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SUBJECT: RUMAILA OIL-FIELD LAWSUIT CONTINUES BUT SUCCESS UNLIKELY

¶1. (C) Summary: The lawsuit concerning the Rumaila oil-field contract continues and could affect the nine other contracts awarded from Iraq's June and December 2009 oil bid rounds. However, key Government of Iraq (GOI) officials predicted the lawsuit would be unsuccessful. No decision is expected until after the March 7 national elections. The lawsuit is a noteworthy reflection of the emotionally charged politics interim to the elections. End summary.

Lawsuit Enters Its Second Month; Next Hearing on March 1

¶2. (SBU) In September 2009, Prime Minister (PM) Nouri al-Maliki and Oil Minister Hussain al-Shahristani were notified of a lawsuit against them filed by Member of Parliament (MP) Sheda Mousa Sadik Musawi. The lawsuit concerned the contract for the Rumaila oil field, in Basra province, awarded as a result of Iraq's first oil bid round on June 30, 2009 (this contract was the first of ten oil-field contracts awarded from Iraq's June and December 2009 oil bid rounds). The initial court hearing occurred on December 22 in the Federal Supreme Court. Hearings continued on January 11 and February 1. The next hearing will be on March 1.

Plaintiff's Claims

¶3. (U) The plaintiff claims the contract is illegal and unconstitutional because (a) it has not been approved by

parliament (Council of Representatives); (b) the Ministry of Oil (MOO) made contract-related decisions independent of, not together with, the province (Basra) in which the oil field is located; and (c) the contract's refundable signing bonus is a loan that has not been approved by parliament.

Defense's Claims

¶4. (SBU) The defense claims the Federal Supreme Court has no jurisdiction and the plaintiff has no standing and has followed improper legal procedure. The defense also counterclaims that the contract is legal and constitutional because (a) such oil and gas service contracts do not require parliament's approval; (b) the Basra provincial council participated in drafting the contract and still participates in ongoing coordination with MOO; and (c) the contract's refundable signing bonus is not a loan but instead an oil production cost incurred in advance and recoverable with other production costs according to contract stipulations; loans do not require parliament's approval; and the cabinet (Council of Ministers) has the authority to approve loans.

All GOI Interlocutors Predicted Lawsuit Would Be Unsuccessful

¶5. (C) The detailed legal arguments are nuanced and subject to contrary interpretations of the federal constitution and prevailing laws. However, key GOI officials across the executive and legislative branches predicted the lawsuit would be unsuccessful. (Note: These GOI officials include MOO Legal Director-General (DG) Laith al-Shaher, who is the lead attorney for the defense; MOO Petroleum Contracts and Licensing Directorate (PCLD) deputy DG Sabah al-Saidi, who is MOO's senior legal advisor for contracts; PM's Advisory Commission Chair Thamir Ghadhban; the chair and the vice-chair of parliament's Oil and Gas and Natural Resources Committee, Ali Balo (Kurdistan Democratic Party, KDP) and

Abdul-Hadi al-Hassani (Da'wa). End note.) Ghadhban further predicted that even if the lawsuit was "100-percent right," the court would find a way to avoid invalidating the Rumaila contract in order to best serve the public interest.

Parliament Ratification is Impractical Alternative to Lawsuit

¶6. (C) The GOI interlocutors described the lawsuit as an inevitable consequence of parliament's failure to pass hydrocarbons legislation that would completely resolve this lawsuit, and forestall expected similar ones, related to the ten oil-field contracts awarded from Iraq's 2009 oil bid rounds. In the absence of hydrocarbons legislation, MP Balo

(KDP) insisted that all ten oil-field contracts must be ratified by parliament. PM Advisor Ghadhban and MP Hassani (Da'wa) expressed the preference that all ten contracts be ratified by parliament but said that any attempt at ratification would be gridlocked by ideological differences and political infighting and therefore impractical.

Lawsuit Reflects Emotionally Charged Election Politics

¶7. (C) Conversations with these interlocutors yielded several moments of unusual candidness that both reflect and offer insight into the emotionally charged politics in the run-up to the March 7 national elections. PM Advisor Ghadhban characterized the lawsuit as a personal vendetta by MP Musawi, who had been a member of Oil Minister Shahrastani's political party, or her MP husband (KDP), rather than an attempt to protect public interests. MP Balo claimed that PM Maliki was pressuring the court to postpone the decision until after the elections, calling him a "terrorist" to the judicial process. Balo also claimed Maliki had threatened the plaintiff (MP Musawi), although Balo did not provide further details. In a meeting on other issues, Finance

Minister Bayan Jabr (Islamic Supreme Council of Iraq (ISCI) of the Iraqi National Alliance (INA)) criticized Oil Minister Shahrستاني's poor relations with parliament. In remarks that support one of the plaintiff's claims, Jabr said he warned Shahrستاني not to pass the signing bonuses to the Ministry of Finance (MOF) because MOF would consider the bonuses to be loans that require parliament's approval.

Lawsuit Decision Not Likely until after National Elections

¶8. (C) Lead defense attorney Shaheer, who is habitually pessimistic and deferential, expressed much confidence in his case and little regard for the case and skills of the plaintiff's attorney. He and PM Advisor Ghadhban predicted, though, that the lawsuit would not be settled until after the March 7 national elections. However, he admitted that if the lawsuit is successful, critics would be emboldened to pursue lawsuits against the other nine contracts.

Impact of a Successful Lawsuit Would Be Significant

¶9. (C) Comment: If the court rules that parliament approval of the Rumaila contract is required, all ten contracts could be declared invalid, since none have been approved by parliament. If the court invalidates the contract because MOO made contract-related decisions without appropriate participation of the province (Basra) in which the oil field is located, the likelihood increases that the other nine contracts will be challenged and invalidated for the same reason. If the court rules that the contract's refundable signing bonus is a loan that must be approved by parliament, the signing bonus provision of the three 1st oil bid round contracts could be declared invalid and the GOI would forfeit \$1.2 billion in signing bonuses (the other two 1st oil bid round contracts are for West Qurna Phase 1, in which ExxonMobil is the major partner, and for Zubair, in which

Occidental Petroleum is a minor partner). End comment.