

## A review of the contractual system governing the investment in the upstream gas sector in Algeria

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### ملخص

استعرض هذا البحث النظام القانوني والتعاقدي الذي ينظم العلاقة بين الحكومة الجزائرية ممثلة في شركة النفط الوطنية وشركات النفط الأجنبية منذ الاستقلال وحتى الوقت الراهن. هدف هذا البحث إلى تحديد أثر تغيير النظام التعاقدي والقانوني على تدفق الاستثمارات الأجنبية إلى قسم المنبع في قطاع المحروقات (الذي يشمل قطاع الغاز) إضافة إلى تحديد النظام التعاقدي الذي يحمي بشكل أفضل المصالح الوطنية. توصل الباحث إلى أنه في الفترة التي سادت فيها عقود تقاسم الإنتاج حقق قطاع المنبع أفضل النتائج من حيث عدد الرقع الممنوحة، عدد ونوع الشركات وكذا عدد العقود الموقعة.

الكلمات المفتاحية: الجزائر، عقود، نظام قانوني، أثر، منبع

### Abstract

The present paper reviewed the legal and contractual system that governs the relationship between the Algerian government (embodied in the national oil company) and Foreign oil companies (FOCs) since the independence till the present time. The main aim of the author is to determine the impacts of changing the legal and contractual system on foreign investment flows into the upstream sector and to tell which system protects well the Algerian interest. The author concluded that during the production sharing agreement (PSA) era that the upstream sector performed well in term of awarded blocks, signed contracts, and the number and the type of .FOCs

Keywords: Algeria, contracts, impacts, legal, .upstream

.K12 ;G18 ;F55 ;F52 ;F51 ;21 F ;E62 ;JEL: D86

### I.Introduction

The world's demand for energy has been increasing at an alarming rate driven by many reasons including population growth, economic growth especially in the new emerging economies, increasing concern over energy security (Bennouna, 2007, 35-40). This has triggered incentives to develop conventional as well as unconventional sources of energy. Though renewable energies are receiving a great support and huge amount of subsidies, yet, their share in the world energy mix does not exceed 15%, the rest of 85% is sourced from non-renewable energies, mainly fossil fuel such as coal, oil, and gas. Fossil fuels are anticipated to dominate the world energy scene for the coming years than-

ks to their characteristics such as abundance and affordability (Jecomodies and Wood, 2009, 2-4). Indeed, the International Energy Agency's reports and the empirical studies reveal clearly that fossil fuels are the main types of energy consumed. For instance, G. Maggio and G. caccol (2012) stated in their paper that according to the pessimistic scenario, oil will peak in 2015, coal in 2052 and gas in 2035. Of fossil fuels, gas is the cleanest and considered to be environmentally friendly; emissions of sulfur dioxide are negligible, and nitrous oxide and carbon dioxide emissions are lower (Speight, 2007, 7). These characteristics of natural gas make it the most favored source of energy that complies with the environmental considerations and provides high thermal units when burned. Besides, increasing demand for electricity, removing restrictions on the use of natural gas in many countries, decline of the gas prices mainly in Europe (Oostvoorn and Boots, 1999, 6), increasing concern about securing and diversifying of supply (Fatma, 2011, 221) have resulted in an increasing demand for natural gas. But as is well known, fossil fuel is not equally distributed among geographical regions, it is unevenly distributed, 65% of oil reserves are concentrated in the middle east and the same can be said about gas as about 55% of the world proven natural gas reserves are concentrated in three countries Russia, Iran, and Qatar. This means that countries which are not abundant with natural gas have to import it from the countries that have a huge amount of reserves on the one hand. On the other hand, these countries lack the funds, and the technology necessary to unlock those reserves (Bindermann, 1999, 1). This implies that FOCs and host countries have to arrange investments by writing contracts stipulating the obligations and the rights of the parties to the contracts and how to handle disputes that arise in the case of conflicts of interests (Berbamdi, 2007, 98).

As Algeria is one of the biggest producers and exporters of natural gas in the world (4.6 Trillion Cubic meters) which presents 3% of the world proven reserves, the 3<sup>rd</sup> exporter of gas via pipelines and the 2<sup>nd</sup> exporter of LNG in the world after Qatar (Sonatrach, several years) and since it is expected to play a major role in the world gas markets particularly the European ones (Yegorov and Wirl, 2011, 1062) it is convenient to study the relationship between the Algerian national oil and gas company Sonatrach and foreign oil companies (FOCs).

