

International Economic Law Clinic

**Accession of Lebanon to the Extractive Industries Transparency Initiative
(EITI): Lessons learned, analysis and legal aspects of accession**

December 28, 2016, Doha

Submitted by

**Mariam Al Maraghi | Shaikha Al Kubaisi | Noora Al Naimi | Najla Al Naimi
Rana Al Bashir | Sara Al Subaey**

**Supervised by
Francis N. N. Botchway**

**Mentor
Danni Kabbani**

To: Lebanese Transparency Association

TradeLab output is prepared on a pro bono basis by students as a pedagogical exercise. It is not professional legal advice and in no way establishes a client-attorney relationship.

Qatar University, College of Law

P.O. Box 2713, Doha, Qatar

TradeLab

International rules on cross-border trade and investment are increasingly complex. There is the WTO, World Bank and UNCTAD, but also hundreds of bilateral investment treaties (BITs) and free trade arrangements ranging from GSP, EU EPAs and COMESA to ASEAN, CAFTA and TPP. Each has its own negotiation, implementation and dispute settlement system. Everyone is affected but few have the time and resources to fully engage. TradeLab aims to empower countries and smaller stakeholders to reap the full development benefits of global trade and investment rules. Through pro bono legal clinics and practica, TradeLab connects students and experienced legal professionals to public officials especially in developing countries, small and medium-sized enterprises and civil society to build lasting legal capacity. Through ‘learning by doing’ we want to train and promote the next generation of trade and investment lawyers. By providing information and support on negotiations, compliance and litigation, we strive to make WTO, preferential trade and bilateral investment treaties work for everyone.

More at: <https://www.tradelab.org>

What are Legal Practica

Legal Practica are composed of small groups of highly qualified and carefully selected students. Faculty and other professionals with longstanding experience in the field act as Academic Supervisors and Mentors for the Practica and closely supervise the work. Practica are win-win for all involved: beneficiaries get expert work done for free and build capacity; students learn by doing, obtain academic credits and expand their network; faculty and expert mentors share their knowledge on cutting-edge issues and are able to attract or hire top students with proven skills. Practicum projects are selected on the basis of need, available resources and practical relevance. Two to four students are assigned to each project. Students are teamed up with expert mentors from law firms or other organizations and carefully prepped and supervised by Academic Supervisors and Teaching Assistants. Students benefit from skills and expert sessions, do detailed legal research and work on several drafts shared with supervisors, mentors and the beneficiary for comments and feedback. The Practicum culminates in a polished legal memorandum, brief, draft law or treaty text or other output tailored to the project’s needs. Practica deliver in three to four months. Work and output can be public or fully confidential, for example, when preparing legislative or treaty proposals or briefs in actual disputes.

Qatar University

Qatar University is the national institution of higher education in Qatar. It provides high quality undergraduate and graduate programs that prepare competent graduates, destined to shape the future of Qatar. The university community has diverse and committed faculty who teach and conduct research, which addresses relevant local and regional challenges, advances knowledge, and contributes actively to the needs and aspirations of society.

The current student population at the College of Law is about 800 with faculty strength of 50 highly educated and diverse academics supported by a team of highly motivated administrative staff. Ranges of programs have been introduced to enrich the curriculum and achieve the college's mission. These include the Center for Energy and Sustainability Law to serve as platform for engagement with industry, Externship program to give our students a taste of practical work prior to graduation, a Legal Writing program that advances the writing and research skills of our students, clinics in Domestic Violence, Human Rights, Environment and many other initiatives.

Our teaching methods, curricula and research programs have been revamped resulting in over a million dollar research grants, engagement with the community and industry and the graduation of high quality students. In tandem with this growth, a new bespoke multi-purpose building, including a law library and moot courtrooms, is being erected exclusively for the Law College. The college is also poised to start new graduate programs in both Arabic and English.

TABLE OF CONTENT

Background	5
Scope and objectives of the Project	5
Task	5
Executive Summary	6
1. What is the EITI?	7
1.1. History of the EITI	7
1.2. Policy of transparency	8
1.3. The legal status of the EITI	8
1.3.1. Political and reputational consequences:	9
1.3.2. A possibility of an emerging customary law of transparency:	13
1.4. Process for applying to the EITI:	13
1.4.1. Steps to join the EITI	13
2. Discovery of oil and gas in Lebanon:	14
2.1. NOCs and IOCs in Lebanon:	15
2.2. Non-governmental institution that regulate oil and gas in Lebanon:	16
2.3. Options for exporting gas:	16
2.4. Regulatory bodies for oil and gas in Lebanon:	17
2.5. Laws that regulate oil and gas in Lebanon:	18
3. Lebanon Political History and sectarianism	18
3.1. Separation of powers	20
3.2. Corruption in Lebanon:	21
4. Assessment of Middle-Eastern EITI experiences:	24
4.1. Grounds of suspension:	27
4.1.1. Grounds of the suspension based on the comparison between Yemen and Iraq:	29
5. Benefits of the EITI:	30
5.1. Disadvantages of the EITI:	31
5.2. Alternatives to EITI:	31
6. Forms of contracts that can be used in exploiting oil and gas:	33
6.1 Disadvantages of the “famous” of agreements:	35
WORKS CITED	36

Accession of Lebanon to the Extractive Industries Transparency Initiative (EITI): Lessons learned, analysis and legal aspects of accession

Background

EITI is a global standard to promote the open and accountable management of natural resources. Following recent discoveries of gas in Lebanon, there has been a growing interest to ensure that more transparency and good governance are employed in the management of Lebanon's energy reserves and also the legal aspects of its investment regime.

The interest of Lebanese Transparency Association (LTA) in EITI stems from its key role as a leader in the fight of corruption and the promotion of transparency and good governance in the conduct of business in general, and the conduct of energy business in particular. In addition, LTA's new strategy focuses among other things on its advocacy role on governance issues generally.

Scope and objectives of the Project

1. Lessons learned from previous accessions of other countries to EITI, and key success factors for Lebanon.
2. Advantages and disadvantages of Lebanon's accession to the EITI. Cost benefit analysis of such accession.
3. Process for accession of Lebanon to EITI, in particular, legal steps to be taken, legal requirements, commitments, etc. Also, it is important to look at the legal aspects of investment in Lebanon in particular in areas of energy, as well current regime for oil and gas extraction, operating model, and competition...

Task

Prepare an advocacy paper, which includes lessons learned from other EITI, cost-benefit, and legal aspects for such accession. The paper will have a section containing clear recommendations, which LTA could use in its advocacy position *vis-à-vis* the Government of Lebanon on this subject.

Executive Summary

Lebanon Petroleum explorations started in the 1930's, between 1947 and 1967 seven wells have been drilled. The Petroleum Lebanese company drilled the first well in 1953. Geologists were looking for methane and heavy hydrocarbons and not oil, because oil explorations were expensive. Explorations came to a halt due to the ongoing civil war in Lebanon. However, in the nineties the explorations began again in an offshore area, in 2013 the area has been marked and calculated. But no gas wells have been drilled in Lebanon. Although Lebanon made a pre-qualification round for offshore licensing in 2013 and forty-six companies were successful, the completion of this licensing is pending due to lack of governmental approvals. Which brings us to the conflicts that Lebanon is facing. The first conflict in Lebanon took place in 1922, between sectarian groups. Which led the Europeans to seize controlling the country. In 1926 France succeeded to control parts of Lebanon and the first Lebanese constitution was stipulated. In 1940 during WWII Britain sent troops to Lebanon to face the Germans. Which led Lebanon to struggle for independence in 1941. Afterwards independence, the Israel-Palestine conflict arose in 1948; this conflict has caused issues to Lebanon since it had accepted Palestinian refugees, causing a real sectarian conflict; since Muslims has become the majority of Lebanon. Leading Christians to call for power distribution. This issue eventually urged a civil war in 1958. Agreements were made to solve sectarianism issue, however they all failed. Sectarian based conflicts have contributed in creating the conditions for the patronage and corruption. There are three main types of corruption in Lebanon: Political Corruption, Bureaucratic Corruption, and Grand Corruption. Lebanon's torn between tribes, religious, and political parties, influenced the governmental system as well; thus leaving the oil industry with no proper management. Statistics, and corruption rates rankings proved that Lebanon lacks Transparency that is why we recommend Lebanon to join the EITI. EITI can benefit Lebanon by providing transparency in Lebanon's industrial sector to achieve public interest. It further could improve Lebanon's economy, and accountability by empowering communities and forming a relationship between government and civil society. EITI also helps in building a trustworthy reputation for Lebanon, making Lebanon an appealing environment for investors. The purpose of this paper is to propose that Lebanon should join EITI.

1. What is the EITI?

EITI is a global standard for transparency in extractive industry payments and receipts. It promotes an open and accountable management of extractive resources. Companies who join the EITI are required to publish what they pay to governments and governments are required to publish what they receive from companies. They are obligated to disclose information along the extractive industry value chain from the point of extraction, to how the revenue makes its way through the government, to how it benefits the public. A state that is a party to the EITI is also obligated to submit reports annually, showing their progress and implementation of EITI regulations. Further, EITI aims to strengthen government and companies systems by providing transparency to the system. Additionally, EITI aims to inform public debate and promote understanding among civil society. This is by requiring implementing countries to form a Multi Stakeholder Group (MSG) that consists of representatives from the government, oil companies, and civil society.

