


A large, abstract graphic composed of various geometric shapes in shades of blue, teal, and yellow. The shapes are layered and overlapping, creating a sense of depth and movement. The overall composition is dynamic and modern.

# THE GOOD GOVERNANCE BOOK

DECEMBER 2022

#GoodGovernanceForum  
منتدى\_الحكم\_الرشيدي



A three-year policy recapitulation for the Good Governance Forum. It includes policy reviews for nine policy papers prepared based on round table discussions organized under the framework of the Good Governance Forum.



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# ABOUT THE BOOK

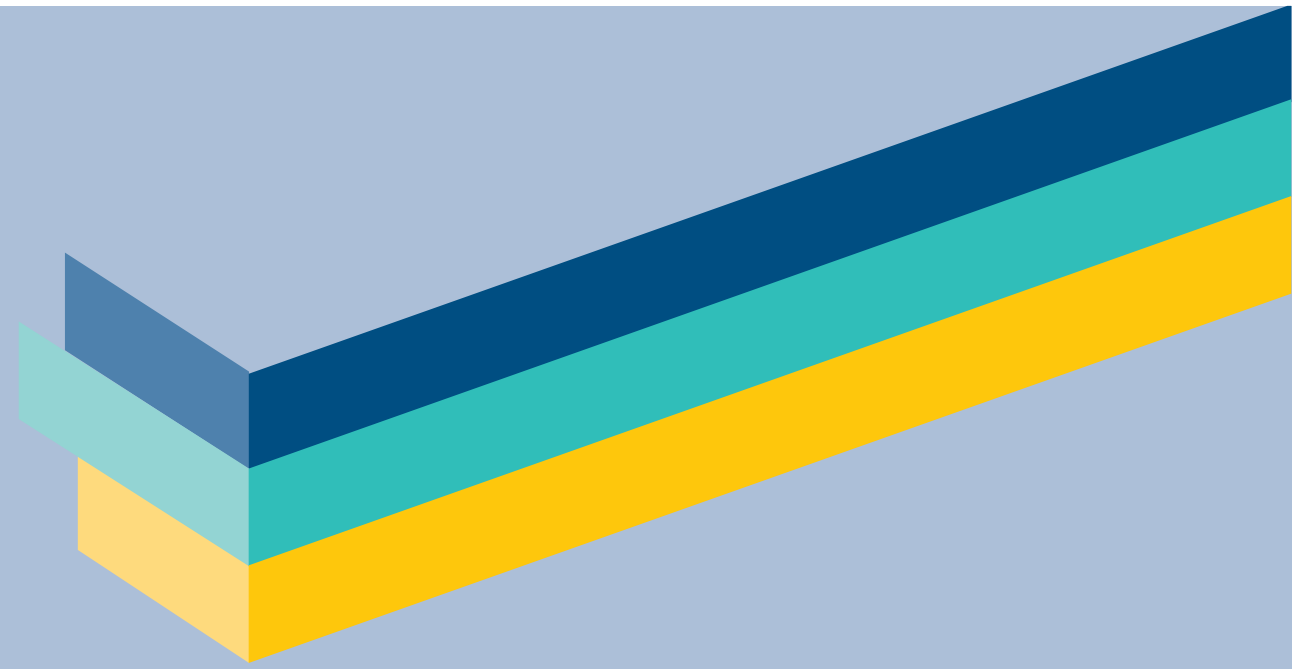
The content of this book paves the path for an inclusive elaboration of a comprehensive framework for good governance policy reform, where policy advocates, academics, journalists, civil society activists and youth and women reformists exchanged their thought and policy expertise toward a more productive, efficient, and transparent public administration under a rule of law realm.

The World Bank defined good governance as “Governance and Development.” According to its definition, good governance refers to “how authority is used to manage a nation’s economic and social resources for growth.” It ensures that corruption is kept to a minimum, minorities’ opinions are taken into consideration, and the voices of the most vulnerable members of society are heard during the decision-making process. Additionally, it responds to the requirements of the polity, both now and in the future.

The UN deems good governance to have eight principles: participation, rule of law, consensus-oriented, equity and inclusiveness, effectiveness and efficiency, accountability, transparency, and responsiveness. This book sheds light on the significance of promoting good governance pillars through the proposed policy reforms.

The consensus-oriented and participation principles can be obtained through elections where people voice their own ideas by legitimate involvement, indicating freedom of association and expression. Consensus-oriented decision-making ensures that even if everyone does not achieve what they want to the fullest, a common minimum can be achieved by everyone. Parliamentary elections have been put forward for study and discussion, as they are the most influential democratic deeds in societies, and the gate to transformation and the transfer of power. Lebanon has known throughout its history a large number of electoral laws. Despite the adoption of proportionality in the electoral law on the basis of which the 2018 and 2022 elections were held, legal experts, interviewed under the framework of the Good Governance Forum activities, agreed that this law did not secure the required validity of representation due to the defects in it and the absence of unified standards assuring its proper implementation.

Furthermore, municipal work is considered by many experts as the only field for the practice of administrative decentralization in Lebanon. Municipal work is of paramount importance to promote decentralization in the absence of the expanded administrative decentralization law stipulated by the Ta’if Agreement. There is a draft law in the Parliament that was developed during President Michel Suleiman’s presidential era. The economic crisis has negatively affected the role of municipalities in providing basic services to the population and residents in the municipal area, and in implementing vital



projects due to the lack of required funding, planning and strategic vision. Amending the elections' laws is the first step to achieving political reform.

Correspondingly, without the Rule of Law principle, the strong will prevail over the weak. All the policy reforms proposed by this book contribute to this pillar. However, it is not possible to think of a real advancement of Lebanon's public and private sectors without radically combating corruption. The doors of corruption vary in different sectors, such as electricity, oil and gas, quarries and waste management among others... Fighting corruption is considered the biggest challenge to achieving reform in Lebanon as corrupt practices and behaviors control the majority of the public sector interfaces. Despite the adoption of many laws, most notably Law No. 175/2020 related to combating corruption in the public sector and the establishment of the National Anti-Corruption Authority, the judiciary is still unable to implement laws due to the lack of independence and political interference in its work.

Furthermore, good governance practices aim towards the improvement of the people's fair and sustainable access to public services, and this cannot take place without the government being accountable to the people. Governmental institutions, private sectors, and civil society organizations should be held accountable to the public and institutional stakeholders. Accountability can be attained through the application of several proposed laws, the most prominent is the forensic audit. The truth about the economic collapse and how public money was misspent and wasted can only be exposed through a thorough forensic audit. The forensic audit journey in Lebanon has been hampered as a result of the lack of inclusive political will of the ruling class. It is noteworthy that the forensic audit is one of the basic conditions imposed by the international community stakeholders such as the International Monetary Fund in exchange for financial support and assistance for economic recovery. Additionally, elections and anti-corruption laws also play a significant role in enhancing accountability.

On the other hand, transparency is mostly sought by the right to access information. Information, especially related to public administration, should be accessible to the public and be understandable and monitored. Four years after the adoption of the Right to Access Information Law, and about a year and a half since the issuance of the amended law, many obstacles still hinder implementation. Lebanon has not yet been ranked among the countries that abide by and enforce the right to access information as many public administrations and institutions have refused to apply its provision. The judiciary did not receive the required response when it requested information from the departments concerned at certain times. Media professionals who attended the Good Governance Forum round table discussion,



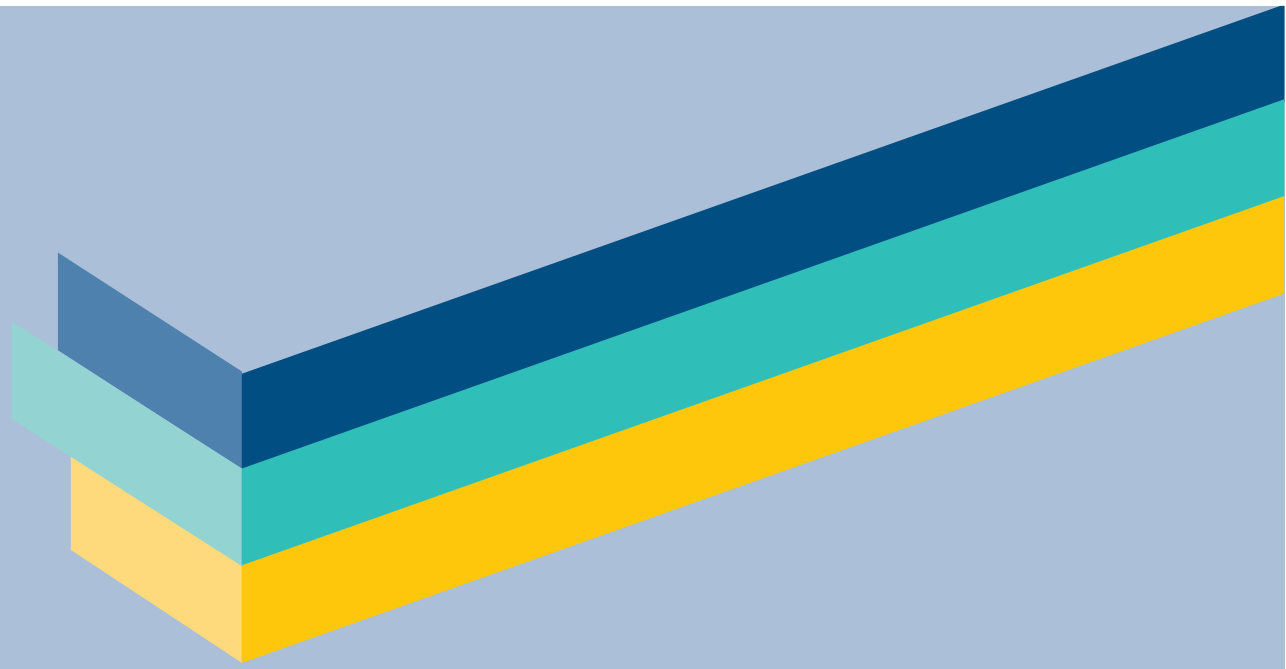
# ABOUT THE BOOK

also complained about the difficulty of accessing public administration-related information. To date, no clear effects of implementation have been observed among a large share of the Lebanese population. Although Lebanon fought the battle of endorsement of the law, its implementation remains the most challenging upcoming milestone.

