



Lebanese Oil & Gas Initiative
المبادرة اللبنانية للنفط والغاز

***Follow the money:
tracking revenues
from sales of seismic
data to enhance
public accountability***

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Executive summary

High transparency and good governance standards in Lebanon are growing in importance, as a response to the demands of the Lebanese People since the 17th of October 2019, thus becoming the top reform priority across all sectors. This comes in line with the work of the Lebanese Oil & Gas Initiative (LOGI), which aims to ensure the compliance with the highest transparency and accountability standards within the Petroleum sector.

Our study will consequently tackle a specific issue pertaining to public funds collected up until today from Petroleum activities (the sale of seismic surveys and application fees). In fact, there is a great need to obtain information and to establish the mechanisms required to identify the source and quantity of funds deposited in the State Treasury and circulating in and out of it.

This investigative study by journalist Jad Ghosn aims to answer the following questions:

- 1. Where are the returns deposited?**
- 2. What is the legal framework governing these returns?**
- 3. Who can maneuver these returns?**
- 4. Has a part of these returns been used?**
- 5. Was the principle of transparency applied in the disclosure of the returns balance movements (public funds)?**
- 6. How will these funds be used in the future?**

Upon the conclusions of the investigative research, LOGI recommends the following:

- Executing an audit of the bank account containing these returns by an international and independent auditing firm to vet the deposited incomes and their sources, and to verify the spending of any funds deposited in said account.
- Elaborating a law prohibiting the use of these returns, to prevent their spending until the creation of the Fund.
- Publishing the conventions by virtue of which the Lebanese State is collecting a share from the sale of seismic data.

Last but not least, we invite the current members of parliament to query/question the Minister of Energy and Water about these returns.



Introduction

The fate of collected petroleum rights

Lebanon is witnessing a critical turning-point on both financial and economic levels due to the accumulated deficits weighing down on the State Treasury. Hard currency (more specifically US dollars) has become a vital need, in light of its growing scarcity in this country where yearly imports amount to 20 billion dollars approximately (as the GDP is of 55 billion dollars). In these circumstances, the Petroleum Sector is more pivotal than ever. As a natural resource, it is hoped to become one of the pillars needed by Lebanon to support the economy and State finances, provided that accelerated measures are taken in order to move forward with the Petroleum Sector in terms of urgent financial and economic reforms.

However, the great challenges faced by this sector are an obstacle in the face of these hopes. Lebanon suffers from the chronic absence of executive governance and transparency, and the quasi-total disruption of presumed oversight and accountability mechanisms. This resulted in a complete lack of trust between the government and the people. Without further elaboration of the above, and in order not to go off-topic, we will draw on a general indicator that clarifies the situation. In 2018, Lebanon ranked 138 out of 180 countries in the Corruption Perception Index issued by Transparency International.

This is why it is more and more important to keep every step taken by official bodies in regard of petroleum activities public and under scrutiny, to protect said activities from political, economic and financial corruption which is widespread in the core of the Lebanese political structure, and to avoid missing a significant upcoming opportunity for the Lebanese people and the future generations.

Our study will focus on a specific issue related to public funds generated until today by petroleum activities in terms of management, in the light of the nonexistence of a Sovereign Wealth Fund in charge of such a mandate, and in compliance with the provisions of the Offshore Petroleum Resources Law (no.132/2010) which governs the sector.

Firstly, a broad overview of the work in the Petroleum Sector since 2010 and until today shall be established.



First: The Petroleum Sector track in Lebanon

The administrative track of the Petroleum Sector in Lebanon started in 2010 upon the adoption of the Offshore Petroleum Resources Law, which constitutes the legal framework governing the management of the sector. It was followed by a series of executive decrees known as the “Petroleum Activities Regulations”.

In November 2012, the Lebanese Petroleum Administration was created by virtue of a decree issued by the Council of Ministers and consequently started operating within a month.

The Lebanese Petroleum Administration elaborated an action plan setting the deadlines for the first licensing round for the exploration of petroleum resources in Lebanese offshore. Qualification requirements for the round were approved in March 2013 before the resignation of Najib Mikati’s Cabinet, which led to the blocking of the launching of this round.

Between 2013 and early 2017, several political factors that remain vague and ambiguous up until today led to delaying the adoption of the decrees relevant to the Tender Protocol and division of offshore blocks, which therefore led to delaying the launching of the first licensing round. This (in addition to the global decrease of oil and gas prices) diminished the enthusiasm of international petroleum companies.

On the 5th of January 2017, the Council of Ministers adopted the pending decrees (relevant to the Tender Protocol and the division of Offshore blocks), thus launching the first licensing round which was completed in October when a consortium of 3 companies being Total (French) acting as operator, Eni (Italian) and Novatek (Russian), as non-operators, submitted two offers for offshore blocks 4 and 9. In January 2018, the Lebanese State, represented by the Minister of Energy and Water, signed an Exploration and Production Agreement (EPA) with the consortium.

On the 16th of December 2019, the Minister of Water and Energy declared the issuance and delivery of the first license to the Consortium to perform the exploration of petroleum in block 4.

