

# **The Extent of Federal and Regional Authorities Rights In The Iraqi Gas and Oil**

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## **The Extent of Federal Regional Authorities Right In the Iraqi Gas and Oil**

All Iraqi agree to the fact that the Iraqi economy today is in a poor condition, which calls for urgent action to develop it.

And since the oil and gas play a major role in developing such economy, the Iraqi as well as the foreign experts found that it is necessary to increase oil production to restore the national economy.

And since the capital required for that is not available, it is essential for the foreign investment, even for a transitional until that day when the Iraqi economy is recovered and to be able to depend on the Iraqi capital in the national investment.

And since all that should have a national legislation thoroughly considered taking into consideration avoiding the adventure element for the investor concerning the discovered oil fields.

Then, there is no reason for exaggeration of the extraordinary condition as long as it is possible to recover the countries ability of self financing within few years.

When the investment laws draft in general and the oil and gas law in particular presented for discussion, the central federal and regional authorities rights in terms of oil and gas property and management presented as well.

This consequently led to opposed opinions about the interpretation of the constitution texts relating to oil and gas property and management.

And after studying the different points of view in this respect, we found that it is necessary for us to express our opinion in this matter.

**We shall present that in three chapters and conclusion.**

- **First chapter** : (Presenting the texts stated in the constitution).
- **Second chapter** : (Interpreting such texts in three paragraphs).

First – Jurisprudential Interpretation.

Second – Juridical Interpretation.

Third – Legislative Interpretation.

- **Third chapter** : (Constitution amendment).
- Conclusion.

## First Chapter

### Texts Stated in the Constitution

Several texts mentioned in the constitution indicated in the discussion going on about the Central and Regional Authorities Rights in oil and gas ownership and management.

And to enable the reader to study the constitution texts related to this dispute. We found its necessary to transfer them literary in this chapter to make it easy for the reader to review them, and consequently to enable him to form a supporting opinion to this party or that of the delegation practices.

**We shall present these texts of the Iraqi Constitutions successively.**

**- Article (49) :**

**First:** “The Council of Representatives shall consist of a number of members, at a ratio of one representative per 100,000 Iraqi persons representing **the entire Iraqi people**. They shall be elected through a direct secret general ballot. The representation of all components of the people in it shall be upheld”.

**- Article (111) :**

“Oil and gas are the ownership of all the people of Iraq in all the regions and governorates”.

**- Article (113) :**

“Antiquities and antiquity sites, traditional constructions, manuscripts and coins are considered part of the national wealth which are the responsibility of the federal authorities. They will be administered in cooperation with the regions and governorates, and this will be regulated by law”.

**- Article (112) :**

**First:** “The federal government with the producing governorates and regional governments shall undertake the management of oil and gas extracted from current fields provided that it distributes oil and gas revenues in a fair manner in proportion to the population distribution in all parts of the country with a set allotment for a set time for the damaged regions that were unjustly deprived by the former regime and the regions that were damaged later on, and in a way that assures balanced

development in different areas of the country, and this will be regulated by law”.

**Second:** “The federal government with the producing regional and governorate governments shall together formulate the necessary strategic policies to develop the oil and gas wealth in a way that achieves the highest benefit to the Iraqi people using the most advanced techniques of the market principles and encourages investment”.

**- Article (114) :**

“The following competencies shall be shared between the federal authorities and regional authorities”:

**First:** To administer customs in coordination with the governments of the regions and governorates that are not organized in a region. This will be organized by law.

**Second:** To regulate the main sources of electric energy and its distribution.

**Third:** To formulate the environmental policy to ensure the protection of the environment from pollution and to preserve its cleanness in cooperation with the regions and governorates that are not organized in a region.

Fourth: To formulate the development and general planning policies.

**Fifth:** To formulate the public health policy in cooperation with the regions and governorates that are not organized in a region.

**Sixth:** To formulate the public educational and instructional policy in consultation with the regions and governorates that are not organized in a region.

**Seventh:** To formulate and organize the main internal water sources policy in a way that guarantees fair distribution. This will be organized by law.

**- Article (115) :**

“All powers not stipulated in the exclusive authorities of the federal government shall be the powers of the regions and governorates that are not organized in a region. The priority goes to the regional law in case of conflict between other powers shared between the federal government and regional governments”.

**- Article (120) :**

“The region shall adopt a constitution that defines the structure of the regional government, its authorities and the mechanisms of exercising these authorities provided that it does not contradict with this Constitution”.

**- Article (121) :**

“**First:** The regional authorities shall have the right to exercise executive, legislative, and judicial authority in accordance with this constitution, except for those powers stipulated in the exclusive powers of the federal government”.

“**Second:** In case of a contradiction between regional and national legislation in respect to a matter outside the exclusive powers of the federal government, the regional authority shall have the right to amend the application of the national legislation within that region”.

“**Third:** Regions and governorates shall be allocated an equitable share of the national revenues sufficient to discharge its responsibilities and duties, but having regard to its resources, needs and the percentage of its population”.

“**Fourth:** The regions and governorates shall establish offices in the embassies and diplomatic missions, in order to follow up cultural, social and developmental affairs”.

“**Fifth:** The Regional Government shall be responsible for all the administrative requirements of the region, particularly the establishment and organization of the internal security forces for the region such as police, security forces and guards of the region”.

**- Article (122):**

“**First:** The governorates shall be made up of number of districts, sub-districts and villages”.

“**Second:** Governorates that are not incorporated in a region shall be granted broad administrative and financial authorities to enable it to manage its affairs in accordance with the principle of decentralized administration. This will be organized by law”.

