

Transparency in Lebanon's Power Sector

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1. Introduction

Over the past few years, transparency has been at the forefront of the political debates in Lebanon. Whether it was a call for “a transparent investigation”, “a transparency tender”, or “a transparent audit”, transparency has become a cross-sectoral reflection of good governance and respect for the rule of law. Lebanese people, who took the streets since the October 17th uprising, demonstrated this will by calling to halt corruption, mismanagement and non-transparent operations.

Transparency entails access to and effective use of information by citizens, civil society organizations (CSOs), non-governmental organizations (NGOs), local communities, and the private sector. It is also a prerequisite to social accountability, especially in public institutions, and one of the factors that influences and stimulates economic sustainability.

The power sector has been both a main symptom of the dysfunctional political system of Lebanon and a key contributor to the national economic, fiscal and financial crisis (Kulluna Irada, 2020). This paper aims to facilitate the advocacy for transparency considerations in the Lebanese power sector and to provide the Lebanese general public with reliable and up to date information across the sector's value chain, through the provision of evidence-based research and analysis. By adopting transparent measures and having an aware and engaged citizenry, Lebanon can efficiently advance in its much-needed sectoral reform towards an accountable and integrity-based public sector.

The paper presents the role of transparency in curbing corruption in Lebanon and the risks associated with corruption in the power sector. This is followed by an overview of the existing legal framework that governs transparency in the country and in the power sector specifically, and an

assessment of the existing gaps and lessons learned using concrete examples along the power sector value chain. To put Lebanon's position into perspective, two case studies are included from countries leading in low-level of corruption and high-power service delivery. In addition, the paper includes in its appendix an assessment of the Ministry of Energy and Water's (MoEW) website to measure its commitment to the Right to Access Information Law No. 28/2017.

As a result of the above research and analysis, the paper suggests concrete policy recommendations to enhance transparency in the Lebanese power sector moving forward.



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2. Lebanon's power sector and existing risks of corruption

2.1. Overview of Lebanon's power sector

Lebanon's power sector has long been at the center of the country's economic, fiscal and social challenges. It has become impossible to tackle the country's several crises without having electricity as a top priority, and to imagine any reform plan that does not look at electricity as one of the key steps to re-equilibrate the economy (Arabnews, 2019).

The electricity sector can be characterized as a monopoly managed by Electricité du Liban (EDL), the national electricity utility. EDL is the public authority in charge of generating, transmitting and distributing power in Lebanon, under the tutelage of the Ministry of Energy and Water (MoEW). The Ministry of Finance (MoF) also exercises control over EDL particularly through the assessment of investment viability over all types of projects that may have financial surplus or financial deficit implications, and over the need for state financial contributions. In parallel, auditing institutions exercise control on prudent accounting and financial operation (EBRD, 2019). The sector is governed according to Law 462/2002 which has been ratified prior to the Paris II conference, but is still not implemented. This law calls for the establishment of an independent Electricity Regulatory Authority (ERA), the unbundling of Lebanon's power sector, and the creation of a more competitive market for electricity with independent power producers (IPPs).

EDL has been unable to meet all of the electricity demand for more than two decades, covering only around 63% of it in 2020, which translates into long hours of power outages, especially in peak demand periods (Ahmad, 2020). As a consequence, Lebanese citizens rely on expensive and polluting diesel generators networks. In addition, EDL has been operating below cost recovery levels, with increasing technical and non-technical losses, and has relied on significant yearly government subsidies, that totaled more than US \$14 billion between 2010 and 2018 (Credit Libanais, 2016), and corresponds to around 3.8% of Lebanon's gross domestic product (GDP) per year. Those were mainly used to secure fuel procurement for EDL's costly and old power plants.

The national utility owns and runs seven heavy fuel and diesel oil generation plants and five hydropower plants, with an effective capacity of around 2,334MW, while the peak demand stands at 3,562MW (IRENA, 2020). For Beirut, which was the best supplied city before the crisis, that meant daily cuts of three hours a day, while outages can be as high as 12-15 hours elsewhere¹. Most of the generated electricity is from thermal power plants run on imported fuel oil. In addition, EDL contracted with Karadeniz Powership in 2013 to provide 385MW of emergency power from floating power barges (MoEW, 2019).

The failings of the power sector originate from deep-rooted political economy challenges (Ahmad, 2020). Lebanon's power sector has been particularly prone to corruption, dysfunction and operational inefficiency, and has been impacting the livelihood of Lebanese citizens, who see it as a platform to maintain a clientelistic system by distributing benefits to those close to politicians and senior members of the public administration (McCulloch et al., 2020). Through the many service contracts, the subcontracting companies and the job opportunities it entailed, the sector generated politically-oriented profits that were always accompanied with non-transparent processes.

¹Since the start of the economic crisis which heavily impacted EDL, power rationing has equally affected all regions, including Beirut, with more than 20 hours of power cuts.

2.2. Transparency as key to curbing corruption

Governance is the process of decision-making and the process by which decisions are implemented. The literature identifies good governance with political systems that are participatory, consistent with the rule of law, transparent, responsive, consensus-oriented, equitable and inclusive, effective and efficient; and accountable. Good public governance is considered a prerequisite to achieving sustainable development and human well-being (UNESCAP, 2009; UNODC, 2019b). As a key principle of good public governance, transparency consists of governments being open in the clear disclosure of information, rules, plans, processes and actions. Under the principle of transparency, public officials and civil servants have a duty to act visibly, predictably and understandably to promote accountability and public participation (Transparency International, 2009).

On one hand, public access to information is instrumental to achieving government accountability as public scrutiny enhances the integrity of public institutions and ensures they are promoting and protecting the interest of the general public. Hence, transparency can act as an effective instrument of public sector control and monitoring. It also contributes to building public trust in the government. Furthermore, transparency can raise the quality of democracy by promoting public participation in policy making. Public participation in the policy process allows governments to tap new sources of policy-relevant ideas from citizens and businesses when making decisions. It also increases compliance by allowing policies to be better supported and understood by the public (OECD, 2003; OECD & Organization of American States, 2002).

Transparency is widely accepted as crucial to reducing government corruption (OECD & Organization of American States, 2002) and is a main component of anti-corruption programs led by international organizations (IMF, 2020; UNODC, 2019b; World Bank, 2020). As to corruption, its effects are wide-ranging. It has political, economic, social and environmental costs; it erodes trust in the government and weakens democracy,

hampers economic development, further exacerbates inequality and poverty, and reduces chances for a healthy environment and a sustainable future (Transparency International, n.d.). In fact, the United Nations on Drugs and Crime describes the role of corruption in undermining all United Nations Sustainable Development Goals (UNODC, 2019a).

Nevertheless, it is worth noting that both transparency and accountability frameworks are equally important to effectively reduce corruption and enable sustainable development. The reason being that while transparency enables, it does not always lead to accountability; “transparency mobilizes the power of shame, yet the shameless may not be vulnerable to public exposure” (Fox, 2007). Even when citizens protest against misconduct, there needs to be a pressure to respond and sanction those responsible. Public exposure of corruption has an impact when it can trigger traditional accountability mechanisms such as investigations, inspections and audits that lead to sanction, compensation and/or remediation (Fox, 2007; Joshi, 2010).



