

Has the Lebanese Parliament Abdicated its Role in Governing the Oil and Gas Sector?

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Executive Summary

Despite broad oversight and legislative authority stipulated in the Taef Accord, the Lebanese Parliament in the post-civil war era has yet to assume its role in the policy-making process, a point accentuated by its role (or lack thereof) in the national oil and gas sector. This policy brief argues that the offshore petroleum law (OPRL) of 2010 fails to incorporate a robust governance framework and that the parliament's legislative process, which should have been integral in the formulation of that law, is devoid of democratic decision-making. Additionally, the parliament failed to exercise its oversight role despite a more than thirty-month delay in the development of the sector. To this end, this brief argues that reform and rehabilitation within the sector should be initiated by enhancing legislative and oversight practices within the parliament and that the parliament must develop an integrated legislative vision for the sector by capitalizing on communication with experts and CSOs. The parliament also must strengthen the role of committees and supporting bodies, particularly oversight agencies, and enhance its role by championing greater access to knowledge, expertise, and transparent information for its members and the public at large.

Introduction

Since mid-2017, the Lebanese Parliament has established three sub-committees to study several draft laws including those concerning a potential sovereign wealth fund, onshore petroleum, and the prospect of establishing a national oil company, issues which are essential to the development of the national petroleum sector. Following the election of 2018, the parliament resumed its legislative efforts by studying an onshore oil and gas draft law, this after managing last September to pass a transparency law for the sector. Despite the legislative efforts exerted over the last twenty months, this spate of legislative action has been an exception rather than the norm. From 2010 (when the offshore petroleum law was passed) to mid-2017, the parliament was effectively absent in legislating the petroleum tax law—one of the prerequisites for companies to prepare their bids. Furthermore, had the parliament been effective in compelling the government to pass two decrees—on block delineation and an exploration production agreement—that were necessary to begin the first licensing round before the collapse of oil prices

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in 2014, Lebanon may have secured better deals with international oil companies.

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for the country rather than a blessing. Countries that have succeeded in transforming oil resource into a blessing are those which are endowed with institutions that ensure checks and balances are in place. National legislatures do so using two key mechanisms. The first entails establishing the regulatory framework that oversees the development of the sector through the implementation of proper legislation. The second entails the parliament monitoring the work of the government and state agencies to ensure that proper legislation is in place and operations are being carried out in line with the law.

This policy brief examines the role of the Lebanese Parliament in governing the petroleum sector using legal texts as well as the hand-written minutes of seven committee meetings and ten parliamentary general sessions that were held from June 2011 to March 2014, each of which has been reviewed, coded, and analyzed. Specifically, this brief focuses on how the parliament debated and legislated the first offshore petroleum law of 2010 (OPRL) and how it carried out its oversight role during the period in which the government failed to pass two key decrees that were prerequisites to launching the first oil and gas licensing round.

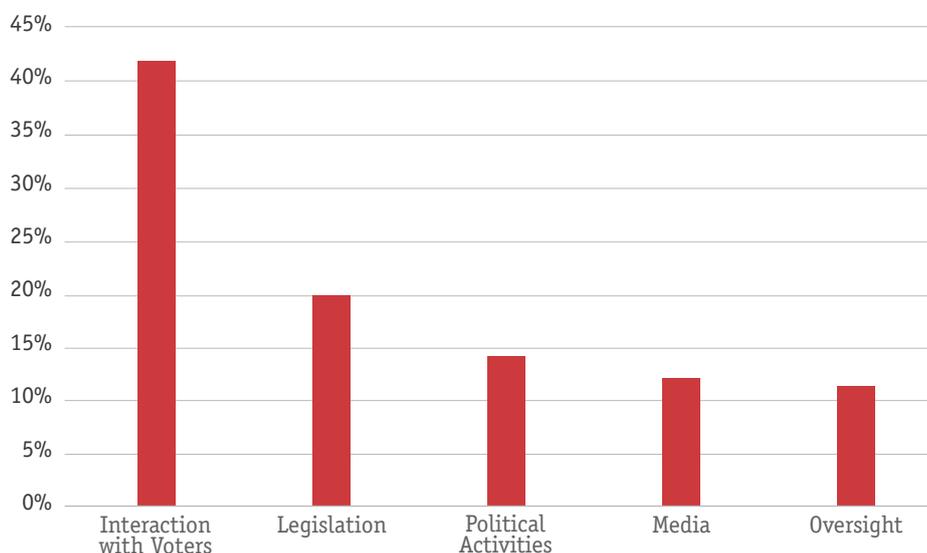
The Lebanese Parliament: Strong but Untapped Authorities