**- Article (126) :**

**First:** "The President of the Republic and the Council of the Ministers collectively or one-fifth (1/5) of the Council of Representatives members may propose to amend the Constitution".

**Second:** "The fundamental principles mentioned in Section One and the rights and liberties mentioned in Section Two of the Constitution may not be amended except after two successive electoral terms, with the approval of two-thirds of the Council of Representatives members, and the approval of the people in a general referendum and the ratification of the President of the Republic within seven days".

**- Article (110) :**

"The federal government shall have exclusive authorities in the following matters:

**First:** "Formulating foreign policy and diplomatic representation; negotiating, signing, and ratifying international treaties and agreements; negotiating, signing and ratifying debt policies and formulating foreign sovereign economic and trade policy"

**Second:** "Formulating and executing national security policy, including creating and managing armed forces to secure the protection, and to guarantee the security of Iraq's borders and to defend Iraq"

**Third:** "Formulating fiscal and customs policy, issuing currency, regulating commercial policy across regional and governorate boundaries in Iraq; drawing up the national budget of the State; formulating monetary policy, and establishing and administering a central bank"

**Fourth:** "Regulating standards, weights and measures"

**Fifth:** "Regulating the issues of citizenship, naturalization, residency and the right to apply for political asylum".

**Sixth:** "Regulating telecommunications and mail policy".

[A-1 The basic principals in the constitution, the first section (articles from 1-12) of the constitution, provided for the ruling regime, state religion, Iraq capital, the flag and the national anthem, the official language, law souvrunt, superiority of the constitution, authority rotation, Iraq foreign policy, Armed forces, respect of the holy place, to determine the location of the capital of Iraq (Baghdad), organizing the flag and national anthem of Iraq. According to law].

[B-2 And discussed the rights and freedoms stated in the second section of the constitution (articles from 14-46) and spoke about the freedom of expression, and equality between Iraqis, equal opportunities assurance, residence respect, the right in the Iraqi nationality, Judiciary independence, and the principle of no crime and no punishment without text, and not to effect the criminal law on the past and to guarantee the right of defense and others].

**Seventh:** “To draw up the general and investment budget bill”.

**Eighth:** “Plan policies relating to water sources from outside Iraq, and guarantee the rate of water flow to Iraq and its fair distribution, in accordance with international laws and norms”.

**Ninth:** “General population statistics and census”.

**- Article (131):**

“Every referendum mentioned in this constitution is valid with the approval of a simple majority of the voters unless otherwise stipulated”.

**- Article (142) :**

**First:** “At the start of its functioning, the Council of Representatives shall form a committee from its members, which will be representative of the main components of Iraqi society and the duty of which will be to present within a period no longer than four months to the Council of Representatives a report that includes recommendations for the necessary amendments that can be made to the Constitution. The committee will be dissolved after a decision is made on its proposals”.

**Second:** “The amendments proposed by the committee will be put before the Council of Representatives in a single batch for approval. It will be considered approved by the agreement of an absolute majority of the number of council members”.

**Third:** “The articles amended by the Council of Representatives under the second clause of this article will be put before the people for a referendum within two months of the Council of Representatives' approval of them”.

**Fourth:** “The referendum on the amended articles will be considered successful with the agreement by an absolute majority of those who vote, unless it is rejected by two-thirds of those who vote in three governorates or more”.

**Fifth:** “This is an exception to Article 61/2712263/47 of this Constitution 61/27which concerns amending the constitution63/47. After the amendments discussed in this article are decided on, work will return to the terms of Article 61/2712263/47.)

**- Article (142) :**

“Legislation enacted in the region of Kurdistan since 1992 shall remain in force, and decisions issued by the government of the region of Kurdistan - including court decisions and agreements - shall be considered valid unless it is amended or annulled pursuant to the laws of the region of Kurdistan by the competent entity in the region, provided that they do not contradict with the constitution”

## Chapter Two

### Interpretation of provisions pertaining to the ownership and management of oil and gas

#### Introduction

Interpretation herein means interpretation within the framework of the law. Within the legal framework it means investigating the legislators intention, namely knowing the purpose intended by the legislator from his expression in the manner expressed by him. We do not want to begin here the consideration of the various tools of interpretation because this subject is discussed in a different place. We will be satisfied now with a quick presentation of the kinds of interpretation and the rules indicated in the Civil Law to assist in interpreting the legislator's intent.

**First:** (Types of Interpretation) . " There are three types of legal interpretation": "judicial interpretation, juristic interpretation and legislative interpretation".

**1- Judicial interpretation:** The judge is the one responsible for the application of the law which is his tool for the enforcement of rights and establishment of justice. However, the judge may be confronted by several problems when he intends to apply the law. The legal provision to be applied to the dispute could be ambiguous or deficient. Therefore, he must remove the ambiguity and cover the deficiency firstly by means of the dissent and analogy concept , and other tools of interpretation.

The judge may not find a provision that governs the dispute , he shall therefore, apply the rules of custom and if he does not find such rules he shall apply the principles of Islamic Shariah which are most appropriate to or consistent with the provisions of the Civil Law . If he fails to do so he shall apply the principles of equity "Article(1)" of the Iraqi Civil Law .After clarifying the provision or completing it, the judge must select the provision applicable to the dispute. Here appears the theory of legal adaptation which is an intellectual process through which the judge knows the legal description of the event in order to know the provision that must be applied thereon.<sup>(1)</sup>

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(1)Refer to our memoranda delivered to the new lawyers in the Lawyers Union in 1980

It is noticed that any error in the adaptation of the facts or merits of the case certainly leads to an error in the application of the law. Therefore, we honestly recommend that lawyers and judges accord great importance and special attention to in-depth adaptation. The judicial interpretation could be binding or not binding according to conditions that require long explanation that is not relevant at this point. The judiciary in charge of interpreting the Constitution is the Supreme Federal Court .