Subsequently, by adopting the access to information law through an adequate application of its implementation decrees, responsiveness, effectiveness, and efficiency will be realized. Institutions and processes are expected to serve all stakeholders in a reasonable period to attain responsiveness. To achieve effectiveness and efficiency, processes and institutions ought to provide public services that meet the needs of their community. The economic crisis in Lebanon has led to a poor reality and paralyzed most public administrations and institutions. Reform has been rendered inevitable to provide access to public services to citizens in a more time and cost-efficient way. For instance, digital transformation is a tool to introduce technology and achieve public sector reform in Lebanon simultaneously, radically and broadly at the same time. The introduction of technology and the rethinking of existing governance structures may be a necessity for the future of the public sector. International institutions such as the International Monetary Fund, the World Bank and development agencies have called on Lebanon for radical reforms in shifting its public administration systems into digitization. Based on this, the repercussions of the economic crisis can be perceived as a golden opportunity for reform, as it is possible to start from the administrative collapse that took place in 2019 to approve the steps required to adopt digital transformation.

In addition, Lebanon's energy sector faces several barriers prohibiting it from being responsive, effective and efficient. The problems are not technical but rather political and legal. Lebanon has shown great potential when it comes to generating energy via alternative sources. Renewable energy and energy conservation constitutes a viable yet more efficient alternative to traditional fossil fuel-generated energy. This goal can be achieved provided the necessary legislation is passed, the required reforms are adhered to in several fields, and investment is made in the sector under the umbrella of good governance and rule of law practices.





Moreover, public procurement policy is at the heart of public fund management, an issue directly linked to corruption. This topic has been given the utmost importance to establish international standards in the spending of public funds, promote transparency, integrity, accountability and restore the confidence of the local and international community. The Parliament approved the Public Procurement Law No. 244 on July 19, 2021, which was published in the Official Gazette on July 29, 2022. Several public administrations and institutions have begun to apply the provisions of the law in the transactions that take place, while several others have not started doing so.

Awareness through traditional and modern media, seminars and organized campaigns plays a role in promoting the culture of good governance. The media in Lebanon can play an influential role in the political and social scenes in democratic societies. It also has a pivotal role to play in establishing good governance, highlighting corrupt practices and defending people's rights. The influence of the media in the Western world reached its peak with the Watergate scandal revealed by the Washington Post, which prompted US President Richard Nixon to resign. The Lebanese media recorded some successes by raising files related to corruption in various sectors including public money management, electricity, telecommunications, marine property, waste management, etc. However, the lack of independence of several media outlets and their direct affiliation with political factions limits their effectiveness, and thus impacts their objectivity and transparency.

Good governance assures an equitable society where people have equal opportunities to improve or maintain their well-being. Hence, passing certain specific laws that have been trapped in the Parliament would be a big step in the right direction of achieving equity and inclusiveness.

The Good Governance Forum will further capitalize on the joint collaboration between the Observatory of Public Service and Good Governance and the Konrad-Adenauer-Stiftung and therefore aspires that this effort will thrive as a means of promoting legislation and spreading knowledge on the use of good governance principles in both the public and corporate sectors.



**FORUM DE LA  
BONNE GOUVERNANCE**  
منتدى الحكم الرشيد  
**THE GOOD  
GOVERNANCE FORUM**

## **THE GOOD GOVERNANCE FORUM**

The Observatory of Public Service and Good Governance of the Saint Joseph University of Beirut, also known in French as « Observatoire de la fonction publique et de la bonne gouvernance (OFP) » launched, in collaboration with the Konrad-Adenauer-Stiftung (KAS) Lebanon Office, the Good Governance Forum. It consists of a series of events, conferences and activities revolving around multi-sectoral and multi-dimensional aspects of governance practices in Lebanon. This initiative is intended to bring subject-matter experts with academics as well as representatives from the public and private sector, political and civil society organizations.

## **ABOUT THE OBSERVATORY OF PUBLIC SERVICE AND GOOD GOVERNANCE**

Established in 2015, the Observatory of Public Service and Good Governance (OFP) supports any initiative aimed at promoting good governance, in its political, institutional, and administrative aspects. The OFP thus intends to act in favor of the democratic principles of the rule of law, transparency, the fight against corruption and the promotion of citizenship, from the academic circle that is USJ, whose tradition has always contributed to the development of these values in Lebanon, and which continues to be a place of intellectual and political debate for young people. The OFP is open to the public.

## **Missions and objectives**

The missions and objectives of the OFP, as well as the issues it tackles across various research axes, aim to contribute to a greater modernization of the state and its institutions. Within this framework, good governance is an essential tool for improving procedures and the internal and external functioning of the public administration and a means of increasing administrative transparency.

## Activities of the observatory

- Research on the problems and issues affecting contemporary public administration and on the challenges of good governance.
- Publication of newsletters and proceedings of symposia, seminars, and scientific works.
- Learning and continuing education.
- Prize Michel Eddé for the best thesis on public governance. The prize is intended to encourage students to turn more frequently to themes of good public governance in their PhD theses.

## Research axes

- Observing and documenting the evolution of public service and good governance.
- Promoting citizenship by working to bring citizens and public institutions closer together.
- Encouraging and working in the fight against corruption.
- Providing intensive training and continuing education, for example in preparation for the civil service entrance exams.
- Steering research projects through observation work to have a better understanding of the stakes, challenges and major trends affecting good governance in Lebanon and around the world.

## Research themes

Research, by means of surveys, comparative analysis, or empirical research, may focus on the following themes:

- The notion of political and social progress in Arab societies
- Local government and decentralization
- Participatory democracy
- Sustainable development
- The fight against corruption
- Protection of human rights and access to justice
- Citizens' right of access to information in the public sector
- Modernization of public action
- E-governance and the challenges of open data or big data
- The impact of social networks on the evolution of good governance
- The development of the image of public administration
- The role of the media and journalists in good governance...

## Partners

To carry out its mission, the OFP relies on extensive networks both internally and externally, in Lebanon, the Middle East and around the world. The OFP thus bolsters a network of partners, in Lebanon and around the world, who support its mission and objectives, including public and para-public actors, the private sector, international organizations and non-governmental organizations that promote the values of good governance.

# ABOUT THE KONRAD-ADENAUER-STIFTUNG (KAS)

Konrad-Adenauer-Stiftung (KAS) is a political foundation, closely associated with the Christian Democratic Union of Germany (CDU). Freedom, justice and solidarity are the basic principles underlying the work of the KAS. It encourages people to lend a hand in shaping the future along these lines, with more than 100 offices abroad and projects in over 120 countries, KAS makes a unique contribution to the promotion of democracy, dialogue, conflict prevention, civil society and social market economy.

To foster peace and freedom KAS encourages a continuous dialog at the national and international levels as well as the exchange between cultures and religions.

## Konrad Adenauer-Stiftung (KAS) Lebanon Office

The Konrad Adenauer-Stiftung (KAS) has been operating in Lebanon for more than a decade so far. Driven by its international mission, KAS Lebanon Office strives to foster freedom, justice, and solidarity throughout three main objectives which constitute its strategic vision from 2021 till 2023:

- Political actors, civil society and the media are motivated and empowered to work for good governance as well as participatory and inclusive societies in the Middle East and North Africa.
- Elements of the social market economy are oriented towards sustainability and innovation, influence the public and economic policy discourse and contribute to socio-economic development.
- Dialogue and cooperation within the region and with external factors contribute to the creation of sustainable structures for peace and security and increase the German and European ability to shape the future.

## Rule of Law Programme Middle East and North Africa

The Rule of Law Programme Middle East and North Africa is one of six regional rule of law programmes managed worldwide by the KAS. The regional approach is considered a supplement to the KAS national programmes in this sector with the aim of creating broader networks to further improve the effectiveness of the work in individual countries.

With the regional project KAS wishes to contribute towards the continual exchange of experience and information for the purposes of analyzing deficits and determining the need for reform as far as conformity with the Rule of Law is concerned. Until now such contacts have been sporadic, even if the relevant parties were open to such contact. The Rule of Law Programme Middle East / North Africa is focusing on the following areas of interest:

- Promotion of structures in accordance with the rule of law and the promotion of democracy
- Separation of powers, in particular concerning the independence of the judiciary
- Protection of Human and Minority Rights
- Support of regional cooperation instruments promoting the rule of law and democracy

The activities of the program in the above-mentioned areas of concentration aim to promote primarily the rule of law development through regional seminars, research, and training activities. The Rule of Law Programme Middle East / North Africa works together with local partners. By cooperating with local partners, it seeks to ensure that it responds to the most urgent needs and developments both in each country, and in the region as a whole. Through its regional approach, the program aims to encourage its target groups to cooperate regionally, and to develop a regional network among the countries of the region and among experts within the region.