One of the major changes stipulated by the Taef Accord is a stronger role for the parliament in legislative and oversight processes. The parliament has legislative power guaranteed by the constitution,² in addition to other provisions that consolidate its law-making authority.³ According to Article 37, the parliament has ‘the absolute right to raise the question of no-confidence in the government during ordinary or extraordinary sessions’. Furthermore, the parliament has electoral authority, as it elects the president and its consultation over the designation of the prime minister is binding.⁴

Despite its legislative and oversight authorities, the parliament has not taken the initiative in utilizing its power. For instance, from June 2009 to June 2017, of the 352 laws that the parliament passed in twenty-six sessions, two-thirds were administrative and fiscal⁵ in nature, meaning just one-third of laws passed in that period have a direct impact on citizens’ well-being and address their primary concerns.⁶ In fact, only thirty-one laws—comprising 9% of laws passed during the specified period—addressed peoples’ priorities and concerns. Furthermore, the parliament held only five oversight sessions rather than the required nine during this period.⁷ It also failed to hold the government accountable for not issuing implementation decrees to activate over thirty-three laws pending since 2000. Finally, it took thirty months and thirty-five sessions to elect a president in October 2016. Based on an LCPS survey of sixty-five MPs, parliamentarians—according to their own estimates—spend only 20% of their time legislating and 10% monitoring the government (figure 1). They spend the remaining 70% of their time interacting with fellow MPs, the media, and their constituencies to cement clientelistic relationships.

Figure 1

How MP’s report spending their time by each day



Source Atallah, S. and N. Geagea. 2018. المجلس النيابي اللبناني: 2009 - 2017 بين التمديد والتفريغ خارطة طريق للاستعادة المجلس لدوره التشريعي والرقابي. Lebanese Center for Policy Studies.

2

The Lebanese Constitution reads in Article (18): No law shall be promulgated until it has been adopted by the chamber.

3

For instance, Article 51 of the Lebanese Constitution states that the ‘president shall promulgate laws after they have been approved by the chamber.’

4

Articles 18, 37, 49, and 53 of the Lebanese Constitution.

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Atallah, S. and N. Geagea. 2018. المجلس النيابي اللبناني 2017-2009: بين التمديد والتفريغ خارطة طريق للاستعادة المجلس. لدوره التشريعي والرقابي. Lebanese Center for Policy Studies.

6

The large number of laws that pertain to fiscal issues is primarily due to the absence of a national budget since 2005. This has compelled the government to frequently propose legislation to obtain the parliament’s approval for its additional spending.

7

The parliament should hold an oversight session after three legislative sessions (Article 136 in the parliamentary bylaws).

The poor performance of the parliament has not been overlooked by citizens. According to the Arab Barometer Survey, 61% of Lebanese reported a complete lack of trust in the parliament in 2013 compared to 49% in 2011.

Assessing Parliament's Four-Pillar Governance Framework for the Sector

Despite its often lackluster performance record, the parliament managed to pass the OPRL, the primary text governing the oil and gas sector in Lebanon, which is composed of seventy-seven articles broken down into ten chapters. Looking closely at the parliamentary debate that accompanied the approval of the text, two issues are apparent: First, the governance framework is a priority

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for politicians. While just over 20% of the articles in the OPRL address governance issues, these accounted for 60% of parliamentary deliberation. Second, while petroleum activities account for 64% of the articles in the law, only 13%

of the deliberation was devoted to it.

Taking this into account, we examine the governance framework set forth in the OPRL across four key pillars as developed by Chatham House⁸ and the World Bank⁹: Policies and objectives of the sector, structural and hierarchical organization of the sector, revenue management, and monitoring and regulation of activities. Equally important is the accompanying debate that took place in parliamentary committee meetings, which we analyze to shed light on MPs' knowledge, concerns, and priorities.

Policies and Objectives for the Sector: No Clear Vision

The main pillars of a petroleum regime include the policies and objectives set forth in a country's constitution, petroleum policy, petroleum law, and petroleum regulation. While Lebanon's constitution (Article 89) affirms state ownership of natural resources and the exclusive right of the state to manage them, the government has not produced a coherent energy policy detailing the country's energy needs and how it plans to meet them. Its energy policy of 2008, which is outdated and fails to take into account changes in petroleum markets, is thin on details. Furthermore, the government's energy policies seem incoherent or at best fragmented as the Ministry of Energy and Water (MEW) produced an electricity policy and renewable energy policies that are not integrated into a larger energy policy. The government not only lacks a coherent policy based on which the petroleum law should have been developed, it separated the offshore from onshore operations, contributing further to fragmentation in the legal framework. The offshore oil and gas law of 2010 is

⁸ Marcel, V. 2013. 'Guidelines for Good Governance in Emerging Oil and Gas Producers.' Chatham House.