We have explained earlier the intention behind judicial interpretation ; and we need now to speak about the interpretation of the disputable provisions of the Constitution . What is the constitutional source or reference towards deciding which of the various interpretations is the best.

The new Iraqi Constitution included three articles that deal with the Supreme Federal Court . Article (92) dealt with the nature of the court by stating that:

**First:** "The Supreme Federal Court of Justice is a financially and administratively autonomous judicial authority. The second paragraph of the same article states :”The Supreme Federal Court of Justice shall consist of a number of judges and experts in Islamic jurisprudence and jurists . Their number and the method of their selection and the court functioning shall be specified by a law promulgated by two thirds majority of the House of Representatives”.

Article (93) of the Constitution determines the jurisdiction of the court, stating:

**“First:** controlling the constitutionality of laws and regulations in force”.

**“Second:** interpreting the provisions of the Constitution”.

**“Third:** Resolving the issues that arise out of the application of federal laws, as well as the decisions, regulations, instructions and procedures of the federal authority. The law ensures the right of the Council of Ministers, individuals concerned and others to object directly to the court”.

**“Fourth:** Resolving disputes between the federal government and regional governments, governorates, municipalities, and local departments etc. This provision explains the mechanism of operation of the court and determines the way to be followed to arrive at the interpretation of the

constitutional provision subject of the dispute”.

Any one who wishes to obtain an interpretation of a constitutional provision must submit an application to the Supreme Federal Court of Justice for the settlement of dispute, seeking the Supreme Courts opinion in the interpretation of the provision subject of dispute. The Council of Ministers, through the Prime Minister or an individual or institutional entity may directly request the Federal Court to interpret the said constitutional provision provided the applicant has a legitimate interest in the matter. Accordingly, in the case of dispute among the central and regional authorities regarding the jurisdiction of the management and ownership of oil according to a certain article of the Constitution, the Supreme Federal Court must be directly approached to interpret that provision, The Court's decision on the matter will be binding and will be considered as a legislative provision.

## **2- Juristic interpretation:**

Juristic interpretation means the interpretation by jurists and law commentators. Jurisprudence plays an important role in influencing both the judges and legislators. The job of jurisprudence is to investigate the intention of the legislator by the various means of interpretation. The jurist is the one who is able to draft general theories in law which may have the greatest effect on the judiciary and the legislators as well, because of his legal logic and wide horizon in the field of law. The French Professor Morin said correctly, “ The judiciary opens the road and paves it “ This means that jurist makes it easier for the judiciary to know the correct meaning of the legal provision because of his ability to deduce the solution from its legislative source.

It is noticed that jurisprudence binds the judiciary. It is not a judgment nor a legislation but its role is confined to presenting theories and expressing legal opinion.

### **The question is, what is the jurists opinion on the meaning of the article of the Constitution on oil and gas?**

Jurists had different arguments in the interpretation of the constitutional provisions pertaining to oil and gas. Each had his justifications. For the purpose of expressing an objective opinion on this controversy, we found it necessary to explain these provisions. Before we start to do so we find it necessary to offer a number of comprehensive rules in the inter-

pretation of the law. These rules appear in the Civil Law on the interpretation of the contract, but they apply to the interpretation on the legislation because of the similarity between legislation and contract, since each is an expression of an intention. The interpreter of law fetches for the intent of the parties to a contract. Moreover, the interpreter of law investigates the intent of the legislator included in the legislative expression and offers the interpretational rules as follows:

**The overall rules of interpretation of these provisions:**

The Iraqi Civil Law has referred to a number of overall rules to which the law interpreter may resort in his heavy and tiresome duty, and present some of them as far as they relate to our subject:

**- First Rule:**

“1- What is important in contracts, is the intent and meaning not the expressions and constructions”.

“2- The basic thing in language is the truth. If truth is not possible to arrive at, then metaphor shall be resorted to “Article 155” of the Iraqi Civil law.

**- Second Rule:**

“Article (58) : “ Putting the words into action is better than neglecting them. But if words cannot be put to action they may be neglected”

**- Third Rule:**

“ The absolute may be generalized if there is no evidence of restriction in word and spirit”. Article 160 Civil”.

**On the basis of these explanatory rules, we present the following interpretation of the constitutional provisions pertaining to the ownership of gas and petroleum :**

**“First : ownership of petroleum and gas”**

**first:** Article (111) of the Constitution provides that the people of Iraq is the owner of gas and oil in all regions and governorates. This provision agrees with the interpretation that oil and gas are the property of all the people of Iraq and that the population of every region have a share in it. But this ownership is undivided and indivisible, the same as antiquities, and archeological sites referred to in article (113) of the Constitution. The Iraqi legislator indicates that ownership in this case shall be in the hands of the central and regional authorities. He also mentions that the management

shall also be joint among the central authorities and regional authorities . This article also explained that the method and extent of participation in the management of antiquities and archeological sites is regulated by law. Therefore the central authorities are the ones which determine the nature and type of participation in this management ; because the law which stated this provision is the law issued by the central authorities and in particular the House of Representatives which represents the people of Iraq ( Article 49 )of the Constitution.