### **The question of the study**

The present study aims to study the effects of the legal and contractual system governing the hydrocarbon sector on investment flows into the Algerian upstream gas sector.

### **Methodology**

The present paper will study the evolution of the legal, contractual and to some extent institutional aspect of the gas industry using the descriptive and analytical approach;

Data used in this paper are secondary data based on the publications issued by national and international agencies;

The term energy when used refers to oil and gas sector only;

Reforms refer to the enactment of the hydrocarbon law number 86-14 of 1986 which allowed foreign companies to invest in the energy sector;

Since the information related to the hydrocarbon sector are confidential, not released and are enough not detailed on the one hand. Due to the difficulties associated with the measurement of variables representing the legal and contractual systems<sup>1</sup>, the author was not able to follow a more quantitative approach and provide more analysis.

### **The scope of the study**

This study is limited to:

- Study the legal and contractual system in Algeria without referring to any country except for the aim of comparison;
- The study will be confined to the gas sector; upstream segment, as such, the purchase-sell contracts will be excluded from this study;
- It will cover the evolution of the legal and contractual system from 1986 to the present time.

### **The objective of the study**

The objective of this study is two-fold:

- Determine the impacts of changing the legal and contractual system on the foreign investments in upstream gas sector;
- Tell under which system the sector performed well.

### **Significance of the study**

The present paper is significant for the following reasons:

- It aims at studying the legal and contractual aspect of the investments in the upstream gas sector;

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1 For more details on this topic, see (Skaaning, 2010).

It aims at identifying which regime is beneficial to the sector.

To the best of the author's knowledge, this is the first paper that attempts to evaluate the legal and contractual regime governing the gas sector from an economic point of view using the results of the sector in term of the number of concluded and signed contracts, number of interested companies, type of companies, the volume of investments... etc.

### **Structure of the paper**

This paper is organized as follows: section two deals with the evolution of the hydrocarbon laws and the systems applied in the oil and gas sector, section three presents the results achieved in the sector under the different legal and contractual systems. Section four concludes the paper.

## **II. Legal and contractual regime applied in the Algerian upstream gas sector<sup>1</sup>**

Since the law applied in hydrocarbon sector does not distinguish between oil and gas upstream activities, the author will study the evolution of the hydrocarbon law especially the clauses that govern the investment in the upstream sector be it oil or gas.

### **(A.Pre -1986 period (before the reform of the sector**

This period can be divided into two main sub-periods; the first one is the period from 1962 to the nationalization of the foreign companies in 1971 and the second one is the period from 1971 to 1986. However, it should be noted that in the nationalization era FOCs that discovered gas basins were forced to transfer those discoveries to Sonatrach (Aissaoui, 2001, p 100) which was perceived by FOCs as unfair. Thus the legal system prevailed at that period did not apply explicitly to gas sector. Yet it is necessary to study this period in order to better understand the evolution of the legal system since the independence until the enactment of the last law.

In the first period, the relationship between the Algerian government and FOCs was governed under the concession system (Srairi, 2008, 95) which grants FOCs, particularly French ones, the right to invest in all the stages of hydrocarbons industry, in vast areas and over long periods of time<sup>2</sup>. However, since the contractual regime was in favour of FOCs at the detriment of the Algerian interests, the failure to adjust the

<sup>1</sup> There is a little detailed and well presented literature that focus on the Algerian legal, contractual and fiscal system applied to the hydrocarbon sector. Thus, the author had no choice but to focus on few sources.