⁹ AGORA. 2013. 'Parliamentary Oversight of the Extractive Industries Sector.' The World Bank.

considered to be short on details and leaves modalities and parameters to be addressed in regulations and contracts, thus undermining the parliament's role in the legislative process and leaving more leeway than necessary for the government to negotiate with oil companies.

Although several MPs recognized the need to have a petroleum policy in place before discussing the OPRL draft law, their calls went unheeded. In fact, then Minister of Energy and Water Gebran Bassil could not distinguish between petroleum policy and the petroleum law as he wrongly believed that 'the offshore draft law in its entirety is equivalent to a petroleum policy.' Other MPs like Ghazi Zeitar 'did not think that time should be wasted on policies.' Additionally, MP Ghassan Moukheiber raised concerns about the exclusion of the onshore since '95% of the articles apply to both', they were again ignored by the parliament speaker and the Ministry of Energy and Water.

Additionally, the draft law that was submitted to the parliament was concurrently discussed by the Council of Ministers (COM), leading to confusion and a duplication of efforts. An attempt by the parliament speaker to allay such concerns centered on him noting that both draft laws have a common origin—the Norwegian government—while also referring to the need to rush the law through the parliament as a response to the often-referenced Israeli threat.

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Although the majority of MPs were opposed to this legislative maneuver, they were ignored.

Compounding this, when the final version of the draft became available, many MPs did not have the time to review it. Furthermore, the parliament ended up passing the law as constituted at the time, leaving little room for discussion.

The Structural Organization of the Sector: A Dependent LPA

A key component in proper management of the oil and gas sector is the delineation of roles and responsibilities between principal actors. Key stakeholders and institutions involved in the management and monitoring of the sector in Lebanon include: The COM, MEW, and the Lebanese Petroleum Administration (LPA). The parliament, however, is absent from the governance structure set forth in the OPRL. Even during parliamentary discussions held before the law was approved, only five MPs mentioned this key flaw regarding their own role in the sector.

The OPRL is considered to be thin on details as it left modalities and parameters to be negotiated by the COM, emphasizing its central role in formulating and adopting petroleum policy. However, the law also authorizes

the MEW to 'sign on its (the COM) behalf'. Regarding the allocation of authority between the minister of energy and the LPA, the law entrusts the LPA with 'financial and administrative autonomy with the minister exercising tutelage

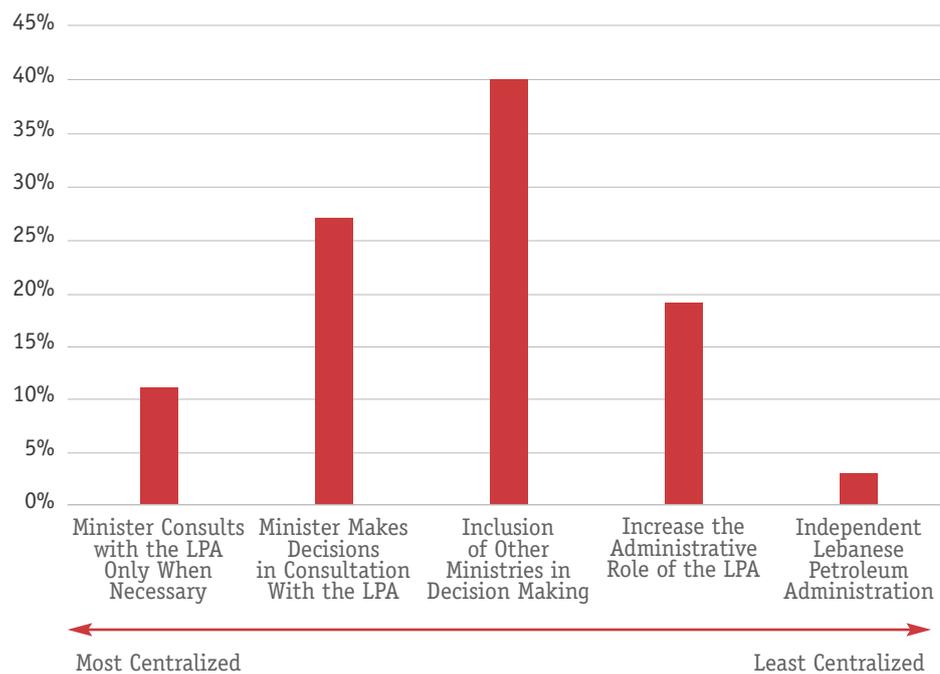
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authority' while some of the decisions are subject to the 'approval of the minister'. This ambiguity concerning autonomy of the administration sparked a heated discussion in the parliament. Figure 2 maps out the five options that were

debated by parliamentarians concerning the level of authority the LPA should have.