Whereas the federal authorities and in particular the House of Representatives is the sole representative of all Iraqis, it is the only reference, or source, in the promulgation of laws regulating the management of oil in cooperation with the regions. Otherwise we cannot understand the benefit of the provision that oil and gas are the property of all the people of Iraq.

In addition, some officials in Kurdistan see that the provision of article (111)of the Constitution means that the oil and gas resources remain governmental and may not be sold to the private sector. The additional provision at the end of the article confirms the rights of the people in the regions and governorates to these resources.

**The question is, what are the rights of the regions and governorates. Do they have the right to sell their undivided interest to others or conclude oil contracts up to the limit of their share in the oil produced in the region. ?**

We have explained our opinion above, but what is the opinion of the Minister of Natural Resources in the regional government of Kurdistan. The said official says “ it is clear that even the limited role of handling available to the federal authorities is conditional to an agreement. to be arrived at with the region and governments regarding:

A-equal demographic distribution of oil and gas revenues.

B- fixed additional share above the demographic rights for a period of time to all deprived areas.

We do not know from where came the commitment of the federal authorities to the necessity of agreement with the regions on these matters?

“Whereas the ownership of oil is principally in the hands of the whole Iraqi people , the distribution of the discovered and undiscovered oil and gas revenues among the central and regional authorities rests in the hands of the House of Representatives who exercises this right by promulgating a law. Then there is no legal commitment to conclude agreements with regions, and the minister was wrong to say that “Any laws concerning article 112 must be agreed upon with regions and governorates. Therefore the only difficulty occurs if no agreement is reached. The regions and governorates need to promulgate laws for them. These laws will have priority over federal laws by depending on the use of powers according to article 115 which is in their favor”.

An interpretation of this kind of the provisions of the Constitution generates provocation as a result of the clear bias to the powers of regions and the Kurdistan region. This is because the laws promulgated by regions should gain constitutional approval . Article(121).

**First:** It ruled that the region’s authorities have the right to exercise legislative, executive and judicial powers in accordance with the Constitution with the exception of the powers exclusively vested in the federal authority.

It is clear from this provision that regions have the right to exercise legislative , executive and judicial powers in accordance with the Constitution with the exception of the powers exclusively vested in the federal authority.

**If the region promulgates a law determining the investment of currently un-produced oil and gas, will this be consistent with the Constitution ? And if a regional law is promulgated giving the region three quarters share in the oil produced in it will this be consistent with the law?.**

Also what is the benefit of the provisions of articles (111 and 113) of the Constitution if the regional law can be amended?.

**Shouldn’t those two articles be applied under the principle words should be applied not neglected.” Could they be revoked by a local law? just because they do not exist in the regional jurisdictions of the federal authorities?.**

In our opinion, as long as oil, gas and antiquities are jointly owned by the people, no region may dispose of it without an express law promulgated by the House of Representatives the sole representative of all the Iraqi people.

We must indicate here again that the natural result of the people's ownership of oil and gas is that all legal dispositions of these national resources must be in accordance with the law which is the only expression of the management of the people of its public property.

It is noticed that contracts made in Kurdistan pertaining to oil and gas investment are considered void because they violate the provisions of (articles 111 and 112) of the Constitution. The provision of article 142 of the Constitution to which we referred in chapter one, cannot be adhered to ; because this article expressly provides that said contracts and decisions must be consistent with the Constitution . .No law may be

promulgated for oil investment in a particular region. , independently from the federal law governing the investment of the oil wealth in Iraq. An act of this sort leads to confusing the policy of investment of all oil in the federal state.

## **Second: Oil and Gas Management**

Article (112) of the Constitution had dealt with two matters, The first is the management of oil and gas produced from the current fields with the governments and governorates of productive regions. , provided their revenues are distributed equitably and proportionately with the population distribution throughout the country, and to determine a share for a certain period to regions which had suffered damages and which were deprived of their rights unjustly by the previous regime and those which suffered damages thereafter, in such a way as to ensure balanced development in the various regions of the country. This shall be regulated by law. The second paragraph pertains to the drawing of a strategy necessary for development of the oil and gas resources in such a way that benefits the people of Iraq, it must be based on up-to-date market principles and promotion of investment.

This article is very clear except for two things. “ **First-** what is meant by the expression oil and gas extracted from current fields? A reply to this is that (current fields) mean the producing fields at the time of issuance of the current Constitution. , regardless of the quantity produced as long as it is a commercial quantity” . “The second is: how will the products be distributed? The text is clear about that, but it states that it shall be done by law. This may raise the following question: If there is no agreement between regions and the central authority about the percentage of distribution of revenues, will each region one-sidedly promulgate a law to determine it? or a federal law should be promulgated for this purpose? The natural resources minister of Kurdistan says “An agreement pertaining to laws relating to article (112) must be made with the regions and governorates. A difficulty exists if no such agreement is reached. The regions and governorates need to set special laws for themselves and these should have priority over federal laws according to the powers vested thereto under article (115) of the Constitution which is in their favor”.

Article (115) provides “anything not provided as being within the exclusive powers of the federal authorities , will be within the powers of the regions and governorates not belonging to a region. With regard to the other powers which are common between the federal government and regions , priority shall be to the law of the regions and non-regional governorates. in the event of dispute between the two , namely if no agreement is reached between regions and central authorities about a subject pertaining to gas and oil outside the exclusive powers of the central authority , these powers rest with the regions and governorates. Also priority will be to laws of regions and governorates, in the event of dispute over joint powers.