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2.3. Associated risks of corruption in the Lebanese power sector

Corruption is embedded in Lebanon's political system. Lebanon scored 24 over 100 on the Corruption Perceptions Index (CPI) in 2021, ranking 154 out of 180 countries globally. Published annually by Transparency International, the CPI measures the perceptions of businesspeople and country experts on corruption in the public sector on a scale that ranges from 0 for highly corrupt to 100 for very clean. Moreover, Lebanon's CPI score has dropped six points since 2012 and in two years its ranking went down by 17 positions, reflecting a deteriorating situation, aggravated in 2020 with the economic collapse, the Beirut explosion and the covid-19 pandemic (Transparency International, 2021). The Lebanese people are very well aware of the existence of corruption in public institutions and witness its negative impacts. In Transparency International's Global Corruption Barometer, 89% of Lebanese reported corruption in government as a big problem, the highest percentage in the six Arabic countries included in the study (Transparency International, 2019).

In parallel, the weak governance is reflected in the low development indicators of the country. Lebanon scores 56.3 over 100 on the World Economic Forum's Global Competitiveness Index (GCI), ranking 88 out of the 141 countries included in the report (World Economic Forum, 2019). The GCI might not be the most suitable index to assess social and environmental development, however, for the purpose of this paper and the benchmark included, it is a suitable measure of overall development and public sector performance in countries.

The power sector is one of the most affected by low transparency and corruption in Lebanon. At 51%, public utilities come second after court services for the share of people who report using a personal connection to access a public service in 2019 (Transparency International, 2019). Nevertheless, the conduct of street-level bureaucrats is only a snippet of corruption in the power sector as will be discussed in section 6 of the paper. Corruption in the sector results in EDL's insufficient, inefficient, inequitable and unclean supply of

electricity to the Lebanese people, and the failure in power sector governance has associated risks along political, economic, social and environmental development dimensions for the country, as presented below.

Political risks:

- Poor service delivery increases dissatisfaction among Lebanese people and contributes to political instability. In fact, the state's inability to deliver reliable electricity has become a metaphor for the country's wider failings (Reuters, 2020).
- The lack of energy diversification and the high dependence on imported oil products is a national security issue. It also increases the vulnerability of Lebanon's economy to oil price fluctuations.

Economic risks:

- The technical inefficiencies of EDL, complemented with the political decision in 1994 to charge a fixed tariff well below cost recovery, drain the budget and require constant transfers to cover its widening deficit. The annual transfer to EDL in recent years has ranged between US \$ 1.2-2 billion (Issam Fares Institute, 2019). The power sector is one of the key contributors to the current economic crisis.
- Availability of reliable electricity is the second biggest obstacle to private sector growth, after political instability (World Bank, 2019).
- Although Lebanon has ample renewable energy resources, these constitute only 2% (excluding hydro) of electricity generation (IRENA, 2020). This is an opportunity cost for Lebanon.

Social risks:

- Blackouts lead to deterioration in standards of living with risks on the health, the well-being and the productivity of Lebanese people.
- The current electricity rationing scheme deepens levels of inequality in the country. The poorest and least developed regions of Lebanon have the lowest delivery of regulated electricity (Issam Fares Institute, 2019), and have to pay for expensive local diesel generation for full energy access.

Environmental risks:

- The use of private generators leads to significantly higher airborne pollution levels and inhalation exposure to carcinogenic compounds (Shihadeh et al., 2012).
- Electricity generation contributes to a total of 57% of total GHG emissions in the country (MoEW/UNDP/GEF, 2019). Heavy fuel and diesel oil have lifecycle emission factors of around 0.778 tonnes of CO₂/MWh, in comparison to 0.433 for natural gas and <0.032 for renewables (Sovacool, 2008).

3. Existing legal framework for transparency in Lebanon

Public access to information was not a pillar of public governance in the past. However, the laws in place, which accompanied the formation of the Lebanese institutions since 1943, guaranteed for oversight bodies such as the Audit Bureau, the Central Inspection, the Civil Service Board, the Supreme Disciplinary Authority/Court, and the MoF, the right to access information and exercise monitoring and control over the operational and financial performances of ministries and other public administrations and entities. Moreover, Law 112/1959 on Civil Servants Regulation managed conflict of interest among public employees. This system of “internal” transparency achieved a level of integrity and accountability within Lebanese public institutions².

Nevertheless, after the Lebanese Civil War, ministries have become increasingly driven by the political agenda of their respective ministers and the political bickering among key players in the country at the expense of the general welfare. At the same time, oversight bodies either lost their authority over the ministries or their independence and refrained from performing their duties. This resulted in a divided, ineffective and corrupt public sector in which no one is held accountable. As the traditional accountability mechanisms failed, social accountability through public scrutiny of government activities became necessary, which led CSOs and a few policy makers to push strongly for a law that would provide the public the right to access information as a way to fight corruption³.

Law 28/2017 on the Right to Access Information

Law 28 on the Right to Access Information was passed in February 2017, eight years after first being presented to Parliament in 2009 (The Daily Star, 2019). It is based on the proactive disclosure of information by the government and the right to individuals to request and access information from the government (Gherbal Initiative, 2018).

In more details, Law 28/2017:

- Covers the Lebanese state and all its public administrations, public institutions, independent bodies, courts, authorities, councils and municipalities, as well as private institutions and companies charged with public utilities management and mixed companies.

- Obligates all above government “administrations” to automatically publish key legal, organizational and financial documents in the Official Gazette and on their websites. These include annual activity reports, regulatory administrative decisions, information about financial transactions exceeding five million LBP, and justification on decisions taken.

- Guarantees the right to any citizen to request and access information from all government administrations including decisions, statistics and contracts from those administrations. It restricts the right to access information that jeopardizes public security and safety and state security yet obliges the administration to justify the refusal of a request in writing.

- Requires the assignment of an Information Officer in each administration to manage requests and specifies a timeframe of 15 days to receive a response (with possibility of renewal for another 15 days supported by a justification).

- Refers to the establishment of the National Anti-Corruption Commission to promote and monitor the effective implementation of the Law.

Nevertheless, Law 28/2017 is yet to be fully implemented, there are only some government administrations complying with it and there is resistance from the highest-level offices. Moreover, The National Anti-Corruption Commission has still not been formed (The Daily Star, 2019). The Law applies to the power sector, but barriers to its implementation are very much present in the sector. The MoEW and EDL were among the 99 (out of 133) public administrations not to reply to the requests for information sent by Gherbal Initiative in its investigation on the implementation of the Law (Gherbal Initiative, 2018). More recently, the Council of Ministers refused to respond to a request for clarification initiated by two CSOs on a substantial decision made by the Council in May 2018 with regards to the Deir Ammar power plant (The Daily Star, 2019), arguing that the law has not yet taken effect as it was not yet “approved by the Council”. This being said the Law does not require an implementation decree to become obligatory⁴. Moreover, the Council of Ministers had previously issued a circular to public administrations to appoint an information officer as per the ratified law.

²KII – 1: Senior Official at MoEW

³KII – 1: Senior Official at MoE

⁴KIII – 3: Legal Consultant & Energy Expert W

Although unimplemented laws are not uncommon in Lebanon, administrations pointed out to the operational challenges in complying with Law 28/2017. Most administrations currently lack the infrastructures and resources necessary to reply to a large number of requests or certain types of requests (e.g., statistics); some do not have websites while others do not have digitized records to allow for easy retrieval of information (Human Rights Watch, 2019).