1.1. History of the EITI

The EITI was first brought into discussion in 2002, when Tony Blair, former UK Prime Minister, outlined the idea in a speech intended for the world summit for sustainable development in Johannesburg, September 2002. In June 2003 a conference in London took place, it was held by the UK department of international development, the meeting had groups of civil society people, government representatives and companies. A statement of principles to increase transparency in the extractive sector was agreed, the 12 EITI principles. Following this meeting, a few countries began to explore how these principles apply and later on signed to it. The second meeting of the EITI implementing countries took place on March 2005, in London; in that meeting it became increasingly clear that the EITI was not evolving. However, in 2009 the EITI board issued versions of the EITI rules, in hopes of making the EITI meaningful, these rules replaced the EITI validation guide, the rules included six “policy notes” that provided further clarification. These were later becoming as requirements and were addressed as steps that implementing countries shall follow. In the 2011 edition of the EITI rules, those requirements were more clearly articulated, and a number of new requirements were added, to ensure EITI quality. There were 21 requirements that implementing countries must follow and are encouraged to go beyond, with the agreement of the stakeholder group that is. Afterwards, The EITI began charting the next steps for transparency; the results of their strategies in solving the issues were launched in Sydney May of 2013. They sought to make EITI reports more understandable, more relevant in each country, Better and more accurate disclosure, Recognizing countries that go beyond the minimum, and to make a clearer set of rules.

This was followed by a new set of requirements that were introduced to the public in a conference in Peru. This latest revision is the EITI standard.¹

1.2. Policy of transparency

The reason EITI requires the implementation of the transparency standard is that the EITI believes that a country's natural resources, such as oil, gas, metals and minerals, belong to its citizens. The way those natural resources are extracted plays a significant role on the economic growth and social development. That's why poor natural resource governance mostly leads to corruption and conflicts.

Lack of transparency will create a perfect environment for companies to engage in corrupt deals. That will increase conflicts from concerned citizens on where the money goes. That's why more openness and public awareness of how wealth from a country's extractive sector is used and managed is necessary to ensure that natural resources benefit all.

1.3. The legal status of the EITI

The EITI is an international standard for transparency in extractive industry payments and receipts. In countries participating in the EITI, companies are required to publish what they pay to governments and governments are required to publish what they receive from companies. When a state joins the EITI, its compliance is completely voluntary rather than mandatory. The organization operates in a 'purely voluntary approach', where governments are 'encouraged' but not 'required' to comply with the principles of transparency.

Having said that, simply because the EITI has no legal enforcement doesn't mean it's useless nor that it has no effectiveness. The idea EITI promotes is stronger than to let its voluntary nature deprive it of its effectiveness. Given that it instantly shields the joined country with a strong statement that implies willingness to a clean, open and free of corruption contract. They gain increased prestige and recognition, which will encourage other countries and investors to do business with them.

The voluntary nature of the EITI is not considered a weakness. Many regulations are made purely voluntary and have other consequences that makes its existence matter, mainly political and reputational. Another reason is the possibility of an emerging customary law of transparency.

¹ <https://eiti.org/history>, last modified 30/11/2016

1.3.1. Political and reputational consequences:

To give a close example of a practical use of voluntary nature regulations is in the International Law itself. It includes hundreds of treaties that allows the state to sign with its free will and has no legal consequences if the state decides to simply withdraw from it.

Having said that, like the EITI, the treaty has other consequences. Most importantly, political and reputational consequences. For example, if a state signs and ratifies the Nuclear Nonproliferation Treaty (NPT) that mainly prevents using nuclear weapons and that state party later decides to withdraw from the treaty, it has the right to leave with its free will and no legal consequences will be applied. But you can't say there will be no consequences to this action, if not legally definitely politically. What kind of message will the country send to the world? Why did they withdraw? What do they have to hide? It sends an implicit message that something shady is going on; that the state party possesses nuclear weapon even if it doesn't. Its unjustified move will put the state in a questionable position against other states and will hurt its reputation. It will definitely raise a red flag against the withdrawn state.

Where if the party stayed a member state on the treaty it will have a strong position that the country is a Non-Nuclear Weapon State (NNWS). It shows confidence and stability among other states avoiding all the harmful consequences.

It's exactly the same when talking about the political role the EITI plays in this. We established above how the EITI is purely voluntary and it has no legal enforcement. To show the relevance between the EITI and the international treaty regarding political consequences we'll apply the same example. If a state joins the EITI, which requires implementing its standard of transparency and later, the state decides to withdraw. No legal consequences will be applied but, definitely political ones. Similar questions will rise if the state decides to withdraw. Why did the country withdraw? Why couldn't it comply with the transparency standards? What is there to hide? It will raise concerns that corruption is practiced within the state, which will hurt the state's business reputation and classify it as unreliable among other states. It also sends an implicit message that something shady is going on and puts the state in a weak questioned position.

Where if the party stayed a member in the EITI, it will be in a strong position and will send a strong statement that implies the country's confidence and transparency in doing business, which will increase its chances of dealing with other states. It is a signal to investors and financial institutions that there will be increased transparency, accountability and governance.

If EITI has that powerful impact in a country's business reputation, it's definitely the strongest solution to join the EITI for countries who lack credibility and experience in the oil and gas aspect like Lebanon. It's the first step to a strong and stable reputation that will lead them to encounter new deals and businesses from other investing countries.

Having said that, the EITI is not exclusive to poor or weak countries that don't know how to manage its resources. The EITI is a global standard to promote transparent and accountable management of natural resources. Countries with rich natural resources will benefit as much by adding transparency to increase trust between the country and the investors and between the country and its citizens. More openness and public information of how wealth from a country's extractive sector is used and managed is necessary to ensure that natural resources benefit all. It seeks to strengthen government and company systems, inform public debate and promote understanding. The belief that you are required to comply in certain aspects such as the EITI transparency standards in order to avoid being expelled and prevent the exposure to political and reputational risks is a force by itself. To support the previous mentioned points we'll provide practical evidence of the EITI's effectiveness through its work outcome in the EITI progress report 2016.

The graph below shows the compliance of countries despite the voluntary nature of EITI, which is an indicator of its effectiveness:²

Better disclosure from the extractive sector

Better disclosure from the extractive sector

showing who discloses what

y Yes p Partial NA Non-Applicable Y / P / NA Capital letters and colour indicate changes in disclosure from previous years

	Latest report	Oil	Gas	Mining	Other sectors	Licence register	Production volumes	Beneficial ownership	Sub-national reconciliation	Disaggregated by company	Disaggregated by company & revenue stream	Social payments	Project by project reporting	Disclosure a electronic file	Received by the government, US\$
Afghanistan	2011		y	y						y	y				101,776,401
Albania	2014	y	Y	y	Y	y	y			y	y	p			17,398,069
Azerbaijan	2013	y	y	y			y		NA	Y	Y	NA			19,581,000
Burkina Faso	2012			y		y	y	p		y	y	y			358,092,143
Cameroon	2013	y	y	y		y	y	P	y	y	y	y			1,597,000,000
Central African Republic	2010			y						y	y				347,000,000
Chad	2013	Y	Y	Y	Y		Y			Y	Y			Y	1,700,000,000
Côte d'Ivoire	2013	y	y	y		y	y			y	y	p			687,088,090
Colombia	2013	Y	Y	Y		P	Y			Y	P	P			18,123,000,000
Democratic Republic of the Congo	2014	y	y	y		y	y	p	y	y	y	y		p	2,083,244,893
Ghana	2014	y	y	y		p	y	p	y	y	y	Y	y		1,623,108,899
Guatemala	2013	y		y		p	y			y	y				182,468,408
Guinea	2013			y		p	y			y	y	y			293,764,326
Honduras	2013	Y		y		p	y		p	y	NA			y	10,602,263
Indonesia	2013	y	y	y		y	y			y	y	Y	y		33,591,429,421
Iraq	2013	y	y	p		P	Y			y	y				81,166,908,244
Kazakhstan	2014	y	y	y		p	Y		NA	y	y	y		y	26,885,161,002
Kyrgyz Republic	2014	y	y	y		y	y	p	p	y	y	Y			181,000,000
Liberia	2013	y	y	y	y	P	y			y	y			y	197,530,000
Madagascar	2013	y	y	y		y	P		y	y	y	P			193,790,760
Mali	2013	Y	Y	y		P	y	p	NA	y	y	y			448,997,391
Mauritania	2013	y	y	y		y	y		y	y	y	y			362,821,460
Mongolia	2014	y	Y	y		p	y		y	y	y	y		y	1,065,401,000
Mozambique	2014	y	y	y		y	y			y	y	y	Y	y	1,053,599,553
Myanmar	2013	Y	Y	Y	Y	Y	Y		NA	Y	P	Y		Y	3,135,080,755
Niger	2013	y	y	y		p	p			y	y		P		440,603,229
Nigeria (only mining)	2012			y		y	y	p		y	y				177,501,388
Norway	2013	y	y			y	y		NA	y	y	NA		y	56,137,148,644
Peru	2013	y	y	y		y	p			y	y			y	5,511,486,805
Philippines	2013	y	y	y		p	y		Y	y	y	y		y	982,102,816
Republic of the Congo	2012	y	y	y		y				y	y				3,087,343,000
São Tomé and Príncipe	2013	y	y			p				y	y	p		Y	1,280,006
Senegal	2013	Y	Y	Y	Y	p				Y					82,183,000
Seychelles	2014	Y	Y			Y		P		Y	Y	Y			299,879
Sierra Leone	2013	y	y	y		y	y		y	y	y	y			60,366,417
Solomon Islands	2014			y			y			p		p			334,953
Tajikistan	2014	Y	Y	Y		P	Y	P		Y	Y	Y			424,463,257
Tanzania	2014	y	y	y		P				y	y				754,302,420
Timor-Leste	2013	y	y	p		P	p			y	p	y	NA		3,054,000,000
Togo	2013	NA		y	y	y	y		y	y	y	y			22,272,506,709
Trinidad and Tobago	2013	y	y			p	Y		P	y	y	y			3,305,270,000
Ukraine	2013	Y	Y				Y	P							3,354,625,000
United States of America	2013	y	y	y	y	y	y			y	y			y	24,440,000,000
Zambia	2014	y	y	y		p	y	p	p	y	y	P		y	1,544,031,692

The Extractive Industries Transparency Initiative (EITI)

www.eiti.org

/ 11 /

² https://eiti.org/sites/default/files/migrated_files/progressreport.pdf, EITI 2016 report.



