PRELIMINARY COMMENTS ON THE BILL TO REFORM THE ORGANIC HYDROCARBONS LAW OF JANUARY 22, 2026

José Ignacio Hernández G.
Professor of Administrative and Constitutional Law at the Universidad Católica Andrés Bello
Visiting Researcher, Boston College
Professor of Comparative Constitutional Law, American University

I. INTRODUCTION

1. According to public information, on January 22, 2026, the sixth legislature of the National Assembly, which began its functions on January 5, held its first discussion on the reform of the Organic Law on Hydrocarbons (LOH)[1]. As expected, and in line with the United States government's policies on the Venezuelan oil sector, the primary purpose of the reform is to formalize contractual arrangements for international oil companies to produce and export oil[2].

2. In addition to the detailed analysis of the proposed reforms, it is relevant to conduct a general regulatory analysis of their scope. This analysis shows that the reforms are insufficient to establish the institutional conditions necessary to implement the policies that the U.S. government has planned for the Venezuelan oil sector.

I. THE GEOPOLITICAL CONTEXT OF THE REFORM

3. The reform of the LOH, which has been a pending issue since at least 2018, does not respond to an isolated event. On the contrary, this reform should be analyzed alongside the events of January 3, 2026, and the plans the United States Government has put in place to ensure Venezuela's stability after the overthrow of Nicolás Maduro. Specifically, and according

[1] See: https://www.asambleanacional.gob.ve/noticias/an-aprueba-en-primera-discusion-reforma-de-ley-organica-de-hidrocarburos. At the time of writing, the official version of the bill that would have been approved has not been published.

[2] The preliminary comments on the reform project set aside constitutional considerations regarding the democratic legitimacy of the sixth legislature of the National Assembly, focusing on the conditions under which the parliamentary elections were held on May 25, 2025.

to the Secretary of Energy, these plans are aimed at three objectives: *(i)* to avoid the disruption of oil operations, to contribute to post-Maduro political stability; *(ii)* reduce the influence of actors such as China, Russia, Iran, and Cuba; and *(iii)* increase crude oil exports to the United States[3].

4. To advance this objective, Executive Order No. 14373 of January 9, 2026, provided a special regulatory framework to channel exports. Thus, *(i)* in the context of the sanctions imposed against PDVSA based on Executive Orders No. 13857 and 13884, of 2019, through licenses issued by OFAC, the United States will control exports, giving priority to the United States and exercising civil actions for the forfeiture of oil and tankers that violate the regulation of sanctions and the fight against terrorism; *(ii)* payments for oil exports will be deposited in U.S. accounts[4]; *(iii)* In particular, the quota that corresponds to the Government of Venezuela on export earnings will remain deposited in these accounts[5]; *(iv)* these deposits may only be used to cover expenses in accordance with the guidelines of the Department of State, including the payment of the costs associated with the industry, such as, for example, the supply of diluents[6]; and *(v)* although these deposits are the property of the Government of Venezuela, they may not be seized by creditors of the public debt.

5. According to the U.S. Secretary of Energy, this plan will, in a first phase, allow an increase in oil production by 30%, that is, approximately 1.2 million barrels of oil per day[7]. To this end, the White House has held

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[3] See the plan here: https://www.energy.gov/articles/fact-sheet-president-trump-restoring-prosperity-safety-and-security-united-states-and#:~:text=PRESIDENT%20TRUMP'S%20US%2DVENEZUELA%20ENERGY,%2C%20Venezuela%2C%20and%20our%20allies.

[4] Section 2. Therefore, the income from the sale of the forfeited crude oil is not regulated by this order.

[5] According to section 4 (a), these deposits are the property of the Government of Venezuela. Therefore, this implies that the oil revenues that will be administered under this order are fiscal revenues of Venezuela, including *(i)* royalty and extraction tax revenues, and *(ii)* revenues belonging to PDVSA from its participation in the operating companies (including production by PPSA and joint ventures). This section alters compliance with the fiscal rules governing income from oil exports. This aspect, in any case, is not dealt with here.