A Senior Official at MoEW links the implementation challenges to the lack of specificity in Law 28/2017. By being too general and open to the type of information that can be shared, it creates complexities to already inefficient administrations, creates risks of sensitive information leakage and creates a barrier to incremental transparency improvements. The Senior Official also points out to the inadequacy of assigning a single Information Officer to manage requests and refers to Law 144 of 1992 which prohibits any public employee from sharing or publishing information without a written approval from the head of their department. Although being a law in the right direction, the Senior Official argues that more clarity on the documents that should be proactively disclosed by an administration and the ones that can be shared by an administration upon request, as well as the assignment of the relevant departments/individuals to publish and share the information would allow a more successful implementation of transparency in Lebanon, and in its power sector⁵.

In an attempt to measure the commitment of the MoEW to the Right to Access Information Law, the Lebanese Transparency Association – No Corruption team assessed the Ministry's website and its compliance with the articles of the law, as Article 9 provides an indirect obligation on all Public Administrations to have a website to be used for complying with Chapter II of the Law "Proactive Disclosure", which requires the proactive publication of several documents. The results of the assessment, as well as the methodology followed, are detailed in Appendix A of this paper.

Law 84/2018 on Enhancing Transparency in the Petroleum Sector

Law 84/ 2018 was adopted by the Lebanese Parliament in 2018, enforcing commitment to transparency in the oil and gas sector. The Law enhances the legal framework for

transparency in the oil and gas sector, which is also the only sector that has adopted transparency measures in its activities. The Law and its implementation are discussed in more detail in section 6.1. However, Law 84/2018 does not cover the power sector at large.

Furthermore, it should be pointed out that legal provisions guaranteeing transparency in the power sector existed prior to the adoption of Law 28/2017, through Law 462/2002 on the Regulation of the Electricity Sector.

Law 462/2002 on the Regulation of the Electricity Sector

The main law that governs the electricity sector of Lebanon is Law 462 of 2002, which was ratified in anticipation of the Donors' community Paris II conference. The law provided the legal framework to establish an independent Electricity Regulatory Authority (ERA). Effectively, the Law not only provides the right to access information but also allows for public participation in the policy process (Law No 462 Regulation of the Electricity Sector, 2002). These rights are found in articles 12, 16, 17 and 18 of the Law:

- Article 12 discusses the National Electricity Regulatory Authority's duty in ensuring a competitive and transparent market and in publishing the annual report submitted to the Council of Ministers in the Official Gazette.
- Article 16 discusses the right of individuals to access information through written requests (although for a fee), as well as requires the Authority to publish its balance sheet and a description of its budget in the Official Gazette.
- Article 17 and 18 obligates the Authority to publish its decisions justifying reasons and purposes in the Official Gazette before decisions take effect. The Articles also discuss the right for individuals to file petitions for reconsideration within two months from the date a decision is published.

Yet again, Law 462/2002 is not fully implemented. The ERA is not established and, despite the pressing need to improve the sector, there is still much debate on whether it should be an independent body (Al-Akhbar, 2020). Transparency requirements, in articles 12, 16, 17 and 18 are all tied to the ERA, making them irrelevant until the formation of the Authority.

⁵KII – I: Senior Official at MoEW

Furthermore, the Lebanese Parliament has enacted a series of laws over the past two decades to increase the fight against corruption and deter public officials from misusing public service to attain private gain. These anti-corruption laws along with the transparency laws presented above form in theory a comprehensive and sufficient legal framework to achieve transparency and accountability and prevent corruption in the country, and in the power sector specifically. Yet, the problem remains in the implementation of these laws, while corruption has become a social way of thinking in the Lebanese society. This has been exacerbated by the current loss of credibility and security within the Lebanese state as a result of the consecutive crises⁶.

A series of anti-corruption laws

The Lebanese Parliament has enacted Law 33/2008 ratifying the United Nations Convention against Corruption (UNCAC). It entered into force few months later, on 22 April 2009, although a reservation was made as Lebanon stated that it will not be bound by paragraph 2 of Article 66. The convention is the only legally binding universal anti-corruption instrument, as it covers five main areas: preventive measures, criminalization and law enforcement, international cooperation, asset recovery, and technical assistance and information exchange (UNODC, 2004). Therefore, Lebanese laws are not the only guarantees for the right to access information, as several international obligations that Lebanon has abided to guarantee and protect this right.

In addition, in 2015, the Agreement for the Establishment of an International Anti-Corruption Academy as an International Organization was adopted by virtue of Law 27/2015. The Academy's vision is to deliver and facilitate anti-corruption education and training for professionals and practitioners from all sectors, and to provide research and platforms for dialogue (IACA, n.d.). During the same year, the Lebanese Parliament has adopted inter alia anti-money laundering and counter terrorist financing law through Law 44/2015.

Later in September 2018, and after the parliamentary elections, the Lebanese Parliament approved a draft law aimed at protecting whistleblowers and asserting that the disclosure of corruption malfeasance does not constitute a violation

of professional confidentiality. Law 83/2018 covers any person who holds a legislative, judicial, executive, administrative, military, or security position, whether appointed or elected, permanent or temporary, paid or unpaid. Equally important, it provides for the protection of whistleblowers from actions that would jeopardize their employment, such as disciplinary proceedings, dismissal, suspension, and demotion. The initiative was considered as a great step for the Lebanese system, which has become notorious for its large-scale corruption (Sadek, 2019).

Law No. 175, dated 8 May 2020, aims at fighting corruption in the public sector through the creation of a National Anti-Corruption Commission. The National Commission is vested with powers to fight corruption in Lebanon, including investigating corruption crimes before submitting them for prosecution. The Commission is also authorized to request taking precautionary measures against indicted officials (such as, impose travel restrictions, freeze assets, etc.), and is tasked to act as an advisory and education body, and to oversee the application of current and future anti-corruption laws. However, the actual establishment of the Commission is pending the assignment of its members by a decree to be issued by the Council of Ministers.

Other laws have also been passed amidst the economic crisis and covid-19 pandemic, such as the Asset and Interest Declaration and Criminalization of Illicit Enrichment Law. This law, although in existence since the 1950s (modified in 1999) was not effective in performing its purposes; it suffered from many legal loopholes that made it difficult to be enforced and was not in line with international standards. It was therefore thoroughly revised and modified in September 2020 through Law 189/2020 (UNDP, 2020). Another law approved concerns lifting banking secrecy from public accounts for a year with the aim to facilitate the controversial forensic audit of the Central Bank and other state institutions, a prerequisite for crucial international financial assistance (Daily Star, 2020c).

Despite this large number of laws, their relative efficacy has not yet been sensed, and no real change has been observed by the public. While these are not specific to the energy sector, all are considered to be applicable to the sector.

⁶KIII - 3: Legal Consultant & Energy Expert

4. International best practices and case studies on transparency

An effective framework for public scrutiny and access to information involves four main elements: enacting laws guaranteeing the right to access information and public participation, developing the policies that support the implementation of transparency, mobilizing the material, financial and human resources necessary, and establishing independent bodies for monitoring and oversight (OECD & Organization of American States, 2002).

The following section looks at the regulatory framework, policies, and/or mechanisms adopted by two countries with the lowest level of corruption, the highest economic competitiveness, and the best quality of electricity supplied regionally and internationally, with a focus on transparency in their power sector.

Case study 1:

The UAE, transparency enhanced by ICT

The United Arab Emirates (UAE) ranks 21st on CPI, the highest position in the Middle East North Africa region (Transparency International, 2021). It is also the most competitive country in the region, with the highest ranking globally for electricity access and a strong one on electricity supply quality (World Economic Forum, 2019). Looking at the Emirate of Dubai in specific, its vertically integrated state-owned utility, the Dubai Electricity and Water Authority (DEWA), has achieved five world records to date for the lowest price of PV solar projects globally, based on an Independent Power Producer model (DEWA, 2019).