# FOREWORD

*Today, the topic of good governance in the public administration has become an ultimate priority.*

*Over the past three years, Lebanon has been facing multi-layered crises, impacting the social-economic abilities of its polities. The pathways for crisis recovery cannot disregard good governance practices, especially those related to the optimization of public sector performance.*

*In this context, in 2019, the Konrad-Adenauer-Stiftung (KAS), represented by its Lebanon Office as well as the Rule of Law Programme Middle East and North Africa, joined forces with the Observatory of Public Service and Good Governance of Saint Joseph University of Beirut (USJ) and launched a series of discussions tackling decentralization and citizenship.*

*Capitalizing on the success of these events, with the intention of linking the reform discussions related to democracy and citizenship to the necessity of promoting the application of good governance practices, KAS and USJ agreed on scaling up and sustaining the policy reform discussions to cover a vast range of public policies, each time focusing on the good governance aspect. Consequently, the "Good Governance Forum" was conceived in 2020, an initiative combining the endeavor of a reputable academic institution, the Université Saint-Joseph de Beyrouth, to foster the principles of good governance with the values of citizenship and democratic participation of KAS.*

*Since then, USJ and KAS have successfully implemented ten round-table discussions, covering the good governance aspect of public procurement law, the interlinkages between media, judiciary and good governance, looking closer at the forensic audit law, anti-corruption laws, the right to access to information law, the role of media in establishing good governance, the challenges of digital transformation in public administration, the parliamentary and municipal elections, and finally, the legal framework of the Lebanese renewable energy sector.*

*For the past three years, this series of events and conferences covered multi-sectoral and multi-dimensional aspects of (good) governance practices in Lebanon. It brought experts together with academics, representatives from the public and private sectors, and political and civil society organizations, under the principles of inclusion, democracy, and objectivism.*

*KAS hopes that this initiative will be recognized as a tool for advocating policies and raising awareness on the application of good governance practices in both the public and private sectors. While particularly counting on the active participation of young scholars in these discussion series, we hope that this forum will pave the road for a more inclusive, effective-driven good governance-oriented policy dialogue for all in Lebanon.*

## **Michael Bauer**

*Director of the Konrad  
Adenauer Foundation in Lebanon*

## **Philipp Bremer**

*Director of the Konrad-Adenauer-Stiftung  
Rule of Law Programme  
Middle East and North Africa*

# FOREWORD

*Inspired by the historical role of Saint Joseph University in building “mankind and society” and developing the potential of human and community practice, the Observatory of Public Function and Good Governance (OFP) has always strived to promote the principles of good governance. Since the achievement of good governance faces great challenges and encounters serious obstacles that prevent the establishment of the capable state of which every Lebanese dreams, the Observatory decided to join forces with the Konrad Adenauer Foundation to foster wide discussion on current topics under the framework of the Good Governance Forum.*

*During the Good Governance Forum discussions, subject matter experts, politicians, ministers, deputies and officials, influencers, opinion makers, leaders, jurists, researchers and civil society activists expressed their opinions freely, inclusively and respectfully. With the support of our stakeholders, this forum is expected to be sustained to keep pace with any policy development or update occurring in any topic dealing with the promotion of democracy, integrity, accountability and combating corruption, leading to the establishment of the state and its institutions. This forum additionally aims to bridge between decision-makers and influencers on the one hand, and the public opinion on the other. Its coverage scope will be utterly upscaled towards the private sector as well as the tertiary sector, based on our conviction of the need to further promote governance standards across sectors for a better societal welfare.*

*Moreover, it is important to emphasize the commitment to implanting the concept of good governance amongst youth, especially university students, through saint joseph university values based on combating corruption and not giving in to current malpractices. This is done through employing emotional intelligence, resilience, rational thinking, perseverance, patriotism and citizenry in every anti-corruption confrontation.*

*Knowledge is the gateway to change, thus, the “Good Governance Forum” is an essential step in this path, towards consolidating the standards of good governance to enable the establishment of a capable and responsible Lebanese state.*

*“It is a pathological behavior to let others accomplish what we can do ourselves” as perfectly expressed by Father Louis Joseph Lebreton in his valuable study in 1961 “Lebanon’s Development Needs and Opportunities”. After 62 years this statement remains valid and therefore, the Lebanese reform cannot be achieved unless good governance practices are adequately applied.*

*It has been a century since the proclamation of the State of Lebanon. Needless to say, the progress of the nation is linked to the strengthening of democracy in it and the establishment of the desired state.*

*Finally, I extend my heartfelt thanks to the President of Saint Joseph University, Father Selim Daccache, for the unlimited support he provides to the Observatory in its activities. I would also like to convey my gratitude to the Good Governance Coordinator, Dr. Charbel Maroun for his extensive input in contributing to the success of the Good Governance Forum. Last but not least, the greatest acknowledgment is reserved to the Konrad Adenauer Foundation for the trust and continuous support.*

*Yours faithfully,*

**Professor Pascal Monin**

*Director of the Observatory  
of Public Function and good governance.*



## INTRODUCTION

This book is the result of a three-year collaboration between The Konrad-Adenauer-Stiftung and the Observatory of Public Service and Good Governance of the Saint Joseph University of Beirut. The book harvests the fruit of the thoughts of more than 50 Lebanese and international subject matter experts whose contribution to the discussions within the framework of the “Good Governance Forum” induced the generation of nine community-based white papers. The policy reform topics revolved around: public procurement, forensic audit, the role of the media, access to information, digital transformation, anti-corruption, elections, and the good governance of the renewable energy sector. Over the course of 3 years, Dr. Maroun Charbel, a journalist and university professor, drafted 9 white papers in Arabic, each followed by a policy review. Each paper corresponded to the aforementioned topics to further align the discussions based on an updated understanding of the policy situation. The observatory team, led by Pr. Pascal Monin, organized the recapitulation of all the press releases, white papers, and policy reviews, had them translated, combined and outlaid upon their date of issuance.

# THE INAUGURATION OF THE GOOD GOVERNANCE FORUM

Wednesday, November 4, 2020



## Event Brief

Within the framework of achieving good governance, strengthening governance and combating corruption in the public and private sectors, the Observatory of Public Function and Good Governance (OFP) at Saint Joseph University in cooperation with the Konrad-Adenauer-Stiftung (KAS) inaugurated the Good Governance Forum on Wednesday, November 4 at the campus of the Faculty of Social Sciences on Huvelin-Beirut-Lebanon.

The beginning was with Pr. Salim Daccache, President of Saint Joseph University of Beirut, who announced the launch of the forum, noting that “the Lebanese today

aspire to a capable state that assumes its responsibilities and provides its residents with what is available to all human beings in the democratic world including the elements of good governance such as the rule of law, accountability, integrity, transparency and access to information.”

Pr. Daccache added: “The time has come for the birth of a ‘Republic of Good Governance’ in Lebanon. Without it, Lebanon will remain a failed project overburdened with wars and crises resulting in mass emigration of its skilled sons. We will remain mired in corruption, chaos and clientelism and will finally declare the death of the homeland.”

Pr. Daccache stressed that good governance



is the solution, “and because it is so, we will continue our endeavor at Saint Joseph University to spread its principles and what the Observatory of Public Function and Good Governance (OFP) have been doing since its establishment is the best evidence of this endeavor.”

Then MP Yassin Jaber, head of the parliamentary sub-committee for studying the public procurement law, gave a speech in which he pointed out that “this initiative comes at a time when we mostly in need to demand the achievement of good governance after we tried everything in the past decades and this is what brought us to this collapse,” stressing that “there are no good governance practices in Lebanon.”

Jaber pointed out that “the importance of this initiative is that it stems from the Saint Joseph University, and today we need to entrench among our youth the importance of good governance.”

Mr. Jaber invited everyone to work together “to achieve good governance by building a state of law and institutions,” adding that “unfortunately, over the years, and despite our work in the parliament in the past on dozens of laws that constitute a structure for real reform, the problem remains in the failure of implementing these laws.”

He continued: “The problem in Lebanon today is how we can make sure that every legislated law will be implemented, so we proposed a few years ago to establish a Parliamentary committee to follow up the implementation of laws, to put in the necessary effort in implementing them and establish the institutions responsible for their application.”

Mr. Jaber stressed that “the return to good governance is a mandatory path out of the crisis we are suffering from, and the first item in any program to support Lebanon is to implement reforms,” calling for a partnership between the Observatory and the Parliament for the largest possible cooperation so that young people can learn about what is happening in the Parliament.

In turn, MP Georges Okais, who stressed his optimism in this forum, pointed out that in Lebanon, we need all dimensions of good governance that are managed for the benefit of the people in their development, institutions in their performance and effectiveness, and the optimal method of governance in democracies.

“Good governance presupposes the participation of the people in decision-making, the effective provision of government services, respect for human rights and a transparent, productive and accountable government,” MP Okais claimed.

MP Okais also wished the forum, through close communication with the Parliament, to carry out monitoring on 14 axes, including the e-government, because of its great importance for the development of Lebanon, and the fight against corruption in it, as well as the judiciary independence and human rights, and the transparency in the management of public funds and all aspects of sustainable development, offering support to the Observatory to monitor these legislative axes.

Dr. Malte Gaier, Director of the Konrad Adenauer Foundation in Lebanon, thanked Saint Joseph University, welcoming cooperation with it for the benefit of the Foundation, the University and the Lebanese citizens. He additionally spoke about the forum, which takes an important place in the Foundation’s objectives in Lebanon.

At the end of the forum, Pr. Pascal Monin, Director of the Observatory of Public Function and Good Governance (OFP) at Saint Joseph University, delivered a speech in which he stressed “adherence to cultivating the concept of good governance in the minds of young people, especially students, through Saint Joseph University values.

He added: “The launch of the forum from the heart of Beirut, which exploded with the port explosion on the fourth of last August, falls within this framework, and represents a message of the firm and strong faith from Saint Joseph University, and from the Observatory of Public Function and Good Governance (OFP), that the resurrection is inevitable, and that life always returns stronger and more glowing, and that Beirut does not die.”

Professor Monin concluded: “Lebanon has paid a high price as a result of the absence of good governance, and has been replaced by the logic of quotas and clientelism that brought us to the bad situation we live in. It is not surprising that all the recipes for a solution, including the French initiative, focused on the elements of this provision as a condition for advancement. Based on this, the new government should put good governance as the basis of its work and governance program.”