Figure 2

Opinions of MPs on authority assigned to the LPA



Source **Author's calculations based on coding of parliamentary deliberations.**

Despite the majority of MPs expressing their inclinations for a more inclusive power system, the law favored minority voices and leaned toward a more centralized power structure. In fact, Parliament Speaker Nabih Berri 'authorized' himself during the last committee session to negotiate this article on behalf of the committee with Prime Minister Saad Hariri, undermining the role of the committee in democratically resolving this controversy.

Revenue Management: Obsessed with a Sovereign Wealth Fund

Good governance in revenue management—encompassing the proper division of roles and responsibilities and strong accountability mechanisms—is a key prerequisite to promoting economic and social development.

The law stops short of dictating how resource revenues will be managed, leaving the issue to be addressed in a ‘specific law’. The law does, however, allow for ‘capital and part of the proceeds’ to be partially invested in an ‘investment fund for future generations’ and other ‘part[s] to be spent according to standards that will guarantee the rights of the state.’

This article and its obscurity resulted from a debate that constituted the lion’s share of parliamentary discussions. There was major disagreement over how petroleum revenues should be governed, including which institutions should manage it. One group of parliamentarians advocated for the establishment of a sovereign wealth fund since they believed that incorporating revenue into the state’s budget would lead to corruption and embezzlement. Other MPs were inclined toward having revenues—at least in part—managed by the Ministry of Finance, COM, or the parliament with revenues feeding into the state’s budget and used in part to pay off public debt.

Monitoring and Regulation of the Sector: No Serious Oversight

The parliament’s monitoring and regulation duties are intended to verify that policies are being adhered to and national policy goals are being met. Although the OPRL states that the minister is responsible for monitoring and supervising petroleum activities, it has remained silent on who in turn monitors the minister. Accordingly, there are no accountability frameworks, monitoring mechanisms, or public reporting included within the law’s framework. In addition, no MP stated that there is need for ensuring parliamentary oversight mechanisms during deliberations.

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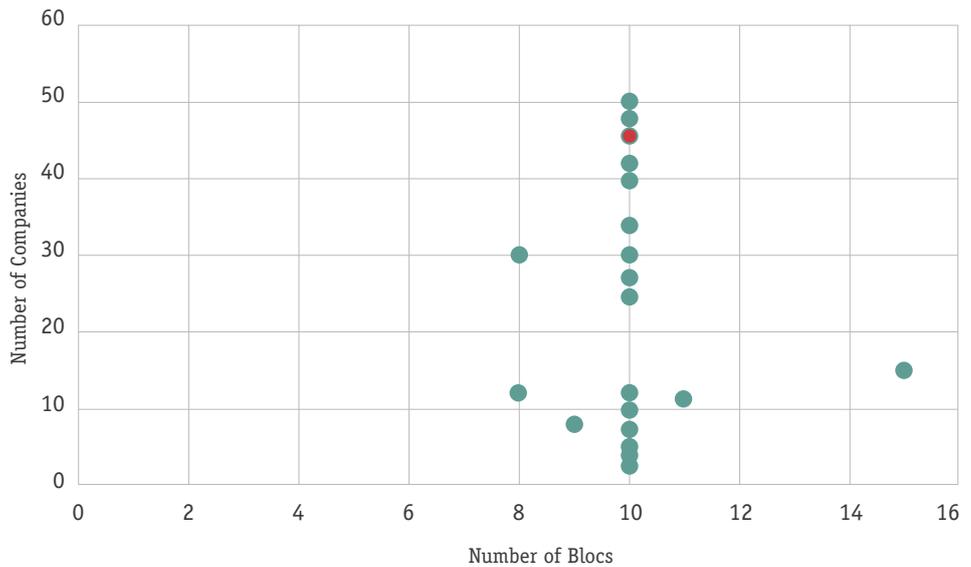
The parliament not only failed to develop accountability measures within the law, it also failed to hold the government accountable when the sector stalled for more than three years. Many MPs, including the parliament speaker, were calling for an expedited approval of the law ostensibly to deter against the Israeli threat of extraction from within Lebanese borders. However, when the government failed to pass the two decrees that paralyzed the development of the sector, the same MPs appeared to no longer be worried by the widely assumed threat of Israel extracting Lebanon’s oil and gas. In fact, only seven MPs voiced concerns to this end in oversight sessions.