<sup>2</sup> It should be noted here that the legal system prevailed at that period was enforced under the Saharan petroleum code which was issued by the French authorities, for more details see: Srairi, (2008); p 95; Abu Alalla Yossri, (1996).

clauses of the Evian treaty, the will to satisfy the local demand and to achieve the goal of national sovereignty over the national natural resources pushed the Algerian government to take an important decision regarding the total and partial nationalization of the FOCs (Aissaoui, 2001, p 66). This was the beginning of the second period which lasted from 1971 to 1986. In 1970 the government expropriated the assets of a number of foreign companies. By the end of the same year, all non-French companies were subject to nationalization. In the following year, after the failure of the Algerian and French governments to reach a deal concerning the adjustment of clauses of the Evian Treaty and the provision of the Sahara petroleum code (Aissaoui, 2001, p 81), the Algerian leadership embodied in the president Houari Boumedien took the decision of nationalizing the French companies especially those companies working in the extracting of natural gas or operating the transportation of oil and gas via pipelines. As a result, the Algerian government embodied in Sonatrach<sup>1</sup> controlled the hydrocarbon sector in the 1970s and 1980s. It should be noted that the nationalization decision and the then law in vigor did not preclude the presence of foreign companies in the hydrocarbon sector, yet, the conditions were so severe that foreign companies did not find it attractive to invest in the Algerian hydrocarbon sector (Bassam, and Darbouche, 2010, 1123). As a result, the only type of contracts that govern the relationship between Sonatrach and foreign companies was service contracts (Srairi, 2008, 95). However, after 15 years of adopting this type of contracts, it was recognized that it did not help to achieve the goals set by the government and did not overcome the problems and the challenges that hydrocarbon sector had faced in this era. It was perceived that time had come to the law and contractual system to be changed.

## **B. The period from 1986 to 1991**

The legal and contractual system prevailed in the nationalization era did not improve the situation of the hydrocarbon sector; on the contrary, it was not performing well. Besides, the drives behind the nationalization decision did not exist any longer, the sharp decline of oil production from 1.2 million barrel in 1970s to about 700.000 barrels in 1985, the drop in the number of the drilled and developed wells (Srairi, 2008, 97-98), the decline in the number of oil and gas discoveries (Traut, 1998, p75), the sharp decline in oil prices in 1986, changes and developments that took place in the international oil markets and most importantly, the non-competitiveness of the law compared to the laws in other countries left no choice for the Algerian government but to reform the hydrocarbon sector and open it to foreign companies (Aissaoui, 2001, p 92). In so doing, the government issued the law 86-14; related to hydrocarbon sector; which was still conservative as it continued to maintain the monopoly of Sonatrach

<sup>1</sup> Société Nationale pour la Recherche, la Production, le Transport, la Transformation, et la Commercialisation des Hydrocarbures ; the Algerian national oil company.

over oil and gas pipelines and the old oil fields (Bassam and Darbouche, 2010, 1124). The new law expanded the range of contracts from which the national and FOCs can choose; i.e joint venture, risk service contracts, production sharing agreement (PSA) (KPMG, 2007, 14). Even though the new law relaxed some restrictions that prevailed in the hydrocarbon sector, yet, these companies did not respond positively to the law (Bassam and Darbouche, 2010, 1124). This led the government to amend it in 1991 by issuing the law 91-21 which allowed FOCs to develop both new and old oil fields and to develop gas fields as well. Besides, the new law allowed for the international arbitrage in the case of a dispute between Sonatrach and FOCs (Bassam and Darbouche, 2010, 1124). Even though the law provided for different types of contracts, yet the bulk of FOCs opted for the PSA, this mainly because their profitability under this type of contracts increased significantly (Aissaoui, 2001, p 101; p 111). In general, the following rules were applied (Krotoff, et al, 2005, 52-53):

- The mining title and the right of exploration and production were exclusively granted to Sonatrach (the law 86-14, Art 2);
- FOCs were allowed to operate in the Algerian oil and gas fields only through partnership with Sonatrach (the law 86-14 Art 13 and 20);
- Only activities pertaining the exploration and production of hydrocarbons were allowed, transporting oil and gas via pipelines was the monopoly of Sonatrach (the law 86-14, Art 17);
- The share of foreign companies should not exceed 49% (the law 86-14, Art 24 and 25);
- Natural gas produced under a partnership with foreign companies should be marketed through joint marketing company (the law 86-14, Art 23);
- FOCs were allocated their shares of oil on FOB basis;

Sonatrach was allocated two shares of the produced oil, one as the holder of the mining title and the other as a partner of foreign companies.