December 2015

Fredrik Reinfeldt, former Swedish Prime Minister, nominated as next EITI Chair.



United States's citizens can track their dollars in first EITI Report

"This is the public's money. To have a process that is very transparent and open with how that money comes in and how it's dispersed is critical to all of us." **Greg Gould**, Director, United States Office of Natural Resource Revenue



Ukraine moving towards greater transparency

"The EITI Report opens a way to a greater transparency where all players have to work in transparent and unifies rules." **Volodymyr Demchyshyn**, Minister of Energy and Coal Industry



Myanmar strengthens its democratic process

"This EITI Report is a driving force for strengthening democratic process and building trust among stakeholders." **HE Dr Maung Maung Thein**, Union Deputy Minister, Ministry of Finance



January 2016

Colombia embeds transparency

"EITI ensures that transparency and accountability are embedded in the way we manage our extractive industries. The first EITI Report, accounting for USD 18bn of government income, is a step forward." **Maria Isabel Ulloa**, Deputy Ministry of Mining

The 2016 EITI Global Conference will take place
on 24-25 February in Lima, Peru



From Reports
to Results



EITI 2016 Global Conference
Lima, Peru 24-25 February

1.3.2. A possibility of an emerging customary law of transparency:

A customary law is evidence of general practice accepted as law. It falls under the primary sources of the international law:³

- International conventions.
- International custom.
- General principles of law.

The emergence of a customary law depends on two elements. An objective element that is an evidence of general practice. A subjective element that is the acceptance of the practice as law. The State's practice must be accompanied with the belief that this practice is required by law and it is binding. We need both the objective & the subjective element for having a new rule of international custom.

In our case the general practice referred to under the EITI is the implementation of the transparency standard that requires the disclosing of contracts and information. The acceptance of the practice as law applies on joined countries that complies to the practice with the belief that it's binding.

Therefore, if the transparency standard continues and proves to be a fundamental standard needed to be applied in doing business and countries continue to apply it, time will accompany the belief of obligation that it's required by law which then will emerge to become a customary law. So Lebanon joining the EITI is not only immediately beneficial but also allows the country to make a long-term contribution to the emergence of customary international law.

1.4. Process for applying to the EITI:

EITI is a global organization that promotes management of natural resources regarding oil and gas. It acts from the moment of extracting oil, to the process of maintaining the revenue through the government all the way to benefit the state and public.

1.4.1. Steps to join the EITI

There are several steps to follow in the application for membership of EITI.

First step: a state must show some government commitments which are mentioned in provision number (1.1) of the EITI Requirements: a state, which wishes to enter the EITI, is required to make unequivocal public statement that shows its intention to implement the EITI; The statement must be issued through the head of state or

³ Article 38 (1) Statute of the International Court of justice

government or by a person who is properly assigned as a government representative. Further, the state shall appoint a senior person to implement the EITI.

Second step: a state shall take steps in engaging the companies according to section (1.2) of the requirements

Third step: a state must engage the civil society in the process of implementing the EITI and ensure that there are no obstacles that will affect negatively their participation, according to the provision (1.3).

Fourth step: the state must establish a multi stakeholder group in accordance with (1.4) provision.

Fifth Step: under the provision number (1.5), the state must issue a work plan through the multi stakeholder group that consists of costs and measurable actions that meets the reports deadlines issued by the EITI. ⁴

Those five steps must be considered prior filling the application form. If the requirements are fulfilled, then the state might become a candidate, and start working on the first report in making some issues transparent. This report may be regarding the laws, fiscal regimes, contracts that the country has signed and the income of the government. ⁵

2. Discovery of oil and gas in Lebanon:

Influenced by the discovery of petroleum in neighboring countries, petroleum exploration started in Lebanon in the 1930. The first company that started the exploration was Iraq Petroleum Company (IPC). Between 1947 and 1967, seven wells have been drilled. Terbol-1 was the first well that was drilled by the Petroleum Lebanese Company (PLC) in 1953. ⁶ In the first stages of exploration, geologists were looking for methane and heavy hydrocarbons rather than oil. Oil exploration was expensive. Due to ongoing civil war the oil exploration came to a halt. In the nineties the exploration started again, however, it was in an offshore area rather than onshore. In

⁴ EITI website, EITI requirements, 1.1, 1.2, 1.3, 1.4, 1.5. Last modified, 2 December, 2016.

⁵ (EI Academy (Extractive Industries Academy), digital library, that explains extractive industries issues and technology in short, What is EITI, 2015.

⁶ Abdullah, M. (n.d.). Overview of the Oil and Gas exploration in Lebanon. Retrieved December 24, 2016, from https://www.researchgate.net/profile/Mirvat_Abdallah/publication/281522439_Overview_of_the_Oil_and_Gas_exploration_in_Lebanon_in_Mediterranean_Gas_and_Oil_International_Conference/links/563e640a08ae34e98c4d92f0.pdf?origin=publication_list

2013, the area has been marked and calculated. It is mainly a gas promoting service. A US based survey estimates the presence of 122 trillion cubic feet of recoverable gas in the territory that covers Lebanese, Palestinian and part of Cyprus offshore.⁷ Strangely to this day, no gas wells have been drilled on Lebanese shores.

The petroleum sector in Lebanon is at an early stage; there are currently no production activities. Nevertheless, in recent years there has been an indication of the presence of petroleum exploration in both onshore and offshore. Lebanon made a pre-qualification round for its first offshore licensing round in 2013, and forty-six companies from twenty-three countries were successful. Although the licensing round was launched in 2013, its completion is still pending due to the lack of two governmental approvals.

Majority of the petroleum regulatory framework in Lebanon is in place, including, among others, a Petroleum Policy, Offshore Petroleum Resources Law as well as Petroleum Activities Regulations. However, there is still a need to have regulations and guidelines to complete the legal boundaries. Government institutions must be strengthened to enable them to implement their roles and responsibilities in the sector. Engagement of the EITI at an early stage may help with the design and operation of the regulatory institutions.

2.1. NOCs and IOCs in Lebanon:

In order for the international or national company to function in Lebanon, It has to have the rights to explore, produce and develop oil through a contract called the Exploration and Production Agreement (EPA). The EPA is a contract between the state and the national and international company. Companies that sign the EPA are required to comply with all of the requirements of the OPR.⁸

It is generally the practice by energy producing countries to have a national oil company (NOC) that partners with an international oil company (IOC) to explore, produce and market the oil or gas. It is important to note that Lebanon does not have a NOC. Examples of competent NOCs are found in neighboring countries such as Saudi Aramco and Qatar Petroleum. Most oil companies in Lebanon are international based companies operating in Lebanon. The most known company is the East Mediterranean basin has 1.7 billion barrels of undiscovered oil, and 122 trillion cubic

⁷ Bank Med (n.d.). Oil and gas in Lebanon . Retrieved December 24, 2016, from <https://www.bankmed.com.lb/BOMedia/subservices/categories/News/20150515170326030.pdf>

⁸ Lpa. (2016, December 24). THE EXPLORATION AND PRODUCTION AGREEMENT. Retrieved from <http://www.lpa.gov.lb/epa.php>

feet of undiscovered natural gas according to the 2010 estimate by the US Geological Survey (USGS).⁹

Despite the great reserves hidden in the Lebanese waters, Lebanon is not yet an oil producing country. Different companies import all the oil consumed in Lebanon to Lebanon in 2008. According to the Central Administration of Statistics.¹⁰ Furthermore, the leading Lebanese importers and distributors of petroleum products are MEDCO, Total and HYPCO. Lebanon used to be a refinery center for crude oil but both Lebanese oil refineries, Zahrani and Tripoli, had to be closed down due to damage and general instability caused by the civil war.

