



Lebanese Oil & Gas Initiative
المبادرة اللبنانية للنفط والغاز

Block 4 Granting Contract and Secondary Contracting

13 January 2023



Lebanese Oil & Gas Initiative
المبادرة اللبنانية للنفط والغاز

Block 4 Granting Contract and Secondary Contracting

Commissioned by:

Lebanese Oil and Gas Initiative (LOGI)

In Partnership with:

Friedrich Ebert Stiftung (FES)

**FRIEDRICH
EBERT
STIFTUNG**

Prepared by:

Mrs. Khadija Hakim

Mr. Akram Hasan

Date:

January 13, 2023

Lebanese Oil & Gas Initiative

المبادرة اللبنانية للنفط والغاز

- 1 • Introduction: *P4***
- 2• Stages of Granting Block 4 in Lebanese Offshore Waters: *P7***
- 3• Legislative gaps in the stages of granting Block 4 in Lebanese offshore waters: *P11***
- 4• Subcontracting in the Lebanese Legislative Framework: *P17***
- 5• Recommendations of the Lebanese Oil and Gas Initiative in the Petroleum Sector in Lebanon: *P23***
- 6• Conclusions and recommendations: *P29***
- 7• Biographies: *P33***
- 8• References: *P34***

1- Akram Hassan and others, Policy Recommendations on the Role of Local Authorities in Lebanon in the Oil and Gas Sector, Publications of the Common Space Initiative Foundation, 2018.

1. Introduction:

The petroleum sector is a rentier return sector that provides major resources to countries, making it a hotbed of corruption and abuse as it negatively affects the economy and the competitiveness of the rest of the productive sectors.

Petroleum resources are characterized by their instability due to their vulnerability to international price variables, which reflects fluctuations in the volume of revenues and affects the ability of countries to plan and set public budgets. The sheer size of these resources makes them susceptible to corruption -especially in the least developed countries- and affects the structure of the economy that would increasingly fear becoming centered around them. However, some of the most prominent characteristics of these resources are that they are limited and prone to depletion, in a sense that the revenues they generate must be exploited in long-term investments to ensure the sustainability of their returns and preserve the rights of generations.

Hence, it is the responsibility of states and governments to manage their petroleum resources and ensure their proper use to avoid them falling into what is known as the "**resource curse**". For instance, the value of exports of petroleum resources increases at the expense of other production sectors, which affects the exchange rate of the national currency and the competitiveness of the rest of the production sectors. However, falling into these practices can be avoided by following the peaceful governance of the sector ; this can be done by establishing a strong system of controls and balances¹, and by adopting transparency and competitiveness standards in all government practices and decisions since the announcement of licensing and pre-qualification rounds for companies, until the evaluation of bids and the awarding of purchase and licensing contracts, as well as during the phases of granting each of the exploration, production, and secondary contracts. Therefore, oil and gas producing countries and/or those in the process of extracting them, seek to establish regulatory controls, strengthen capacities, and adopt long-term policies that maximizes profits out of their revenues from this sector to ensure national growth and economic prosperity for their people.

The method of managing petroleum resources varies according to the pattern adopted by countries for this administration, as some countries resort to the establishment of national companies for oil exploration, while other countries adopt the method of outsourcing the extraction of these resources to foreign companies in exchange for certain shares that benefit the state. However, the most common method is to adopt a production-sharing system while retaining the right of the state during any executive phase of the contract by participating in production.

In Lebanon, Article IV of the Offshore Resources² Law, “**hereinafter referred to as the Petroleum Resources Law**,” stipulates that ownership of petroleum resources and the right to manage them shall be the exclusive property of the State. Article XII of the same law granted the Council of Ministers, based on the Minister's decision, and based on the opinion of the Petroleum Administration, “**hereinafter referred to in this study as the Authority**,” the power to grant an exclusive license to carry out petroleum activities under the exploration and production agreements. It is noted that the petroleum sector in Lebanon is subject to a gradual legislative and regulatory framework at four levels of control and administration entrusted with its organization and management, ranging from the legislative and oversight role exerted by the House of Representatives, through the role played by the Council of Ministers with regard to major and important decisions, and the oversight exerted by the concerned ministry, to the role of the body established by law, which exercises the power to manage, control, and supervise petroleum activities under the tutelage of the Minister. Citizens, civil society, and academic and research institutions can also carry out their role in the sector by activating their oversight work and holding their representatives in the parliament accountable for managing their petroleum resources to achieve economic growth for their country.

From here comes this study to evaluate Lebanon's first step towards the start of the exploitation of its petroleum resources, which began with the signing of the “**Exploration and Production Contract**” in block (4) in the Lebanese offshore waters, reviewing the stages of the award, leading to the signing of the exploration and production contract on this block, and the gaps marred by these steps leading to subcontracts in contracts for the supply of goods and services needed for petroleum activities, citing the study issued by the Lebanese Oil and Gas Initiative (LOGI) and in what it included from recommendations that aimed at enhancing transparency in subcontracting. Accordingly, the first section of this study is devoted to reviewing the steps that preceded and accompanied the process of granting block (4) in Lebanese offshore waters, starting from the first licensing round to the issuance of the Council of Ministers' decision on the approval of granting block (4) to the pre-qualified companies consisting of the French company “**Total Sa**”, the Italian company “**Eni International B.V**” and the Russian company “**Novatek JSC**”; the second section will be devoted to discussing the compatibility of the granting contract with Lebanese laws and relevant decrees related to oil exploration during the bidding and granting stages. Our study will also address some of the amendments made to the principles of evaluating the granting of the purchase contract and the violations that attained some of its clauses on the legislative framework in force in the petroleum sector in Lebanon, especially the tender protocol for licensing rounds in offshore waters and the agreement module on exploration and production.

2- Law No. 132 issued on 24/8/2010 “Offshore Petroleum Resources Law”.

The third section of this study will be devoted to the subject of subcontracting and will present the agreement's provisions in this field in order to identify the shortcomings and gaps that have marred them, in particular with the delay in the issuance of the decree on secondary contracting. Section IV is devoted to examining the extent to which stakeholders have benefited from the study prepared by the Lebanese Oil and Gas Initiative (**LOGI**) on the subject of enhancing transparency in secondary contracting in the petroleum sector in Lebanon issued in 2018, and then reviews the impact of not considering the proposals and recommendations contained therein.

In conclusion, the study will present some suggestions and recommendations that can be used to develop extractive work in the future in exploration and production contracts related to other blocks in Lebanese offshore waters.



3- Decree No. 9882/2013 related to the pre-qualification of companies to participate in petroleum activities licensing rounds was subsequently canceled by Decree No. 4918 dated 31/05/2019.

2. Section One: Stages of Granting Block 4 in Lebanese Offshore Waters:

The promulgation of the Petroleum Resources Law and the subsequent legislation and regulatory decrees constituted in their entirety the establishment of an integrated legal system for Lebanon as a petroleum producing country. Hence, the draft required several detailed stages before granting the exploration and production agreement to any consortium of companies with the aim of protecting Lebanon's rights to its natural resources along its marine waters and achieving promising commercial discoveries in it. The award of block (4) in the Lebanese offshore waters to the pre-qualified companies, consisting of the French company "**Total Sa**", the Italian company "**Eni International B.V**" and the Russian company "**Novatek JSC**", **hereinafter referred to as the consortium of companies (Total-Eni-Novatek)**", Lebanon's first practical experience of the petroleum sector, constitutes in its levels a road to future stages in this field. Any uncertainty or error in application would open the way for the growth of a corruptive environment that threatens national resources in the sector.