## Panelists

### Pr. Daccache Salim S.J



President of Saint Joseph University of Beirut, previously acted as Director of the Institute of Oriental Letters, and Dean of the Faculty of Religious Studies-USJ, along with several honorable positions. Pr. Daccache joined the Society of Jesus in 1975, in Egypt, and became, until the present, the Editor-in-Chief, and Associate Director of the Society of Jesus' Arab Cultural Magazine Mashreq. He had been responsible for more than a hundred articles and publications, conference proceedings, and studies in the Arabic, French, English, and Italian languages, in the fields of education, Syriac spirituality, moral and political philosophy, Islamic Jurisprudence, cross-cultural meetings, interfaith dialogue, Muslim-Christian relations, etc..Pr. Daccache holds two PHDs, one in Literature and Philosophy from Panthéon-Sorbonne University (Paris 1), and another in Educational Sciences, University of Strasbourg-France. He also holds a certificate in Political Science, a Bachelor of Arts in Philosophy from USJ, a Master of Arts in Theology and Philosophy from the Sèvres Institute, as well as a Diploma in Islamic Sufism and Syriac Spirituality.

### Dr. Gaier Malte



Dr. Malte Gaier has been the Director of the Konrad Adenauer Foundation's foreign office in Lebanon till July 2021. He was born in Ludwigsburg - Germany and has been a guest researcher at Max Weber Center (Erfurt) and International Islamic University (Islamabad), as well as a Field researcher in Pakistan, India, Egypt and Palestinian Territories. Dr. Malte Gaier is also the publisher of several articles on security, state and religion. Dr. Gaier became a PhD Candidate in Islamic Studies and lecturer at the University of Erfurt (Konrad Adenauer Scholar) working on comparative analysis on religious-political movements in Pakistan and Israel. He studied Media and Communication, Arabic and Global History with a regional focus on the Middle East and South Asia in Erfurt, Vienna and Cairo. He was certified in Conflict Analysis from the Academy for International Conflict Management and Peacebuilding, United States Institute of Peace (USIP).



## Pr. Monin Pascal

Professor Pascal Monin is the director of the Observatory of the Public Service and Good Governance (OFP) at Saint Joseph University in Beirut (USJ). Head of the Masters in Communication and Political Marketing of the Institute of Political Sciences since 2015. Since 1998, he is a professor at USJ and the founder and former director of the Master in Information and Communication. He directed the book: "Democracy in Crisis, Democracy in Mutation: from Popular Mistrust to Citizen Participation" published in 2020 by the USJ. He is also the author of "The Ways of Freedom", a book published by Editions Dar Annahar; as well as numerous articles, conferences and studies on Lebanon, on the geopolitics of the Middle East, the impact of media, political communication and marketing, journalism in the digital age... He regularly speaks in local and foreign media. Pr. Pascal Monin was the advisor to the Lebanese minister of the Environment from 2011 to 2014. He is also a former member of the scientific committee of the Observatory of the French and national languages, the AUF amongst others.



## MP. Okais Georges

MP. Okais is a member of the Lebanese Parliament since 2018, and a Member of the Parliamentary Committee on the Public Procurement Law. His Excellency started his career as a judge in Lebanon for 17 years where he presided over the First Instance Tribunal in Beirut. He then pursued a career in the Legal Profession, and was soon appointed as Head of the Strategic Planning and Performance Management Bureau in Abu Dhabi in 2010, and eventually served as an adviser to the Minister of Justice in the UAE from 2014 to 2018. MP. Okais was elected for the first time in Lebanon as a Deputy. Moreover, he is a partner at EKP Legal Counsel, and actually heads EKP's dispute resolution department in Lebanon.

MP. Georges Okais is a member of multiple organizations in the legal and judicial fields. He is also a regular lecturer at various Lebanese Universities and legal and legislative Fora. Nevertheless, he is known for handling complex litigation and arbitration.



## MP. Yassin Jaber

Member of the Lebanese Parliament, representing the Nabatieh District. He is considered a liberal politician who is known for his advocacy of social justice, peace and sustainable economic development. After graduating with a BA in Business Administration from the American University of Beirut in 1973, Jaber founded a financial company in the capitol and worked there until the beginning of the Lebanese Civil War in 1975. He served as the Minister of Economy from 1996 to 1998, and took part in reconstructing Lebanon after 17 years of civil war. His Excellency was the first Lebanese Minister of Economy to consider the social and psychological cost of war, and promote peace through economic development. He is also a vocal supporter of human rights through equitable economic development in other countries such as South Africa.

# THE PUBLIC PROCUREMENT LAW

Wednesday, November 4, 2020



## Event Brief

After the opening session, the attendees began the work of the first session under the title “Public Procurement Law is a Basis for Good Governance”, which was broadcasted live via Facebook and the “Zoom” application, and was attended from inside the college campus by MPs Yassin Jaber and Georges Okais, Ms. Lamia Moubayed Bsar, Head of the “Basil Fuleihan Institute of Finance and Economics” at the Ministry of Finance, Dr. Jean Alliyeh, Director General of the Tenders Department at the Central Inspection Authority, and Mr. Karim Daher, a lawyer and specialist in financial and tax reform.

Pr. Pascal Monin opened the first-panel discussion session moderated by Dr. Charbel Maroun, a journalist and university professor, who conveyed the questions of the viewers participating in the online dialogue to his guests.

## Panelists



### Mr. Alliyeh Jean

Dr. Jean Alliyeh is the General Director of the Tender Board at the Central Inspection Board since June 2012. He is also the Secretary of the Network of Public Procurement Experts in the Middle East and North Africa (MENA) since 2013.

He contributes to the meetings of the Finance and Budget Parliamentary Committee and in several commissions and is a lecturer at the Lebanese University and a trainer at the Institut des Finances Basil Fuleihan. Dr. Alliyeh holds a Bachelor degree in Business Administration, a Bachelor and a Master’s degree in Law, and a PhD in Public Law from the Lebanese University.



### Me Daher Karim

General Coordinator and one of the main founders of the “Lebanese Association for Taxpayers’ Rights and Interests” (ALDIC). He is registered at the Beirut Bar as a practicing lawyer and founding partner at the HBD-T Law Firm. He specialized in corporate and tax laws as well as estate planning and M&A. He lectures on fiscal law and public finance at Saint Joseph University of Beirut. He has published comprehensive books on taxes as well as many specialized studies in connection with fiscal issues that were published in business and professional magazines and daily newspapers; in addition to his participation as a speaker at several conferences, and also as legal advisor and/or tax expert, in several commissions for the modernization of the Lebanese fiscal and commercial legislation and proposed several bills in connection therewith. Me Karim Daher is a graduate from the University of Paris II Panthéon-Assas (French Law degree with honors and Master in Business Law & Taxation with honors) as well as from Saint Joseph University of Beirut (Lebanese Law degree and DEA in Private Law). He also holds an executive diploma in finance from the ESA School of Business in Beirut (ESCP/EAP).



### MP. Jaber Yassin

Member of the Lebanese Parliament, representing the Nabatieh District. He is considered as a liberal politician who is known for his advocacy of social justice, peace and sustainable economic development. After graduating with a BA in Business Administration from the American University of Beirut in 1973, Jaber founded a financial company in the capitol and worked there until the beginning of the Lebanese Civil War in 1975. He served as the Minister of Economy from 1996 to 1998, and took part in reconstructing Lebanon after 17 years of civil war. His Excellency was the first Lebanese Minister of Economy to consider the social and psychological cost of war, and promote peace through economic development. He is also a vocal supporter of human rights through equitable economic development in other countries such as South Africa.



### Ms. Moubayed Lamia

President of the Institute of Finances Basil Fuleihan since 2000. In 2018, she was selected by the United Nations Committee of Experts on Public Administration among the 24 experts to guide members of CEPA on the agenda of 2030. In 1992, Ms. Moubayed began her career by joining as a researcher, the Consultation and Research Institute in Lebanon (CRI), and then joined the UNDP, and the ESCWA. Starting 2016, Moubayed became the representative of Lebanon and MENA countries on the board of the "International Association of Schools and Institutes of Administration (IASIA). She actually lectures public management at the Institute of Political Sciences of USJ in Beirut (Sciences-Po). Ms. Moubayed is a member of several organizations such as OECD, INNOVMED, and was known for being the co-founder and volunteer of Green line in 1991, the first non-governmental organization (NGO) in Lebanon addressing environmental and agricultural development. Ms. Lamia Moubayed Bissat graduated with an engineering degree in agriculture in 1988 and received her master's degree in Agricultural Economics and Development from the American University of Beirut (AUB) in 1990. Eight years later, she joined l'Ecole Supérieure des Affaires in Beirut to pursue a master's in business administration (MBA).



### MP. Okais Georges

MP. Okais is a member of the Lebanese Parliament since 2018, and the Member of the Parliamentary Committee on the Public Procurement Law. His Excellency started his career as a judge in Lebanon for 17 years where he presided over the First Instance Tribunal in Beirut. He then pursued a career in the Legal Profession, and was soon appointed as Head of the Strategic Planning and Performance Management Bureau in Abu Dhabi in 2010, and eventually served as an adviser to the Minister of Justice in the UAE from 2014 till 2018. MP. Okais was elected for the first time in Lebanon as a Deputy. Moreover, he is a partner at EKP Legal Counsel, and actually heads EKP's dispute resolution department in Lebanon. MP. Georges Okais is a member of multiple organizations in the legal and judicial fields. He is also a regular lecturer at various Lebanese Universities and legal and legislative Fora. Nevertheless, he is known for handling complex litigation and arbitration.