[6] For these purposes, the U.S. Government serves as the custodian of oil fiscal revenues under Section 4(b). Therefore, PDVSA cannot freely dispose of these revenues, nor can it freely sell them to the Central Bank of Venezuela. Bank deposits with these proceeds may only be used for the purposes provided for in the Department of State's guidelines and regulations in accordance with Section 5.

[7] "Wright tells oil executives that Venezuela's output can rise 30%, sources say," *Reuters*, January 21, 2026: https://finance.yahoo.com/news/wright-tells-oil-executives-venezuelas-123602787.html

meetings with international oil companies, including Chevron, which already operates in the country[8].

6. To meet this goal, it is necessary to implement policies for the reconstruction of the oil industry, including the development of institutional capacities required for the proper functioning of infrastructure sectors such as the electricity sector[9]. As part of these policies, it is necessary to improve the institutional conditions under which private investment can produce and export oil. This is precisely the objective of the legal reform considered by the National Assembly.

II. THE LEGAL BARRIERS THAT LIMIT PRIVATE INVESTMENT AND THE "REGULATORY SHORTCUT" OF PRODUCTIVE PARTICIPATION CONTRACTS

7. The LOH, together with the legislation approved to implement the policy of expropriation of oil contracts entered during the "Apertura Petrolera", does not allow private investment to exercise exploration and production rights[10]. On the contrary, these rights can only be granted by the Executive Branch to state-owned enterprises controlled by PDVSA, including *(i)* subsidiaries of its exclusive property, such as PPSA, and *(ii)* joint ventures. The regulation of joint ventures is very restrictive, as it forces PDVSA to control both the majority shareholding and its operations and prohibits any contract that, directly or indirectly, cedes the management of oil activities to the minority partner.

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[8] "Trump seeks $100bn for Venezuela oil, but Exxon boss says country 'uninvestable', *BBC*, January 10, 2026.

[9] The destruction of two-thirds of Venezuelan oil production was the result of predatory policies implemented since 2002, which undermined PDVSA's autonomy and capacity, illegally expropriated contractual rights of private investment, and, in short, destroyed the state's ability to fulfill the functions necessary for the operation of the industry, such as, for example, the electricity supply. See Monaldi, Francisco *et al.*, *The collapse of the Venezuelan oil industry: The role of above-ground risks limiting foreign investment*, Center for Energy Studies-Rice University's Baker Institute for Public Policy, 2021, pp. 11 et seq. From a legal point of view, see: Brewer-Carías, Allan, *Crónica de una destruction. Concession, nationalization, opening, constitutionalization, denationalization, nationalization, surrender, and degradation of the oil industry,* Editorial Jurídica Venezolana, Caracas, 2018, pp. 111 et seq.

[10] Articles 9, 22, and 57 of the LOH, in accordance with Article 3 of the *Law on the Regularization of Private Participation in Primary Activities Provided for in Decree No. 1,510 with the Force of an Organic Law on Hydrocarbons*. We follow what is stated in Hernández G., José Ignacio, *Economic sanctions and new oil contracts in Venezuela (The productive participation contract),* Editorial Jurídica Venezolana, Caracas, 2025, pp. 29 et seq.

8. This regulatory framework placed the burdens of exploration, production, and marketing of crude oil on PDVSA. Therefore, production capacity depends on PDVSA's capacity. Precisely, while this capacity was destroyed, production collapsed, even before the United States government sanctioned PDVSA[11].

9. As of 2018, the Government of Nicolás Maduro created exceptions to the regulatory framework for hydrocarbons through the unconstitutional Decree No. 3,368, *which establishes a special and transitory regime for the operational and administrative management of the National Oil Industry*. Under this decree, PDVSA signed "oil services contracts", transferring to private investors the exercise of oil activities exclusive to PPSA and joint ventures[12]. Subsequently, the equally unconstitutional decree No. 4,131 of 2020 again authorized PDVSA to sign contracts not provided for in the LOH.[13]

10. The institutional fragility of these contracts led Maduro's government to consider reforming the LOH to allow private investment to exercise oil rights. However, disagreements within the fifth legislature of the National Assembly prevented progress on this option. Hence, it was decided to resort to the unconstitutional National Constituent Assembly to enact the so-called Anti-Blockade Law, which sought to authorize the Executive to enter into any contract, outside the provisions of the Constitution and the Laws[14]. It was based on this legal framework that PDVSA entered into contracts known as "shared service agreements" (ASCs), or "productive service agreements" (ASPs), similar to production-sharing contracts[15].