To evaluate this experience, it is necessary to review the detailed steps that preceded the granting of Block (4) in accordance with the provisions of the laws and decrees related to the petroleum sector, and these stages are listed successively as follows:

1. Launch of the licensing cycle

On 27/12/2012, in virtue of the resolution No. (41) issued by the Lebanese Council of Ministers, it was approved to launch the first licensing round for oil exploration in Lebanese offshore waters under the jurisdiction of the Lebanese State according to the proposal of the Minister of Energy and Water based on the recommendation of the Commission.

2. Opening of the pre-qualification phase for companies³

On 15/02/2013, the Minister of Energy and Water announced the opening of the qualification phase for the first licensing round in Lebanese offshore waters.

3. Announcement of the list of pre-qualified companies

On 18/04/2013, the Minister of Energy and Water announced the list of pre-qualified companies consisting of 46 international companies.

4. Call for bidding

On 30/04/2013, the Minister of Energy and Water announced the launch of calls to apply for acquiring petroleum rights according to the first licensing round, starting from May 2013. This call was followed on 18/06/2013 and 19/06/2013 by a conference for pre-qualified companies in Beirut, where individual companies were invited to submit their comments and questions on the initial tender protocol and the agreement module on exploration and production that were announced by the Authority in May 2013. The process of the first licensing round after this conference was suspended until 2017, mainly due to the delay of the Council of Ministers in approving two decrees related to the division of marine waters under the jurisdiction of the Lebanese State into areas in the form of blocks, and to the tender protocol for the participation in licensing rounds as well as the agreement module on exploration and production.

4- By virtue of Decree No. 4918/2014, some articles and annexes of Decree No. 43 dated 19/01/2017 were amended the tender protocol for Offshore Licensing Rounds and the Model Exploration and Production Agreement.

5. Approval of the tender protocol and of the agreement module on Exploration and Production⁴

In virtue of the resolution No. (1) of Minutes No. 6/2017, the Council of Ministers decided to resume the course of the first licensing round after the agreement on the approval of the two pending decrees. Indeed, on 19/01/2017, and in virtue of the decree No. (43), the tender protocol for licensing rounds in offshore waters was issued, "**hereinafter referred to as the tender protocol**", which limited the procedures for bidding requests for blocks in the first licensing round, the procedures for evaluating these applications, the selection of the winning bidding companies, as well as the conditions and guarantees for bidding fees, in addition to the inclusion in this decree of the agreement module on exploration and production.

6. Approval of the decree dividing the Lebanese waters into patches

On 19/01/2017, decree No. 42/2017 was issued to divide the marine waters under the jurisdiction of the Lebanese State into areas in the form of blocks, which were divided into ten blocks (**Block 1 to Block 10**) defined according to certain latitudes and longitudes for each. Five of them, blocks (**1,4,8,9,10**), were offered for bidding for pre-qualified companies beforehand to participate in the first licensing round based on a granting strategy prepared by the Authority and submitted to the Minister of Energy and Water. Companies that were previously qualified under the first qualification round conducted in 2013 were invited to inform the Authority within 15 days from the date of publication of the decision of the Minister of Energy and Water of any amendments that may lead to a review of the availability of their qualifying conditions.

7. Organizing a second pre-qualification round

A second pre-qualification round was organized for companies wishing to participate in the first round of exploration and drilling of petroleum resources in Lebanese offshore waters, while retaining the results of the qualification round conducted in 2013. This step led to an increase in the number of qualified companies from 46 companies to 51 companies.

8. Announcement of the date of submission of bidding requests

15/09/2017 was set as the deadline for submitting bidding applications by the consortium of pre-qualified companies. On 07/09/2017, a resolution was issued by the Minister of Energy and Water, based on the recommendation of the Authority, to postpone the date of submitting bidding applications to 12/10/2017 to allow pre-qualified companies to review the Tax Provisions Law related to petroleum activities No. (57), which was approved later on, on 19/09/2017. On the deadline for submitting bidding applications on 12/10/2017, two applications from a consortium of pre-qualified companies were submitted to the Authority to bid on the displayed blocks sealed with wax.

9. Closing bids

On 13/10/2017, the Authority unsealed the bids on blocks (4 and 9) and it was found that they were submitted by a consortium of companies, namely the French company "**Total Sa**" (owner of a 40% shareholding right), the Italian company "**Eni International B.V**" (40% participation of an unoperated right holder) and the Russian company "**Novatek JSC**" (a non-operating right holder with a 20% participation), meaning that this consortium submitted one request for each block.

10. Assessing offers

On 27/10/2017, the Authority handed over its recommendations on the two offers submitted by the consortium of companies (**Total, Eni and Novatek**) to the Minister of Energy and Water after they were evaluated by it - according to the Authority – under comprehensive evaluation system according to the principles of legal, technical, commercial, and strategic harmonization required by the tender protocol containing the evaluation procedures. We will stop later in the study at the evaluation process carried out by the Authority and the violation of the text of the tender protocol.

5- Law No. 28 issued
on 10/2/2017 "The Right
to Access Information".

11. Closing the bid

Based on the report submitted by the Authority, the Minister of Energy and Water invited the consortium of companies (**Total, Eni, Novatek**) to the final negotiation phase, specifying two items for negotiation, according to the recommendation of the Authority, namely the discussion of the evidentiary item for the commitment in minimum obligations of work in order to determine it definitively in accordance with the provisions of the tender protocol, and shortening the period specified by consortium of companies to start drilling the first exploratory well in each of the two blocks. On 11/12/2017, the Minister of Energy and Water handed over to the Council of Ministers a complete file to take the appropriate decision regarding the granting of blocks (**4 and 9**) to the consortium of companies (**Total - Eni - Novatek**) bidders.

12. The Granting

On 14/12/2017, by virtue of resolution No. (**32**), the Council of Ministers approved the granting of blocks (**4 and 9**) to the consortium of companies (**Total, Eni, Novatek**) and approved the appointment of "**Total SA**" as an operator in both blocks. The Minister of Energy and Water was appointed to sign the final text of the Exploration and Production agreements in blocks 4 and 9. After this approval, the Minister of Energy and Water set the date of 29/1/2018 as the date for signing the exploration and production agreements on blocks (**4 and 9**) of the consortium of companies (**Total - Eni - Novatek**) by virtue of resolution No. 15 K/ W / 2018.

13. Appointment of the State Representative in the Blocks Management Committees

On 09/03/2018, The Lebanese State Representative was appointed in two management committees related to blocks (**4 and 9**) in the Lebanese offshore waters.

14. Publication of the Exploration and Production Agreements for Blocks (4 and 9)

According to the decision issued by the Minister of Energy and Water No. 19 K/W dated 27/3/2018, the exploration and production agreements related to blocks (**4 and 9**) in the Lebanese offshore waters were published on the Authority's website pursuant to the provisions of Article (**28**) of the Right to Access Information⁵.

15. Approval of the Exploration Plan

According to Resolution No. 21 K/W issued by the Minister of Energy and Water on 28/5/2018, it was approved to explore the two properties of blocks (**4 and 9**) in the Lebanese offshore waters.