The strong emphasis on digitalization in its economic strategies and the UAE leaders' commitment to excellence has led to the adoption of Information Communication Technologies (ICT) in public institutions, as a way of enhancing efficiency and transparency in their operations. In turn, the high adoption of ICT has also allowed for the provision of online public services and for more direct public access to government (UAE Government, n.d.). In other countries, ICT has been increasingly used to promote transparency, accountability, and anti-corruption globally. With the right procedures in place, it makes financial and administrative decisions traceable and open to challenge. Some nations

with transparency laws have directly tied the implementation of these laws to the implementation of ICT-based initiatives (Relly & Sabharwal, 2009). However, ICT needs to be implemented with coherent legal frameworks, training and oversight capacity to bring about transformational results (Transparency International, 2014).

ICT initiatives in DEWA include an e-procurement system which allows any company with a trade license in the UAE to find out about and participate in the utility's tenders online. In addition, tender results are made available to the general public on its website. Moreover, DEWA launched in 2020 an internal smart application for its employees to report violations while protecting their identity. In addition to the publication of annual statistics and to the dissemination of information on its website and through its mobile application and electronic utility bills, DEWA allows consumers to engage with the institution by way of filing complaints, providing suggestions and sharing innovation ideas with a group of professionals in the utility (DEWA, n.d.).

That being said, transparency on policy decisions in the sector and public participation in these decisions is nevertheless limited in the UAE.

Case study 2:

Finland, Open government and commitment to public participation

Finland ranks 3rd globally for transparency with a CPI score of 85 (Transparency International, 2021). It also ranks 11th on the global competitiveness index with a score of 100 on electricity access and supply quality (World Economic Forum, 2019). The Finnish electricity sector is liberalized and open for competition and is part of the North European electricity market. The sector is regulated by the Finnish Energy Authority under the Electricity Market Act, as well as EU energy market legislations (Waselius & Wist, 2020).

The low level of corruption in Finland can be associated with a long-standing culture of transparency and openness in the Finnish Government. As per the Finnish Act on the Openness of Government Activities, government documents are primarily classified as public, unless there are specific reasons that require otherwise. The Law also obligates public officials to engage in active communication with the general public. In addition, media outlets and journalists are independent and CSOs which count 100,000 operate without restrictions (Freedom House, n.d.; Open Government Partnership, 2019). It is worth noting that 75 to 80 percent of the Finnish population belongs to at least one CSO (GHK, 2010).

Furthermore, the Finnish Government is continuously improving transparency and openness. It joined the International Open Government Partnership in 2012 and has since developed short term national action plans to promote accountable, responsive and inclusive governance (Open Government Partnership, 2019).

Public consultation is one of the key regulatory tools employed to improve transparency, efficiency and effectiveness of regulation in OECD countries besides other tools such as regulatory impact analysis. It is a step ahead of public notification on regulatory decisions and involves actively seeking the opinions of interested parties and affected groups in the development of regulations (OECD, n.d.). In Finland, interest organizations and associations are regularly consulted, through traditional approaches such as committee hearings, joint council memberships, experts' testimonies and the circulation of bills and draft legislations, as well as through the internet (OECD, 2010). Similarly, public consultations are carried out in Finland's power sector. In fact, calls for public opinions on draft regulatory reforms can be found on both the Finnish Energy Authority and the European Commission's websites (EC, 2020; Energiavirasto, 2020).

Lebanon could benefit from public consultation as a cost-effective way for better and more inclusive policy making⁷, and ICT adoption in public institutions can help enhance transparency and reduce the opportunities for corruption in operations, particularly in procurement processes, as well as facilitate citizens access to the government. However, the political systems and contexts of the UAE and Finland are very different from those of Lebanon. Hence, the immediate actions and the pathway to transparency for the Lebanese power sector need to be compatible with the political context in the country and the current issues in the power sector.

⁷In January 2020, LOGI started developing a public consultation draft law with the legal expert Fatima Karaki. This law proposes a clear and effective plan that ensures the participation of the public in the decision-making process especially when it comes to ratifying laws.

5. Transparency across the value chain of Lebanon's power sector

5.1. The oil and gas sector: a leading example

The oil and gas sector has been a leading example of transparency in Lebanon. Since the kick-off of activities more than a decade ago, the nascent industry has been treated differently at both the official and public levels. It has been scrutinized by the public and the media because of its potential to improve electricity supply and generate additional economic gains as well as because of the risk of falling into the resource curse.

Law 84/2018 on Enhancing Transparency in the Petroleum Sector

Conscious that transparency commitments are necessary to attract international oil companies and pressured by CSOs, the Lebanese Parliament adopted Law 84 on Enhancing Transparency in the Petroleum Sector in October 2018⁸. The Law which was put in place after the Offshore Petroleum Resources Law (OPRL, law 132/2010), enforces commitment to transparency and accountability in the oil and gas sector. In more details:

- Law 84/2018 covers all parties involved across the value chain of the sector, as well as the Council of Ministers, the MoEW, the Lebanese Petroleum Administration (LPA), and any other public administration or body and any company which undertakes petroleum activities. It sets out the exact obligations of each party with respect to disclosure and publication of information at each stage of the petroleum activities. It also imposes disclosure and publication obligations regarding the sovereign wealth fund, employment, and social networking expenses (Alem & Associates, 2019).

- In addition to disclosure of contracts with right-holders, the Law obligates the disclosure of secondary contracts between the right holders and subcontractors as well as publishing information on beneficial ownership of subcontracted companies. This is a very important clause of the Law as corruption is more prevalent at the subcontract level, and the cost of projects subcontracted to third parties in extractive

industries make up between 50 to 90 percent of all costs involved in the sector (LOGI, 2019). The disclosure of secondary contracts in Law 84/2018 surpasses the requirements of the international Extractive Industries Transparency Initiative (EITI) Standard, making Lebanon at least on paper among the world leaders on transparency in the oil and gas sector (LOGI, 2019).

- Finally, the Law includes details on the scope of accountability and right to bring suit in case of infringement of the Transparency Law. It has also granted CSO the right to monitor the transparency of the oil and gas sector (Alem & Associates, 2019).

Implementation of transparency in the oil and gas sector :

The first offshore licensing round was completed before Law 84/2018 was adopted; however, it followed a transparent process that led to the awarding of two Exploration and Production Agreements (EPAs) in February 2018 to a consortium led by Total, Eni and Novatek as right holder operators to explore, develop and produce the hydrocarbons potential of blocks 4 and 9 of Lebanon's Exclusive Economic Zone (LPA, n.d.). The pre-qualification requirements took into account the companies' history of corruption in addition to technical and financial performance criteria⁹.

Furthermore, the LPA, which was established as an autonomous public institution mandated to plan, supervise and manage the upstream petroleum sector in Lebanon, is one of the few institutions to comply with Law 28/2017 (Gherbal Initiative, 2018). The LPA's website includes a request for information page and the Administration has an assigned Information Officer. The LPA disseminates on its website up to date information on the petroleum activities and has a page on the legislative framework guiding the sector with links to the laws, decrees, and minister's decisions so far issued. It also includes the documents and information to be disclosed and published as required by Law 84/2018 among which the publication of beneficial ownership of contractors and subcontractors (LPA, n.d.).