# PUBLIC PROCUREMENT LAW IS A MEANS TO SET UP GOOD GOVERNANCE

Published on Monday, August 9, 2021

Public procurement makes up a major axis of public spending seen in the general budgets of the state. Approximately 20% of the public spending noted in the budget goes to public procurement. Public procurement operations are mainly governed by two old legal texts: The Tender Law legislated by Executive Decree No. 2866/59, and the Public Accounting Law implemented by decree No. 14969/63. The first decree laid down the unified foundations for the system of public procurements in Lebanon, and the second decree stipulated the methods and rules for conducting them.

After many decades, it has become necessary to update and develop these legal texts, fill the gaps in them, and put an end to the imbalance in their application and implementation, by taking advantage of successful international experiences in this context.

The reality under these two decrees consisted of many loopholes, including the decentralization of public procurement in a chaotic and disorganized manner. Tender management powers were limited to public administrations with regard to public procurements, while procurements related to public institutions and municipalities were conducted by the management and supervision of these latter.

As a result of the developments in public procurement and the complexities that go with these processes, it was necessary to develop a modern and advanced law that includes a process mainly supplying publicity, transparency, justice, inclusiveness and fair competition.

The Public Procurement Law cannot be perceived as an independent law, it rather forms part of a coherent legal system that includes the laws of finance, the public budget, state programs, projects and strategic plans for various economic, social and development levels.

The aim of any public procurements' legislation is to provide equal opportunities

for the institutions and companies concerned, enhance participation for medium and small enterprises, and contribute to the achievement of sustainable development with its three pillars: human, economy and environment.

The proposal of the Public Procurement Law, whose preliminary draft was prepared by the "Basil Fuleihan Institute of Finance and Economics" with the participation of thirteen Lebanese and international experts, stems from the Model Law issued by the United Nations World Trade Commission, which was approved by the General Assembly of the International Organization in its resolution No. 66/95 dated December 9, 2011. The association stressed that this model will be a reference for the reform of public procurement laws. States recommended that this model should be used when drafting public procurement laws to evaluate public procurement systems based on this model. Therefore, Lebanon adopted it as a formal document in its law.

## First: The content of the Public Procurement Law:

In order to better understand the content of the Public Procurement Law, the gaps in the existing legal texts should be highlighted:

**1-** The current reality: The most prominent gaps in the current laws can be summarized as follows:

**A-** The bodies covered by the powers of managing tenders are limited to public administrations, excluding the security and military ones, while public institutions and municipalities apply different principles from those stipulated in the tender's system.

Indeed, public institutions, especially those of a commercial and industrial nature, are not subject in their spending of public funds to the rules stipulated in the Public Accounting Law.

**B-** Absence of standard books needed for procurements.

**C-** The lack of an exact description of procurement methods and areas of application to ensure their effective use away from interpretations and jurisprudence.

**D-** Forming committees for awarding procurements in public administrations, institutions and municipalities without unified foundations, while ignoring the rules of independence and efficiency stipulated in the tender system.

**E-** Reducing the deadlines for announcing

the awarding of procurements without any justification, which hinders the opening of the competition, especially for companies and medium and small enterprises.

**F-** Resorting to consensual agreements without any justification and covering some agreements with the approval of the Council of Ministers, which forms a legal violation and a corrupt act.

**G-** The absence of a secret estimated price that would reduce corruption and waste of public funds.

**H-** Dividing the procurements in order to avoid the control of the guardianship authorities, the Audit Bureau and the Tender Department.

**I-** Lack of an electronic procurement system.

**J-** Public access to information on public procurement is restricted and limited.

**K-** Failure to develop an annual program for public procurements in response to the request of the Tenders Department, and the absence of scientific planning on the budgets of the majority of administrations, public institutions and municipalities.

## Articles of the law:

Based on this reality, the proposal of the Public Procurement Law came to address many of the existing gaps. The proposed law defines the rules for conducting public procurement by the best international standards and principles and good practices, and aims to:

- Apply competitive procedures as a general rule.
- Supply equal opportunities without discrimination to take part in public procurement.
- Supply fair, equal, transparent and responsible treatment to all exhibitors and obligors.
- Supply publicity, integrity and professionalism of procedures in a manner that activates control and accountability.
- Encourage local economic development and national production on the basis of the best value of public money spending, without prejudice to efficiency.

The proposed law is based on a number of basic principles: inclusiveness, planning and inclusion, accountability, effectiveness and competition, integrity, transparency, apprenticeship and sustainability.

It is divided into 110 subjects divided into nine chapters as follows:

**Chapter One:** General Provisions. It holds general provisions applicable to all procedures.

**Chapter Two:** Includes general rules for the preparation, conduct and implementation of procurement operations. It details general rules according to the purchase cycle.

**Chapter Three:** deals with the methods of purchase, and details them with the conditions of their use.

**Chapter Four:** Lays the foundations for electronic procurement.

**Chapter Five:** deals with apprenticeship and capacity building and holds provisions for the profession and training.

**Chapter Six:** Governance of Public Procurement. This chapter sets up the regulatory body and the objections committee, details its functions in addition to the tasks of the awarding and receiving committees, and deals with the special tasks of the contracting authorities.

**Chapter Seven:** Procedures for objections shall be detailed at the pre-contract stage.

**Chapter Eight:** Penalties and Integrity: Establishes penalties related to corruption risks in procurement procedures

**Chapter nine:** Includes final transitional provisions.

Its content can be summarized thus:

**1-** The law is governed by the largest base of public administrations, institutions and municipalities that spend public money on uniform provisions.

**2-** The law stipulates that the model books of procurements and other standard documents such as the minutes of the work of the contracting committees and the establishment of the bases for the preparation of reports and forms for the preparation of the annual program is the prerogative of the Public Procurement Authority.

**3-** The law adopts the mechanism for the formation of tender committees stipulated in the tender system issued in Decree No. 2866/1959. Consequently, the texts were standardized, updated and controls were set up, considering the rules of competence and integrity in the composition of the committees. Under the new law, the criteria for forming awarding committees pass through the Public Procurement Authority, and the regulations are presented to the Central Inspection Authority.

**4-** The law did not approach the deadline for

announcing the procurements by linking the approval to reduce this deadline to a specific purchasing authority or the general regulatory authority. It rather sets legal controls for all the deadlines and facts related to the public procurement process which are notified in advance to the Public Procurement Authority. If the authority finds that the deadline for announcing a tender does not supply the sufficient opportunity for bidders to prepare their documents. For example, it can resort to using the right of objection or review before the judiciary and the Objections Authority stipulated by law. This is an important achievement, which will ensure competition and equality.

**5-** The law shall set up strict and real controls on consensual agreements, limiting them to the values of small transactions and emergency exceptional circumstances. Article 47, paragraph 12 of the Public Procurement Law, which allowed the Minister to present the procurements by mutual consent to the Council of Ministers, was repealed by law, regardless of the availability of exceptional circumstances.

The new law is a qualitative development in this regard that will reduce the possibility of corrupt practices in public procurements because a large part of these practices is conducted through open authorizations from the Council of Ministers for ministers to conclude consensual transactions without objective reasons justifying this.

**6-** The law stipulates that the work shall be at the estimated price so that the contractor or obligor who wants to contract knows in advance the approximate genuine cost of what he wants to contract for. This greatly reduces the possibility of collusion and agreement between the two offers, resorting to raising the price beyond the realistic price and sharing the difference between them.

**7-** The law tends to adopt the planning system and later adopt the annual program in public administrations, institutions and municipalities. It obliges the entities covered by its powers to develop procurement plans, and that these plans are consistent with the budgets they prepare, and the appropriations they request and allocate to them. This achieves the integration of the public procurement process into the public financing system.

**8-** The law shall set up numerous controls for the Minister's performance in public procurement operations. It is true that the

initiative remained in the hands of the Ministry in terms of preparing the tender books and conducting tenders. But this is done under the watchful eye of the Public Procurement Authority. If in most exceptional cases, according to the new law, this body does not have the authority to stop deviations, it has the authority to watch and go to the competent judicial or administrative authorities to request the necessary action.

**9-** The issuance of decrees on the application of the Public Procurement Law shall be within the smallest reasonable limit and with regard to the general policy of the State to which the Council of Ministers is competent following the provisions of the Constitution. Decrees shall be issued by the Council upon a proposal or recommendation from the Public Procurement Authority. For example, giving preference to national products and to medium- and small-sized enterprises.

**10-** The law shall devote a chapter relating to the crime of public procurements and shall specify penalties for them. The offenses set forth in the Penal Code were taken into account. However, detailed acts that do not fall directly within the framework of the Penal Code, and which make up a violation of the Public Procurement Law, are stipulated and appropriate penalties are specified.

For the first time, the law supplies penalties for the purchaser, such as the release of the credit distributed to the operation if it indulges or engages in collusive or corrupt practices, while remaining the personal responsibility of anyone who interferes in the public procurement process.

Noting that the earlier legal text included penalties for those who are committed to the administration often not implemented such as exclusion from future tenders.

But the new law, with all its radical changes, includes minor gaps, including that the view of the Tender Department in terms of the obligation of the private sector to the provisions of the new law was not considered. The tendency is for contracts to remain subject to the provisions of the law regulating public-private partnerships.

But this loophole is not flawed, because many countries regulate partnership processes with special laws. What is important in this context is that these laws include mechanisms and principles based on openness, competition, equality and the choice of the best offer.



The following table shows the main changes in public procurement with the proposal of the new law:

CHANGES BROUGHT ABOUT BY THE PROPOSAL	CURRENT REALITY
The powers of the Public Procurement Authority include public administrations, institutions and municipalities, i.e., all public procurement operations.	The powers of tender management are limited to public administrations without security and military.
Typical term sheets for transactions.	Absence of typical term sheets for transactions.
Unified bases for the formation of procurement commissions.	There are no unified bases for the formation of procurement commissions.
Strict conditions are limited to resorting to a consensual agreement.	Recourse to the consensual agreement without justification.
Adoption of the secret estimated price.	Absence of a secret estimated price.
Adopting an electronic purchase system.	Lack of an electronic purchase system.
Transparency and dissemination of information.	Public access to information is restricted.
Planning and developing an annual program of deals.	Failure to develop an annual program for deals.