Responding to the new changes and developments, the foreign companies seized the opportunity and entered into partnership with Sonatrach to exploit the huge reserves of oil and gas. This resulted in foreign companies establishing well their position in Algeria by investing about 1.5 billion US dollar in exploration activities (Bassam and Darbouche, 2010, 1123). In 2001 the year in which the Algerian government introduced the mechanism of international bids<sup>1</sup>, the government granted a number of

<sup>1</sup> This is not to say the system of international bids is per se enough to attract FOCs. The international bids system was introduced under the PSA, as result, the number of companies and the number of contracts have increased. Beside, under the exploration and the exploitation system, blocks are granted after a cession of bid, yet the number of companies and contract have declined.

contracts amounted to about 2 billion US dollar beside 1.5 billion dollars invested by Sonatrach solely (Bassam and Darbouche, 2008, 9). Table I summarizes the main features of the legal system.

### C. Law 05-07

According to the theory of changing circumstances which states that the parties of a given contract can adjust its clauses if this contract does not reflect the market fundamentals or if it does not lead to the equilibrium of the contract, on the one hand. As part of the overall policy that aims to restructure the Algerian economy on free-market basis, the Algerian government enacted the law 05-07 in 2005 whose main aims were to introduce competition, enhance transparency, improve the investment climate and attract FDI.

Table 1: The main Features of The Legal System

basic	Major forms of contracts	Remunerations	bonus	taxation	legal
Sonatrach on behalf of the government	Joint venture				
	Service contract	Cost oil Profit oil	signature	85%	International arbitration incase of dispute
	Production sharing agreement	Royalty (20%) Taxes			

Sources: law 86-14 and law 21-91, the Algerian official journal.

The oil and gas sector was not an exception to this policy, which is based on the following basis (Patlitzianaset al, 2006, 1918):

- Shifting the role of state from operation to regulation;
- Liberalization of the markets and introducing competition;
- Introducing clear, transparent and an unambiguous legal framework.

According to the proponents of the law 05-07, there were many reasons justifying the enactment of this law such as the necessity to comply with the international laws, increasing taxes revenues, increasing hydrocarbon reserves, creating jobs, transferring technology and managerial skills that enable Sonatrach to be a fully fledged company rather than undertaking functions on behalf of the government, decreasing the costs of operation, getting access to foreign finance (Srairi, 2008, 150-151; Meckleed, 2008, 117-118).

In order to put the new policy into practice and define the relationship between the host country (Algeria) and FOCs, the government issued the law 05-07 related to hydrocarbon sector in March 2005. This law was adjusted before it entered into force by the presidential directive 06-10. The law 05-07 was the most controversial law ever, due to the long period it took it to be issued and the trend toward the total liberalization that it introduced in the upstream sector; i.e. FOCs were no longer required to enter into partnership with Sonatrach, their share were not limited to 49%, the FOCs were the owners of the extracted oil and gas, FOCs were no longer required to market gas jointly with Sonatrach (Kartouf et al, 2006, 53).

It is this trend toward liberalization that generated a fierce opposition to the law 05-07 and was the issue of hot debates among policy makers and the parliament members. This situation pushed President Abdelaziz Bouteflika to issue the directive 06-10 that amended the law 05-07. The new amendments kept the institutional and legal framework unchanged, yet, it abandoned the liberalization trend almost totally (Kartouf et al, 2007, 1). In general, the following rules were applied ((Kartouf et al, 2009, 1-4; Bassam and Darbouche, 2010, 1124):

- The mining title was transferred to ALNAFT<sup>1</sup> (a supervisory and regulatory agency created by the new law);
- Contractors are required to enter into exploration and exploitation contracts with ALNAFT;
- The contract enter into effect after a fair and transparent round of licensing;
- Hydrocarbon production is allocated to the producers at the measurement point, these shares are subject to royalty and taxes;
- FOCs' shares should not exceed 49%;
- FOCs assume all the costs in the exploration phase when the commerciality of the field is announced they will be compensated for the costs;
- Contractors are required to use the most effective methods and the most efficient equipment in order to assure that their operations do not harm the environment;
- Contractors might have to decrease their production shares for many reasons such as the compliance with the OPEC decisions.

It should be noted that the new law created two fully-fledged regulatory and supervisory agencies. The first one is in charge with technical matters such as the protection of the environment, and access to transportation and storage facilities. The second agency is ALNAFT which is responsible for organizing tenders and awarding contracts

<sup>1</sup> Agence nationale pour la valorisation des ressources en hydrocarbures.

(the law, 05-07, Art 2). Table number 2 below summarizes the main features of the new legal system.