⁸ KII – 2: Senior Member at CSO

⁹ KII – 2: Senior Member at CSO

In parallel to adopting Law 84/2018, the government and CSOs have been working on Lebanon's candidature application to the EITI. The EITI is a club of nations that have chosen to adhere to minimum standards of transparency in their extractive industries. Lebanon has first announced its intention to join the EITI in January 2017 before the first licensing round (EITI, 2017). Implementation of EITI standards starts with the formation of a multi-stakeholder group (government, companies and CSO) that sets objectives and an action plan for EITI implementation. Lebanon's candidature application has been delayed. However, the formation of the multi-stakeholder group was reinitiated this year. Joining the EITI would promote transparency because Lebanon's progress would be assessed annually by the EITI International Board against the EITI Standard in order to remain a member (EITI, n.d.).

Lessons learned and applicability to the power sector :

Law 84/2018 is the only sector specific law on transparency, and the most detailed and comprehensive one. It shows how the legal framework for transparency in the power sector at large could be further enhanced and serves as a leading example for other sectors too. Some of the main requirements of the Law 84/2018 that should be replicated in the power sector, as pointed out by a Senior CSO Member, include publishing the list of companies applying for prequalification and the result of prequalification, disclosing contracts and secondary contracts with subcontractors, and publishing information on beneficial ownership of both contractors and subcontractors. The Senior CSO member has also identified the need to involve the stakeholders beyond the MoEW in the review of draft contracts and discusses the benefit of establishing a public consultation process on draft legislations, requirements that are currently not included in the oil and gas regulatory framework but are lessons learned for the power sector¹¹.

Nevertheless, the successful adoption of an enhanced legal framework and the implementation of transparency in its activities, makes the oil and gas sector a unique case in Lebanon and an evidence of inconsistency in the government, as

much as a leading example. Unlike other sectors, transparency was a prerequisite for the existence of the oil and gas sector in Lebanon since international oil and gas companies look to protect themselves from reputational damage and face increasing pressure from the countries in which they are based to operate responsibly. It is therefore in the interest of the lawmakers to create a transparent environment to attract these international players. On the other hand, in the power sector, the factors were not present to have a comparable transparency regime. A lack of transparency is the norm, and the lack of accountability allows the key political actors to carry on corruption in the sector.

This being said, the increasing need for reforms and the pressure from international donors creates a window of opportunity that could shift the incentives of these key players and make transparency possible in the power sector¹².

5.2. Strategies and plans in the power sector

When it comes to policy strategies and plans developed for the power sector, including the Policy Paper for the Electricity Sector of 2010 and the Updated version adopted by the MoEW in March 2019, it is unclear how policy decisions are reached and how their delivery is monitored and evaluated. The 2019 Update which was developed with the aim of reforming the sector to reduce its impact on public debt, entails the procurement of temporary and permanent generation plants (MoEW, 2019). Some of the main criticisms of the Update are that it did not include the macroeconomic and fiscal analyses needed to inform optimal decision-making. It also did not show the different energy scenarios assessed before selecting the proposed plan, which is the best practice when trying to optimize policy decisions in the power sector (Executive Magazine, 2019).

Moreover, there is no real scrutiny of MoEW's implementation of adopted policies and of whether these policies are having the desired impact. Parliamentary oversight is the main means by which the government is held to account, and in Lebanon oversight is weak.

¹⁰ KII – 2: Senior Member at CSO

¹¹ KII – 2: Senior Member at CSO

¹² KII – 2: Senior Member at CSO

In addition, decision making is not participatory, and politicians have no interest in listening to the public because the latter has little influence over what happens in Lebanon. While some pilot public participation projects have taken place in the past decade such as the Citizens Agenda between 2014–2016 and the Citizens' Assembly on Electricity in 2020, these were led by CSOs or international organizations (International Alert, 2016; Relief Centre, n.d.). Moreover, a select number of CSOs are sometimes invited to attend parliamentary sessions. However, there is currently no formal public consultation process on draft laws or regulations¹³.

5.3. Fuel procurement to Electricité du Liban

Earlier in 2020, a major corruption case was investigated on the import of adulterated fuel that affected Lebanon power plants' operations and services. The company accused by Lebanese authorities was a subsidiary of Algeria's state energy firm Sonatrach registered in the British Virgin Islands (BVI) to bypass taxation. The Sonatrach's fuel scandal, as it is known today, dates back to the year 2005, when the Lebanese Government signed a contract with Sonatrach to deliver fuel oil to its power plants, and was then renewed on a continuous basis every three years. Nevertheless, the contents of the contract were never known to the Lebanese people, despite costing the treasury billions of dollars (LOGI, 2020). The scandal centers around importing fuel which does not meet the technical specifications required in Lebanon's power plants and has thus halted a portion of Lebanon's power generation capacity. Early investigations revealed that many public sector employees received regular bribes from the two Lebanese owned companies, BB Energy and ZR Energy, involved in importing the fuel to the country (Al-Akhbar, 2020). Charges were also filed against 12 people linked to the case, including high-level public servants (Middle East Eye, 2020).

The case has revealed the need to make all state contracts in the energy sector publicly available and the more pressing role of transparency in such cases since the names of the key players involved

and real beneficiaries were hidden behind the Algerian company. This also extends to another agreement the Lebanese Government has concluded in early 2019 with Russian company Rosneft to rehabilitate and manage terminals for oil storage in Lebanon's second largest city Tripoli. The 20-year contract remains undisclosed until today (Reuters, 2019).

The latter two examples showcase the need for establishing a transparent procurement process when it comes to EDL purchases. In fact, these measures can be found within the existing decrees governing EDL as a public institution that is completely independent administratively and financially. Non-compliance to these measures and bypassing existing processes have led to corrupt and costly results, which should be considered moving forward.

In general, Lebanon has an outdated and fragmented public procurement system with considerable capacity and technology gaps, resulting in inefficiencies and high risks of corruption. As a consequence, the quality of the procurement system has been below the international and regional averages (Institut Des Finances, 2020). In fact, a draft public procurement law is currently being discussed in parliamentary committees to achieve savings, to manage fiduciary risks, budget uncertainties, inefficiency and corruption, to allow to finance public investments and to enhance service delivery to citizens.

5.4. Tendering of power projects

Another prominent case linked to corruption in Lebanon's electricity sector is the issue of rented Turkish power barges. These ships, with a capacity of 388MW (in 2018), were brought in 2012 as a temporary solution until the full implementation of the Policy Paper for the Electricity Sector of 2010 (which was expected in 2015) but have remained operational since no new investments in EDL's generation capacity have been made. The cost of renting these power ships has had a huge impact on state's budget, with annual costs reaching US \$800 million per year (Al Akhbar, 2017). The barges' contract was extended at the end of 2016 and again in 2018 in the absence of any other generation alternative and the incapacity

¹³ KII – 2: Senior Member at CSO

to go through a new transparent tender for power purchasing. The contract has ended in September 2021, but the situation was exacerbated even earlier due to the ongoing financial crisis. Outstanding payments that have been accrued amount to around US \$200 million (until their departure).

An additional example of non-transparent tendering of power projects is the Deir Ammar- 2 power plant. In 2013, after a first unsuccessful tender, the construction of Deir Ammar 2, planned to generate 550MW, was awarded to the Cypriot company JP and Avax, a deal worth around US \$500 million. However, the execution of the contract was suspended due to a conflict between the MoEW and the MoF on the applicability of VAT to the contract, a question of US \$50 million, prompting the company to seek international arbitration (Le Commerce Du Levant, 2019). In October 2016, negotiations kicked-off again to restart the construction works. Then in May 2018, the caretaker Cabinet approved the transformation of the construction contract into a BOT (Build-Operate-Transfer) which includes terms for financing, construction and management, without making any further details public. It appears that the project was taken over by a consortium of Lebanese businessmen close to powerful politicians without a new call for tenders (Business News, 2018).