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[11] We follow what has been stated in Hernández G., José Ignacio, *The privatization of PDVSA and the destruction of the Venezuelan Petro-State*, Editorial Jurídica Venezolana, Caracas, 2023, pp. 163 et seq.

[12] The decree was published in the Official Gazette No. 41,376 of April 12, 2013, and was based on the state of exception and economic emergency. See: Hernández G., José Ignacio, *The privatization of PDVSA and the destruction of the Venezuelan Petro-State*, cit., p. 260.

[13] Published in the Official Gazette No. 41.825 of February 19, 2020. See: Hernández G., José Ignacio, *Economic sanctions and new oil contracts in Venezuela (The productive participation contract),* cit., p. 110.

[14] The Constitutional Anti-Blockade Law for National Development and the Guarantee of Human Rights was published in the Official Gazette No. 6,358 extraordinary of October 12, 2020. The unconstitutionality of this text has been duly accredited by Venezuelan doctrine. See: Brewer-Carías, Allan R., "The Anti-Blockade Law: A Legal Monstrosity to Disapply, in Secret, the Totality of the Legal System," in *Bulletin of the Academy of Social and Political Sciences, No. 161. Homenaje al Dr. José Andrés Octavio*, Caracas 2020 pp. 1499 et seq.

[15] See our analysis in Hernández G., José Ignacio, *Sanctions económicas y nuevos contratos petroleros en Venezuela (El contrato de participación productiva),* cit., pp. 115 et seq.

11. The relaxation of economic sanctions by the United States government, reflected in General License No. 41 and then in License No. 44, encouraged the design of new contract modalities, which ultimately led to the adoption of the so-called productive participation contract (CPP). In summary, and based on the Anti-Blockade Law, through the CPP the private investor *(i)* assumes the exercise of production and marketing activities, including all costs and risks, and *(ii)* distributes the proceeds of the sale of the oil[16]. Because the Anti-Blockade Law imposes confidentiality on these contracts, there is no public information on how the revenues are distributed. In general terms, the contractor retained a percentage for cost recovery and to pay the commercial debt that PDVSA maintains. The remainder was used to pay the "government take", which could eventually reach 50% of production, under the so-called "shadow tax" included in the general conditions of joint ventures[17].

12. The CPP model was used to allow partners in joint ventures, such as Chevron, to take over production and marketing activities, even though the LOH enables such activities to be carried out only by PDVSA. Likewise, this model could be implemented with PPSA, that is, with respect to PDVSA's production. Even after the revocation of General Licenses No. 41 and 44, the CPP model remained the primary policy for attracting private investment to the sector.

13. However, the CPP's contractual model does not provide legal certainty or protection of contractual rights for private investment. Thus, the unconstitutionality of the Anti-Blockade Law, amid the significant decline in legal certainty, heightens the uncertainty and regulatory risks for the CPP model. This is especially true given the recent experience with predatory policies in the sector. Therefore, the CPP model enabled stabilization of oil production at around 900,000 barrels per day, but it is clearly insufficient to

[16] According to the *lex petrolera*, the CPP is close to the so-called oil service contract. Vid. Hernández G., José Ignacio, "The new oil Contracts in the Venezuelan Law", in *Revista Legislación y Jurisprudencia n° 22*, Caracas, 2024, pp. 79 et seq.

[17] Hernández G., José Ignacio, *Economic Sanctions and New Oil Contracts in Venezuela (The Productive Participation Contract)*, cit., pp. 171 et seq.

sustain that increase in accordance with the plan formulated by the United States Government[18].

III. THE REGULATORY REFORMS INTRODUCED IN THE DRAFT REFORM OF THE ORGANIC LAW ON HYDROCARBONS

14. The LOH reform project, considered in the first discussion by the National Assembly, aims to improve the regulatory quality of the CPP contractual model and thus create favorable institutional conditions for compliance with the policy designed by the Trump administration. To this end, the project *(i)* introduces contracts similar to the CPP and *(ii)* allows the tax burden to be reduced, i.e., the "government take".