3. Section Two: Legislative gaps in the stages of granting Block 4 in Lebanese offshore waters:

After we presented in the first section the path that accompanied the granting of blocks (4 and 9) of the Lebanese offshore waters, and since the process of granting block (4) in the Lebanese offshore waters was the first practical experience for the petroleum sector in Lebanon, and like any first experience that may be interspersed with some gaps that would be overlooked and open the way for corruption as well as expose the national petroleum resources of this sector to waste, in this section, we will address the gaps and differences revealed by this experience between the legislative and regulatory framework of the sector and the aforementioned granting process to the consortium of companies (**Total, Eni, Novatek**) according to the following:

First: Accountability for the disruption of the petroleum sector for a period of four years

The success of the petroleum sectors in any oil-producing country or a country that takes steps in the field of oil exploration and drilling, such as the Lebanese state, is based on the adoption of the basic principles of governance of the petroleum sectors, the most important of which are the principles of accountability and transparency. As to the Lebanese experience in granting block No. (4), to its date, the executive authority entrusted to the management of the petroleum sector in Lebanon, whether by the Council of Ministers, the Minister of Energy and Water and/or the Authority, has not been held accountable for the reasons that led to the delay in issuing the implementing decrees for the petroleum sector for four years since the announcement of the first licensing round in 2013 to the date of re-announcing its completion in 2017 and the consequent reduction of serious investment opportunities for oil exploration in Lebanon and its impact on market value as a result of a decrease in international oil prices.

6- Article (9), paragraph (8), stipulates that "the Petroleum Administration may recommend that no petroleum rights be granted in a particular area, as a result of its comprehensive evaluation within the scope of the specified area and licensing objectives. This must be applied especially in case the number of offers presented for a certain block is less than two (2)".

Second: Multiple applications as a formal condition for the validity of bidding procedures

In the previous section, we pointed out that although the Minister of Energy and Water extended the date of submitting the bid on block (4), on the deadline date of 12/10/2017 only one offer/request was submitted to the Minister of Energy and Water submitted by the consortium (**Total – Eni – Novatek**), and the application and its evaluation were dissolved by the Authority although the licensing round should have been canceled in whole or in part in this case because the legal conditions were not met formally to start evaluating the application in terms of the necessity of preparing the applications according to the tender protocol. The legally approved legislative framework is decisive in its provisions in terms of the need for multiple applicants to ensure validity of the bidding procedures. For example:

- Clause (9.8) in the tender protocol stipulates that the Authority must recommend not to grant any petroleum rights in a particular area if it is found that the number of applications submitted for a particular area is less than two applications⁶ (2), and therefore the Authority does not have in this case any discretionary power over the explicit text, and it was required to issue a recommendation not to grant because the number of applications is less than what the law required for evaluation.
- Clause (4.3) of the tender protocol stipulates that the Minister of Energy and Water, based on the recommendation of the Authority and with the approval of the Council of Ministers, has the right to cancel the licensing round in whole or in part, at any time, without the Lebanese State incurring any responsibility towards the applicant or any other person or individual company. This applies in particular to cases where the Minister of Energy and Water, in consultation with the Authority, decides, and as a result of the number and/or level of applications submitted in respect of a particular area or due to other pressing circumstances, that the objectives of the licensing round have not been achieved or will not be adequately achievable. This gives the Minister the right in the aforementioned context to cancel the licensing round due to the small number of applications.
- By reading of the terms used in the tender protocol relating to the submission of bidding orders, the evaluation and/or the closing of the auction shows that they assume the existence of multiple bids. For example, the phrases "**instructions to applicants**", "**invite the winning applicant**", "**evaluation of applications**", "**allocation of the highest score in each bid**" and "**evaluation of commercial offers**" make it unequivocally clear that the multiplicity of bidding applications is imperative in terms of the legal form of the validity of bidding procedures and in starting the evaluation process until its end. This confirms the illegality of the phase of evaluation and granting of the bidding to the consortium of companies (**Total, Eni and Novatek**).

Third: Legislative Gaps in the Production and Exploration Agreement for Block (4)

Another major gap between the legislative framework in Lebanon and the process of granting block 4 to the "**Total – Eni – Novatek**" consortium is the exploration and production contract signed with this consortium, which includes, in some of its clauses, violations of the Petroleum Resources Law and the Decree No. 10289/2013 "**hereinafter referred to as the Petroleum Activities Decree**", of which some are listed as follows:

- Withdrawal of the State's right to participate without restriction: The exploration and production contract, and the term "**production sharing contract**", is named so for the main reason that the State has the right to participate in production at any phase of the implementation of the exploration and production contract on a certain area whenever the State deems that the circumstances allow it to do so, especially if the commerciality of exploration operations is proven. This right is enshrined in the Petroleum Resources Act, specifically in the following articles:

A- Article (6) which stipulates that: "**The State reserves the right to carry out or participate in petroleum activities in accordance with the provisions of this Law.**"

B- Paragraph (e) of Article (19), which stipulates that the exploration and production agreement must include provisions related to the possibility of the state's participation in the exploration and production agreement.

As for the exploration and production agreement signed with the consortium of companies (**Total-Eni-Novatek**) on block (4), specifically Article (5) thereof, the violation of the aforementioned legal provisions is evident by withdrawing the state's right to participate without any right. The aforementioned article stipulates that: "**The state does not have a participation rate in the first licensing round,**" which is a clear violation of the legislative framework established in the Lebanese Petroleum Resources Law and is subject to criticism that requires accountability.

It should be noted in this context that later on, to sign the exploration and production agreement on block (4), Decree No. 4918/2019, which relates to the amendment of some articles and annexes of Decree No. 43/2017, "**Decree of the Tender Protocol for Licensing Rounds in Offshore Waters and the Model Exploration and Production Agreement**", was issued. The amendment extended to item (5) mentioned above which is related to the right of state participation. The following paragraph was deleted: "**The State does not have a participation rate in the first licensing round**". However, this amendment may suggest that it has addressed the legal error concerning the right of a State to participation, but in fact, it does not achieve its intended purpose. Article (5), amended by Decree No. 4918/2019, stipulates that: "**The State or any State-owned may become, or become in the future, a right holder in accordance with Article (36) of this Convention**", which is a criticized amendment for two reasons, respectively:

A- Article (6) and Article (19) of the Petroleum Resources Law, which were referred to above, were explicit in terms of the need to include a provision in the Exploration and Production Agreement concerning the possibility of the participation of the State as a right holder whenever it deems it necessary without restricting this right.

B- Article (5), amended by Decree No. 4918/2019, suggests that it restored the right of participation of the state in the Exploration and Production agreement, but it is an artificial suggestion that this participation, and according to the text, is governed by the provisions of Article (36) of the amended Exploration and Production agreement, which talks about the right of early termination and forced waiver. It is implicitly understood that the right of the Lebanese state to claim participation as a right holder in the exploration and production agreement is linked to the cases stipulated in Article (36), namely early termination and forced waiver. This is criticized because the law was clear in terms of giving the Lebanese state the right to participate whenever it deems it necessary without restriction, which is the purpose of this type of agreement called "**production sharing**."

- **Right to mortgage rights without specifying the place of mortgage:** Article (34) paragraph (6) of the Exploration and Production Agreement allows any right holder to mortgage or otherwise encumber his/her rights under this Agreement, whether in whole or in part, in favor of a bank and/or a reputable international institution, in accordance with Articles 50 to 53 of Law No. 132/2010. This raises some legal fallacies for several reasons:

A- Article (50) of the Petroleum Resources Law stipulates that: "**The right holder has the right to mortgage his/her share only in a petroleum right to finance the petroleum activities related to this right**", after the approval of the Minister based on the opinion of the Authority, by virtue of the decree issued by the Council of Ministers related to the rules and procedures of mortgage. The object of mortgage referred to in this provision is the financial share of the right holder and not the petroleum right itself. The generality of the clause relating to mortgage in the exploration and production agreement mentioned in paragraph (6) above, in terms of the right holder to mortgage all his rights without specifying the place of mortgage, is subject to criticism, because the petroleum right is a constitutional right enshrined in Article (89) of the Lebanese Constitution. Therefore, it is not possible to imagine the consent of the State to impose any encumbrance on this right, whether mortgaged or otherwise. This goes in line with the rules recognized in petroleum contracts in terms of determining the place of mortgage with the financial share of the right holder, and conforms to the letter of the text mentioned in the Petroleum Law of the Petroleum Response, the right holder may mortgage his/her share only in the petroleum right, i.e. the financial share and not the rights completely.