## Second: The most prominent achievements of the law:

The law transfers public procurement operations to a new reality radically different from what would have prevailed if political influences were removed from its application. The achievements of the law can be summarized as follows:

**A- Strengthening the powers and role of the Public Procurement Authority:** The Tenders Department was an observatory that works mainly with its eyes, and the law granted the Public Procurement Authority what can be called teeth that allow it to intervene and work to follow the law and the principles of good governance.

The Authority by law is a non-punitive monitoring, supervision, regulation and control body. Therefore, when registering any violation, the Authority can stop some public procurement operations. This power is not comprehensive, in the sense that the law stipulates it in certain cases and does not refer to it in others.

The basic powers of the Authority can be summarized by three:

- Prepare periodic reports issued by it, which are accessible to the public opinion in order to allow full access to public procurement processes and all their details, highlight obstacles if any, and propose the right solutions. This authority enshrines transparency to a high degree.

- Prosecution in front of the judiciary. This forms the strongest translation to give the Commission teeth in the exercise of its functions. It is now able to confront the violation and deviate from the legal texts by reviewing before the judiciary, either to stop the damage and the violation or to hold them accountable.

For example, if this authority existed previously, the Tenders Department could have sued the Council for Development and Reconstruction before the judiciary as a result of the violations that were monitored in the implementation of the tunnels at the southern entrance to Beirut, and the disasters it caused and disrupted the interests of the people when it rains.

- Heading directly to the President of the Republic, the Speaker of the Parliament and the Prime Minister to explain the course of its work and inform them of the obstacles when they exist through direct correspondence, which gives it moral authority, and helps it to present what it faces in front of officials in the executive and legislative authorities and request their assistance. This may in turn solve many problems if the required political intentions are available.

**B- Centralization of control and decentralization of application:** The law provides a practical application of a reformist principle adopted in public procurement processes, which is "centralization in control and decentralization in implementation"

so that it gives the Public Procurement Department a key role in the control and leaves the applied procedures in the procurements to public administrations, institutions and municipalities under the control of the authority. It can be said that the proposed law supplies flexibility in implementation and strict control.

**C- Approving the principle of comprehensiveness in the powers of the Public Procurement Authority:** The Tenders Department of the Central Inspection Authority was partially managing the procurements of public administrations. An estimated less than 5% of public spending on transactions was made through the Authority, while 95% of public procurement was conducted away from the Authority. For example, the value of the deals completed by the Municipality of Beirut alone in one year exceeded the total completed by the Tender Department in the public administrations combined.

With the expected law, the authority's validity now covers 100% of public procurement transactions, and the authority can intervene in these operations and influence their course.

**D- The right of inquiry to the Public Procurement Authority:** Before the adoption of the law, public institutions and municipalities were not obliged to give the Tenders Department any information about the deals they conduct. This is the case with all the deals of EDL (Electricité du Liban), which accounted for the bulk of the public debt of about USD 100,000,000,000, and the accompanying question marks about their waste.

With the new law, the filing of information to the Public Procurement Authority has become a legal obligation with publication. Thus, the Parliament and public opinion are able to know all the information about public procurement transactions, which enhances the possibility of accountability.

**E- Transparency:** by dedicating the obligation to publish everything related to public procurement operations, especially transaction terms books and the method of conducting them at all stages contrary to what is the current reality. For example, this reality prevented the publication of any information about the contract signed between the Lebanese state and the Algerian company "Sonata" since 2005 under the pretext that it is between two countries. This prevents any possibility of accountability and redress of the situation in case of any violation.

### Third: Suggestions and Recommendations:

A number of steps and procedures should be resorted to ensure that the law is issued in the form in which it came out of the hands of the parliamentary subcommittee, and put into practice immediately after its issuance and publication in the Official Gazette that promotes the values of good governance through the following:

**A- The rule of modern law:** This is done through:

**1-** Approving the proposal of the law in the General Assembly as it came out of the hands of the parliamentary committee without modifying the controls in it because it practically means emptying the law of its actual content, disrupting the role of the Public Procurement Authority and consolidating the current situation with a legal "Rotcha" that does not provide or delay.

**2-** Speeding up after the adoption of the law, the issuance of the necessary regulatory and implementation decrees so that it does not remain a dead letter, as is the case with the law establishing administrative courts and the law on the right to access information, and working to prevent disruption of its application, as happened with Law 175/2020 on combating corruption in the public sector and the establishment of the National Anti-Corruption Authority, and Law No. 462 of 2002 on the organization of the electricity sector.

**B- Dedication of competence and specialization:**

**1-** The Public Procurement Commission was made up with 5 members to be appointed by the Council of Ministers, without regard for quotas, so that qualified and impartial individuals, whose reference is the law and the public interest, will manage the commission. Political meddling should also be avoided.

**2-** Work to supply a qualified and efficient human cadre in the staff of the Public Procurement Management Authority, ministries, departments, public institutions and municipalities, and qualify them to apply the law after its issuance and publication.

**C- Achieving development in public administrations, institutions and municipalities:**

**1-** Supplying the required technology in the Public Procurement Management Authority, ministries, administrations, public institutions and municipalities in a way that helps the

proper application of the Public Procurement Law without obstacles.

**2-** Achieving electronic connectivity between the Authority and these ministries, departments, institutions and municipalities to facilitate the required direct communication.

This would develop the administrative work related to public procurement and move public administrations, institutions and municipalities steps forward and make them keep pace with technological developments.

**D- Transparency: achieved through freedom of publication and delivery of information to those concerned. This is done through:**

**1-** Establishing the electronic platform that allows the collection of data and information related to public procurement and placing them at the disposal of public opinion.

**2-** Issuing of model documents and units of public procurement procedures.

**E- Consecrating the right to inquiry and knowledge:**

**1-** Conducting an organized media campaign on traditional and modern media to explain the law and its advantages to public opinion, and pressure for its rapid implementation.

**2-** Develop a scientific and detailed guide explaining the details of the new law after its issuance and publication.

**F- Consecrating the principle of public interest: Work is being done at many levels to make the public procurement law on the agenda of the Lebanese public opinion, through which it achieves the public interest.**

**1-** Contacting institutions and personalities working in the public and private sectors and civil society organizations to adopt the demand for the application of the law and the removal of political influences from it.

**2-** Adoption of a national strategy and action plan for reform since the reform is an integrated and interdependent process, not limited to the reform of the public procurement system.

## **Policy Review conducted in December 2022:**

Public procurement policy is at the heart of public fund management, an issue directly linked to corruption. This topic has been given the utmost importance to establish international standards in the spending of public funds, promote transparency, integrity, accountability and restore the confidence of the local and international community. The

Parliament approved the Public Procurement Law No. 244 on July 19, 2021, which was published in the Official Gazette on July 29, 2022. One of the gaps that existed in this law is what is related to municipalities, as the second clause of Article 100 requires that the award committees in their management be employees of at least the third category who have previous experience in the field of public procurement. It was found that none of the municipal employees would be in the category of those qualifications.

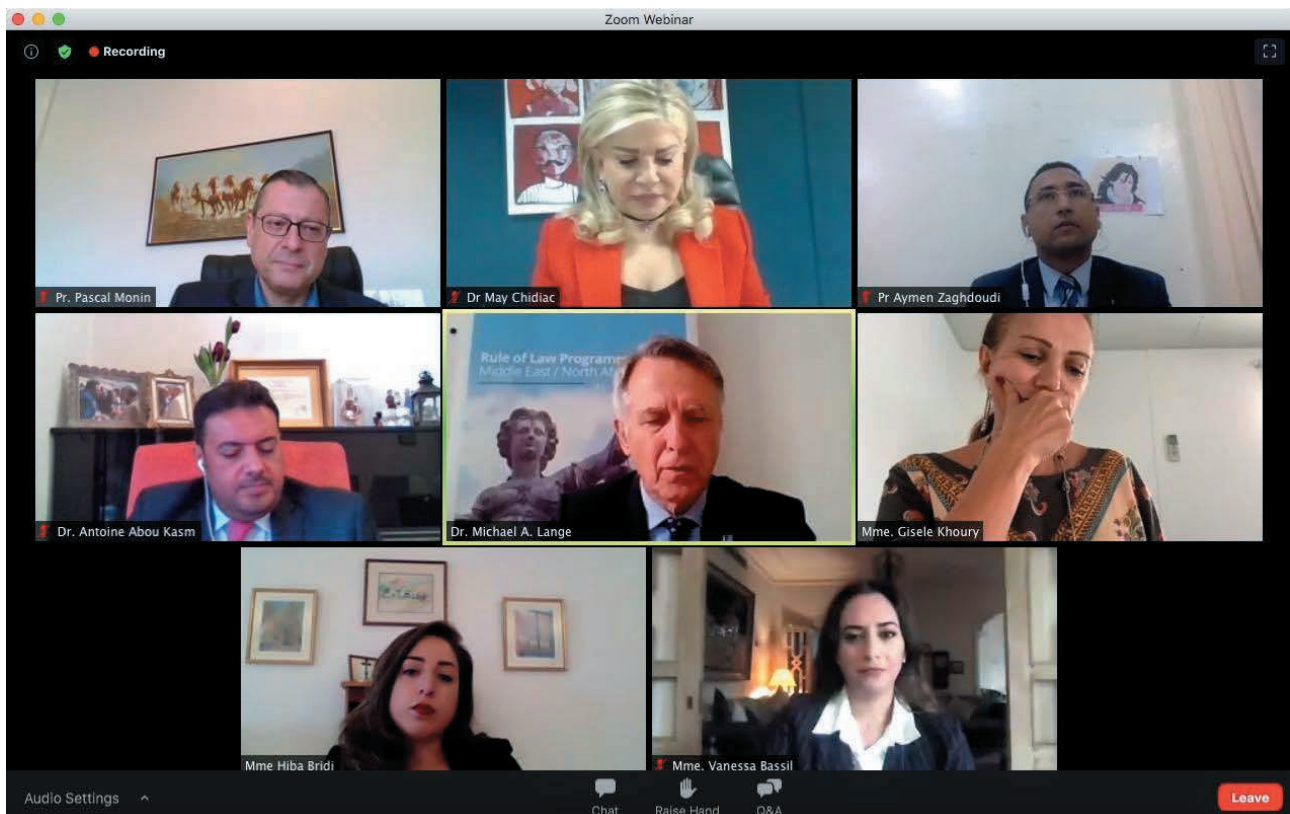
The budget for the year 2022, which was approved on 26-9-2022, provided a solution to this problem by amending this article. Article 101 of the law has also been amended to increase the spending ceiling set for the mayor and the municipal council to facilitate the work of municipalities in response to the demands of several mayors.

