eight: Regulating the form and manner relating to "Grant of Rights"

Article 9 is important and operationally very complex since it deals with "Grant of Rights". Paragraph (D-) of the Article states "The Designated Authority is to regulate the form and manner in which rights are granted under this Article in a manner consistent with this law and the regulations of the Federal Oil and Gas Council."

Operationally there are three designated authorities. As mentioned earlier they are, according to Article 4 (35 and 36), the Ministry of Oil, INOC, or the Regional Authority, which is the authorized ministry in the Regional Government. So which one of them will "regulate the form and manner in which rights are granted" under Article 9? Could this mean that each designated authority "regulate the form and manner in which rights are granted" for the Exploration and Production contracts it conclude? And if this is the case, then is there a high risk of discrepancies in the competency and professionalism of these three designated authorities and their conducts, which might compromise the national interests, and may create multi-tier system? Would the granting of the Regional Authority, pursuant to Article 5 (F-Second), the competency to "Carry out the licensing process regarding activities within its respective Region related to Exploration and Production of discovered but undeveloped Fields mentioned in Annex No. 3" practically create such a multi-tier system? Dose this generates a conflict of mandate, authority and territoriality among these three designated authorities? Or could it create a bandwagon effect, where each designated authority expects the other ones "to regulate the form and manner in which rights are granted"? These questions illustrate what the ambiguity of the law could generate on the ground.

Ninth: The Council of Ministers and the administration of Petroleum Operations.

CoM, pursuant to Article 5 (B. Second), "administers the overall Petroleum Operations"

It is indeed unrealistic to expect the CoM to undertake administrative function on the variety of activities at the fields level. This becomes abundantly clear once we know what "Petroleum Operations" really include. Article 4 (19-) defines "Petroleum Operations" as "all or any of the activities related to Exploration, Development, Production, separation and treatment, storage, transportation and sale or delivery of Petroleum at the Delivery Point, Export Point or to the agreed Supply Point inside or outside Iraq, and includes Natural Gas treatment operations and the closure of all concluded activities;"

Obviously, and from the above definition one can logically expect hundreds of activities, which are and can be performed throughout all these operations. Accordingly, the "administrative" functions of these activities are the responsibilities of the executing entities on the ground. Furthermore, there are multiple levels of administration depending on the nature of the activities. Some of the activities are performed by Iraqi entities while others by the foreign contractors in accordance with the related and concluded contracts. How logical and realistic is it that the CoM administers these operations? What are the mechanisms and modalities to effectively and productively execute such administrative function? Would this lead to a very rigid centralization? Could this generate a serious and repeated conflict of responsibilities between the center and the periphery of the petroleum operations? (The Arabic version of this article though differs slightly from the English text and implies "overall supervisions of the petroleum operations", it nevertheless dose not alter the picture or the understanding.)

Tenth: **The Corporate Social Responsibility/CSR and Foreign Direct Investment/FDI**
The Iraqi economy and the oil sector need FDI, and it should be encouraged. Using UNCTAD terminology the TNCs/ Transnational Corporations are the main vehicle for FDI. Statistics shows that Iraq was deprived for decades from benefiting from FDI. However, The presence of FDI and TNCs is not problems free. Far from it! The holders of the Exploration and Production contracts and related rights should adhere strictly not only to their contracts with the Iraqi entities but also to a variety of international norms and standards. These are dealt with in the increasingly recognized Corporate Social Responsibility, the UN Global Compact, best business practices and good deal of moral and ethical conducts etc, and the role of Civil Society Organization/CSO in maintaining these standards and observing TNCs' compliance with them.
Anticorruption, for example, is one of the basic components of CSR.
DOGL provides, through Article 37, provisions regarding anti-corruption. In addition that these provision are very brief, they are also mild in tune by using expression "may" in case of violation. With such formulation they do not constitute serious deterrent against corruption. However, what matters are not DOGL but the anticorruption law, transparency and other legal measures adopted in the country. What should be remembered and emphasized at is that international petroleum industry is characterized with complex corruption practices and tendencies, and national anti-corruption legislations and legal frameworks of the host countries might not be sophisticated and developed enough to encounter and discover corruption cases in due time. The elapsed of time and changing the ownership or even the existence of the entire foreign company would limit the recourse advantages of litigation regarding a corrupting action. The possibility of "business laundering" through complex operations of M&A (Mergers and Acquisitions) is real and happening to get away with the responsibility and corresponding liabilities in relation to financial irregularities and corruption cases.
In Iraq, corruption-induced environment had been, regrettably, spreading, as many reports had already confirmed, and this makes petroleum related senior positions highly susceptive to corrupting pressure.

Generally speaking DOGL provides very little room for the mentioned above international norms and standards and their governing instruments. There is a need, therefore, to incorporate these standards one way or the other within DOGL itself. If this is not feasible, then incorporating them in the Model contracts and in the Regulation for Petroleum Operations becomes imperative, fundamental and of paramount importance to protect the Iraqi intersts.

FDI, on the other hand, requires enabling and conducive environment. And one of the fundamental components of such environment is the legal predictability. Vague, unharmonious, unclear and ambiguous legal framework constitutes real and formidable risk for foreign investors. Legal scholars and FDI professionals would advice that ambiguity reduces predictability, and reduced predictability increases risk.
In more than one aspect DOGL might generates serious legal predictability problem and uncertainties, especially with regards to the gray areas between Federal and Regional powers and authorities.

Concluding remarks
This review and assessment would lead us to conclude the followings:

1. DOGL as it is suffers from serious structural weaknesses, inflicted with many ambiguities and contains too many flaws. In short it has more demerits than merits, and could generate serious and conflicting interpretations and exercise of authorities;
2. It seriously and effectively undermines the Constitutional role of the Council of Representatives in having the final say on Contracts that have direct consequences on the interest of all the Iraqi people. If the Council of Representatives approves DOGL in its current version, the Council will definitely do great injustice to itself and betrays the trust of the people they represent;
3. FOGC, un-elected organ of the Executive Branch, was granted sovereign powers and authority, which structurally and functionally, could be detrimental to the interests of the Iraq economy. Considering the possibility that FOGC depends on foreign advisors is very real, the risk could be extremely high;
4. The proposed Law suggest one-only Exploration and Production Contract, which has three Models. Though the DOGL dose not admit it, this type of Contract and its three models are in reality nothing but a version of the known Production Sharing Agreement;
5. By adopting one-only Exploration and Production Contract, DOGL imposes what seems to be a compulsory linkage between "exploration" and "production" phases as if they are mutually inclusive and essential for the validity of a concluded "Exploration and Production contract". Such linkage produces surprisingly long duration for the concluded contracts, which could reach 37 years;
6. The qualitative features put the Iraqi oilfields amongst the most rewarding fields worldwide. Under the light of a hypothetical, but very possible and realistic, case Iraq would be able to repay a debt of $30 billion and its accrued interests, needed to develop a production capacity of 5 *mbd*, within a period of 75 to 120 days if oil prices ranges between $50 to $80 per barrel. One would question, therefore, the wisdom of not pursuing the development of oil production capacity through the national-execution option by Iraqi entities only, and also question why DOGL offers such a long duration to reward the foreign investors generously;
7. DOGL deals with INOC in an apparent confused and contradictory fashion. Unless the identified weaknesses are dealt with, the expected Laws for INOC and MoO and the "Regulation for Petroleum Operations" are properly drafted, it would be unrealistic to expect this DOGL to constitute suitable base for sound federal petroleum policy. Let alone contributing to sustainable development in the country, and the optimal utilization of these depletable and finite petroleum resources.