B- Article (34), paragraph (6), mentioned above, stipulates that the right holder has the right to mortgage his/her rights in favor of a bank and/or a global financial institution of good international reputation. The text came in general without specifying the criterion on the basis of which good and international reputation is determined on the one hand, and on the other hand, lacking to determine the role of the state or the petroleum administration in accepting or not accepting this choice. This may raise several problems when applied, the most important of which is the issue of normalization of the bank and/or the global institution that has a good international reputation with Israel, which is contrary to common law in Lebanon.

- **Waiver:** Article (34), paragraphs (1, 2, 3 and 4) of the Exploration and Production Agreement allow the holder to assign all or part of his participation in the following cases:

A- In accordance with what was stipulated in Article (36) of the Exploration and Production Agreement relating to Early Termination and Forced Assignment.

B- In accordance with paragraph (2) of Article (34), allowing the right holder to assign to one of the associated companies wholly owned by him, provided that the assignee company submits a letter to the Minister confirming that the guarantor's obligations will apply to the obligations of the wholly owned related company, the assignee is then exempt from any obligations, liabilities or security in the exploration and production agreement. This is criticized and contrary to the legislative framework in force in Lebanon, because the principle is to exclusively assign to the state in exploration and production agreements in accordance with the text of Article (25)⁷ of the Petroleum Resources Law, and the text of Article (39) of the Petroleum Activities Decree, which states that "By virtue of a notice to be submitted to the Minister with a copy handed in to the Petroleum Administration within a period of not less than thirty days, withdrawal of the agreement, or of some of the rights associated with it, is permissible to the right holder, which is the Lebanese State exclusively. However, Article 70 of the Petroleum Resources Law allows the right to assign or transfer rights and obligations related to a petroleum right or partially, to a qualified company in accordance with the provisions of this Law. Therefore, it was unacceptable that the exploration and production agreement allowed the right holder to assign his/her participation to a company wholly owned by him/her without requiring at least the stipulation that this company be qualified, in accordance with the Petroleum Resources Law, as in the case of assignment to a third party, which stipulated in paragraph (3) item (a) of the same article that "**the third party shall be qualified in accordance with Law No. 132/2010.**" .

- Failure to respect the notification period imposed by the law on the right holders related to the results of the inspection of exploration well: Although Lebanese law forces right holders, in accordance with Article (28) of the Petroleum Resources Law and Article (10.2) of the Exploration and Production Agreement, to submit a report to the Minister describing the results of the examination of the exploration well that has been drilled based on Article (10.1) of the Exploration Agreement within a period of maximum 6 days following this notice⁸. However, this deadline was not respected during the stages of the implementation of the contract by the consortium of companies (**Total, Eni and Novatek**), and to date, the Authority and/or the Minister of Energy did not announce that they had received such a report or disclosed its content, despite all the doubts in the results of the inspection of the well that was drilled in block (4).

7- "To assign the exploration and production agreement, the right holder shall be entitled exclusively to the State, provided that he has fulfilled the work obligations and the minimum investment expenses specified in the exploration and production agreement, and that he has paid his financial obligations to the State, including taxes due."

8- There is a similar provision in Decree No. 10289/2013, specifically Article 101, which requires the right holder to submit to the Minister, with a copy to the Petroleum Administration Authority, a final geological and technical report on the reservoir in relation to each well or well course within a period not exceeding six months after the completion of a drilling operation or a drill-related activity.

9- The Enhancing Transparency in the Petroleum Sector was issued under No. 84 on 10/10/2018.

4. Section Three: Subcontracting in the Lebanese Legislative Framework:

After we presented in the first section of the study the path that accompanied the process of granting block (4) in the Lebanese offshore waters and examining in the second section the compatibility of the granting contract with the Lebanese laws and relevant decrees related to oil exploration during the bidding and granting stages. In this section, we will highlight local recruitment and subcontracting or what is termed "**secondary contracting**". It should be noted that although Lebanon has issued a basket of legislation and regulatory texts related to the petroleum sector, the aforementioned texts, including the exploration and production agreement, do not address in detail the subject of contracts concluded by the operating company with subcontractors and secondary contractors to carry out the works and secure the goods and services they need. The Enhancing Transparency in the Petroleum Sector⁹ sets multiple restrictions on the petroleum sector at all stages, including secondary contracts, inspired by the principles imposed by the Extractive Industries Transparency Initiative (**EITI**), with the aim of:

- Contributing to enable stakeholders in the sector to possess the basic capabilities necessary to activate their role in enhancing transparency and control over petroleum resources and extractive industries related to the sector.
- Committing to publish and make information available to the public by imposing on ministries, public administrations, authorities, and petroleum companies the obligation to publish and disclose all data and information about petroleum activities, including information related to the management of public funds, especially revenues.
- Working with the media, public opinion, and interested parties to expand transparency and circulation of information by providing access to information and publishing periodic reports and the results of audit reports.
- Supporting and encouraging the role of civil society in implementing qualitative initiatives to evaluate and monitor policies in extractive industries through more specialized roles in the structure of the extractive industries sector.

First: Local Recruitment, Contracting and Subcontracting in Lebanese Texts

Secondary contracting within the framework of petroleum activities, or what is known as a supply agreement, is the contract or agreement concluded between the original contractor (the operating company that owns the petroleum right) and another natural or legal person (the subcontractor) to carry out any of the petroleum activities related to or resulting from exploration and production agreements¹⁰. Secondary contracting also includes the contract or agreement concluded between the subcontractor and a natural or legal person (subcontractor) to carry out part of the petroleum activities resulting from exploration and production agreements¹¹. These contracts are often concluded to secure the supply of merchandise, goods, and services needed by petroleum activities. However, in accordance with the provisions of Article 157 of the Decree on Regulations and Rules relating to Petroleum Activities, the main contracts for the purchase of goods and services for the purpose of carrying out petroleum activities shall be subject to public tendering knowing that the price, quality, delivery conditions, and guarantees provided shall be taken into account when evaluating offers and awarding contracts. The most prominent texts that dealt with the subject of secondary contracting and sub-procurement are:

- **Article 67 of the Law on Offshore Petroleum Resources:** Article 67 of which stipulates that the right holder and the subcontractors with whom he has contracted shall give priority to Lebanese companies in respect of contracts related to the construction of a facility or the supply of materials, products and services related to petroleum activities, if the conditions provided by Lebanese suppliers are equal to those of their competitors.
- **The Decree of Petroleum Activities Regulations and Rules:** Article 157 of which stipulates that the main contracts for the purchase of goods and services for the purpose of implementing petroleum activities shall be subject to public tender. The quality, price, delivery conditions, and guarantees provided had to be taken into account when evaluating offers and awarding contracts. It imposed on the operator to ensure preferential treatment for the purchase of goods and services of Lebanese origin, when such goods and services were internationally competitive with regard to their quality, availability, price, and performance. The decree also gave preference to the hiring of qualified Lebanese employees, if available, in addition to the obligation to finance and organize training courses related to petroleum activities. It is to be noted that the costs incurred by petroleum companies for these courses are refundable.

10- Carole Nakhleh and Akram Hassan, Handbook of Parliamentarians in the Field of Oil and Gas, a study prepared in collaboration with the Westminster Foundation for Democracy, House Press, 2018, p. 42.

11- Ibid., p. 42.