### **But, how do regions and governorates exercise their legislative powers?**

**Article** (120) of the Constitution answers this question as follows:

“The region will draft its own constitution that determines the structure of the powers of the region and the jurisdictions and mechanisms of exercising these powers. , provided this does not conflict with the Constitution. Therefore, the laws legislated in the regions will not be effective unless they are in conformity with the Constitution. No doubt all the regional legislative activities are restricted by this condition. Therefore, any local

law that deals with a regulation that pertains to oil and gas will not be constitutional if it violates an express provision in the federal constitution. Whereas oil and gas is the property of the Iraqi people, the decisive solution of any dispute among the regions and the Central Authority regarding the oil jurisdictions, rests in the hands of the legitimate representative of the Iraqi people namely the House of Representatives. **(Article 49 of the Constitution)**".

### **3- Legislative interpretation :**

We had previously defined the legislative interpretation that the legislator himself interprets the ambiguous legislative provision whose ambiguity leads to a different understanding of judicial and administrative applications. To avoid these differences the Council of Ministers must submit a memorandum to the legislative body requesting interpretation of the ambiguous text in said law. Accordingly, the legislative body will study the application and issue an interpretation of the ambiguous provision.

This interpretation will be considered ipso jure as called in legislative interpretation. Can the Council of Ministers demand from the House of Representatives currently an interpretation of the ambiguous provisions of the constitution, particularly those relating to the ownership and management of oil and gas?

The House of Representatives can do so provided it follows all procedures necessary for legislating the Constitution. Therefore, it must vote on the interpretation at the House of Representatives in the manner it follows to legislate the Constitution. Then the interpretation will be presented for referendum. It ought to be mentioned here that the guarantees determined in the Constitution to protect minorities mainly that the Constitution will not be approved if two-thirds of the votes in three governorates object to. It is noticed that this method is not safe if resorted to.

## Chapter Three

### **Amendment of the Constitution :**

Some persons are of the opinion that it is necessary to resort to the amendment of the constitution to settle the existing dispute regarding the ownership and management of oil and gas, the federal system, and other points of dispute. When referring to the provisions of the constitution we find it full of provisions restricting its amendment especially with regard to the jurisdictions of regions and governorates.

- **Article** (126) of the Constitution ruled in its first paragraph that :

“**First:** The President and the Prime Minister jointly, or one fifth (1/5) of the members of the House of Representatives, may propose the amendment of the Constitution”.

But paragraph (**two**) of this article prevented the amendment of basic principles mentioned in Part One, and the freedoms stated in Part Two of the Constitution, except after two consecutive electoral sessions and pursuant to the approval of two thirds of the members of the House of Representatives, and approval of the people by referendum and ratification by the President within seven days.

Paragraph (**Four**) of the same article stipulated that it is not permissible to amend any articles of the Constitution that diminish the powers of the regions which do not fall within the exclusive powers of the federal Authority, except by approval of the legislative authority of the region concerned and approval of the majority of its population by general referendum.

This provision prevents the amendment of the Constitution in all cases in which the amendment diminishes the jurisdictions of the regions.

If the restriction over the basic principles and general freedoms provided for in the Constitution has a limited period namely, two consecutive electoral sessions, the restriction in question over prejudicing the jurisdictions of the regions came absolute without a certain period for it.

Therefore, any dispute over the articles of the Constitution concerning oil and gas cannot be easily resolved by demanding the amendment of the Constitution. There is another obstacle which prevents the amendment of the articles of the Constitution that pertain to oil and gas. It is article (142) of the Constitution which permits the minority's control over the majority. The article reads as follows: "The House of Representatives shall form at the beginning of its business, a committee from among its members to represent the main components of the Iraqi Society( by shares) .Its mission shall be to submit a report to the House of Representatives within a period of four months to include a recommendation of the necessary amendments to be introduced to the Constitution. The Committee shall be dissolved after deciding on its proposals."

Paragraph two of the same article provides that it is necessary to present the proposals on the amendment at one time to the House of Representative for voting. They will be considered passed with the approval of the absolute majority of the number of the members of the House.

Afterwards the amended articles will be presented to the people for referendum within not more than two months from the date of approval of the amendment by the House of Representative.

Paragraph Four of the same article had placed another obstacle to the success of the referendum by making possible the use of veto over the amendment. The paragraph read that voting on the amendment, to be successful, it must not be objected to by two thirds of the votes of three governorates.

It is clear that any amendment to the rights and powers of the regions is not possible as long as it can be vetoed by a majority of two thirds of the votes of three governorates.

It is noticed from a calm reading of the provisions of the Constitution, that there is an intention in these provisions to support the over-ruling of the central powers by the provinces. One of its features is the confinement of federal powers, and leaving the remaining powers to the provinces. Not only this, but the Constitution guarantees the veto of every amendment that diminishes the powers of governorates.



**Iraq : Oil and gas rights of regions and governorates**  
**Press interview with Dr. Hawrami, KRG Minister**  
**of Natural Resources**

Erbil, 15 June 2006 (krg.org) - In response to various enquiries, Dr. Ashti A. Hawrami, the KRG Minister of Natural Resources, answers questions about the constitutional rights of regions and governorates regarding oil and gas resources. The answers have been prepared in accordance with independent constitutional advice provided to the Minister.

There has been some media speculation as well as a number of press releases, articles and interviews, calling for federal constitution articles related to oil and gas resources to be amended.