Several public administrations and institutions have begun to apply the provisions of the law in the transactions that take place, while several others have not started doing so. In parallel, the Bassel Fuleihan Institute of Finance and Economics, established in 1996, launched courses to train employees and workers to help implement the law. The participants underwent a final exam to assess the knowledge acquired during the training on the provisions of the law.

The economic crisis and the reluctance of employees to apply for daily work in their departments negatively affect the participation in training courses.

# MEDIA, JUDICIARY AND GOOD GOVERNANCE - THE CONSTRUCTION OF A FRAGILE BALANCE.

Wednesday, November 25, 2020



## Event Brief

The judiciary system in a free and democratic constitutional State thrives on people's understanding and confidence in justice. In this context, targeted and appropriate cooperation between judicial authorities and print and online media, radio, cinema and television, is a central element. Through the media, the administration of justice has an impact on the citizens' legal community. For this reason, one of the essential tasks of the judiciary is to maintain contact with the media through active public relations work. Within the framework of legal provisions, judicial authorities respond to the request for information from the press. In doing so, the legal interests protected by the Constitution, particularly the personal rights of the persons concerned, must be respected in a manner consistent with the rule of law.

The press and the judiciary have a complex relationship. The difficulty stems from the different missions of the two institutions. Instead of excluding the media from judicial work, is it not better to try to work better with the news media in order to enlighten citizens on the functioning of the Judiciary? How to ensure good practices in media coverage of court cases?

In most Western countries it is the responsibility of the spokesperson of the Court to actively explain the procedures, context and decision-making processes and thus make them comprehensible to the public. If they don't, the lack of transparency urges journalists to alternative sources: Lawyers and PR professionals who specialize in communicating about legal disputes, often seizing this opportunity and risk to determine the direction of the report and therefore public opinion. It cannot be in the interests of the judiciary to leave the field to other actors.

In this context, the Observatory of Public Function and Good Governance (OPF) in collaboration with the Konrad-Adenauer-Stiftung regional programme of the Rule of Law, organized on November 25th of 2020 a webinar tackling the linkages between media outlets, and judiciary where subject matter experts discussed the impact of both entities on fostering good governance and the rule of Law.

## Panelists

### Dr. Abou Kasm Antonios

Lawyer and Professor of International law at the Lebanese University and at the LAF's Colleges and a Counsel practicing before international criminal courts. He's the Chair of the Professional Standards Advisory Committee at the ICCBA. Dr. Abou Kasm is a lecturer at the Fouad Shehab Command and Staff College and at the Research and Strategic Studies Centre of the Lebanese Army, and previously a Director of the Faculty of Law and political and administrative sciences of the Lebanese University (4th Branch) and a Professor of Public Law at the Political Sciences Institute of the University of Saint Joseph. He holds many academic degrees with honors and high distinctions.

### Mrs. Bassil Vanessa

Vanessa Bassil is the Founder, President & Executive Director of the Media Association for Peace (MAP), Lebanon. Mrs. Vanessa is a TEDx speaker and the winner of several prizes for her peace media activism. She has visited more than 25 countries to facilitate workshops, speak at conferences and train journalists and activists on media and social change. Vanessa consults for local and international organizations on peace and media training and publications. In 2016, Rotaract Sahel Metn (Lebanon) awarded her a trophy as an "Inspiring Young Leader". Mrs. Bassil is the first Lebanese to earn a Master's degree in Media, Peace and Conflict studies from the United Nations Mandated University for Peace, Costa Rica. She holds two Bachelor degrees in Journalism and Political and Administrative Sciences from the Lebanese University.

### Mrs. Bridi Hiba

Magistrate at the Lebanese Council of State. Judge Bridi has developed a reputation for being an experienced administrative Judge, skilled in Legal Writing, Litigation, Judicial, Administrative Law, and Justice. Judge Hiba initially graduated from Sagesse university with a Bachelor's degree in Law.

### Dr. Chidiac May

Former Lebanese Minister of State for Administrative Development. Dr. May is also a former Journalist at the Lebanese Broadcasting Corporation (LBC) and one of the station's television anchors. She was a Professor of Journalism and Radio/Television at the Notre Dame University-Louaize (NDU) since 1997. She is the Founder and President of the two NGOs; May Chidiac Foundation (MCF) and its affiliated Media Institute (MCF-MI) since 2011. Dr. Chidiac a PhD. in Information and Communication Sciences from Paris 2 Panthéon-Assas University with honorable distinction.



### Mrs. Khoury Gizele

Journalist and president of Samir Kassir Foundation. She co-founded the “Al Rawi” production company. She has worked since 1985 with LBC, MBC, AL-Arabiya, and BBC Arabic. She hosted political decision makers, heads of state, prime ministers and ministers of foreign affairs. Mrs. Khoury currently travels to different countries to meet with predominant Arab and international figures and hear their accounts of events that have shaped history. Mrs. Gizele studied History at the Holy Spirit University of Kaslik, and Media at the Lebanese University.



### Dr. Lange Michael

Dr. Michael A. Lange had been acting Head of the Rule of Law Program Middle East/North Africa till June 2021. Previously team leader, coordinator, country advisor, also Deputy Head of Department Industrial Countries. Dr. Lange has served and gathered experience from multiple countries and regions such as Croatia, the Middle East, Africa, America, and so on. Nevertheless, he has conducted several publications that are mostly available on Kas.de Website. He had studied economics (and sociology) at the Ruhr University Bochum (1971-76), research associate at the Institute for Development Research and Policy in Bochum, and eventually acquired his doctorate in Research OEC in 1983.



### Pr. Zaghdoudi Aymen

Professor at the faculty of laws and political science at the University of Sousse, Tunisia. He is also a Professor assistant in Public law at the Institute of Press and Information Sciences. Pr. Aymen is mainly focused on human rights, media law and internet regulation issues. He graduated as a Doctor of Law (J.D.), Freedom of expression, Law, from Faculté de Droit et de sciences Politiques de Sousse. He also holds a Master’s degree in Constitutional tax law, also in public law from the same University.

# THE FORENSIC AUDIT

Tuesday, December 15, 2020



## Event Brief

"The Observatory of Public Function and Good Governance (OFP)" at Saint Joseph University, in cooperation with the Konrad Adenauer Foundation, resumed its dialogue seminars within the framework of the activities of the Good Governance Forum, organizing a seminar entitled "Forensic Audit towards a State of Transparency and Accountability?" Former Minister Ziad Baroud, former MP Ghassan Mekhayber, Judge Dr. Rana Akoum and former Director General of the Ministry of Finance Alain Bifani participated from the French capital, Paris.

First, a welcome speech by the Director of the "Observatory of public function and Good

Governance," Pr. Pascal Monin, in which he considered that "financial auditing is of great importance in the Central Bank in uncovering facts in front of public opinion and defining responsibilities, leading to accountability and achieving justice."

He said: "It is obvious to emphasize that this audit should include all ministries, departments and public institutions, with the hope that this will allow the opportunity to know how and where public money was spent, and whether the rules and legal procedures have been adhered to in spending and managing public funds."

He thanked the presidency of the Saint Joseph University for "supporting the Observatory in all its national academic

work aimed at the good of Lebanon first and foremost," and said: "We will carry in the Observatory the ladder in width, according to President Fouad Chehab, until things straighten out and we reach good governance, because with this type of governance, and only with it, we will find solutions for Lebanon."

For his part, Bifani pointed out that he does not know "about the accounts of the Central Bank, and this is a big paradox in this country because there are still reserves that are forbidden for the state to know what is happening with the public money."

He said: "I am happy to talk about forensic audit now because this matter was put in the draft budget in 2017





and it was not discussed, and it was also in 2018. I also put it in the government's project four times."

On the reform plan drawn up by the government, he pointed out that "the international community praised it while it was shot internally because no one wants to reform and go to address the current economic crisis."

He added: "They proposed an alternative plan to cover losses through the public property and freeze deposits, which means a terrifying Haircut that may last up to 20 years, and therefore the plan is ridiculous, but it was used to hit the government's plan, and the goal is to reach the impoverishment of the people by throwing losses on them either through the collapse

of the Lebanese pound or even through Haircut."

Regarding forensic auditing, he said: "There is a farce in dealing with the forensic audit file, and the great work we have already done, but there are those who do not want to continue with this file."

He added, "The Central Bank has the autonomy to manage it, but it is owned by the state, and if it suffers a loss, the state is the one who returns its losses."

He revealed that he prepared "the necessary studies on the financial accounts of the Lebanese state, which are lost today between the Audit Bureau and the Presidency of the Council of Ministers," and said: "Since my arrival in the public administration

in 2000, there have been no clear accounts of the Lebanese state, and I worked on reconstituting 28 years of accounts."

"Forensic auditing is self-evident, but the question here is on which side the forensic audit will be?" he asked.