- **Enhancing Transparency in the Petroleum Sector:** The Enhancing Transparency in the Petroleum Sector addressed in a focused manner the issue of transparency at various stages of the sector. The concerned authorities, starting with the Ministry, the Petroleum Administration Authority and the companies holding rights, are required to disclose and publish all operations carried out in the sector, including secondary contracts. Among the most prominent articles that dealt with the obligations of the concerned authorities and the obligations of rights holders, subcontractors and secondary contractors are:

1. Article (3) entitled to the scope of accountability, which stipulates in its sixth paragraph that under this law, companies that own petroleum rights, operating companies that own the petroleum rights, subcontractors, secondary contractors, and companies that are not the owners of the rights, are entitled to the scope of the law.

2. Article (6) entitled Refraining from investing in petroleum activities, which prohibits all persons and entities holding public positions during their tenure of office and for a period of five consecutive years after leaving their positions, from investing directly or indirectly, in any way, in companies previously qualified to participate in licensing rounds, in petroleum rights holders, in parent companies, and/or in companies associated with them, companies eligible for the transfer of a petroleum right to them, subcontractors and secondary contractors with these companies, whether this was done by owning shares or other means and forms. They are also prohibited from holding the position of Chairman and/or General Manager or Board Member and/or Principal Manager in any of these companies. The said prohibition covers their spouses, ascendants, and descendants up to the first degree.

3. Article (7) entitled Anti-Corruption, which prohibits in its second paragraph any natural or legal person from providing or accepting any offer, commission, compensation, payments, gifts, promises, or other benefits in order to facilitate the contracting of subcontractors with the companies that own petroleum rights and the companies that own the operating petroleum rights, or to facilitate for the secondary contractors contracting with these contractors. This is under penalty of temporary detention for a period of not less than four years and a fine that ranges from two to three times the value of the expected or realized material benefit.

4. Article (13) entitled Employment, the first paragraph of which stipulates that the Minister of Energy and Water, the Authority, the Petroleum Rights Holders, the operating Petroleum Rights Holders, the State-owned Companies, and the secondary contractors shall disclose and publish the identity of the employees in the petroleum sector, the percentage of national employment, and the percentage of employment of resident foreigners.

The aforementioned article also specified the transparent procedures for use that should be carried out by right holder companies and the operating right holder companies, namely:

A- Announcing the work centers to be filled with the right holders on websites, including the Authority's website.

B- Following clear application procedures by qualified candidates for the duty stations to be filled, easy access to information, and ease of submitting applications to these duty stations, whether directly or electronically.

C- Publish the final results of filling duty stations in such a way that those who have been nominated to fill duty stations will easily know these results. The same article requires the Authority to ensure that rights holders are committed to implementing the of hiring Lebanese workers which was approved by the Commission, and to ensure that rights holders annually update and approve this program in accordance with the mechanisms specified in the exploration and production agreements, in addition to sending a report every four months to the House of Representatives specifying the manner and course of the recruitment and employment process.

5. Article (15) of the Law, which stipulates that if petroleum rights holders and operating petroleum rights holders commit repeated and serious violations of the provisions of the Transparency Support Law, the Council of Ministers shall apply Article 71 of the Offshore Petroleum Resources Law, based on the proposal of the Minister of Energy and Water and based on the opinion of the Authority.

6. Articles (17) and (19) of the law, which grant transparency support associations broad powers in the field of enhancing transparency in the sector during all its phases, including the legal contracting phase, including the power to prosecute.

Second: Steps required to address legal and regulatory gaps in the field of secondary contracting

Despite the important provisions of the laws and regulatory decrees related to the petroleum sector in Lebanon, especially those contained in the Enhancing Transparency in the Petroleum Sector, it is noted that many of their obligations are not precisely defined. This requires the issuance of regulatory decrees specifying the mechanisms of their implementation and the obligations imposed on the Authority and petroleum companies, especially the operating company, contractors and secondary contractors who are outsourced to the supply of goods and services for the benefit of the operating company. Note that Article 52 of the Offshore Petroleum Resources Law established a register for the registration of petroleum rights, and entrusted the Council of Ministers with issuing a decree, based on the proposal of the Minister after consulting the Minister of Finance, to determine the system and provisions related to the petroleum register that have not been issued to date, despite the passage of more than ten years since the adoption of the law.

Paragraph (2) of Article (72) of the Petroleum Resources Law requires the issuance of a decree in the Council of Ministers upon the proposal of the Minister that is based on the opinion of the Authority, specifying the obligations of the right holders with regard to the declaration of secondary contracts, which in turn has not been issued until today. Here, it is necessary to focus on the need to ensure equal opportunities and equality within the aforementioned secondary contracting decree to reduce the possibilities of corruption within the framework of these contracts. We hereby recommend, when approving the required decree, the adoption of executive mechanisms for the laws in force based on:

- Exclude any bidder in the event that commits a violation or act prohibited by law, especially crimes of corruption and bribery, or if he/she has an unfair competitive advantage or has a conflict of interest in violation of the provisions of the law and publish the reasons for the exclusion.
 - Establish a mechanism to exclude companies, wholly or partially owned by persons prohibited from participating in petroleum activities, specified in the Enhancing Transparency in the Petroleum Sector.
-

- Establishing a special register for procurement operations within the Authority that includes all information related to these operations to be available to the public electronically, and including the following basic information:
 - 1- Launch dates, bidding, and eligibility requests, if any.
 - 2- The date of opening the bids and determining the winning bid.
 - 3- A brief description of the topic of purchase.
 - 4- The value of the contract and its most important terms and conditions, in addition to a copy thereof. In the case of framework agreement procedures, a summary of its most important terms and conditions and a copy of the completed written framework agreement shall be added.
 - 5- In the event of cancellation of the purchase, determine the reasons and circumstances on which the purchaser relied to make its decision to cancel the purchase.
 - 6- A summary of requests for clarification related to pre-qualification documents, if any, or the grant's files, responses to such requests, and a summary of each amendment to such documents or files.
 - 7- Names and addresses of the exhibitors and the name and address of the obligatory entity.
 - 8- If an exhibitor is excluded from the granting procedures, a statement of the reasons and circumstances relied upon by the procuring party in that decision shall be procured.
 - 9- Information regarding the qualifications of the applicants' bidders and offers, if any, or information proving that they lack the required qualifications.
 - 10- If the information is considered confidential, specify the reasons and circumstances that warrant confidentiality.
 - 11- Any other information that needs to be included in the record.



12- <https://logi-lebanon.org/KeyIssue/reinforcing-transparency-in-subcontracting-lebanese-oil-gas-sector-2018-Arabic>

13- The study and recommendations were issued months before the Minister of Energy and Water signed the exploration and production agreement with consortium companies (Total- ENI - Novatek).

5. Section IV: Recommendations of the Lebanese Oil and Gas Initiative in the Petroleum Sector in Lebanon:

After presenting in the previous section the legislative framework governing secondary contracting and the legal gaps in it, we will address in this section the most prominent contents of the study issued by the Lebanese Oil and Gas Initiative (LOGI) on September 26 2018, on enhancing transparency in secondary contracting in the petroleum sector in Lebanon¹², and the extent of the commitment of the concerned authorities to the content of the recommendations they concluded¹³.