15. The reform allows PDVSA's sole subsidiaries, such as PPSA and joint ventures, to enter into contracts, transferring to the investment the exercise of exploration, production, and, eventually, marketing activities. Thus, these contracts can be signed with the minority partner of the joint ventures[19]. In addition, PPSA can also sign these contracts, so private investors do not have to partner with PDVSA.[20]. Following the model of the operating contracts signed during the "Apertura Petrolera", these contracts will have the private investor assume all financial obligations and the operational risk, so their remuneration will be a percentage of production.[21]. In a very vague way, the reform provides for the inclusion of clauses to preserve the economic balance of the contract[22].

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[18] In summary, the quality of the regulatory or institutional framework for hydrocarbons influences their performance. Cf.: Espinasa, Ramón, "The reconstruction of the national oil industry", *Revista SIC N° 710*, 2008, pp. 474 et seq.

[19] Article 36. However, this article does not clearly define the contract terms that would allow the minority partner to exercise operational and technical management of the joint venture, market the oil produced, and distribute the proceeds of sales. Instead, the bill merely recognizes the Executive Branch's discretionary power to authorize the performance of these activities.

[20] Article 40. This rule has slightly more explicit content than Article 36, but it is equally imprecise. In this way, PDVSA or its exclusive subsidiaries can enter into contracts "*with private companies domiciled in Venezuela for the execution of primary activities, where the operating company will assume the integral management of the exercise of the activities, at its exclusive cost, account and risk, having to demonstrate financial and technical capacity through a Business Plan approved by the Ministry with competence in hydrocarbons*."

[21] Articles 41 and 42. This regulation allows PDVSA to lease assets to the private contractor.

[22] Article 45.

16. As shown, the project does not establish a single contractual model. Instead, it differentiates between contracts with the joint venture and the minority partner, as well as between PPSA and private-entity contractors.

17. The bill does not address the legal qualification of these contracts. In any case, it is clarified that only PDVSA subsidiaries and joint ventures will hold oil rights. This means that private investment does not have any rights over the deposits, so it acts as a contractor for the state-owned operating companies, including joint ventures[23].

18. There is no provision establishing mechanisms for protecting foreign investment, beyond a general provision that appears to refer to domestic arbitration[24].

19. Based on the above, it can be concluded that the oil contracts introduced by the reform are oil service contracts. Under these agreements, state-owned operating companies transfer exploration, production, and, eventually, marketing activities to private investors. Private investors take on the operational and capital expenses associated with these activities' risk. The contractor's remuneration will be a portion of the proceeds from crude oil sales, to be determined on a case-by-case basis. The bill does not clearly assign the right of private investment to market crude oil[25].

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[23] According to Article 23, companies exclusively owned by the State, such as PPSA, and joint ventures are operating companies, and only they can be holders of rights over deposits under the terms of Article 25. Private companies, even when mentioned in Article 23, cannot hold oil rights.

[24] Article 8 establishes that disputes arising from the Law will be resolved by Venezuelan courts or by alternative mechanisms, including "independent arbitrations". In the past, and erroneously, it has been considered that the Constitution does not allow disputes with the State to be resolved through international arbitration, especially in hydrocarbon matters. Of course, international arbitration is not prohibited by the Constitution, but there is a doubt here that the bill does not resolve. Added to this is the inadequacy of treaty-based investment protection. We have commented on all this in Hernández G., José Ignacio, *Administrative law and international investment arbitration,* CIDEP-Editorial Jurídica Venezolana, Caracas, 2016.

[25] Article 64 appears to establish that only PDVSA subsidiaries and joint ventures can market natural hydrocarbons and products derived from them, designated by decree. In exceptional circumstances, this right may be allocated to joint ventures and private contractors. The meaning of the rule is unclear, and it appears to contain material errors.

20. In this sense, the bill is limited to ratifying the validity of the CPPs signed to date, without converting them into the new contract modalities.[26].