2.2. Non-governmental institution that regulate oil and gas in Lebanon:

The institution that regulates international oil companies (IOC) in Lebanon is the Association of Petroleum Importing Companies (APIC). It is a non-governmental organization, APIC's membership covers 14 oil companies in Lebanon that are active importers and distributors of petroleum products into the Lebanese market. The most prominent petroleum products importer and distributor in Lebanon is MEDCO. The roots of MEDCO can be traced back to 1910. It is a privately owned family-run business. It imports refined petroleum products of highest quality, distributes them to service stations, businesses and homes. MEDCO also retails Gasoline and Diesel Oil to more than 250 service stations across the country such as Total Liban SAL, Hydrocarbon Products Company, United, The Coral Oil Co Ltd and Wardieh Holdings Inc.¹¹

2.3. Options for exporting gas:

The successful development of Lebanon's gas resources could bring substantial economic benefits to Lebanon. The development of its hydrocarbon reserves would let Lebanon reduce its dependence on imports of oil products. Unfortunately, Lebanon imports petroleum instead of exporting it.¹² However, there are plans to export oil and gas, but gas production is not likely to begin before the mid- 2020s.

The commercial development of Lebanon's hydrocarbon reserves faces many internal and external challenges. Lebanon's political system has led to long delays in the

⁹ Bank Med, Oil and Gas in Lebanon, Market and Economic Research Division 2014; <https://www.bankmed.com.lb/BOMedia/subservices/categories/News/20150515170326030.pdf>

¹⁰ Central Administration of Statistics. (2016, December 24). Lebanon in Figures. Retrieved from C. (n.d.). Lebanon in Figures. Retrieved from <http://www.cas.gov.lb/images/pdfs/lebanon-figures-2008>.

¹¹ Oil Companies in Lebanon | List of Largest Oil Companies in Lebanon. (2016 , December 12). Retrieved from <http://www.marcopolis.net/top-oil-and-gas-companies-in-lebanon.htm>

¹² Lebanon. (2016, December 27). Retrieved from <http://atlas.media.mit.edu/en/profile/country/lbn/>

country's hydrocarbon development. This therefore, delayed the country's first licensing round. According to the Petroleum Administration, the resources in offshore Lebanon are not less than any of the reserves discovered in the nearby countries and are similar in magnitude to the size of these discoveries. There are two ways to transport gas. The first is by pipeline from the field to the end user, and this is less costly than transportation fees. If a pipeline is built by land crossing to Syria and Turkey, then it will be connected to the Turkish hub, which will be the center of distribution to Europe. Second, the gas and oil can be transported by ship. This has a disadvantage, as the cost would be extremely high if the oil or gas was transported using this method. Therefore, it is cheaper to export gas by pipeline instead of ships. Ships are used to transport to further countries such as Malaysia and Korea.¹³ Therefore, it is more suitable to use pipelines as a more effective alternative.

2.4. Regulatory bodies for oil and gas in Lebanon:

Petroleum activities in Lebanon are regulated and managed by the following regulatory bodies:

Council of Ministers: This is responsible for setting the state's general petroleum policy and managing petroleum resources in the country.

The Ministry of Energy and Water (MEW): This is responsible for ensuring a good implementation of the petroleum policy and related laws and for monitoring and supervising petroleum activities. It signs any contracts with international oil companies and takes necessary measures to protect water, health, property and environment from pollution.

The Lebanese Petroleum Administration (LPA): This is an autonomous public entity created in 2012 under the Offshore Petroleum Resources Law, to regulate, manage and monitor all petroleum activities. However, some of its financial and administrative decisions are subject to the approval of the MEW.

Petroleum Regulatory Authority: Which consists of 6 appointed members. The Authority enjoys financial and administrative autonomy with the Minister having authority over it.¹⁴

¹³ General Energy News. (n.d.). Lebanon's gas production and export will take seven years after decrees passed. Retrieved December 26, 2016, from <http://www.hellenicshippingnews.com/lebanons-gas-production-and-export-will-take-seven-years-after-decrees-passed/>

¹⁴ Leader. (n.d.). LEBANON'S PROMISED OIL WEALTH. Retrieved December 26, 2016, from http://www.logi-lebanon.org/uploaded/2016/6/SRR6AT0B_137-2.pdf

2.5. Laws that regulate oil and gas in Lebanon:

As onshore regulations are yet to be enacted, petroleum activities within Lebanon's territorial waters and exclusive economic zone are regulated by the one main law.

Offshore Petroleum Resources Law No. 132/2010 (OPRL): This is the most important law. It includes 10 chapters that consist of 77 articles that contain the processes of licensing and exploration. The OPRL is supplemented by the Petroleum Activities Regulations (Decree No. 10289, dated 30 April 2013) (PAR). Moreover, include the legal representation of the rights of holder, the exploration and production rights and transportation rights.

Delineation and Declaration of the Maritime Regions of the Lebanese Republic Law No. 163/2011: Consists of 18 articles that determine Lebanon's internal waters, territorial sea, contiguous zone, exclusive economic zone and continental shelf in accordance with the provisions of the United Nations Convention on the Law of the Sea signed.¹⁵

Other decrees and laws are also ready to be enacted, including the: Model Contract decree, Oil and Gas Taxation Law.

3. Lebanon Political History and sectarianism

Lebanon is considered a parliamentary democratic country¹⁶, in a way that affects the political interests. Political interests can be achieved through the formation of groups and associations. Therefore, the way that people organize themselves in social groups, or collectivities, contributes significantly in determining the political system in the country.¹⁷ In Lebanon, there are a number of sects and groups with competing interests, which occasionally resulted in conflicts. In 1922, the first conflict took a place in Lebanon between Druze and Maronites. Which led Europeans to seize control of the country.¹⁸ In 1926 France succeeded in controlling parts of Lebanon, and the first Lebanese constitution was stipulated. The constitution recognized the role of the official 18 official sects, and recognized all citizens as equal.¹⁹ In 1941,

¹⁵ Leader. (n.d.). LEBANON'S PROMISED OIL WEALTH. Retrieved December 26, 2016, from http://www.logi-lebanon.org/uploaded/2016/6/SRR6AT0B_137-2.pdf

¹⁶ Imad Salamey, *The GOVERNMENT AND POLITICS OF LEBANON, USA, CANADA*, 2014, Page 83.

¹⁷ Imad Salamey, *The GOVERNMENT AND POLITICS OF LEBANON, USA, CANADA*, 2014, Page 84.

¹⁸ Imad Salamey, *The GOVERNMENT AND POLITICS OF LEBANON, USA, CANADA*, 2014, Page 25.

¹⁹ Imad Salamey, *The GOVERNMENT AND POLITICS OF LEBANON, USA, CANADA*, 2014, Page 27

during WWII, Lebanon struggled for independence.²⁰ After independence, in 1943, the national pact republic was established, and has also recognized sectarianism in Lebanon and set a foundation for “sectarian power-sharing system” as a base for the Lebanese governmental system.²¹ Further, Israeli conflict with Palestine have arisen in 1948, where Israel has proclaimed independence in Palestine. This conflict has caused issues to Lebanon since it had accepted Palestinian refugees, causing a real sectarian conflict; since Muslims has become the majority of Lebanon in a short term.²² That situation led Christians to call for power distribution and called for declaring Lebanon as a sectarian republic. However, these calls have failed and crisis arose in social and political phase.²³ Lebanon afterwards was very affected of the Palestinian conflict that has happened in 1948, leading a civil war in Lebanon trying to divide themselves into major parties seeking power.²⁴ Agreements were reached to solve these conflicts including Taef agreement; “Document of National Accord” (1989) and Doha Agreement (2008).²⁵ The 1989 Accord aimed to balance the diversity in the political system to terminate the civil war. Taef Agreement redistributed powers evenly between Muslims and Christians in Lebanon. Unfortunately, the Accord failed to solve the issue. Political issues between Sunni and Shi’a left no choice but to sign another agreement entitled Doha Agreement in 2008, it was a trade-off between the rights of maintaining the weapons for Shi’a, and pursue special relations with Iran. While the Sunni maintain the power of the Prime Minister in running economic and internal-domestic affairs.²⁶ Eventually, the Agreement also did not solve the endless sectarianism conflict. Issues arose again seeking more political powers for both of sectarian groups.

Once a system is built based on the diversity of public will, then the interest of diverse groups is going to evolve into new conflicts.²⁷ Further, We can predict for the Lebanese political future that the struggles of maintaining powers among the sectarian groups is going to be a continuous conflict. Recently, this struggle has been shown in the assassination of Rafiq Hariri in 2005 specifically between the March 14 alliance, led by the Future Movement, and the 8 March alliance, led by Hezbollah. “This is reflective of the sharp divisions along increasingly sectarian lines and incompatible

²⁰ Imad Salamey, *The GOVERNMENT AND POLITICS OF LEBANON, USA, CANADA*, 2014, Page 29.

²¹ Imad Salamey, *The GOVERNMENT AND POLITICS OF LEBANON, USA, CANADA*, 2014, Page 30.

²² Imad Salamey, *The GOVERNMENT AND POLITICS OF LEBANON, USA, CANADA*, 2014, Page 32.

²³ Imad Salamey, *The GOVERNMENT AND POLITICS OF LEBANON, USA, CANADA*, 2014, Page 34.

²⁴ Imad Salamey, *The GOVERNMENT AND POLITICS OF LEBANON, USA, CANADA*, 2014, Page 51, 52.