**- What are the views of the KRG on these issues?**

**Dr. Hawrami:** These calls are irrelevant. They are initiated largely by those who hold anti-federalist views and are supported by some sympathisers of the former regime. These individuals seem to have conveniently forgotten that the Constitution is already in place. It has been ratified in a nationwide referendum and on this basis Iraq has formed its first democratically elected government.

It is understandable that not everyone likes all the articles, but the Constitution was adopted as a package by all the people; it is a single document.

Therefore, its individual articles cannot be amended to suit the views and wishes of individual persons or parties.

The rights of the regions and governorates are clear and cannot be modified in any way to enhance the powers of federal authorities.

**- Would the KRG consider renegotiation or amending these oil and gas related articles?**

**Dr. Hawrami:** The constitutional negotiations are behind us now and we have to live with the constitution and respect it as the ultimate law of the land. The oil and gas articles are important for the whole country, so now we need to concentrate on providing the necessary guidelines to the federal and the regional parliaments and to all other authorities within the governorates to draft requisite petroleum laws.

This should be conducted in private, without the intervention of unhelpful and uninvited guests or media speculators.

**- Has the KRG been in discussion with the federal authorities on the creation of the petroleum laws and on its relations with Baghdad?**

**Dr. Hawrami:** The KRG is in regular contact through the senior Kurdish members of the federal government, and just before our respective appointments, I met Dr. H. Shahrastani, the federal oil minister in Baghdad, and we agreed to fully cooperate for the benefit of all Iraq. The regions and the governorates will be represented and they will participate in the drafting of petroleum laws. The KRG intends to be proactive, constructive, and cooperative on these important matters.

**- How does the KRG interpret the oil and gas related articles?**

**Dr. Hawrami:** The same way as all the commentators who have been complaining about them. These articles are clear to all concerned, so we do not interpret them differently from those who have been complaining about them. The only difference being is that we like them and they don't.

**- Can you explain and elaborate on the oil and gas related articles, particularly the role of Baghdad, revenue distribution, control of field operations, relations with OPEC and oil exports?**

**Dr. Hawrami:** There are two specific articles and a governing article in the federal Constitution relating to oil and gas resources.

- **Article** (111) states, “Oil and gas are the property of all Iraqi people in all regions and governorates”.

This article is intended to clarify that these natural resources remain public and cannot be sold to the private sector. The additional text added at the end of this article (underlined) stresses the rights of the people in the regions and the governorates to these resources, but it does not deal with revenue sharing as this is defined separately in Article(112).

- **Article**(112) has two distinctive parts.

**Part 1 deals with existing producing fields and states:**

“The federal government in cooperation with the producing regions and governorates shall administer the extracted (produced) oil and gas from existing oil and gas fields provided that the proceeds (revenues) are evenly distributed in accordance with the demographic distribution around the whole country, and a specific share of the proceeds for a specific period of time shall be allotted to the regions which were unjustly deprived by the previous regime, and were affected by it, to secure a balanced development of the different areas of the country and this shall be regulated by law”.

This part of Article (112) makes it clear that the role of the federal authorities is only an administrative role confined to the handling, i.e. exporting and marketing, of the extracted oil and gas from existing producing fields.

This does not entitle the federal authorities to a broader role on operations; otherwise, the word ‘extracted’ (‘produced’), would not have been inserted in the text.

The right to handle extracted oil and gas is directly related to revenue distribution. Therefore, the federal administrative role does not extend to the actual oil and gas extraction process, such as drilling, field operations, day-to-day running and management of oil and gas fields. This should not be a problem because these functions are currently, as they have always been, locally managed by the people living in the regions and the governorates.

Under the new constitution, however, the elected authorities of the regions and producing governorates are now entitled to administer and supervise the extraction process, in other words local oilfield managers are answerable to the local authorities. This is not a big deal, after all we all live in one Iraq.

It is also clear that even the limited handling role available to federal authorities is conditional upon an agreement being reached with the regions and the governorates on :

- 1- an even demographic distribution of the oil and gas proceeds (revenues).
- 2- a specific additional share or top-up above the demographic rights, for a period of time for all the deprived areas.

This means an agreement by the federal authorities with the regions and governorates is to be reached on a range of clearly defined and legally binding formulas to unconditionally allocate an additional percentage of revenue to each region and governorate for an initial period (to be defined) to redress the balance, and also for long-term entitlements beyond the initial period. Of course, there should be no dispute that the Kurdistan Region and many of the southern governorates have been deprived areas for a long time. Therefore, they would expect to receive or negotiate a reasonable share of the top-up revenues.

**(Part 2 of Article 112) deals with strategic policy issues and states:**

“The federal government together with the governments of the regions and governorates shall put in place (draw up) requisite strategic policies for the development of the natural oil and gas resources in order to achieve for the Iraqi people the highest benefits by adopting the most modern market-driven principles and techniques to encourage investments”.

Here the emphasis is on an agreement being reached between the federal authorities and the producing regions and governorates to draw up strategic policies for all Iraq. This primarily pertains to overall short, medium, and long term production targets or limits that are to be achieved or allowed from each region and governorate, and to overall relations regarding the OPEC quota for Iraq.

Any laws related to Article (112) need to be agreed with the regions and the governorates. Therefore, the only difficulty here occurs if no agreements are reached, in which case the regions and governorates are entitled to create their own laws. These laws will prevail over federal laws by relying on the use of powers per Article (115), which is in their favour. While this would only happen if one of the parties becomes unreasonable, we should remain optimistic that this will not happen.