While waiting for the results of exploration drillings in block 4, Lebanon still has years ahead before starting to collect financial earnings generated by the extraction and sale of gas. However, this does not mean that Lebanon still hasn’t collected, until this date, dividends, since the beginning of the sector track in 2010.

There are currently two sources for the returns generated by this sector and benefiting the Lebanese State, i.e. the application fees paid by companies in order to participate in the first offshore licensing round and the sale of the seismic surveys data to interested companies.



Second: The legal framework governing returns generated by the Petroleum Sector in Lebanon:

In the Offshore Petroleum Resources Law, items 2 and 3 of Article 3 identify the legal framework adopted by the Lebanese State in order to manage petroleum returns:

2. The net proceeds collected by the State from Petroleum Activities or Petroleum Rights shall be placed in a sovereign fund.
3. The Statute regulating the Fund, the rules for its specific management, the direction of investment and use of returns shall be regulated by a specific law, based on clear and transparent principles for investment and use of returns that shall allow the State to keep the capital and part of the returns in an investment fund for future generations, leaving the other part to be spent according to standards that will guarantee the rights of the States and avoid any short or long-term negative economic consequences.

This means that the returns of Petroleum activities and rights shall not be deposited in the Treasury, like other State revenues, but rather in a sovereign fund governed by a relevant law specifying its mechanism of administration and use.

Therein lies the issue: how are the returns generated by application fees payed by the companies participating in the licensing round and by the sale of the data of seismic surveys to interested companies until this point used, and what similar returns could be collected in future licensing rounds before the adoption of the sovereign fund, which, by virtue of the law, should be the depositary of these funds?

Upon viewing the executive decree of the Offshore Petroleum Resources Law, i.e. “the Petroleum Activities Regulations”, an essential distinction is noticed in the direction of returns generated by application fees and returns generated by seismic surveys.

With regard to the fees, the executive decree is clear in all pertaining articles and specifies that these funds are to be deposited in the State Treasury. The grounds of such specification are rather logical since these amounts are generated by fees related to the Petroleum Sector but are not considered to be generated by petroleum activities and rights. Below are two excerpts from the PAR:

Article 17: Fees related to Reconnaissance:

An application for any type of Reconnaissance license is subject to a fee of twenty thousand (20 000) US dollars which shall be paid to the State Treasury. If the fee is not paid, it shall be considered that the application was not submitted.

Article 26: Application fee:

The retrieval of an application for an Exploration and Production right shall be subject to a fee of fifty thousand (50 000) US dollars, which shall be paid to the Lebanese Treasury.”

As for the returns generated by the sale of offshore seismic surveys to interested companies, the matter is more complicated due to the absence of any relevant legal provision in the Offshore Petroleum Resources Law, unlike the fees which are governed in the Petroleum Activities Regulations. Therefore, the identification of the direction of the sales of seismic surveys was governed by another jurisprudence which will be further elaborated herein.

However, before tackling this jurisprudence, a quick review of the seismic survey track must be established before identifying the direction adopted by the Lebanese State for the returns generated by the sale of the surveys to interested companies.

Offshore seismic surveys in Lebanon and their returns:

Seismic surveys are a data-providing technique. Said data could be processed and interpreted to generate valuable quantitative information used by interested companies in order to identify the possibility of the existence of petroleum resources in the subsoil.

Two companies, i.e. Petroleum GeoServices (PGS) and Spectrum, were contracted by the Lebanese State to execute these surveys. Indeed, they surveyed the entirety of territorial waters using 2D techniques and 80% of territorial waters using 3D techniques.

The surveys were completed in 2014 but started in 2000 (Spectrum) and 2006 (PGS). The companies performed interrupted works in order to complete and reproduce the surveys.

By the end of the last century, in 1993, a 2D survey was made by Geco Prakla in the north, across the Tripoli shore.

The former Minister of Energy and Water César Abi Khalil had assured the existence of previous contracts signed before 2010 between the Lebanese State and survey companies, by virtue of which the share of the State from the sale of these surveys is of 20% while that of the companies is of 80%. However, the equation was inverted in 2010, with the share of the State from the sales becoming 80% and that of the companies 20%.

However, the contracts signed between the State and these companies have not been published by the Ministry of Energy and therefore it is not possible to verify their contents.

The direction of returns generated by the sale of the surveys to interested companies is unspecified in any law or decree governing the sector. Through the Tender Protocol of the offshore licensing rounds, the State requires the applying companies to buy these surveys but there is no mention of the direction of collected returns:

“Article 5.4: At the time of submission of an application, the applicant must include proof of:

- (ii) Payment of the purchase price of the license to all the 3D seismic data for the block that is the subject of the application (the 3D License purchase price); and
- (iii) If there are geophysical surveys other than the 2D and 3D seismic surveys for the Block that is subject of the application, the applicant must include a proof of payment of the purchase price of these surveys.”