²⁵ Imad Salamey, *The GOVERNMENT AND POLITICS OF LEBANON, USA, CANADA*, 2014, Page 54, 56.

²⁶ Imad Salamey, *The GOVERNMENT AND POLITICS OF LEBANON, USA, CANADA*, 2014, Page 86.

²⁷ Imad Salamey, *The GOVERNMENT AND POLITICS OF LEBANON, USA, CANADA*, 2014, Page 85.

visions of Lebanon's past, present, and future.”²⁸ Due to the history of sectarianism and other political and social challenges, it is in the best interest of the Lebanese people to have access to information regarding an important sector as energy; which EITI provides.

3.1. Separation of powers

It is important to have an overview on the governmental system in Lebanon, in order to analyze how it will govern the new projects, such as the production of Oil in Lebanon.

The principle of the “separation of powers” has been adopted in Lebanon, within the constitution.²⁹ The powers are divided into three branches of government: the legislative branch; which makes the law, the executive branch; which enforces the law, and the judicial branch; which arbitrates and monitor the application of the law and enforcement. This principle should make the government work properly, in a way that prevents bad governance to new projects, and fights corruption.

- The legislative branch

The Lebanese constitution declares Lebanon to be a Parliamentary republic. The legislative branch is called The National Assembly of Representatives or Chamber of Deputies, which is commonly referred to as the Parliament. Parliament is the only governmental entity that is elected directly by the public. That is why parliament is considered as the most powerful and has significant powers relative to other branches of the government. Since Taef Agreement in 1992, its members have been composed evenly of Muslims and Christians. Although the parliament has the competence to exercise several roles, such as introducing the proposed laws to the chamber, it is noticed that the Council of Ministers exercise control over this role. In fact, the role extends to the approval on the proposed legislation, even before referring it to the president.³⁰

- The executive branch

The executive branch is divided between the President and the Prime Minister. Both of them have the obligation to report to the parliament seeking the approval on most critical issues, such as the formation of government. The Lebanese governmental system thus fuses the legislative and executive branches together, and there is no strict separation of powers. It means that there may be limited control of executive action by the elected representatives of people.

²⁸ Imad Salamey, *The GOVERNMENT AND POLITICS OF LEBANON, USA, CANADA*, 2014, Page 88.

²⁹ Mona Alami, Article, Lebanon must uphold democratic principles, June 2013.

³⁰ Imad Salamey, *The GOVERNMENT AND POLITICS OF LEBANON, USA, CANADA*, 2014, Page 131.

- The Judicial branch

The Lebanese Judicial branch is horizontally divided into three main courts systems, each has hierarchical structure.³¹ In addition, general prosecutors are considered as a judicial party in Al-Niyaba Al-Ammah. Though the process runs under the ministry of justice; so we can say that the Judicial system is dominated by both Judicial and Executive branches.³² Despite the fact that the constitution addresses the judicial branch in a way that makes it independent, in reality it did not reach the independence goal. Since the executive branch interferes through the ministry of justice in the process of appointment of the judges, transferring judges based on sectarianism, and some other roles.

All in all, even though Lebanon is a parliamentary republic and adopts the principle of the separation of powers, it is not reaching the aim of this principle. Unfortunately, those principles are affected by other political factors, such as sectarianism. Thus, the whole system is directly influenced by sectarianism, since the separation cannot be accomplished because of the various interests. Therefore, we conclude, “sectarian confessionalism has delegated explicit and implicitly powers to each institution.”³³ The lack of strict separation of powers, sectarian based appointment, and the lack of independence for the Judiciary, coupled with an ineffective prosecutorial system; creates conditions for the patronage and corruption. The Lebanese governmental system thus fuses the legislative, executive and judicial branches together, and there is no strict separation of powers. This is an avenue for corruption and bad governance. For the purposes of the nascent energy industry, therefore, resorting to external transparency bodies such as EITI can help ameliorate the apparent absence of effective check and balances in governmental systems.

3.2. Corruption in Lebanon:

Due to the inefficient governmental system as previously discussed, the corruption rate in Lebanon is aggravating.

There are three main types of corruption:

- Political corruption:

The citizens of Lebanon ranked their political parties and Parliament amongst the top three most corrupt institutions of the country based on Transparency International 2011.³⁴ Therefore, Political corruption is considered a dominant problem in Lebanon.

³¹ Imad Salamey, The GOVERNMENT AND POLITICS OF LEBANON, USA, CANADA, 2014, Page 154.

³² Imad Salamey, The GOVERNMENT AND POLITICS OF LEBANON, USA, CANADA, 2014, Page 154.

³³ Imad Salamey, The GOVERNMENT AND POLITICS OF LEBANON, USA, CANADA, 2014, Page 154.

³⁴ <http://www.transparency.org/gcb201011> , Transparency International 2011.

Another report by Freedom house stated that “Lebanon is not an electoral democracy” because of issues of vote buying that Lebanese political life suffers from.³⁵ Lebanon lacks regulations of political party financing which provides a gap for political corruption to take place. It also lacks proper legislative accountability, which should be strengthened to prevent such corruption. Global Integrity categorized these two points as “very weak” in 2009.³⁶

- Bureaucratic corruption:

“Inefficient government bureaucracy is the second most important obstacle for doing business in the country, which encourages the use of bribery to speed up or grease processes”.³⁷

Bribery is a main concern in Lebanon and has been proven to take place mostly in governmental sectors. A survey conducted by the Lebanese Transparency Association found that bribery is common factor needed in order to do business in Lebanon. Where 65% of the companies surveyed faced situation where they had to pay bribes. Also, 47,8% of the same companies had to pay between 1 to 5% of their annual revenues as unofficial payments to public officials.³⁸

Bribery doesn't just take place in governmental circles. It also takes place among citizens of Lebanon themselves. Another survey has found that more than one out of three citizens admits having paid a bribe. Mostly with the customs, the registry and permit service, the police and the judiciary being the most common bribe takers.³⁹ As a result, companies who have done business in Lebanon have identified corruption as one of the main obstacles for doing business in Lebanon.⁴⁰ This implies Lebanon's bad business reputation among companies, which could hinder Lebanon's future with potential investors. Another survey conducted by the World Bank/IFC Enterprise, proves that Lebanon's bad reputation goes beyond companies that worked with Lebanon. It reaches potential companies who have not yet worked with Lebanon and who expect to have to offer gifts to civil servants in order to accomplish work.⁴¹

- Grand corruption:

³⁵ <http://www.freedomhouse.org/report/freedomworld/2012/lebanon>, Freedom House 2012.

³⁶ <http://report.globalintegrity.org/Lebanon/2009/scorecard>, Global Integrity 2009.

³⁷ <http://www.transparencylebanon.org/publications/nisennew.pdf>, Lebanese Transparency Association 2011.

³⁸ <http://www.transparency-lebanon.org/publications/UncacFinal.pdf>, Lebanese Transparency Association 2010.

³⁹ <http://www.transparency.org/gcb201011>, Transparency International 2011.

⁴⁰ <http://reports.weforum.org/global-competitiveness-report-2012-2013/>, World Economic Forum. 2012.

⁴¹ <http://www.enterprisesurveys.org/Data/ExploreEconomies/2009/lebanon>, World Bank/IFC. 2009.

According to the World Bank/IFC Enterprise survey, 97.7% of surveyed companies admitted to having paid a bribe or been expected to pay a bribe to secure a government contract.⁴² Procurement regulations are unsuitable and inconvenient and the system is non-transparent which helps hide corrupt operations and deals. Also, the system doesn't include provisions against conflicts of interest for public procurement officials. The system also lacks any kind of mechanism that allows the monitoring of the assets of procurement officials which makes it impossible for unsuccessful bidders to investigate decisions.⁴³

There are many sectors in which corruption can be found; Political parties, Public administration, Police, Parliament and Judiciary. To give examples, we'll consider sectors most affected by corruption:

Sectors most affected by corruption:

- Political parties

Lebanon's safeguards are highly insufficient as they lack assurance of the integrity of political party financing and the financial support of candidates. According to Transparency International's Global Corruption Barometer 2011, political parties are considered the most corrupt sector of society.⁴⁴

- Public administration

Lebanon's public administration lacks suitable resources and efficient safeguards against political interference. It provides inequality in regard to access to basic public services. Its inefficiency can be linked to its unqualified staff and its misuse of available resources. This led the citizens to rank the public administration as the second most corrupt sector in Lebanon.⁴⁵

The WEF Global Competitiveness Report listed inefficient government bureaucracy as the second main obstacle to doing business in Lebanon.⁴⁶ First obstacle to doing business in Lebanon, as previously mentioned, is bribery. Surveyed citizens ranked the Customs Authority as the institution requesting the most bribes.⁴⁷ The Lebanese Transparency Association also confirmed the bribery issue by stating that "Bribery is

⁴² <http://www.enterprisesurveys.org/Data/ExploreEconomies/2009/lebanon>, World Bank/IFC. 2009.

⁴³ <http://www.transparency-lebanon.org/publications/UncacFinal.pdf>, Lebanese Transparency Association 2010.

⁴⁴ <http://www.transparency.org/gcb201011>, Transparency International. 2011.