Table 2: The Main Features of The New Legal System

basic	Forms of contracts	Remuneration	bonus	taxation	Legal framework
Anaft on behalf of the government	Exploration and/ or exploitation contracts	Cost oil,  Allocated hydrocarbon at the measurement point  Royalty	Signature	Taxes,  Area taxes (5-23%) depending on the area  Taxes 30-70%  Additional income tax of 30% (windfall income)	International arbitration

Source: law 05-07 and directive 06-10, the Algerian official journal

The law 86-14 was issued in a situation characterized by a downtrend of oil prices, it was plausible that the government issued this law in order to boost hydrocarbon production and, increase the revenues and face the external debts as well as the internal development requirements. However, the law 05-07 was issued in a very different situation i.e. the prices of oil were on the rise, external debts were at their lowest level and a considerable amount of foreign reserves at the disposal of the government. In sum, there was no pressure on the government that entailed the enactment of such a law. Moreover, Sonatrach is among the national oil companies of developing countries that already reached the last stage of development (Ledsema , 2009, 6; 24) as it started investing abroad. Furthermore, NOCs are becoming more and more mature and experienced in the hydrocarbon industry which means that FOCs have no longer bargaining power over NOCs. It is now the FOCs that are in a position that entails them to figure out what they can do for NOCs rather than trying to impose their view over them (Ledsema , 2009, 14)<sup>1</sup>.

<sup>1</sup> It should be noted that the findings of this author are the results of interview with the representatives of FOCs and NOCs. Taking into consideration the inconsistencies associated with interviews, it is more or less safe to say that these findings exhibit some degree of reliability as they were obtained directly from the stakeholders.

Having said so, Sonatrach has already reached the last stage of development<sup>1</sup> and it is becoming a global company since it is expanding its investment portfolio geographically, giving the fact that FOCs are willing to cooperate with NOCS on a more equal and fair basis putting into consideration that the period in which the law 05-07 was issued witnessed an increasing demand for oil and gas and an uptrend of oil prices. These facts lead us to conclude that the issuance of the law 05-07 was not an appropriate and “necessary” decision to attract FOCs. In other words, the rules of the law 05-07 did not reflect the situation that prevailed in the energy sector at that period and did not entail the enactment of such a law which abandoned the PSA model and replace it with the exploration and exploitation contracts which are a unique type of contracts, it is neither a concession contract whereby the government collects taxes and royalties and ownership of the extracted resources belong to the FOCs nor PSA whereby the NOC and FOCs share the ownership of the extracted resources and the NOC pay the due taxes to the government<sup>2</sup>.

### **III. The performance of the gas sector**

As noted earlier, this paper is devoted to analyzing the contractual and the legal system that govern the relationship between Sonatrach and FOCs in the upstream gas sector. As such the author will not extend it to cover other areas of research such as oil sector or the transportation activities. However since disaggregated data about the gas sector are not always available especially data about the number of signed contracts, the types of the companies interested in the bids ...etc. the author had to use a somewhat overlapped data.

#### **A. The performance of the sector between 1991 and 2005**

##### **The number of concluded contracts.<sup>1</sup>**

Though it has been noted that the present paper is confined to analyze the legal system governing the relationship between Sonatrach and FOCs in the upstream gas sector, however, the author will present and analyze the number of contracts signed in the upstream sector be it gas or oil for the following reasons:

- The same legal and contractual systems are applied to both oil and gas sectors;
- The contracting parties do not know the type of resources in advance;

<sup>1</sup> To Read more on the evolution of the NOCs, readers are referred to (Ledsema, 2009).

<sup>2</sup> The new law is to somewhat a combination of both types whose provisions and clauses tend to exhibit more nationalism which will have an impact on the performance of the hydrocarbon sector

- The unavailability of information about the number of discoveries, type of energy for each contract.

Table 3: The Number of Signed Contract In The Upstream Sector Between 1995 and 2005

Year	1987	1988	1989	1990	1991	1992	1993	1994
Number of con-tracts	3	1	3	4	6	7	4	4

Year	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Number of con-tracts	2	2	2	2	2	2	10	7	4	8	9

Source: ministère d'énergie (2009), résultats de réalisation du secteur d'énergie et des mines, 2000-2008 ; Aissaoui, 2001, p 109.