Since the share of the Lebanese State from the sale of these surveys is considered as a public fund, and since the sovereign fund stipulated upon in the Offshore Petroleum Resources Law hasn't been created by virtue of an executive law, these returns should have been legally deposited in the State Treasury, as explicitly stipulated in Article 243 of the Public Service Accountability Law:

“Public administrations, municipalities, public institutions and legal persons mentioned in Article 2 of the present Law are prohibited from creating accounts in private banks or special accounts in the Central Bank.”

However, in 2012, the Council of Minister adopted a resolution stating that returns generated by the sale of seismic surveys are to be transferred to a special account in the Central Bank under the signatures of the Minister of Energy and Water and the Director General of the Oil facilities in Lebanon.

According to the former Minister of Energy and Water César Abi Khalil, creating a special account for public funds instead of transferring them to the Treasury aims to preserve the true sense of the Offshore Petroleum Resources Law which stipulates in Article 8 that Petroleum Activities returns are to be deposited in a sovereign fund. Article 3 also indicates that this Fund shall be considered as an investment fund for the future generations. Upon this reasoning, the true sense of the Law is to be necessarily respected, despite the fact that the Law on the Creation of a Sovereign Wealth Fund hasn't been created yet. Therefore, the returns generated by the sale of surveys were not to be deposited in the Treasury in order not to spend them on budgets, especially since these returns did not constitute large amounts. Transferring these funds to a specific account in the Central Bank aims to protect them from Treasury expenditures, until the creation of the Sovereign Wealth Fund, where they would constitute the initial seeds for the Fund.

Another issue resulted from this decision in terms of transparency required to manage these public Funds. By depositing them in a specific account in the Central Bank, they wouldn't be subject to financial oversight and to public budgets, and will thus be excluded from parliamentary oversight of the total State budget revenues and expenditures.

The failure of the Ministry or the Lebanese Petroleum Association to publish detailed data pertinent to the amounts deposited in and spent from the account has fueled this issue, until March 2019. In fact, upon pressures exercised by the civil society to increase transparency in regard of survey returns, the Lebanese Petroleum Association published the amount deposited in the specific account. The numbers are periodically updated on the website of the Lebanese Petroleum Association ever since. The latest figures show that the account balance on October 31, 2019 was of USD 43.03 million.



Recommendations to increase transparency

Upon overviewing the timeline relevant to petroleum activities generating returns and the timeline governing said returns, the following recommendation may be given in order to increase transparency:

1. Auditing the specific account, in which these returns are deposited, by an independent auditing company (selected through transparent norms as a proof of non-bias and independence), to vet the incomes deposited, their sources and the expenditures.

The objective of this audit is to follow transparent measures still absent in the management of public funds, notwithstanding of the size of the account.

2. The elaboration of a Law by virtue of which the use of the returns is prohibited until the creation of the Sovereign Wealth Fund.

Finding ways to respect the true meaning of the Offshore Petroleum Resources Law by preventing the spending of the returns through the State Treasury is reasonable. However, depositing these Funds in a specific account in the Central Bank and subjugating it to the signatures of the Minister of Energy and Water and the Director General of the Oil Facilities upon a ministerial decision is contradictory with the provisions of the Law. In fact, such a measure requires a Law adopted by the Parliament and shall not be taken by virtue of a ministerial decision. In this context, Article 83 of the Constitution stipulates that:

“Each year, at the beginning of the October session, the Government shall submit to the Chamber of Deputies the general budget estimates of State expenditures and revenues for the following year.”

This comes in line with the “comprehensive aspect of the budget” which requires the inclusion of all types of expenditures and all types of returns. In addition, the management of this specific fund shall be under the mandate of the State Treasury by virtue of Article 158 of the Public Service Accountability Law:

“The State Treasury shall be in charge of all receipt and disbursement of funds required for the implementation of the State Budget, and of the management of accounts created outside of the budget.”

3. Publishing the agreements by virtue of which the Lebanese State collects a share of the sale of seismic data, by withholding the information that could jeopardize the interests of the State vis-à-vis the companies. This falls within the maintenance of competitiveness. According to the stakeholders, publishing the agreements signed between the State and the companies that have executed seismic surveys could be detrimental to the public interest, since disclosing such information could negatively affect the competitiveness required for the companies interested in the licensing rounds, and could weaken the State’s capacity to negotiate with other companies which could be contracted in the future to perform additional surveys.



About the Researcher

Jad Ghosn, journalist, news reporter and documentary producer. Specialized in Political and Administrative Sciences. Notre Dame University - Louaize graduate who followed his higher education in Political Studies in the American University of Beirut. In 2009, Ghosn had his first experience as a journalist where he acted as reporter and news anchor for Sawt Al-Mada.

In 2012, he started working for OTV as a news reporter before moving permanently at the beginning of 2013 to AlJadeed.

As a journalist, he focuses on political, economic and social files and his style fluctuates between criticism and investigation. He worked on several TV shows which he either presented or co-presented, in addition to his periodic appearances in videos posted on AlJadeed's social media where he would explain some political and economic concepts based on daily events in simplified manner.





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