⁴⁵ Ibid

⁴⁶ <http://reports.weforum.org/global-competitiveness-report-2012-2013/>, World Economic Forum. 2012

⁴⁷ <http://www.transparency.org/gcb201011>, Transparency International 2011.

rife within the public administration and is considered a basic norm in the domestic political life”.⁴⁸

4. Assessment of Middle-Eastern EITI experiences:

The EITI’s presence in the Middle East region was first marked with Yemen’s approach to implement the EITI in September 2007. Soon after, in 2009, Iraq followed its steps. Falling under the same geopolitical scope, Lebanon, Yemen and Iraq are all areas of conflict. For Lebanon to benefit from the lessons learned, this is a brief overview of the experience of Middle Eastern states that have adopted the EITI.

EITI in Yemen

Yemen is a small oil producer, unlike many regional oil producers; Yemen relies heavily on foreign oil companies that have production-sharing agreements with the government. Income from oil production constitutes 70 to 75 percent of government revenue and about 90 percent of exports. Although it is an oil producing state, Yemen is one of the poorest countries, where 45% of its population lives in poverty. The reliance on oil in generating revenues for the country notes why EITI is of great significance to Yemen. Adopting high transparency standards in the sector would reduce or hamper chances of embezzlements. In 2007 Yemen expressed its intent to adopt the EITI. The government then started taking the suitable measures to achieve EITI candidacy by forming a Multi-stakeholder Group ‘YEITI’ comprised of government representatives, civil-society groups and representatives of oil companies. Later on the same year Yemen was announced a candidate. YEITI published reports of 2005-2007, after reports were validated, Yemen was announced Compliant to the EITI in 2011. Immediately after its validation, the state was suspended due to its political instability after the people of Yemen were calling for resignation of the then Yemeni president Ali Saleh in what was later called the Arab Spring. Suspension was lifted in June 2012 based on the application made by the Government of Yemen represented by Minister of Oil and Minerals (Yemen Extractive Industries Transparency Initiative annual report, 2014). After lifting the suspension, Yemen EITI was not in a position to meet the EITI requirements as a compliant country during 2012 -mainly the production of YEITI 2nd Report- due to several reasons reflected from the crisis in Yemen, which had its negative impacts on many projects all over the country in general and on Yemen EITI in particular. Yemen continued to be under negative consequences of the political and security crisis causing the delay of producing the YEITI 2nd Report and resulting in another suspension placed by the EITI International Board on February 2013. This

⁴⁸ <http://www.transparencylebanon.org/publications/nisennew.pdf>, Lebanese Transparency Association 2011.

was due to lack of funding from the Ministry of Finance; however, Suspension placed on Yemen EITI membership was lifted in July 2013 after the production and the publication of the 2nd Report by June 2013. Yemen was suspended again in March 2015 (and still is) because of its unstable and insecure status quo.

Effectiveness

In measuring the effectiveness of the implementation of the EITI in Yemen, light must be shed on the participation of civil society as a stakeholder. In the 2011 validation report issued by Coffey International Development, the validator notes that although government and civil society stakeholders tend to believe that everyone in the MSG has sufficient capacity. However, civil society members on the Council are required to increase their understanding of the basics of oil and gas industry exploration and production, and major oil and gas revenue streams for better performance. This emphasizes that the civil society has to grasp sophisticated and technical concepts in the oil industry. The validation report also noted that discrepancies were found in the YEITI 2003-2007 report in the numbers but after reconciliation of the reports, once notified by the reconciler that reports were incomplete, the reporting entities were able to provide accurate information rapidly. ‘Validators consider these were genuine oversights by the reporting entities rather than an attempt to obfuscate or derail the reconciliation process.’

One of EITI’s primary goals is to publicize detailed information on revenues and allocation of costs for the public to engage in debate and dialogue. There was no evidence on community engagement, which means that more comprehensive studies must be made evaluating and assessing the emergence of the Yemen EITI.

EITI in Iraq

Iraq is a major oil exporting state and is a member of Organization of Petroleum Exporting Countries (OPEC); it holds 10% of the world's proved oil reserves and some of the world's largest untapped oil and gas reserves, which at the current rate can run up to forty years. Iraq has implemented the EITI since 2010 and was declared an EITI compliant country following a successful Validation in 2012 by Adam Smith International. Till now Iraq is in the usual process of submitting reports (illustrated by the figure below), Iraq has submitted five reports covering the period 2007-2014, latest of which was submitted March 2016. A new validation and assessment by the EITI under the more comprehensive EITI Standard is scheduled 2016. Iraq’s reports saw progress year after another. The country sometimes went beyond requirements and provided data on revenue income by company in a disaggregated manner; other countries followed its example. A sign of Iraq EITI (IEITI) successful implementation is its expansion in 2013 to include reports on the mining sector.

However, in a report on Report Reforms, EITI recommended that NOCs reports must be audited in accordance with international accounting standards contrary to the outdated accounting standards of Iraqi Board of Supreme Audit, to avoid creating “an understanding gap between national oil companies as compared with the industry practice”.

Iraq is also considering using experience gained through the current EITI process to launch a draft Iraq EITI Law inspired from the existing Petroleum Law. It is also important to note that the IEITI is carrying out its work in the midst of sectarianism conflicts. According to the 2016 report, the report did not include reconciliation of data related to the extractive industries (including oil & gas) in Kurdistan Region. “The data instead was requested from the Kurdistan Regional Government but it was not provided, however, IEITI Stakeholder Council has requested the inclusion of information about the extractive industry in KRG based on publicly available information”.

Effectiveness

IEITI Multi stakeholder council is the prime leader of the progress being made despite political and security risks in Iraq. In a ‘historic’ move in 2014, the civil society organized the first election of CS representatives in the IEITI council as a part of a forum that included Between 500 and 600 participants from more than 380 civil society organizations where they held constructive discussions. With the emergence of ISIS at that time, such a step is indeed historic. This demonstrates a good level public awareness among Iraqi civil society because in the presence of discrepancies, such discussions would develop questions to pressure the government or companies and hold them accountable.

Even though YEITI and IEITI do not seem ideal, their implementation is a good start towards fighting what some would call the ‘resource curse’. However, field studies should be conducted in implementing countries, closely measuring and evaluating the experience and its reflections. Future recommendations, reconciliations will be building blocks towards better transparency. The role of civil society and parliamentarians in acting upon reports publicized is of great importance. Community should promote EITI; hold discussions, forums and debate to tackle issues and discrepancies in the reports in order for them to be able to benefit from their publication. The Lebanese Transparency Association can play a vital role in promoting EITI in Lebanon by educating the public. Parliamentarians on the other hand should pass legislations according to needs addressed by the MSG. Iraq is an example that shows that when there is a political will, progress can be made. Although it does not ensure absence of corruption, transparency will lead to better governance.

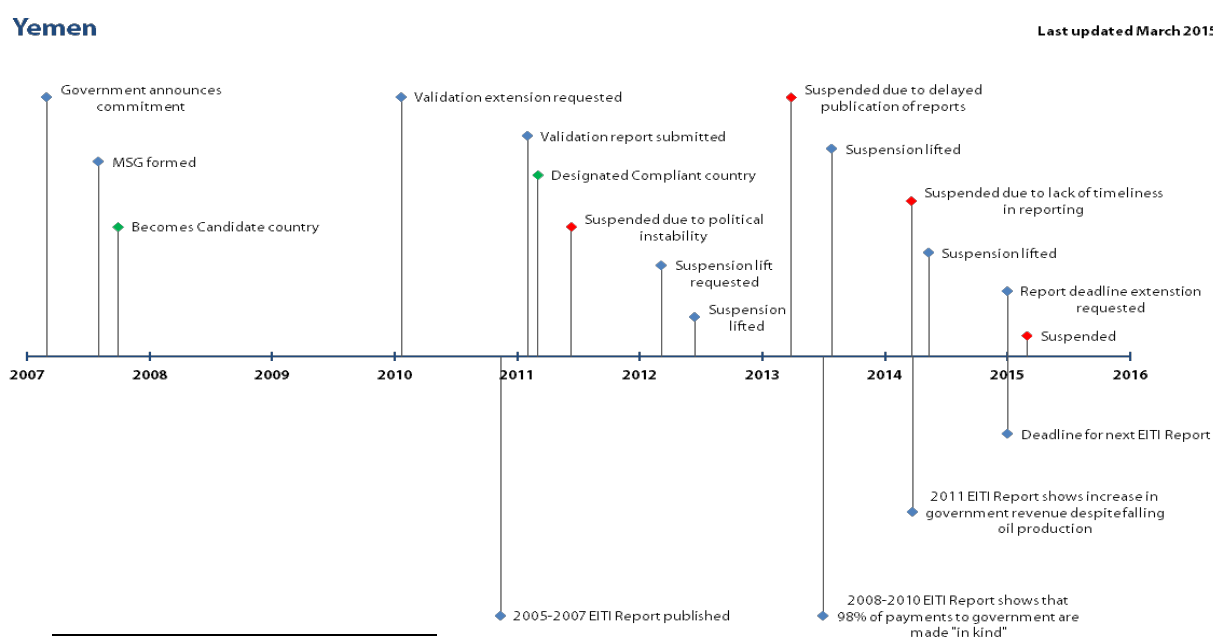
4.1. Grounds of suspension:

A state can be suspended even after being a member of the EITI. However, we can see that some countries are suspended, while others are not, even though they might have same circumstances.