On the other hand, the Public Private Partnership (PPP) Law approved in 2017 after a decade of delays was highly anticipated to set the principles of transparency, competitiveness, and accountability in key infrastructure projects. However, the Law has not yet been implemented in any infrastructure project, and there are talks among policymakers to exclude the tendering of power projects from it (Executive Magazine, 2018).

These examples, among others, are an additional proof that politics is still part and parcel of power projects decision making processes. Direct contracting, unfair tendering conditions, political bickering and the exclusion of the tendering departments are issues that have to be raised. There is a need to re-assess procurement processes and learn from the above presented failures.

5.5. Appointment of civil servants

The process of appointing civil servants at the level of the Council of Ministers has always been a playground for political bickering and a “sectarian carve-up” among main parties in the government (Daily Star, 2020a). Despite the conceptual agreement among key players on an “unofficial and consensual” appointment mechanism years ago, the latter was never implemented, and appointments were always made based on clientelistic, non-transparent and confessional bases. The Lebanese Parliament has approved back in May 2020 a law to pave the way for civil servants to be appointed based on merit rather than on sect. Yet, the reformist move did not last long, since the Constitutional Council made the decision to repeal the law deeming it unconstitutional.

A recent case involving the appointment of a new six-member board of directors to EDL in July 2020 is a good example of civil servants selections in the power sector. Despite showing some transparent measures at initial stages of the appointment process, such as publicizing the call and job requirements on the MoEW’s website, the members were eventually chosen based on political and confessional affiliations, bypassing the input of the Civil Service Board in this regard. In addition, there was ambiguity around the jury that was appointed to look in the applications and choose the most fit profiles for the positions, which was under the supervision of the Minister of Energy and Water himself. The same happened back in 2012 when appointing the six members of the LPA.

The latter proves the long-term absence of a rigid, non-sectarian and transparent appointment process of independent, skillful civil servants at the national level at large, and in the power sector specifically, questioning the effectiveness of such appointments and the ability of the appointed to implement the much needed reforms.

5.6. Operation and maintenance contracts

Alleged corrupt and non-transparent practices in EDL’s procurement and

maintenance contracts have also been highlighted but were never properly investigated by the judiciary. EDL usually sub-contracts private companies to operate and maintain its generation power plants, including the Zahrani and Deir Ammar-1, the new Zouk and Jiyeh, and the Naameh landfill power generation project, as well as its distribution services (DSPs project). According to EDL's 2019 budget, the cost of those contracts are estimated at around LBP 201,733 billion (US\$ 134 million based on a 1\$=1,500 LBP exchange rate) (Al-Akhbar, 2019). Over the years, those contracts were not monitored against key performance indicators (KPIs) and were always imbalanced and favorable to the private sector's side, whose services are always urgently needed¹⁴.

Renewal of contracts should be based on an independent audit of the performance of contractors, which never takes place, due to the continuous state of emergency in the sector.

5.7. Downstream distribution

Similar to several other key economic sectors of the country, the downstream oil operations in Lebanon have been widely known for their politically designed value chain and the lack of transparency, hindering the development of a competitive market throughout the past decades. As a consequence, a carefully-engineered oil Cartel has been set up since the Lebanese Civil War in the 1980s and is currently striving to maintain its profits.

The downstream oil sector in Lebanon is manipulated by 13 private companies that import, store and distribute the majority of the fuel products, benefiting from a large storage capacity. The latter allow these importers to manage more than half (or 55%) of the distribution stations that amount to around 3,100 stations. They also own around 68% of the distribution trucks that transport oil products to the several regions (Legal Agenda, 2020).

This large number of actors operating in a small market like Lebanon makes alliance and cooperation vital to secure profit share. In fact, those companies do not import individually, but rather agglomerate to import the same shipments and then share the quantities to distribute in the market.

This allows them to avoid buying half a shipload or less, which enhances their stock and reduces the price, reflecting a clear representation of the monopolistic structure of the sector that hinders any competitiveness and price differences.

Even when the MoEW decided in 2019 to enter the market to break the existing monopolies and launched tenders to import diesel and gasoline for the oil installations in Tripoli and Zahrani, the process was not carried out in a direct way between the state and suppliers to ensure that the monopoly was broken, but through private companies that required this process, and most companies operating in Lebanon have refrained from submitting bids for these tenders in objection to the move.

In fact, the entry of the state in the downstream market was not actually a move to break the oil cartel nor did it help reduce oil prices to open the market to competition. What happened instead was the entry of the MoEW as a new importer according to the same rules of the political game, with an implicit commitment not to prejudice the interests and profits of existing players. This facilitated the reception of an additional player at the table and allowed new political parties to extend their influence over a share of the market.

Why don't laws get implemented in Lebanon?

This documentation of the various laws tackling transparency and anti-corruption in Lebanon and how they aren't implemented in practice leads to questioning the real causes behind this political stalemate. The high number of existing laws show that Lebanon should be well governed, but actually isn't, and this is another indication to how the different political factions combine to give rise to the outcomes we observe.

Some blame the political system that has emerged after the Lebanese Civil War. In negotiating the end of hostilities, and after wars, countries often reach agreements that lead to deadlocks, the reason being that they try to find win-win situations and consensus-based resolutions of conflict (Adwan, n.d.). Thus, the Taef agreement that

¹⁴ KII – 2: Senior Member at CSO

has emerged in the year 1990 entrusted the Council of Ministers with executive authority, which theoretically aimed at ensuring the representation and participation of all parties in the decision-making process. However, it made the ministers, as individuals, the masters of their relative ministries, and the funnel to all decisions within its body, be it sometimes the decision of selectively not applying existing laws or even bypassing them. Consensus has therefore been essential to end war, but it was too costly, as it hindered vital issues such as transparency and accountability.

Confessionalism also comes to the forefront when agreeing on the implementation of laws in Lebanon. In fact, it translated into the need for consensus in all aspects of politics and public life, and gave equal powers to all actors in the political game (Adwan, n.d.). When a law is not implemented on one actor or party, it is not implemented on all, and this was used repeatedly to halt the applicability of laws, raising the number of laws ratified by Parliament that remain unimplemented to 52, according to the Speaker of the Parliament Nabih Berri in 2019 (LOGI, 2019).

The same issue applies to the judiciary system, which is also not independent from political interference. As a result, the political elite gets away with not implementing laws, including those promoting transparency and anti-corruption.

A country that requires consensus at every stage of its work provides great legitimacy to its poor achievements. Therefore, it would be beneficial for the Lebanese public in general, and CSOs, opinion-leaders and activists in particular, to embark on discussions of the real causes behind lack of implementation of laws, in order to figure out a pathway of change around which a coalition of sufficiently powerful actors would agree to move things forward.

Yet, this paper does not aim to dive into the problematics of the political scene, but rather to present an evidence-based approach that would touch upon the main concerns of the public, and sets the stage for a transparent energy planning for the next decade.

