

Beirut, July 1st, 2021

Statement issued by the Lebanese Transparency Association – No Corruption On the adoption of the Public Procurement Law by the Lebanese Parliament

As part of the Lebanese Transparency Association – No Corruption’s (Transparency International Chapter in Lebanon) follow-up to the development of the legislative system on the good governance of public administration and anti-corruption, and following the adoption of the new Public Procurement Law by the Lebanese Parliament, which moves the procurement system from the 1950s to the present day, the Lebanese Transparency Association – No Corruption considers that the new Law contains many loopholes that may undermine its goal and object, despite the importance of its advanced and contemporary provisions compared to public procurement laws around the world, particularly in terms of establishing a Public Procurement register and accessing specific information, and the creation of a centralized website dedicated to the dissemination of other specific information on e-procurement, along with new provisions on the integrity of employees engaged in procurement operations.

Although the law addresses the transparency of Public Procurement procedures, still, the procedural approach used to enhance transparency does not take into account that access to information is a constitutional and fundamental human right; which means that when regulating transparency, it must be in conformity with constitutional principles and international human rights law; meanwhile, the procedural approach to transparency in the new Law did not follow constitutional principles or international human rights law.

Accordingly, we make the following two observations on the new Public Procurement Law:

First: The new Law does not directly refer to the Right of Access to Information Law, this means that the Parliament is on the path to dispersing the legal rules governing the Right of Access to Information, which will inevitably undermine its legislative system through sporadic laws, and that is contrary to the Nine International Standards for its regulation, just as in the case with the Public Procurement system, which the current Law seeks to unify it to govern the sector.

Second: The new Law has followed the fabricated Lebanese theory of the absolute secrecy of a specific type of information, which is contrary to the principles and spirit of the Lebanese Constitution and the International Obligations of the Lebanese State in this area, in particular the International Covenant on Civil and Political Rights (ICCPR), ratified by Lebanon in 1972; yet, the exception cannot be absolute, since the principle is to always make the information available, except in certain cases and on a case-by-case basis.

The purpose of having an absolute exception and thus not having absolute confidentiality is that, in some cases, the Public Interest requires the accessibility of certain information, even if it may cause harm to a particular party, though it must always be controlled by the competent courts.

The Association also considers that the Parliament missed two golden opportunities to strengthen safeguards, the effectiveness of the Law and the transparency of Public Procurement through:

First: The Law does not in any way address the Beneficial Owners of the companies contracted and which is going to contract with the State like other countries do, which in turn contributes to the coverup of conflict of interest and influence peddling, as well as weakening the planning and policies of the new Public Procurement department.

For example, a Public Procurement Law was adopted in Slovakia requiring state-contractors to declare their Beneficial Owners, otherwise, their contracts will be

annulled, which led five companies to opt-out of the contracts and to continue their work with States, which shows that such information would have concealed, at the very least, a conflict of interest.

Second: The lack of involvement of civil society organizations in monitoring procurement procedures like other countries, knowing that the countries that have engaged civil society organizations in monitoring procurement procedures have benefited from it to enhance competition and increase the number of bidders in tenders, which reflects positively on prices and quality of services.

The Association was aware of the content of the final draft of the law before its adoption through informal means, given that the relationship between civil society organizations is not institutionalized, and this also negatively affects the adoption of a participatory decision-making policy; as there had been no formal public consultation held by the Parliament with civil society organizations.

Hence, the Lebanese Transparency Association – No Corruption considers that the new Law, although many of its provisions work to develop the Public Procurement system, has a number of areas that allow those who are lurking in the public administration and in the capabilities of the Lebanese people, to wreak havoc on it, and the failure to treat transparency as a constitutional and fundamental human right, and the failure to address the Beneficial Owners of the State-contracting companies, as well as the failure to involve civil society organizations.. All of this undermines the performance of the new Law.