**- Is Article (115) specific to oil and gas, and how does it work?**

**Dr. Hawrami:** This is a general overriding article which applies to oil and gas resources and to all other shared rights of the regions and governorates under the constitution.

**Article (115)** states:

**“Any rights that are not stated under the exclusive powers of the federal authorities shall come under the authorities of the regions and the governorates, and with regard to all the other jointly shared authorities between the federal government and the regions and governorates the priority shall go to the laws of the regions and the governorates in the case of conflicts between them”.**

This article states the supremacy of regional laws over federal laws, and can be invoked if no agreement is reached on the management of oil and gas resources and the distribution of proceeds under Articles (111) and (112).

This should only arise, however, if one of the parties becomes unreasonable, which is unlikely. If that occurs, then the regions and the governorates may exercise full control over all the fields, both old and new, including some oil and gas exports, and revenue collection and distribution.

**- Who controls infrastructure facilities, downstream activities, exploration or related exports, and revenues from new fields?**

**Dr. Hawrami:** The articles are silent on many aspects of the oil and gas industry. However, anything which is not stated under the federal powers or under the shared powers comes under the absolute authority of the regions and governorates. For example as noted by many, with respect to oil and gas resources no reference has been made to the following and, therefore, these will be exclusive to the regions and governorates:

- 1- **Article** (112) does not mention anything about discovered undeveloped fields, or about any new fields, or any of the unexplored areas.
- 2- **Article** (112) does not mention the handling of extracted oil and gas, or related proceeds, from undeveloped fields, or from any new fields resulting from new drilling and further exploration activities.
- 3- **Article** (112) does not address any of the infrastructure and downstream activities such as refining, storage facilities, pipelines, pumping stations, export terminals, tankers, filling stations and buildings, and thus, these are the property of the regions and governorates.

#### **- Who controls new contracts, production sharing agreements and major service contracts?**

**Dr. Hawrami:** Again, as these are not defined under the shared powers, the regions and governorates will have all the controls.

It would be easier, however, and preferable for all to adopt common contracts, common fiscal terms and models to simplify matters and to avoid confusions with potential investors and service providers. Once again, this is not a big deal, we all live in one Iraq so the contracts can be awarded and managed locally. But officials, wherever they may be, should be fully transparent and must be accountable to their parliaments and authorities for all their decisions.

We should not listen to the alarmist views that these arrangements will not work and they may become uncontrollable. If a few people sitting in their offices in Baghdad can be trusted to do all these things, why can't the real people who do all the actual work within the regions and governorates be trusted to do the same? Some can argue that the regions and the governorates may lack some expertise to perform some of the functions on these contracts. However, even if that were the case, the answer is not to change the articles, but let the experts go and work in the regions and the governorates instead of sitting in Baghdad.

**- Is the KRG awarding new contracts?**

**Dr. Hawrami:** We just had our first excellent discovery by DNO earlier this week under the new Constitution and that is good for attracting more investment to the Kurdistan Region and hopefully to all of Iraq in the future. The KRG is moving ahead with its local activities as defined under the Constitution and is discussing potential contracts with a number of parties.

**- Has your appointment as the KRG's new Minister for Natural Resources, and your background as a well known experienced former international oil executive, lead to more enquiries?**

**Dr. Hawrami:** Yes since my return, the KRG has received a number of enquiries from experienced, reputable and capable companies who wish to set up bases in Erbil or Suleimaniah to invest in this Region and perhaps further south once the security situation improves.

**- What types of contracts do you intend to issue and what about transparency?**

**Dr. Hawrami:** We will be fully transparent and shall adopt standard internationally recognised contractual models, which can be defended at all times and hopefully resulting from petroleum laws that we wish to be put in place during the next few months. The Kurdistan Region is safe, secure, and stable, and we have already started to discuss and negotiate with some well-known companies.

Hopefully this process will pave the way for the rest of Iraq in the near future.

## **Speech of Prime Minister Nechirvan Barzani**

**Kurdistan Regional Government**

**Sunday, 14 May 2006**

**Distinguished guests, ladies and gentlemen,  
I would like to welcome you all.**

It is a pleasure to be here. I am pleased to come here today to participate with you in this important event that will significantly contribute to the development of our economy.

On behalf of the Kurdistan Regional Government and the people of the Kurdistan Region I would like to welcome you all to participate with us today. I would like to especially congratulate and thank all those who have worked so hard on this project.

Since the 1960s it was known that Taqtaq has oil but no Iraqi government moved to exploit the oil resources of the Kurdistan Region outside of the Kirkuk area. The regime of Saddam Hussein and of those before him aimed to weaken the Kurdistan Region. Our economy was neglected and remained underdeveloped compared to other parts of the country.

Saddam Hussein used the oil resources of Kirkuk to destroy thousands of our communities, dislocate and disappear our people, and to attack us with chemical weapons. In the hands of Saddam Hussein's regime, oil was not a blessing; it was a curse, a cause for extreme suffering of our people.

Following the liberation of Iraq this deplorable situation has dramatically changed. For the first time in our history we have a country with a constitution that finally admits and affirms that Kurds and Arabs are partners in a new Iraq. Representatives of the Kurdistan Region are playing a leading role in rebuilding the country. As you know, President of Iraq Jalal Talabani and other colleagues are working seriously to build a government of national unity.

Article-108 of the Constitution of Iraq affirms that the federal government and the oil producing regions together will manage oil fields currently in commercial production. The revenue of this oil is to be distributed equitably

among all regions and all people of Iraq.