6. Conclusions and policy recommendations

There is a widespread lack of transparency in the Lebanese public institutions, and there is no government accountability. This is particularly true in the power sector, where corruption results in highly inefficient, insufficient, inequitable and polluting electricity supply despite significant government subsidies. The existing legal framework should guarantee the right to access information in the power sector and should sanction those responsible for misconduct. Yet a review of the activities in the past decade and the many examples provided are ample evidence that, with the exception of the oil and gas, which serves as a leading example and constitute an exceptional case, corruption reigns along the power sector value chain. Transparency laws are not implemented, they are even resisted. The lack of law implementation and accountability can be linked to the consensus based political system that emerged after the Civil War.

As presented below, the first and foremost step to achieve transparency in the power sector and curb corruption is the implementation of the existing legal framework, after which gaps should be gradually addressed. At the same time, Lebanon should promote public participation in decision making and slowly build the infrastructure needed to enhance the implementation of transparency measures. Corruption in the power sector is too costly to Lebanon and is an immense barrier that needs to be lifted to enable political, economic, social and environmental development in the country.

On the legal framework for transparency

- Implement Law 28/2017 in the power sector and address progressively the gaps that were raised based on the lessons learned over the past three years, such as identifying/specifying the type of information to be made publicly available, the timeframe for sharing such information, as well as the responsible entities/bodies approving this process.

- Learn from Law 84/2018 on transparency considerations in the oil and gas sector and implement those measures in other service sectors. Lessons learned included but are not limited to the following: publishing the list of companies applying for prequalification and the result of prequalification, disclosing contracts and secondary contracts with subcontractors, and publishing information on beneficial ownership of both contractors and subcontractors.

- Lobby towards the implementation of the existing laws for anti-corruption which are applicable across the value chain of the power sector, namely laws 33/2008 (ratification of the UNCAC), 27/2015 (Establishment of an International Anti-Corruption Academy), 44/2015 (Anti-money laundering and counter terrorist financing law), 83/2018 (protection of whistleblowers), 175/2020 (Fighting corruption in the public sector and the creation of a National Anti-Corruption Commission) and 189/2020 (Asset and Interest Declaration and Criminalization of Illicit Enrichment Law) and start with appointing the members of the National Anti-Corruption Commission.

- Launch the process for the appointment of an independent Electricity Regulatory Authority (ERA) based on Law 462/2002 and secure the support necessary for the new entity to be fully operational while ensuring that its members are independent and autonomous, and empowered to perform their duties, among which creating a competitive and transparent market.

- In the oil and gas sector: Complement the existing legal framework by submitting to the Council of Ministers all necessary decrees related to transparency such as the petroleum registry and the beneficial ownership decrees.

On procurement processes

- Fully comply to EDL's internal procurement considerations by launching transparent tenders for fuel procurement, equipment supply and operation and maintenance contracts according to clear processes;

- Issue tenders and call for services within a period of 6-8 months before end of contracts, which would allow for a transparent tendering process.

On the appointment of civil servants

- Issue and implement a rigid, non-sectarian and transparent appointment process of independent, skillful civil servants, that is applicable to the power sector.

On power generation projects

- Reject direct contracting, unfair tendering conditions, and any political interference in the awarding of future generation projects.

- Consider Public Private Partnerships (PPP) Law 48/2017 in the tendering of future power projects in compliance with the ERA's future vision and plan for the sector, and ensure that the information related to these tenders are shared transparently.

On legal and policy decisions

- Establish a formal public consultation process on draft plans, regulations and laws in the power sector. Adopt mechanisms that would allow the participation of interested stakeholders.

On government operations

- Initiate the implementation of ICT-based initiatives to promote anti-corruption in the sector and accountability in procurement processes and to facilitate the implementation of the Right to Access Information Law.

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Commitment of the Lebanese Ministry of Energy and Water to the Right to Access Information Law (28/2017) and its Implementation Decree (6940/2020)

Almost 5 years after the adoption of Law No. 28/2017; the Right to Access Information Law, that provides the legal framework for transparency in Public Administrations, and one year after the adoption of its Implementation Decree, the Lebanese Transparency Association – No Corruption, National Chapter of Transparency International (LTA), assessed the Commitment of the Lebanese Ministry of Energy and Water to the Proactive Disclosure provided under this legal framework; on June 22, 2021.

In 2020, Lebanon scored 25/100 with a rank of 149/180 countries from around the world on the Corruption Perceptions Index (CPI) , outlining the systemic corruption in Lebanese Public Administrations. The Power Sector, which resides under the patronage of the Ministry of Energy and Water (MoEW), amounts to around \$43 billion USD of public transfers, around 46% of the National Public Debt . Not to forget continuous blackouts and/or long shutdowns of electricity in the country.

To measure the commitment of the MoEW to the Right to Access Information Law, LTA assessed the Ministry's website; as Article 9 of the above-mentioned law provides an indirect obligation on all Public Administrations to have a website to use it for complying with Chapter II of the Law "Proactive Disclosure", which requires the proactive publication of:

- Decisions, instructions, circulars, and memorandums that include an interpretation of laws and regulations or that are of a regulatory nature. This publication shall occur within fifteen days of the date of their issuance.
- Transactions involving payment of more than LBP 5,000,000 of public funds. This publication shall occur within one month of the date they or one of their installments are executed. The publication shall include the value of the disbursement, the means of payment, the purpose of the payment, the beneficiary, and the legal basis of the disbursement (such as a tender, a contract by mutual consent, or the implementation of a judicial ruling).
- The competent hierarchical head in each administration shall produce an annual report on its activities.

However, reference to Article 5 of the Law and its implementation provision in the Implementation Decree will be made due to the fact that Article 5 provides for exceptions on the access to a specific type of information, while exempting a specific type of document from the exception in the Implementation Decree.

On the other hand, the Implementation Decree in its Article 8 (a), provides that Information Requests can be submitted online through the administration's website and/or an e-mail, which in turn complies with the best practices on the matter in several countries such as: the United States of America, Canada, the United Kingdom, France...this also I addressed in the assessment.

While assessing the MoEW's website, the above-mentioned information were tracked when available, and a score of 2 was given when the information available on the MoEW's website is fully compliant with the law, while a score of 1 when the information available on the MoEW's website is partially compliant, and a score of 0 when the information is not available on the website and/or non-compliant with the law.

¹Corruption Perceptions Index, Transparency International. 2020. Available at: <https://www.transparency.org/en/cpi/2020/index/lbn> (2021/06/21).

²Audi Bank, 2021

In the below table, reference is made to the legal provision setting out the obligation on the MoEW to publish specific information, whether based on the Right to Access Information Law or its Implementation Decree. In addition to the type of information, its availability with notes, and the source of the information is provided when available or partially available.

The MoEW has very low compliance with the Right to Access Information Law as it only recorded a score of 1/12 for 6 indicators, totaling to 8.33%. This shows how transparency is being dealt with at the level of the MoEW, the culture of secrecy thrives in the Power Sector and its patronage; the MoEW in Lebanon, which undermines any future good-governance approach to the sector.