First: The study of the Lebanese Oil and Gas Initiative (LOGI) and its main recommendations:

The study was inspired by several international initiatives, most notably the Extractive Industries Transparency Initiative (EITI) and a report prepared by the Natural Resources Governance Institute in cooperation with the Open Contractual Partnership Initiative entitled "**Open Contracting for Oil, Gas and Minerals Rights: Highlight Good Practice**". In conclusion, the LOGI study puts forward a set of recommendations, notably:

- Early disclosure by rights holders, including the operator, of prospective subcontracting projects, so that eligible companies wishing to participate can submit their bids.
- Disclosing in detail information related to the award of contracts to subcontractors and secondary contractors, including the terms of the contract and any modification to subcontracting projects and arrangements arising therefrom, in accordance with the Global Open Contracting Principles.
- Disclosure of the rules and standards governing the award of contracts, the criteria for pre-qualification, and the selection of qualified candidates.
- Disclosure of application conditions and criteria for selecting contract winners.
- Allow all qualified providers who meet the requirements to participate in the submission of bids.
- Disclosure of the list of applicants or bidders, the names of the owners and beneficiaries, their nationality, their country of residence, and the names of politically prominent persons with direct or indirect interests, if any.

- Exclusion of applicant companies if politically prominent persons have direct or indirect interests in them.
- Disclosure of the content of the contracts awarded to subcontractors and secondary contractors, the reasons for awarding the contract, and the reasons for excluding other bidders.
- Establish a mechanism to monitor the obligation of rights holders under preferential treatment to Lebanese in the selection of secondary contractors.
- Establish a mechanism and an honorable body to resolve the existence of conflicts of interest, and to resolve disputes that may arise between right holders and bidders who have been excluded from the contract.

Second: The extent of the commitment of the concerned authorities to the content of the recommendations:

This study was issued several months before the Minister of Energy and Water, commissioned by the Council of Ministers, signed on 29/1/2018 the exploration and production agreements to grant blocks (**4 and 9**) to a consortium of companies (**Total - Eni - Novatek**) and the appointment of "**Total SA**" as its operator.

The Exploration and Production Agreement stipulates that rights holders must make a supply on a competitive bidding basis unless the contract, or the sum of the interrelated contracts awarded does not exceed the total value of more than fifty thousand US dollars (**\$50,000**). Preferential treatment must be accorded to Lebanese goods and services within reasonable conditions and limits. The same preferential treatment was required for Lebanese companies, or companies that are majority-owned by Lebanese persons, when selecting contractors to provide services related to petroleum activities, within specific conditions and criteria. Arguably, the requirement of competitive bidding for procurement operations is itself important and provides significant transparency, but it does not eliminate the possibility of corruption and favoritism for specific suppliers, especially since the Convention in Article (**27**) thereof requires obtaining the prior approval of the Minister for any contract, based on the recommendation of the Authority, if any right holder or company associated with it is a party to the contract (**except the operator in this capacity**), or if the total recoverable costs to be incurred under the contract exceed twenty million US dollars or exceed ten million US dollars in one calendar year. Provided that the application for approval submitted to the Minister shall include information on the value of the contract, the name of the contractor, a copy of the contract, or a detailed description of its most important provisions, the Minister shall have a period of one month to respond to the request, otherwise the application shall be considered approved.

Hence, it can be said that the requirement to obtain the approval of the minister on supply contracts may make petroleum companies obligated to favorite certain companies that find that the minister or the authority prefers them over others. This is to avoid the risk of refusing to agree to the contract.

It should also be noted that the agreement also referred to the legal and regulatory texts in force in the petroleum sector, and therefore we will address the recommendations included in the (LOGI) study to scrutinize its coverage in the exploration and production agreement and in the rest of the legislative and regulatory texts in force in the petroleum sector.

A review of the provisions of the Convention, in particularly those relating to subcontracting, it can be seen that most of the recommendations contained in the study have not been considered, as shown below:

1. Early disclosure by rights holders, including the operator, of prospective subcontracting projects: Article (27) of the Exploration and Production Agreement does not contain any provision relating to early disclosure of prospective contracting projects, which the right holders and the operating company intend to bid or contract for. Article (157) of the Decree of Regulations and Rules relating to Petroleum Activities¹⁴ merely states that a reasonable period must be granted for the preparation of the offer and that the specifications, deadline for submission of offers, and delivery conditions should not be complicated so as not to exclude competing suppliers inappropriately. It is clear from the text that it is insufficient and leaves room for discretion in publication and disclosure, which makes its objective, which is equal opportunities for contractors and subcontractors, unattainable.

Article (13) of the Enhancing Transparency in the Petroleum Sector, entitled "**Employment**", also dealt incidentally with the subject, stating in its second paragraph that "**companies that own petroleum rights and operating petroleum rights holders must follow transparent procedures for employment that ensure equal opportunities for qualified specialists to work with these companies in petroleum activities...**" It is considered a transparent procedure for use that is required by the right holders and the operating right holders: announcing the duty stations to be filled with the right holders on websites, including the Authority's website, and following clear application procedures by qualified candidates for the work centers to be filled, Ease of access to information and ease of submitting applications for candidacy to these duty stations, whether directly or electronically.

14- Article 157 of Decree No. 10289 issued on 30/4/2013 "Decree of Regulations and Rules Related to Petroleum Supplies" in application of Law No. 132 dated 24/8/2010 (Offshore Petroleum resources).

2. Disclose in details information related to the award of contracts to subcontractors and secondary contractors, including the terms of the contract and any modification in the subcontracting projects and arrangements arising therefrom. In addition to disclosing the rules and criteria governing the award of contracts, the criteria for pre-qualification and selection of qualifiers, the conditions for submitting applications and the criteria for selecting contract winners: the does not mention this issue, as does the law of petroleum imports in offshore waters. Article (157) of the Decree on Regulations and Rules relating to Petroleum activities, indicates that information relating to the granting of a major supply contract must be provided by the operator or the right holder, provided that this information includes the basic elements that justify the choice of the supplier, without indicating the reasons for excluding others. The obligation to disclose and publish is also not insured. On the other hand, the decree requires the distribution of qualification invitations to submit and send offers to a reasonable number of suppliers who are considered or expected to be able in terms of quality, qualifications, and experience to deliver the goods or perform the required service. The question arises as to why a (**reasonable**) number of suppliers should be selected rather than the open procurement method?

The Enhancing Transparency in the Petroleum Sector did not address the obligation of rights holders and the operating company to disclose information related to contracts, pre-qualification criteria, selection of qualified persons, and then criteria for awarding these contracts. The Authority and the Transparency Support Act also omitted the obligation to disclose the content of contracts awarded to subcontractors and secondary contractors, the reasons for awarding the contract, and the reasons for excluding other bidders.

3. Allow all qualified suppliers who meet the requirements to participate in the submission of bids: There is no reference in the text of the Agreement or in the Law on Offshore Petroleum Resources and the Ordinance on Regulations and Rules Relating to Petroleum activities that the right holders, including the operating company, must be obliged to accept the participation of all suppliers who meet the required conditions in the submission of the offers. The Enhancing Transparency in the Petroleum Sector omitted to refer to this issue, despite the significant importance of such a commitment, as it clearly and explicitly secures the principle of equal opportunities among all qualified suppliers and ensures their competition in obtaining contracts offered for tendering.

4. Disclosure of the list of applicants or bidders, the names, nationality and country of residence of the owners and beneficiaries, and the names of politically prominent persons with direct or indirect interests, if any: The Convention does not oblige the right holders and the operator to disclose the applicants and offers or any information about them, and the Offshore Petroleum Resources Law and the Enhancing Transparency in the Petroleum Sector omit this aspect. The decree on regulations and rules relating to petroleum activities indicated that a copy of the list of qualified bidders must be submitted to The Petroleum Administration to take note, as well as inform it of the decision under which major supply contracts have been awarded. It was also noted that potential suppliers should receive the same invitation specifications whether or not they were specifically invited to make the offer, without publication and disclosure obligations.