From the table number 3, we can distinguish three main phases. The first one lasted from 1987 to 1994 which witnessed a general trend toward increasing the number of signed contracts aftermath the relaxation of the restrictions that made it unprofitable for FOCs to invest in the upstream sector.

The second phase lasted from 1995 to 2000, in which the number of signed contracts decreased and stagnated at 2 contracts per annum. This can partially be explained by worsening the security situation in Algeria during that period.

Contrary to the first and the second period, the period from 2001 to 2005 recorded the highest number of signed contracts. This is mainly thanks to the abandoning of the old system and introducing the tender system in 2001. The new system was effective, transparent and treat FOCs equally which enhanced the credibility of the law and resulted in an increasing number of contracts signed between FOCs and Sonatrach. Indeed, in 2001 the number of contracts jumped to 10 contracts, then 7 in 2002 and 9 in 2005.

The following table reveals some information about the contracts under the old legal system.

Table4: Some Information about a selected signed contracts

company	year	Model of contracts	bonus	invested Capital
BP	1995	PSA	n.a	\$ 3 billion
Total	1996	PSA	\$22 million	\$ 874 million
Amaco	1998	PSA	\$30 million	\$790 million
BHP	2000	PSA	n.a	n.a
BP	2001	PSA	n.a	n.a

Source: Benmensour Leilia. (2004). The role of partnership in financing the hydrocarbon sector, master thesis, Batna University, Algeria, pp. 101 FF, (in Arabic).

According to Sonatrach special report on gas issued in 2012, these fields are in the production stage (Sonatrach, 2012, 3).

## 2. Type and number of companies interested in tenders

It would be interesting to know the number of companies interested in the tenders announced by the Algerian authorities and the types of companies awarded contracts since this reflects the attractiveness and the competitiveness of the legal and contractual system.

Table 5: Number of Contracts Signed Under The Old Regime

	2001	2002	2003	2004	2005
Number of projects	6	10	12	10	10
Number of interested companies	22	30	32	35	48
Number of contracts	10	7	4	8	9

Source: Ministère de l'énergie et des mines. (2011). Bilan de réalisation de secteur de l'énergie et des mines 1962-2010, Alger, Algérie.

It is obvious that FOCs found the contractual system as well as the other aspects (institutional and fiscal systems) attractive or at least not restrictive and prohibiting; otherwise, they would not be interested in doing business in the Algerian hydrocarbon sector. The data in the table above support this statement. The number of companies

that submitted their technical and financial proposition to the pre-qualification for the tenders was 22 in 2002 and continued to increase gradually to reach 48 in 2005.

It is of great importance to note the companies that signed a contract to undertake investments in the upstream segment vary widely. Geographically, there are Europe-based companies such as Repsol and ENI, Asia-based companies such as the Chinese CNPC and, North America such as Anadarko and even companies from Australia are present in the Algerian hydrocarbon sector. Similarly, these companies vary in term of their size, from small independent companies like Gulf Keyston to major oil companies like Total, BP, shell, Sinopec, CNPC, Rosneft and Gazprom.

The ability of the Algerian hydrocarbon sector to attract a wide range of foreign companies enabled the Algerian authorities to avoid dependency on major international oil companies (Bassam and Darbouche, 2010, 1123). Further to this, a considerable number of foreign companies are state-owned companies like Sinopec and Rosneft which explain their willingness to accept tighter conditions (Bassam and Darbouche, 2010, 1129), contrary to the FOCs whose main goal is to maximize profits (Ledsema, 2009, 21).

### **3. Number of disputes recorded**

Neither Sonatrach nor the foreign companies that undertook investments in the upstream gas sector has recorded dispute which means that the investment climate in this sector was stable and business friendly.

However, though it is beyond the scope of this paper, it should be noted that the situation is somewhat different in the oil sector and in another segment of the gas industry, particularly purchase-sell contracts. For instance, the American Anadarko and the Dutch Maersk registered a request for an arbitration proceeding in ICSID and international arbitration court after introducing the windfall profit tax and the case of the Spanish consortium of Repsol and gas natural after the cancellation of their contracts by Sonatrach for the non-accomplishment of their commitments.

## **B. The performance of the sector after 2005**

### **1. Number of contracts signed under the new regime**

The last international bid that took place in 2014 is the fourth since the establishment of ALNAFT and the tenth 10th since the system of international bids has been introduced.