Moreover, for parliamentarians to play an effective role in oversight, they must have some knowledge of the sector. A survey conducted by LCPS with

sixty-five MPs in 2016 indicated what little interest and knowledge MPs have in the oil and gas sector. Figure 4, for example, indicates that only one MP out of sixty-five could answer two basic questions about the number of blocs (which is ten) and the number of pre-qualified companies (which was forty-six, prior to re-opening the pre-qualification in February 2017).

Figure 3

MPs' knowledge of the oil and gas sector



Source LCPS 2016 survey of Lebanese MPs.

Recommendations

In light of the state's ineffectiveness in controlling corruption and upholding the rule of law, an accelerated path to the development of resources would entail significant governance risks. This policy brief, through assessing Lebanese parliamentary functions within the oil and gas sector, clearly

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demonstrates the parliament's weakness in terms of legislative structuring and content, decision-making processes, and implementation and oversight procedures. The parliament has failed to create a space in

which it can contribute to the sector's development and oversight. Put more succinctly, the parliament's majority opinion has not seemed to matter. In fact, MPs were bullied into approving the law despite flaws in both the process and substance. Finally, when the government delayed the process of approving decrees necessary to establish the country's petroleum sector for more than three years, the parliament was not compelled to investigate the causes of the delay.

Moving forward, strengthening accountability, improving the disclosure of information regarding the sector, and building parliamentary capacity can help alleviate the governance risk. Enhancing both legislative and oversight functions could be the cornerstone of a successful oil and gas sector in Lebanon. To this end, we make the following recommendations:

Develop an Integrated Legislative Vision to Strengthen Policies

Through analysis of the governance framework set forth by the OPRL, it is evident that MPs did not indicate their intention or readiness to work on establishing a general framework that harmonizes a coherent vision or strategy for the sector. Therefore, it is necessary for the parliament to put forward comprehensive proposals for national strategies concerning the oil and gas sector. This could be supported by forming research teams that review proposals and draft laws, presenting economic and social feasibility studies, and engaging in other research support that adds an interdisciplinary nature to legislative processes.

Master Knowledge of Oil and Gas Sector Governance and Operations

For the parliament to be effective in playing a role in the governing of extractive resources, it is essential that MPs, support staff, and subsidiary organs be informed about the oil and gas sector and how it operates. This entails providing intensive training courses for parliamentarians and other staff members working in oil and gas-related activities to improve their technical understanding of the sector and improving their skills in legislative drafting and oversight operations.

Bolster Accountability and Transparency Channels between Parliament and Executive

Effective parliamentary oversight of the government's work would entail closer coordination and cooperation between the government and the parliament. The Lebanese Parliament must adopt new tools to exercise this role in order to enhance communication channels with the government and different ministries. In order for such measures to be successful, it is necessary for the parliament to tighten oversight regulations, specifically regarding consequences that will be incurred in the event ministries and public offices ignore requests to share information, updates, or clarifications with MPs. Routine disclosures can also play an important role in addressing this culture of secrecy.

Strengthen and Reform Parliamentary Committees and Other Supporting Bodies

The parliament has many subsidiary organs to cooperate with in carrying out its legislative and supervisory functions. Through organized and coordinated committee work, legislators can use their oversight authority to affirm their

role in representative and accountable policy implementation. While the Public Works, Transportation, Energy, and Water Parliamentary Committee is responsible

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for oil and gas related activities including legislation and monitoring of the sector, an independent committee for oil and gas should be established for legislators to organize and coordinate their involvement in the extractive industries sector.

Coordinate with Different Stakeholders

Promoting greater communication and collaboration between parliamentarians, CSOs, experts, and other stakeholders is central to knowledge sharing and capitalizing on the central roles that the parliament is meant to play. Local coordination will make project implementation more effective since resources and time can be saved if best practices are shared. The parliament should engage civil bodies in the legislative process to meet the needs and demands of citizens from different regions and in different sectors. Moreover, the parliament could reintroduce means and procedures—such as petitions and complaints—and develop mechanisms to foster continuous and direct communication between legislators and citizens.

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About the Policy Brief

A Policy Brief is a short piece regularly published by LCPS that analyzes key political, economic, and social issues and provides policy recommendations to a wide audience of decision makers and the public at large.

About LCPS

Founded in 1989, the Lebanese Center for Policy Studies is a Beirut-based independent, non-partisan think-tank whose mission is to produce and advocate policies that improve good governance in fields such as oil and gas, economic development, public finance, and decentralization.

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