5. Exclusion of applicant companies if politically prominent persons have direct or indirect interests in them: The agreement and the rest of the legal and regulatory texts did not address the issue of excluding companies submitting bids to obtain contractual agreements and contracts for the supply of goods and services needed by petroleum rights holders, including the operating company for the implementation of petroleum activities. As for the Law on Supporting Transparency in Petroleum Contracts, several articles prohibit persons and entities holding public political positions or senior positions in the country, whether presidents, ministers, deputies, judges, security officials, senior officials, diplomats, politicians and others, from investing, directly or indirectly, in any way, in petroleum activities, including the activities of subcontractors and secondary contractors contracting with companies that hold petroleum rights, operators or non-operators, whether by owning shares or under any other means and forms. The same law also mandated that this law should extend to the spouse, ascendants, and descendants of such persons up to the first degree. The law imposed penalties on them for any of these acts. However, despite these provisions, the law does not address the steps that petroleum companies must follow if they find that there are prominent persons among the companies applying for contractual agreements and supplying merchandise and goods, which constitutes a major gap that must be addressed.

6. Establishment of a mechanism to monitor the obligation of right holders under preferential treatment to Lebanese in the selection of secondary contractors: The Convention and the laws governing the procedure in the petroleum sector do not mention the establishment of such a mechanism, which aims to monitor the obligation of right holders under preferential treatment to Lebanese when selecting subcontractors and secondary contractors. This raises the question of who is responsible for conducting this type of control, and the criteria that must be followed to this end. Especially since the text of the Authority in this, the field has come in general and did not include executive mechanisms for its implementation.

7. Establish a mechanism and an honorable body to resolve the existence of conflicts of interest, and to resolve disputes that may arise between right holders and bidders who have been excluded from the contract: The agreement and the laws applied in the petroleum sector did not address in any way the content of this recommendation, despite the importance of establishing a mechanism to resolve the issue of conflict of interest, and to identify the competent authority to settle disputes that may arise between right holders and bidders who have been excluded from contracts. This requires the issuance of an implementing decree for the Transparency Support Law in the petroleum sector to ensure absolute transparency and equal opportunities among all bidders applying for supply contracts. The establishment of this mechanism will also facilitate the commitment of petroleum companies to comply with the provisions of the Enhancing Transparency in the Petroleum Sector in terms of preventing prominent persons from participating in petroleum activities, including contractual agreements and secondary supply contracts.



6. Conclusions and recommendations

The optimal management of the petroleum sector requires the governance of all its stages, including the stage of granting work contracts and secondary contracts of contractual agreements and the supply of goods and services. This study dealt with the stages of granting in the first licensing round and the exploration and production contract signed with the consortium of the three companies (**Total - ENI - Novatek**) on block (4), as well as the subject of subcontracting in the field of petroleum activities as an integral part of exploration and production operations.

The study concluded the following conclusions:

1. Focusing laws and decrees on giving preference to the Lebanese local component in all stages of petroleum activities with disregard to the frameworks and mechanisms that guarantee and monitor the verification process.
 2. The existence of violations of the legal provisions during the granting phase of the exploration and production contract due to the lack of competition resulting from the submission of a single drilling and exploration offer in block (4) and (9).
 3. Deviation of some provisions of the "Exploration and Production Agreement" from the legal and regulatory texts governing the petroleum sector.
 4. Approval of tendering as a means of awarding contractual agreements and supply contracts serving the purposes of petroleum activities.
 5. The inclusion of the signed exploration and production agreement of a single article that sponsors secondary contracting, which restored what was stated in the legal and regulatory texts in terms of giving preference to the local component during the process of granting contracting agreements and supply contracts. It also gave the Minister the power to approve a large part of these contracts depending on their size.
 6. Failure of laws and decrees to the obligation of disclosing and publishing of all information related to the contracts to be granted, the conditions of qualification and the mechanism for awarding these contracts, and the obligation to disclose the winning entities and companies as well as the reason for excluding others from the tender.
-

15- Carole Nakhleh and Akram Hassan, *Handbook of Parliamentarians in the Field of Oil and Gas*, a study prepared in collaboration with the Westminster Foundation for Democracy, House of Representatives Publications, 2018, p. 12.

7. The absence of monitoring mechanisms to ensure transparency and equal opportunities during the granting and awarding phase.
8. The absence of a clear mechanism to ensure that contracts are not granted to sponsored contractors and companies, whether through owning it or their ownership of shares from influential parties or their relatives, or through the intervention of these bodies for the benefit of specific companies, directly or indirectly.

Through the study review of all the gaps mentioned, it becomes clear that the fortification and governance of the subject of contractual granting and secondary contracting in agreements that can be signed in the future on other patches, requires taking several steps, whether at the legislative and regulatory levels or by seeking the amendments of some texts of the model exploration and production agreement. We will divide these recommendations according to their mandates:

Policy recommendations:

First: Develop a comprehensive and well-defined oil policy and approve it by the concerned authorities, provided that this policy addresses the issue of secondary contracting and supply agreements and sets the general foundations to be followed in this regard.¹⁵

Second: Strengthen the implementation of laws related to combating corruption and the right of access to information and secure their executive mechanisms.

Third: Ensure public access to information related to petroleum, including what relates to secondary contracting at all stages, which will reflect positively on the transparency of the sector.

Fourth: Establish a mechanism for comprehensive monitoring at every phase of granting, exploring, and producing.

Fifth: Enhance the mechanism of disclosing detailed information related to exploration activities and data, as well as what relates to exploratory reconnaissance and drilling, and information about the results of exploring, drilling, and appraising wells as required by laws in the petroleum sector.

Sixth: Lebanon's accession to the Extractive Industries Transparency Initiative and to the Open Government Partnership, in order to ensure a higher level of transparency in the sector especially with regard to secondary contracting.

Recommendations at the level of legislation and regulatory texts:

First: Issue the secondary contracting decree stipulated in Article 72 of the Offshore Petroleum Resources Law. The decree shall specify how subcontractors and secondary contractors are chosen and contracted with to supply goods and services needed by petroleum activities, and the obligations of rights holders with regard to the declaration of secondary contracts.¹⁶

Second: Issue the decree specifying the system and provisions related to the petroleum register, stipulated in Article 52 of the Offshore Petroleum Resources Law.

Third: Issue the decree related to the mortgage and the rules and procedures annexed to it, whether in terms of mortgaging shares in the petroleum right or establishments.

Fourth: Issue the implementing decrees of the Enhancing Transparency in the Petroleum Sector specifying the executive mechanism for the obligations imposed by the aforementioned law on all concerned authorities, especially the obligations of publication and disclosure, starting from the Ministries of Energy and Finance, through the Petroleum Administration Authority, and ending with the rights holders of petroleum companies including the operating company. Furthermore, specify the information considered confidential and therefore the concerned authorities are exempted from publishing and disclosing it.

Fifth: Resolve the conflict between the legislative and regulatory texts approved in the petroleum sector and the texts included in the model exploration and production agreement.

Sixth: Clarify the binding mechanism to the right holders and the operating company to the standards related to local employment mentioned in the granting contract. This is done by amending the agreement text or by issuing a decree or an implementing resolution, by virtue of a study based on a comprehensive policy and strategy.

16- Decree issued In the Council of Ministers on the proposal of the Minister based on the opinion of the Authority.

17- Extractive industries are complex and subdivided. Thus, the amount of information about them is variable and huge. Hence the need for information related to the sector to be available through fixed and transparent mechanisms, in order to ensure orderly and easy access to the public.

18- Review the Guide to Enhancing Transparency in Extractive Industries, prepared by Labib Shaif Mohamed Ismail, 2015.

Recommendations on the Petroleum Administration Authority level:

First: Develop an action plan to follow up on the issue of secondary contracting based on three basic principles: transparency, reporting to the public, and public participation and accountability.