But new oil fields, those not at commercial production at the time of the drafting of the Constitution, will remain the management responsibility of the regional governments where they are located. These governments will make the management decisions regarding investments and also the contractual arrangements regarding exploration and production.

While the Kurdistan Regional Government has many programs and initiatives, none is more important for our future than securing the value of our energy resources in the service of our people. We do not see oil only as wealth for economic growth and the prosperity of our people. We see it as a major factor in the stability of our region and the country, and for the realization of peace and prosperity.

As we have announced in our Cabinet program, increasing our capacity to provide secure energy is a top priority. Since 1991 we have suffered immeasurably due to lack of energy supplies.

We had to always rely on others who had the power to restrict the supply of energy in the form of electricity and fuels to harm us. At times, our people resorted to cutting trees to meet their basic need which caused further deforestation and damaged our environment.

According to the new Iraqi constitution we have all the rights to explore and produce the oil of our land and to exploit it to meet the peaceful needs of our people. We secured these rights through the sacrifice and struggle of our people, the result of thousands of people who have shed their blood in martyrdom for this land, and through the thousands who were displaced. We shall, therefore, never be prepared to surrender these rights.

All our activities and steps in this regard shall be in accordance with the provisions of the Constitution of Iraq. Our activities and steps will benefit both the Kurdistan Region and the entire country. We believe the Constitution secures the rights of all groups in all parts of Iraq. The exploration work being done in new fields will pave the way for a new dynamic of increased production and fair sharing of benefits for all Iraqis.

We began drilling new wells last Fall and we are expecting good results.

Our determination and action are based on the fact that we have been given a valuable gift in order to improve the lives of our people. We have worked hard to establish personal security and political stability so that under the auspices of the Kurdistan Regional Government we can work hard on this project to improve the lives of our people.

If we had acted on the urging of some people to wait until the situation in Baghdad is clarified, no practical steps would have been taken to explore and exploit our oil resources to serve our people and the rest of the country. Let me make clear and affirm that despite media reports to the contrary, our activities and steps have been taken in coordination with the Ministry of Oil in Baghdad and we shall continue in this mode of operation.

Baghdad has been a full partner and will continue to be so in the development of oil fields in the Kurdistan Region. Contrary to what some have tried to assert, the development of oil in the Kurdistan Region will lead to strengthening the national economy and consolidating the voluntary union of Iraq.

I would like to thank the Government of Turkey for supporting the economic growth of the Kurdistan Region through this contract, which is in the interest of both Turkey and Iraq. Turkey has played an important role, and will continue to have an important role, in supporting the economy of the Kurdistan Region.

Special thanks to Turkey's 'Ganel Enerji' and to Switzerland's 'Ad-dax' for the professional interest and expertise they bring to this project.

We remember very well Turkey as an important neighbor during difficult times. We view with appreciation and thanks Turkey's support of the protective 'No Fly Zone' and the assistance provided under Operation Provide Comfort. With a view toward our mutual good fortune, we would like Turkey, as they have done in the past, to be first in providing protection for our people, and continue to play an important role in supporting the development of our economy.

While we are developing this natural resource, there are certain principles we have to bear in mind. This resource is for all of us. Therefore, we are engaging qualified and experienced companies to provide the latest technology and expertise to help us in new, creative, and innovative ways.

We shall manage our oil effectively and transparently. While oil is an important asset for economic growth, we do not want to ignore other important aspects. We must keep in mind that as we explore and exploit our natural resources, we must not damage our environment.

The oil deep underground is not only for current generations, but for all future generations. Therefore, we must proceed in a manner that protects our natural resources for the benefit of the future of the Kurdistan Region.

Although our needs are great, we must conduct ourselves in ways that maximize the benefits for today and for the unforeseeable future. We shall work transparently to develop our economy.

We shall always work by caring about our people, our land, and the economic environment of the Kurdistan Region. We shall work to provide more and better services to all our people. To pursue these aims and realize our goals and objectives, the guarantor will be our management of the benefits from our natural resources.

Finally, I would like once again to offer my thanks and appreciation to all those who worked hard on this project to bring it to the level of success we observe today.

Special thanks to Mr. Dilshad Abdulrahman of the General Enterprise for Special Projects in Suleimaniyah, and to all the engineers and technicians, for your hard work and success. I wish you further success in your efforts. I thank you for your participation and contribution to the reconstruction and development of the Kurdistan Region.

Again, you are all very welcome.

Thank you.



## Conclusion

It is clear from the above discussion that the dispute going on about the Federal Authority and the regions responsibilities in the framework of the oil and gas property, cannot be solved with reference to the constitution, as long as there is a serve differences in interpreting the texts regulating oil and gas property, due to lack of good faith of the opponent parties.

If the situation continues as it is we shall face a serve political congestion threaten to explode and worsen the current bad situation more and more.

Iraq is a country for all its people, embraced all, and blessed them with its wealth, therefore, it deserves from us all to be faithful to it.

The most important aspects of faithfulness are cooperation, support and loyalty to the interest of this country. This can be achieved by the postpone of Federations implementation in regions other than Kurdistan, and to apply administrative decentralization for further period enough to reconstruct Iraq by the efforts of all its people; and after stabilization and the intended economic prosperity, we can think in implementing the federal regime.

And to achieve Iraq interest, we shall go back to the representatives council to present and discuss the differences by all parliamentary entities, provided that the objectives shall be to serve the interest of all Iraqi people.

This is the impartial solution if we want to serve the interest of this country, and may Allah help us.

**Dr.**  
**Malik Dohan Al Hasan**