21. The contractor's remuneration depends, in part, on the government's share of oil revenues ("government take"), which is also subject to reform. Specifically, even when the royalty remains at 30% of production, the Executive Branch can, at its discretion, reduce it to 20% (for projects under the control of PDVSA subsidiaries) or to 15% (for projects under the control of joint ventures). This tax regime is not stable, in that it depends on the Executive Branch's discretion[27].

22. There are no other fundamental reforms to the "government take".[28] Therefore, it is not clear if the so-called "shadow tax" is maintained, which, as said, applies in accordance with the general conditions of joint ventures[29].

23. Finally, the bill repeals the laws under which the unconstitutional expropriation policy in the oil sector was implemented[30].

IV. CONCLUSIONS ON THE REFORMS TO THE ORGANIC LAW ON HYDROCARBONS

24. The proposed reforms to the LOH fail to strengthen the fragile regulatory framework significantly and, consequently, do not offer the legal certainty needed for rebuilding the oil industry. Aside from a detailed review of the reform articles, this conclusion rests on six core reasons.

25. First, the bill does not contain explicit, predictable, and certain rules that provide legal certainty for private investment rights. On the contrary, the regulation of new oil contracts is confusing and ambiguous.

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[26] Third transitional provision. This does not seem to be the most appropriate solution to preserve the scope of previously recognized contractual rights. See what we explain in Hernández G., José Ignacio, *Economic sanctions and new oil contracts in Venezuela (The productive participation contract),* cit., pp. 198 et seq.

[27] Article 52. Therefore, at its discretion, the Executive can reverse the reduction in the royalty.

[28] Beyond operational reforms to the extraction tax, equivalent to one third of production, deducting the royalty (Article 11.4). The reform empowers the Executive to modify that rate at its discretion.

[29] On this "shadow tax" and its treatment in the framework of the CPP, see Hernández G., José Ignacio, *Economic sanctions and new oil contracts in Venezuela (The productive participation contract),* cit., p. 175.

[30] Derogatory provision.

26. The absence of legal certainty in the assignment of contractual rights is, secondly, evidenced by the Executive Branch's discretion to define the rules under which private investment will operate. This discretion is even more significant given that, in practice, the so-called "administrative contract" thesis prevails in Venezuela, potentially enabling the Executive Branch to alter or terminate oil contracts at any time[31].

27. This discretion, *thirdly*, is present in the fiscal rules. The reductions in royalties and extraction taxes are exercised under discretionary powers without precise limits. At any time, the Executive Branch could change these fiscal rules.

28. *Fourth,* the bill does not offer substantive guarantees for the protection of foreign investment, leaving unanswered the unfounded doubts about the constitutionality of international arbitration in petroleum disputes.

29. *Fifthly*, beyond the bill's deficiencies, rebuilding legal certainty demands more than just legal reform. Without reinstating fundamental aspects of the rule of law and the legal protections for economic rights—such as economic freedom, freedom of contract, and private property— even the most effective regulatory reform will not create sufficient legal conditions of certainty.

30. Finally, the reform does not include any measures to tackle PDVSA's structural crisis. This crisis hampers new oil contracts, as private investment will serve as PDVSA's contractors.

31. The recognition of the inadequacy of the Anti-Blockade Law to sustain private investment, and, with it, the inclusion of new contractual formulas, indicates that, at least in part, the bill is based on a diagnosis that implicitly takes into account the causes of the industry's collapse[32]. However, the

[31] On the adverse effects of this thesis on the legal security of private investments, see Hernández G., José Ignacio, *Economic sanctions and new oil contracts in Venezuela (The productive participation contract),* cit., p. 71.
[32] Implicitly, because the bill enhances the "legacy of President Higo Chávez", when the truth is that this legacy – in terms of predatory policies on PDVSA and foreign investment – is the primary cause of the collapse of the industry. The ambiguity of the project can be explained precisely by the impossibility of reconciling the new contractual models with such a legacy, especially given the criticisms of the operating contract.

reforms seem insufficient to support the modest, sustained growth in oil production outlined in the United States government's plan.

Brookline, January 22, 2026