Yemen:

According to the Yemen EITI 2013 Annual Progress Report, Yemen at first was announced as a compliant state on the 1st of March 2011. Unfortunately, Yemen has been suspended because of the serious political and security interruptions in that same year; it was described in the document as a “Sharp political and security crisis”. This suspension was lifted in 2012 after an application made by the minister of oil.⁴⁹ However, Yemen was not in a good position due to the negative reflection of the political crisis and did not meet the requirements of the EITI again to be considered as a compliant state. The negative impacts of the Yemen political crisis have been reflected badly on the implementation of the EITI in Yemen. Causing delay of submitting the 2nd EITI report, giving the EITI no choice but to suspend Yemen once again in February 2013.⁵⁰ Yet, the suspension has also been lifted in June 2013, when the report was submitted. Even though, the suspension was lifted, Yemen’s latest status was “suspended” for the same reason of the last suspension was mentioned, which is the delay of reporting and the lack of timeliness.

The figure below shows the timeline for Yemen’s activity, 2015 update:⁵¹



⁴⁹ EITI website, Yemen annual report, June 2014, P.3, Last modified, 3 December, 2016.

⁵⁰ EITI website, Yemen annual report, June 2014, P.4, Last modified, 3 December, 2016.

⁵¹ EITI website, Yemen’s timeline, 2015, Last modified, 3 December, 2016.

Iraq:

According to the EITI 2013 annual progress report, Iraq became a candidate in 2010. The 1st report was published on December 2011, and the EITI declared Iraq as a compliant country on December 2012. The annual report has showed that Iraq is making a sufficient progress in the phase of the implementing the EITI and meeting the requirements.⁵² Further, Iraq showed success in gathering the civil society representatives from all over the country and reformed a part of the multi- stakeholder group in late 2014. Furthermore, despite the issues between Iraq's government and the Kurdistan's regional government, the Iraq EITI has achieved an agreement, and was assessed by the Supreme Audit board to publish the report including the Kurdistan's oil and gas data.⁵³

It is noteworthy that the EITI Secretariat has published on the EITI website an article under the name of “ The dogs bark, but the caravan moves on: Iraq EITI demonstrates that transparency is achievable even under difficult circumstances”.

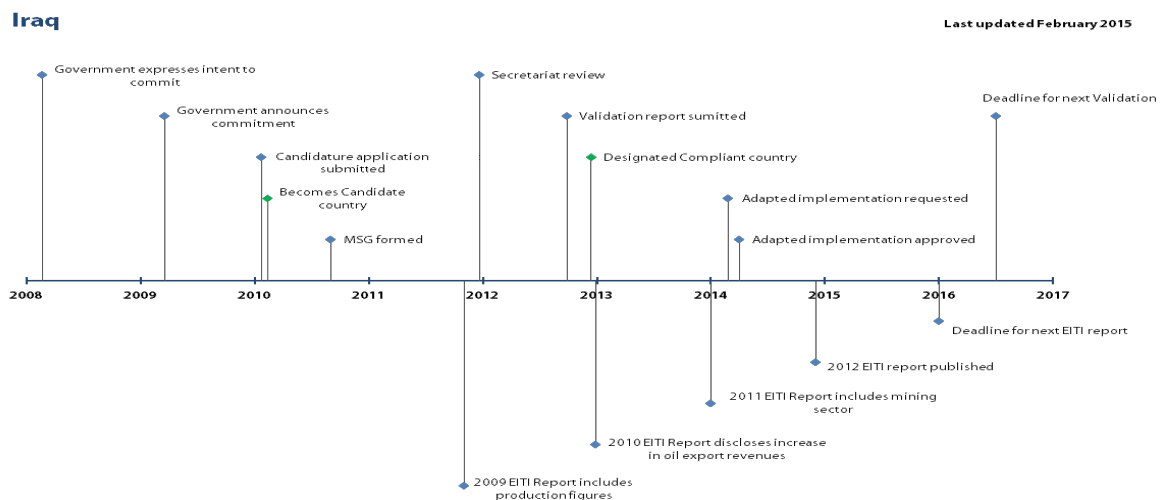
Iraq is acknowledged as a state that faces some serious issues regarding politics, finance, and security crisis. However, the Iraqi ministry of oil is still publishing information on their website that includes monthly production, exports, and other important information. Further, Iraq still submits documents that can be used through civil society, journalists, and politicians, publishes data, and provides its citizens with information about the oil and gas industry through meeting the deadlines of the EITI. To sum up the Iraqi situation, we can notice that despite the issues and crisis that Iraq is facing, we can still see a progress in meeting EITI requirements. Iraq has always been on the right track, and never was suspended.⁵⁴

⁵² EITI website, Iraq annual report, 2013, P.3, Last modified, 3 December, 2016.

⁵³ EITI website, Implementation of Iraq, Iraq page, Last modified, 3 December, 2016.

⁵⁴ EITI website, Secretariat of EITI, The dogs bark, but the caravan moves on: Iraq EITI demonstrates that transparency is achievable even under difficult circumstances, 2015, Last modified, 3 December, 2016.

The diagram below shows the timeline for Iraq's activity, 2015 update:⁵⁵



4.1.1. Grounds of the suspension based on the comparison between Yemen and Iraq:

In the requirements sections of the EITI, requirement number 8.6 states the grounds of suspension. Sections (a) and (b) of 8.6; deal directly with the situation of Yemen and Iraq. Where the provision clearly states that suspension can be made, on the grounds of:

- (a) Breaches of the EITI principles and requirements; The EITI will delist or suspend the country if it breaches a significant principle and requirement. Including the cases where states do not comply with the requirement of timely EITI reporting.
- (b) Political instability or conflict; The EITI board may decide to suspend countries facing political instability or conflict that reflects badly on the state, in a way that prevents countries from complying with important EITI requirements.²

Comparison between Yemen and Iraq situations:

- 1- The first suspension for Yemen was on the grounds of the political instability, since it has been suspended due to the sharp political and security crisis. When

⁵⁵ EITI website, Iraq's timeline, 2015, Last modified, 3 December, 2016.

⁵⁶ EITI website, requirements of EITI, Article 8.6 § a § b, 2016.

the suspension was lifted, Yemen still showed that it is affected badly due to political crisis, and was reflected on the implementation of the EITI.

- 2- Ensuring the fact that Yemen had the chance to show more compliance, where the suspension was lifted three times. Yemen still was not able to prevent the bad reflection of the circumstances, and was continuously affected by the political circumstances, causing delays in submitting the reports and in meeting other requirements.
- 3- Iraq might have similar circumstances, but it showed a significant commitment to the EITI requirements. Iraq did not show slow progress, and did not show any signs of bad reflections on their implementation of the EITI.

Iraq was declared as a compliant country since 2012, and has never been suspended for any reason until present day. According to the aforementioned article, Iraq is expected to be declared as a compliant country this year as well.

All in all, Iraq and Yemen might be having similar circumstances, but their response towards those circumstances are completely different; and that's what matters to the EITI.

Lebanon can take an advantage from the previous situations since both of the countries are Middle Eastern states, and they both offer lessons to take into consideration. To avoid being suspended, Iraq showed noticeable progress in meeting the requirements despite the political issues. Therefore, Lebanon must follow the guidelines that Iraq has been following, and keep reporting effectively regardless the political status. Lebanon can even establish relations with other international institutions, as a backup management resource to keep reporting effectively, even if Lebanon politically collapses.

5. Benefits of the EITI:

The EITI has several benefits that could improve state governance. Lebanon clearly needs this help, since its government has changed a lot in the past years. Not only have that, but a lot of cases showed that Lebanon's government had been unable to maintain transparency. Therefore, EITI is going to help the government maintain a steady flow of transparency, which will build trust between government, companies and citizens. Further, EITI interacts civil societies and empowers them to have more roles in maintaining transparency. Since, EITI requires establishing a Stakeholders Group that consists of members of the governments, civil society, and companies.

Additionally, The EITI can help to reduce the risks in the extractive industries companies by improving the corporate risk management; that shows what is being paid to the government and to the communities. This improves revenue collection,

management process and it provides a forum to discuss broader extractive industry governance issues; such as physical and process audits, contracts transparency and sub-national revenues.

Further, EITI builds trust and dialogue, demonstrates a national commitment to transparency and it promotes accountability. Thus improving business climate. Once it builds trust, Lebanon will become more appealing for the investee, because a trustworthy reputation for the country, means big companies starting businesses in Lebanon. This helps Lebanon in attracting new business to the country because everything would be out in the open, it will show all the communities (governmental, society and companies) where the money is coming from and where it is spent.

To conclude, EITI is about transparency and Lebanon is proven to be under corruption, leading us to recommend an instrument to reduce corruption, which the EITI can be. ⁽⁵⁷⁾⁽⁵⁸⁾

5.1. Disadvantages of the EITI:

- 1) Limited mandate (narrow view of transparency)
- 2) Voluntary rather than mandatory compliance (voluntary nature)
- 3) Public and private sector resistance
- 4) Dependence on strong civil society
- 5) Green-washing (some groups have accused the EITI of enabling them to perpetuate green-washing)
- 6) Strategic manipulation⁵⁹

5.2. Alternatives to EITI:

The Equator Principles ⁶⁰

The equator principles is a risk management framework adopted by financial institutions to determine, assess and manage environmental and social risk projects.