Second: Classify, arrange, and make information related to petroleum activities available through electronic and/or paper publication¹⁷, and publish recommendations, studies, and transparency reports related to extractive industries on the administration's website.

Third: Develop an executive mechanism to absorb and follow up with the results of the proposed reports, studies and recommendations, study them, to hold forth and comment on them.¹⁸



7. Biographies:

Professor Khadija Hakim: Prof. Hakim holds a master's degree in Public International Law and postgraduate studies in Diplomatic and Political Relations and currently is in the final year of completing her doctoral thesis treating the topic of oil contracts under the subject of "**The International Legal System of Petroleum Resources - Lebanese Case Study**". Other than being a legal consultant in the field of contracts for over 17 years in both the Arabic and English languages between Lebanon and the Arabian Gulf and a legal researcher in the field of oil, she has also published articles and research in the field of Lebanese maritime border demarcation.

Professor Akram Hassan: Prof. Hassan holds a master's degree in International Law on the subject of "**Lebanese Maritime Borders**" and is currently preparing a doctoral thesis on Legal Analysis of Conflicts in Shared Watercourses. He has been the secretary of the Parliamentary Energy Committee for more than a decade during which he kept pace with the course of legislation, regulatory decrees, and decisions related to the oil and gas sector (**in collaboration with Dr. Carole Nakhleh**) and published a study on the role of municipalities in the field of oil and gas (**in collaboration with Dr. Carole Nakhleh and Professor Theresa Karam**).



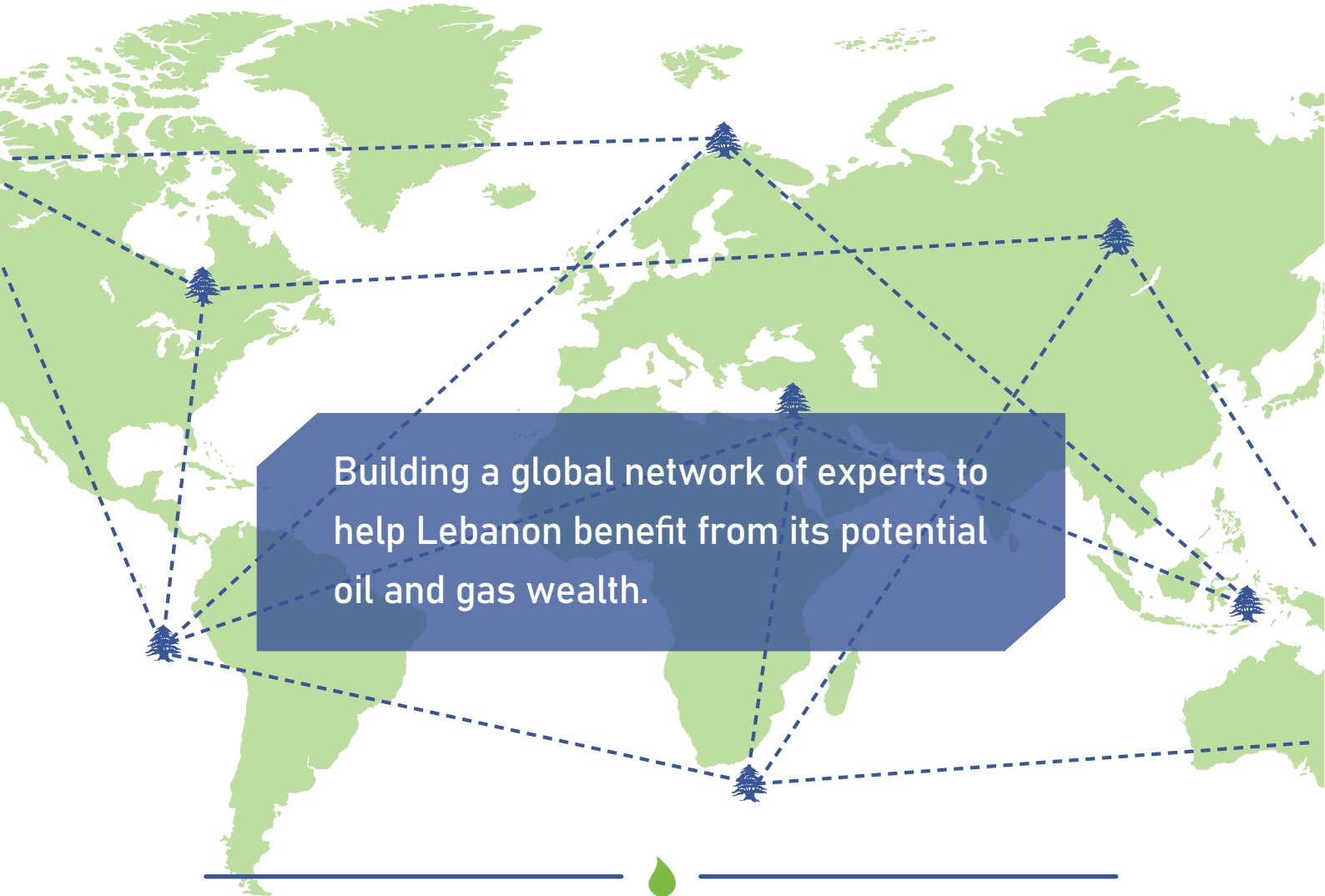
8. References

- **Law No. 132** issued on 24/8/2010 "**Offshore Petroleum Resources Law**".
- **Law No. 84** issued on 10/10/2018 "**Enhancing Transparency in the Petroleum Sector**".
- **Law No. 28** issued on 10/2/2017 "**The Right to Access Information**".
- **Decree No. 10289** issued on 30/4/2013 "**Decree of Regulations and Rules Related to Petroleum Supplies**" in application of Law No. 132 of 24/8/2010 (**Offshore Petroleum**).
- **Decree No. 9882/2013** on the Pre-qualification of companies to participate in petroleum activities licensing rounds by Decree 4918 dated 31/05/2019.
- **Decree No. 4918/2014** Amending some articles and the annexes of Decree No. 43 of 19/01/2017 the tender protocol for licensing rounds in offshore waters and the model exploration and production agreement.
- **Agreement** on the exploration and production of petroleum activities in Block 4 signed between the Republic of Lebanon and a consortium of companies (**Total- ENI - Novatek**).
- "Enhancing Transparency in Secondary Contracting in the Petroleum Sector in Lebanon," a study issued by the Lebanese Oil and Gas Initiative (**LOGI**) on September 26, 2018.

<https://logi-lebanon.org/KeyIssue/reinforcing-transparency-in-subcontracting-lebanese-oil-gas-sector-2018-Arabic>

- Carole Nakhle and Akram Hassan, *Handbook of Parliamentarians in the Field of Oil and Gas*, a study prepared in collaboration with the Westminster Foundation for Democracy, House of Representatives publications, 2018.
- Akram Hassan and others, *Policy Recommendations on the Role of Local Authorities in Lebanon in the Oil and Gas Sector*, publications of the Common Space Initiative Foundation, 2018.
- *A Guide to Enhancing Transparency in Extractive Industries*, written by Labib Shaif Mohamed Ismail, 2015.





Building a global network of experts to help Lebanon benefit from its potential oil and gas wealth.

LEARN MORE ABOUT LOGI

www.LOGI-Lebanon.org

FOLLOW US



Logilebanon

Commissioned by:

Lebanese Oil and Gas Initiative (LOGI)

In Partnership with:

Friedrich Ebert Stiftung (FES)



Prepared by:

Mrs. Khadija Hakim

Mr. Akram Hasan

Date:

January 13, 2023