It is worth mentioning that during our assessment to the MoEW's website, errors were faced for long durations when trying to enter the website that provided a message; "the site can't be reached". Whether voluntary by the MoEW or involuntary, it constitutes an obstacle against exercising the Right to Access Information; a fundamental human right and a constitutional right, which in turn means that the MoEW is violating a fundamental human right.

| Law Provision | Implementation Decree Provision | Type of Information | Availability of Information on the MoEW's Website | Source | Notes | Score |
|--|---|--|---|---|--|-------|
| <p>Article 5 (B-3): B – The following documents shall not be accessible: 3. The Council of Minister's deliberations and the decisions that it renders confidential.</p> | <p>Article 3 (B): B – In applying Article 5 (B-3) of the law, secrecy provisions in contracts conducted by the administration does not withheld access to it, in accordance with Article 5 of the Law.</p> | Contracts conducted by governmental agencies. | Non-compliant | http://energyandwater.gov.lb/ | The MoEW appears to be in violation of these articles, as it doesn't publish Contracts conducted by it on its website. | 0 |
| | <p>Article 5: In applying the provisions in Chapter II of the Law relating to the proactive disclosure, that requires electronic publication, the publication of information shall be in a way that allows for searching for the document, downloading it, copying it and searching through its content.</p> | Electronic proactive disclosure facilitating access to information. | Non-compliant | http://energyandwater.gov.lb/ | The MoEW website does not allow searching for the data within the website. In addition, it only publishes news and announcements that are not compliant with Article 5 of the Implementation Decree. | 0 |
| <p>Article 7: The administration shall as a matter of course publish on its websites the following: -Decisions, instructions, circulars, and memorandums that include an interpretation of laws and regulations or that are of a regulatory nature. This publication shall occur within fifteen days of the date of their issuance. Publication shall occur in the Official Gazette as well as on the administration's website. -Without prejudice to Article 5 of this law, all transactions involving payment of more than LBP 5,000,000 of public funds. This publication shall occur within one month of the date they or one of their installments are executed. The publication shall include the value of the disbursement, the means of payment, the purpose of the payment, the beneficiary, and the legal basis of the disbursement (such as a tender, a contract by mutual consent, or the implementation of a judicial ruling). The salaries and compensations of employees shall be exempt from this article.</p> | <p>Article 6: In applying the last paragraph of Article 7 of the law, and to identify the financial transaction that shall be published, the whole transaction is considered if it is a compounded transaction by looking at its object and purpose. It is considered one transaction, even if it contains more than one transaction that amounts less than LBP 5,000,000, the total of transaction conducted in a convergent time period as long as it serves the same purpose.</p> | Proactive disclosure of decisions, circulars, memorandums, and financial transactions. | Non-compliant | http://energyandwater.gov.lb/ | The MoEW appears to be fully non-compliant with these provisions for not proactively disclosing any decisions, circulars, memorandums, and financial transactions. | 0 |

| Law Provision | Implementation Decree Provision | Type of Information | Availability of Information on the MoEW's Website | Source | Notes | Score |
|---|---|--|---|---|---|-------|
| <p>Article 8 (A & C): A – The competent hierarchical head in each administration shall produce an annual report on its activities. C – The annual reports shall include at least the following:</p> <p>1 – Information about the administration's working mechanism, including expenses, objectives, rules, accomplishments, difficulties that faced workflow, and audited accounts. 2 – The general policy and the projects of the administration concerned, both those that were implemented and those that were not and the reasons why, and any proposals that help improve the administration's work.</p> | <p>Article 7 (A): In applying Article 8 (A) of the law, reports or annual reports are published in a time period not exceeding the 31st of January of the next year.</p> | Proactive disclosure of annual reports by Public Administrations. | Non-compliant | http://energyandwater.gov.lb/ | The MoEW does not publish its annual reports. | 0 |
| <p>Article 14 (A): A – Information Requests shall be submitted in writing to the administration possessing the information, it should include sufficient details to enable the Information Officer to retrieve the information with little effort.</p> | <p>Article 8 (A): In applying Article 14 (A) of the law, Information Requests are submitted either personally or by proxy with another person, attaching a copy of the ID of the person asking for the information. Information Requests can be submitted electronically in accordance to a mechanism outlined by each administration in accordance with its resources, which then allows to dedicate a special section for electronic Information Requests either on websites or through e-mails in a way that allows the administration to identify the identity of the person requesting the information.</p> | Electronic Information Requests. | Non-compliant | http://energyandwater.gov.lb/ | The MoEW does not dedicate a special section for electronic Information Requests on its website, nor does it provide an e-mail for that matter. | 0 |
| <p>Article 15: In each administration, an employee shall be assigned to examine Information Requests, they shall have the necessary jurisdiction to find and access the requested information and hand it over to citizens.</p> | <p>Article 9 (3): The provisions of Article 15 of the law shall be applied in accordance with the following: 3 – Every administration, upon assigning an Information Officer, shall publish the Assigning Decision through the Official Gazette and its website, if existent..</p> | Proactive disclosure of the Information Officers' contact information. | Partially compliant | http://energyandwater.gov.lb/ | The MoEW published the Information Officer Assigning Decision only through the Official Gazette and not through its website. | 1 |

| | |
|--------------------|--------------|
| Total Score | 1/12 |
| Percentage | 8.33% |



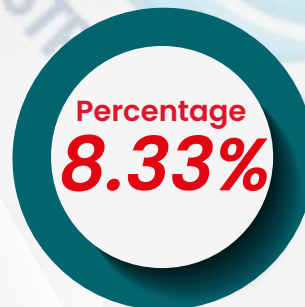
Commitment of the Lebanese MoEW to the Right to Access Information Law (28/2017) and its Implementation Decree (6940/2020)

To measure the commitment of the MoEW to the Right to Access Information Law, LTA assessed the Ministry's website

While assessing the MoEW's website:

- A score of **2** was given when the information available on the MoEW's website is fully compliant with the law,
- A score of **1** when the information available on the MoEW's website is partially compliant,
- A score of **0** when the information is not available on the website and/or non-compliant with the law.

Results:





Associated risks of corruption in the Lebanese power sector



Political risks:

- Poor service delivery increases dissatisfaction among Lebanese people and contributes to increased political instability.
- The lack of energy diversification and the high dependence on imported oil products is a national security issue.



Economic risks:

- The technical inefficiencies of EDL, complemented with the political decision in 1994 to charge a fixed tariff well below cost recovery, drain the budget and require constant transfers to cover its widening deficit. The annual transfer to EDL in recent years has ranged between US \$ 2-1.2 billion
- Availability of reliable electricity is the second biggest obstacle to private sector growth, after political instability
- Renewable energy resources only constitute only %2 (excluding hydro) of electricity generation = this is a missed opportunity for Lebanon.



Social risks:

- Blackouts lead to deterioration in standards of living with risks on the health, the well-being and the productivity of Lebanese people.
- The current electricity rationing scheme deepens levels of inequality in the country. The poorest and least developed regions of Lebanon have the lowest delivery of regulated electricity and have to pay for expensive local diesel generation for full energy access.



Environmental risks:

- The use of private generators leads to significantly higher airborne pollution levels and inhalation exposure to carcinogenic compounds.
- Electricity generation contributes to a total of %57 of total GHG emissions in the country. Heavy fuel and diesel oil have lifecycle emission factors of around 0.778 tonnes of CO₂/MWh, in comparison to 0.433 for natural gas and <0.032 for renewables.

Existing Legal Framework for Transparency in Lebanon

**Law
462/2002**

**on the
Regulation of
the Electricity
Sector**

**Law
84/2018**

**on Enhancing
Transparency in
the Petroleum
Sector**

**Law
33/2008**

**ratifying the United
Nations Convention
against Corruption
(UNCAC)**

**Law
28/2017**

**Right to Access
Information Law,
its Amendment, and
its Implementation
Decree**

**Law
27/2015**

**Agreement for the Establishment of an International
Anti-Corruption Academy as an International Organization
was adopted by virtue of Law 27/2015**

While these are not specific to the energy sector, all are considered to be applicable to the sector and enhance transparency and integrity within such crucial sector.

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