It is intended to provide a minimum standard for due diligence to support responsible risk decision-making.

⁵⁷ <http://www.resourcegovernance.org/analysis-tools/publications/extractive-industries-transparency-initiative-eiti>, last modified 30/11/2016

⁵⁸ <http://www.globalpolicyjournal.com/blog/25/02/2016/how-eiti-involvement-can-benefit-corporations>, last modified 30/11/2016

⁵⁹ Benjamin K. Sovacool, Energy And Ethics: Justice and the Global Energy Challenge, 14/04/2015

⁶⁰ Francis N. Botchway, Natural Resources Investment and Africa's Development, 2011

The equator principles formally launched in Washington DC on 4 June 2003, and it was based on existing environmental and social policy framework established by the International Finance Corporation.

Since then the equator principles have been revised and was launched again on 4 June 2013.

The equator principles apply globally to all industry sectors; the equator principles provide four financial products:

- 1) Project finance advisory services
- 2) Project finance
- 3) Project-related corporate loans
- 4) Bridge loans

The Equator Principles Financial Institutions (EPFIs) commit to implementing the EP in their internal environmental and social policies.

These are the 10 principles:

- 1) Review and categorization
- 2) Environmental and social assessment
- 3) Applicable environmental and social standards
- 4) Environmental and social management system and equator principles action plan
- 5) Stakeholder engagement
- 6) Grievance mechanism
- 7) Independent review
- 8) Covenants
- 9) Independent monitoring and reporting
- 10) Reporting and transparency

And as of January 2016, 87 financial institutions in 36 countries have officially adopted the equator principles, which covers 70% of international project finance debt in emerging markets.⁶¹

Equator principles and Lebanon:

There are 12 members of the Equator Principles association steering committee. One of them is Citigroup, which ⁶² has a bank in Lebanon (Citibank). Another financial

⁶¹ <http://www.equator-principles.com/index.php/about> , last modified 31/12/2016

⁶² <http://www.equator-principles.com/>, last modified 30/11/2016

institution that applies the equator principles is The Arab African International Bank, which has a bank in Lebanon. ⁽⁶³⁾⁽⁶⁴⁾

As at now, Equator Principles apply principally to financial institutions and products. Indirectly, it can apply to the emerging energy industry in Lebanon through the financial involvement of Citigroup and other banks that may be involved in the industry in Lebanon. For the immediate purposes of the energy industry in Lebanon, the EITI is a better option and the realistic option.

6. Forms of contracts that can be used in exploiting oil and gas:

Contractual arrangements of a contract:

A contractual arrangement happens with either a state or a private entity where the means are resources, which are supplied to one of the parties.

Generally speaking, domestic law usually controls oil and gas. Even though, International Law plays an important role guiding certain aspects of the use of oil and gas. Domestic law is what really requesting the natural resources within a country's jurisdiction.

There are two main types of contractual arrangement, firstly, a permit license for exploration and a substantive contract that requires the state to be part of agreement. Additionally, there are also different types of investment contracts, to name a few that relate to the exploration of natural resources: concessions, leases and licenses, production sharing agreements, service contracts, and joint ventures. Each and all of those types of contracts serves the same purpose but with very different methods of application.

Concessions:

A concession agreement is an agreement between a state and an investor. It is a negotiated contract between a company and a government that gives the company the right to operate a specific business within the government's jurisdiction, subject to certain conditions. The host country usually receives royalties for the actual

⁶³ <http://www.equator-principles.com/index.php/members-and-reporting>, last modified 30/11/2016

⁶⁴ <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&ved=0ahUKEwjw40CvhdHQAhVMWhoKHdzCgwQFghEMAU&url=http%3A%2F%2Fwww.bdl.gov.lb%2Fdownloads%2Fdownload%2F82%2Fen&usg=AFQjCNGsVN8Kht9C1a5fqg5abRjyzlFdFg&sig2=MZPZw38aAdHltwBgb6Zh6w>, last modified 30/11/2016

production of natural resources but does not participate in the profits. A great example of a concession agreement is the “D'Arcy Concession” which was a petroleum oil concession that was signed in 1901 between “William Knox D'Arcy” and “Mozzafar al-Din Shah” of Iran. The oil concession gave D'Arcy the exclusive rights to prospect for oil in Iran.¹

UN General Assembly Resolutions on Permanent Sovereignty over Natural Resources (PSNR)

The PSNR clearly declares “the right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.” Which emphasizes the importance of the serving the interests of the host country. Another declaration in the PSNR states that “the exploration, development and disposition of such resources, as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities.” Meaning, that the foreign investor companies must respect and abide to the rules and regulations of the hosting country.

Production and Sharing agreements “PSAs”

Production and sharing agreements are a common type of contract signed between more investors and the government and a resource extraction company to prospection, exploration and extraction of mineral resources from a specific area over a specified period of time. The agreement usually includes how much of the natural resources, mainly oil or gas, will be extracted from the country. Along with how much each of the contracting parties will be receiving.

The technical definition of Production and sharing agreements especially in oil and gas is defined as the phase that occurs after successful exploration and development and during which hydrocarbons are drained from an oil or gas field.

Types of agreements:

1. **Buy-back agreement** is a trade arrangement under which the investor supplies production equipment, technology, and in return takes the resulting products that were made as a payment.
2. **Joint Venture agreement** is an agreement that requires the state not to only have royalties and taxes but also have a share in the profits.

6.1 Disadvantages of the “famous” of agreements:

There is a huge risk taken by the host country and the responsibilities that follow up with that. Because, investment contracts lay down all the laws and rules that the state will have to abide to if they chose to do so.

The contract that gives the most transparency and is the most appropriate to Lebanon is the “Production Sharing agreements “PSAs”

There are several reasons why the production sharing agreement is considered the ideal form of contract for Lebanon. The main reason is that it is easier to follow the flow of where the money went. However it should be noted that, the sudden change from a Concession contract to a Production Sharing contract might affect the transparency of the system. Other reasons include economic benefits that are added into the country’s income. This happens because more money comes into the country because of more job opportunities and employment. Also, adopting the Production Sharing contract will support our argument to Lebanon to join the **EITI**. Mainly, because of the consent security of oil supply which it provides. This all in eventually linked to the creation of new refiners, because of refiners, which is considered to be a legal entity that shares their profits with the local government, which in this case is Lebanon. The government will eventually financially benefit from refiners and production sharing agreement contracts because they will be guaranteed a percentage of profit, which directly goes to them. Lastly, an important reason why production sharing is considered important is the existence of a transparent report that clearly names the profits made by the oil companies.

Works Cited

1. <https://eiti.org/history>, last modified 30/11/2016
2. <http://www.resourcegovernance.org/analysis-tools/publications/extractive-industries-transparency-initiative-eiti>, last modified 30/11/2016
3. <http://www.globalpolicyjournal.com/blog/25/02/2016/how-eiti-involvement-can-benefit-corporations>, last modified 30/11/2016
4. Benjamin K. Sovacool, Energy And Ethics: Justice and the Global Energy Challenge, 14/04/2015
5. Francis N. Botchway, Natural Resources Investment and Africa's Development, 2011
6. <http://www.equator-principles.com/>, last modified 30/11/2016
7. <http://www.equator-principles.com/index.php/members-and-reporting>, last modified 30/11/2016
8. <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&ved=0ahUKEwjw4OCvhdHQAhVMWhoKHdzbCgwQFghEMAU&url=http%3A%2F%2Fwww.bdl.gov.lb%2Fdownloads%2Fdownload%2F82%2Fen&usg=AFQjCNGsVN8Kht9C1a5fqg5abRjyzlFdfg&sig2=MZPZw38aAdHltwBgb6Zh6w>, last modified 30/11/2016
9. Imad Salamey, THE GOVERNMENT AND POLITICS OF LEBANON, USA, CANADA, 2014.
10. <https://www.loc.gov/law/help/lebanon-constitutional-law.php>, 2016, last modified 1st December.
11. Mona Alami, Article, **Lebanon must uphold democratic principles, June 2013.**
12. Library of congress, **Lebanon: Constitutional Law and the Political Rights of Religious Communities**, last modified 1st of December.
13. <https://www.loc.gov/law/help/lebanon-constitutional-law.php>, 2016, last modified 1st December.
14. EITI website, EITI requirements, 1.1, 1.2, 1.3, 1.4, 1.5. Last modified, 2 December 2016.
15. **(EI Academy (Extractive Industries Academy), digital library, that explains extractive industries issues and technology in short, What is EITI, 2015.**
16. EITI website, Yemen annual report, June 2014, Last modified, 3 December 2016.
17. EITI website, Yemen's timeline, 2015, Last modified, 3 December 2016.
18. EITI website, Iraq annual report, 2013, Last modified, 3 December 2016.
19. EITI website, Implementation of Iraq, Iraq's page, Last modified, 3 December 2016.

20. EITI website, Secretariat of EITI, Dogs bark but the caravan moves on: Iraq EITI demonstrates that transparency is achievable even under difficult circumstances, 2015, last modified, 3 December 2016.
21. EITI website, Iraq's timeline, 2015, Last modified, 3 December 2016.
22. EITI website, requirements of EITI, Article 8.6 § a § b, 2016.