Even though the Algerian authorities have adjusted the law of 2005 by canceling the windfall profits taxes expanding the scope of the law to cover unconventional resources and introducing new taxes system in 2013 (the law 13-01), yet, they have not been able to attract the FDI into the hydrocarbon sector.

The table below depicts some information on these bids

Table 6: Number of Contracts Signed from 2008 up on.

	2008	2009	2011	2014
Block	16	10	10	36
Number of companies	52	36	40	n.a
Number of contracts	4	3	2	4

Source1: Algérie. Ministère de l'énergie et des mines, Bilan de réalisation de secteur de l'énergie et des mines 1962-2010, Alger, Algérie, (2011) ;

Indeed, in 2008, 16 blocks were offered in the first bid and only 4 blocks were awarded. This trend continued to prevail ever since. Even worse in 2014, during the fourth bid, 31 blocks were included in the bid, yet only 4 out of these 31 blocks were awarded to international consortiums.

Further to this, the number of companies interested in the international bids in 2008 was 52, and then decreased to 36 in 2009 before increasing to 40 during the third bid. The officials in Algeria claim that financial crisis was responsible for the decrease in the number of contracts. This argument can be debated since the petroleum industry is financially self-sufficient and do not depend on external funds to finance their operations (IEA, 2009, 19-20) Furthermore, FOCs tend to invest more when oil prices decline since the costs decrease (Bindermann, 1999, 22; Bassam and Darbouche, 2010, 1120), contrary to state-owned companies that tend to increase their investment in periods of increasing oil prices (Sami and Albustani, 2007, 123).

Comparing the number of blocks offered in the bids with the number of contracts makes it clear that not all the blocks were attractive to the FOCs. Moreover, as the new contractual regime imposed on the FOCs to enter into a partnership with Sonatrach, limited their shares to just 49% and required them to pay the due Taxes directly to ALNAFT (contrary to PSA), the profitability of the operations from the perspective of foreign companies is likely to decline significantly. This, in turn, led them to be very cautious and reluctant to invest in such an environment.

This response from FOCs reveals clearly that the new contracting system is far from Being attractive to FOCs (Kartouf, 2009, 4).

1 <http://www.oxfordbusinessgroup.com/analysis/laying-down-law-new-hydrocarbons-legislation-expected-provide-much-needed-tax-break> ; <http://www.reuters.com/article/2014/09/30/algeria-energy-idUSL6N0RV2FG20140930>

## 2. Types of companies and disputes

Like in the phase before the issuance of the law 05-07, the types of the bulk of companies awarded contracts are stated owned companies whose main aims are not maximizing profit.

As far as the author knows, no dispute between Sonatrach and its partners in the upstream gas sector has been registered.

### IV Conclusion: Main findings and Limitation of the study

- The present paper traced the evolution of the legal framework and contractual system that govern the investment in the upstream gas sector. The author has shown that there was a trend toward nationalism in designing the legal and contractual framework;
- After introducing the system of international bids, the number of contracts increased significantly. The new system attracted a wide range of companies;
- The issuance of the law 05-07 generated a fierce opposition and led to its adjustment in 2006 which resulted in a somewhat distorted system, it is neither a concession nor PSA or service contracts;
- In terms of the number contracts signed with Sonatrach/ ALNAFT and a number of companies investing in the hydrocarbon sector (including gas sector), the old contractual system (PSA) is better than the new one (exploration and /or exploitation contracts). It can be argued, that the upstream gas sector performed well under the PSA system;
- The Algerian authorities should overpass the nationalism doctrine, which the natural resources are subject to. The authorities should adjust the new system since it is not attractive to foreign companies. They should offer incentives for FOCs in order to transfer their funds and technology. At the same time, they should protect the national interests as well. The author believes that PSA is the system that can best protect the national resources and be attractive to FOCs at once.

Since the clauses of the contract of investing in the upstream segment and the purchase-sell contract are classified and are not disclosed, the author had to use very aggregated data, which do not serve very well the aim and the scope of this study. Without a doubt, this affects the quality and the findings of this paper, the future research should use disaggregated data, if any, in order to determine the impact of the legal and contractual regime on the investment in the upstream gas sector.

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