He stressed that "the actual reform begins with political authority and subjecting everyone with this authority to the judiciary, and the problem is not the administration, but the performance from the top of the pyramid to the bottom," wondering: "can the state accept the lifting of banking secrecy to an external administration and refuse to raise it to an internal administration."

In turn, Baroud said that "there is political resistance



not to proceed with the forensic audit,” and said: “There are laws in force and can be followed, and we do not need new laws, although we can pass new laws if necessary.”

He added: “I bet on the judiciary, and I support the automatic publication of forensic audits, but we have to take advantage of this information to move judicially, and within the judiciary, there are assets of powers and jurisdiction.”

He continued: “In addition to judicial oversight, there is popular control that does not accept a half-term solution but wants satisfactory and adequate answers, and the issue is a matter of time and we will reach answers for everything that has happened so far.”

He concluded: “Everyone should follow the slogan ‘All of them means all of them,’ which means that everyone is under the law and accountable”

Mekhayber stressed that “the work of the Parliament and all oversight institutions was not sufficient in the matter of monitoring public funds and on what basis they were spent,” considering that “the role of oversight is disabled by the ruling political system, due to gaps in institutions, some of which were formed without effectiveness.”

He was not surprised that “Lebanon turns into a corrupt country because everyone is involved and no one has an interest in revealing corruption files,” stressing that “what is happening now in the matter of forensic

auditing is a lie to the Lebanese people.”

Akoum explained the fact that new laws have been passed to lift banking secrecy and how to deal with forensic auditing from a legal point of view. It is noteworthy that the seminar, which was held on the campus of the Faculty of Humanities, was transmitted via Zoom, in addition to the official pages of the Observatory and Saint Joseph University via Facebook, and was attended by a large number of university students.

## Panelists



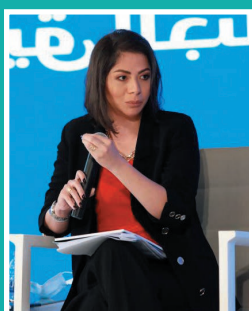
### Me Baroud Ziad

Me Ziad Baroud is the former Minister of Interior and Municipalities (MoIM) of the Republic of Lebanon between 2008 and 2011. A court lawyer by practice, Managing Partner at HBD-T Law Firm and arbitrator, Me Baroud held a number of academic posts as a lecturer at Université Saint-Joseph and has a number of publications on subjects related to local governance, decentralization, human rights, and other political and legal issues. Under his leadership, the Ministry was awarded the 2010 United Nations Public Service Award First Prize. As for himself, he has also received several awards, including the “Grand Officer de l’Ordre National du Cèdre”. Me. Baroud has a law degree from Université Saint-Joseph and pursued his doctoral studies in Paris.



### Me Mekhayber Ghassan

Former Member of the Lebanese Parliament (2002-2018), a lawyer and a Human Rights and anti-corruption activist. In addition, Me Mekhayber is a member of the Parliamentary Committees on Law and administration, and on the environment. He is also the rapporteur of the Parliamentary committee on Human Rights. Me Ghassan is known to have sponsored the Access to Information Law and followed it through the elections. He obtained his law degree from Université Saint Joseph in 1981 and his LL.M. from Harvard Law School in 1983.



### Dr. Akoum Rana

Judge Rana Akoum occupies the position of Head of the Execution Department in Al-Matn and is the liaison officer for anti-corruption affairs at the Ministry of Justice with the United Nations Office on Drugs and Crime (UNODC). She is the author of several books, including “Registering the Lebanese Unregistered in the Nufus Records” and “The Temporary Manager in Troubled Banks: A Comparison of the Lebanese and French Laws”. She holds a PhD in Business Law from the Lebanese University and is a lecturer at the Lebanese University.



### Mr. Bifani Alain

Mr. Bifani is the President of the Citizen Foundation for Lebanon, and an international consultant. He has a long and proven track record of achievements and a wide international network. He is the Former General Director of the Ministry of Finance. As director general of Finance, against all odds, he rebuilt the financial accounts of the Lebanese Republic over 28 years, thus paving the way to accountability in the system, and forced the establishment to abide to the tax transparency and exchange of information requirements of the OECD, thus paving the way to tracing ill-gotten assets. He introduced major laws such as insider trading, VAT, capital markets, and many others, in a race against time to avoid the crisis. A year ago, Alain prepared the government plan to exit the crisis, which allowed Lebanon to start negotiations with the IMF. Alain recently published a book, “Destructuring”. He is the author of many studies, papers, and articles. He is Commandeur de l’Ordre du Cedre and Chevalier de la Légion d’Honneur.

# FORENSIC AUDIT... TOWARDS A STATE OF TRANSPARENCY AND ACCOUNTABILITY?

Published on Monday, September 6, 2021

It is enough to review the annual reports of the supervisory bodies to ensure that there are many legal violations in the work of public administrations and institutions that indicate corruption and waste of public money. We did not reach the great collapse by chance without preliminaries. Although convictions are sometimes issued by supervisory bodies such as the Central Inspection, the Civil Service Council and the Audit Bureau, they are often doomed to drawers.

The forensic audit has recently entered the Lebanese scene, which is an unprecedented procedure for Lebanon. We bring an external party from outside the existing political, administrative and supervisory system, and ask him to reveal the hidden. Are we really at a juncture that will allow us to access information that actually reveals the size of the losses of the Central Bank and the operations of spending public money and how it is spent in public administrations, institutions, councils and funds, so that they can entail responsibilities later?

Are we facing a technical process in which the political class has nothing to do with it, or are we facing an integrated process in which roles are distributed? Will the political class obstruct the vetting process? And how?

**1- Forensic Audit Definition:** A Forensic audit differs from a financial audit in terms of the operations it includes. The latter is routine procedures that include financial statements confirming the occurrence of certain financial operations, such as the payment of salaries and wages and the payment of fees of contractors and contractors.

While the forensic audit goes beyond this role to the level of detecting the committed crimes, knowing whether the money spent is a bribe, embezzlement, or waste.

Forensic auditing is based on financial auditing to identify criminal financial activity and uncover those responsible for it through

unquestionable accounting material evidence. It aims for two things:

**A-** Detecting suspicious operations, acts of fraud and financial policies adopted and exposing the wrong practices that have been adopted.

**B-** Identify the departments, institutions, companies and persons who benefited from financial operations and made profits. Uncovering these facts would allow knowing where and how the deposits of Lebanese and foreigners in banks flew, and to accurately define responsibilities.

reach the full facts, the forensic audit must be expanded from the Central Bank to public administrations, institutions, councils and funds to reveal the full financial operations. Without this, it will be impossible to form a comprehensive picture of what happened.

**2 - The prevailing reality:** There is a saying circulating that "abandoned money teaches people how to steal." In Lebanon, public money is "abandoned" money, and the Parliament which has the first oversight role on spending public money, is negligent. The ruling political system asks about the disruption of this role. The Lebanese think that their system is a parliamentary democracy, and in fact, it is a corrupt sectarian oligarchy. The provisions of the Constitution and laws are not adhered to in many cases, and the role of institutions is disrupted by the gaps that sometimes affect powers, which makes the control of these institutions, especially the Parliament a formality. A good example of this is what happened in the financial accounts of the State carried out by the Ministry of Finance, which includes operations and activities over a period of 28 years. These accounts were "detained" by the government and not referred to the Parliament, on the pretext that they should be subject to the Audit Bureau first. Although the opinions of legal experts were unanimous that they should be referred to the Council independently of the Audit Bureau. This is a clear trend for the political system to evade accountability.

For decades, the Parliament has not received any financial accounts of public administrations, institutions and municipalities. On the other hand, the Audit Bureau was unable to conduct the due audit because of a severe shortage of its workers

and the lack of powers given to it.

Despite the great achievement of approving the general budget in 2017 after 12 years of interruption, the matter was accompanied by a terrible constitutional violation, which is the failure to approve the audit of government accounts in contrary to the provisions of Article 87 of the Constitution. This requires a forensic audit to find out how public money is spent and to determine responsibilities.

The scene is complemented by the spread of the lack of accountability and lack of clarity of numbers. Opinions can diversify into a legal text approach, but whatever the justifications are, the numbers cannot be a point of view.

In order to effectively control public funds and their spending, the following should be dedicated:

**A- Transparency:** Transparency requires unhindered access to financial information. The Access to Information Act passed in 2017 provides part of this possibility.

Audits can be secured by the ordinary auditors of the State Audit Bureau. It is strange what former MP Ghassan Mekhayber said in the seminar "Forensic Audit ... Towards a state of transparency and accountability" Those officials in the State Audit Bureau told him that the Audit Bureau has rarely audited the state's financial accounts since the fifties of the last century! Throughout the fifties, sixties and seventies, the Parliament approved the cuts of accounts with a reservation coupled with the opinion that may be issued by the Audit Bureau.

One of the auditors is also the government commissioner at the Central Bank, which is not controlled by the audit office. It is ironic that the Minister of Finance complains about the inability to access the accounts of the Central Bank, and that the state is forced to use an international auditing company, knowing that the legal texts give the government commissioner the right to access all financial accounts of the Central Bank, public administrations, institutions and municipalities, and to see everything related to assets, funds and gold... owned by the bank. All these measures are actually hampered by political resistance.

**B- Accountability and liability:** Failure prevails over the performance of the Parliament. In medium countries in the concept of democratic practice, the government holds accountability

sessions (questions and answers) at a rate of one session per week, while the number of sessions of the Lebanese Parliament since 1992 has reached 21 sessions, which is less than one session per week, according to former MP Ghassan Mekhayber.

The Parliament does not play its role in other domains. For 12 years between 2005 and 2017, public budgets were not approved, and account cuts were not referred thereafter. This has disrupted the possibility of parliamentary accountability.

What the Ministry of Finance has accomplished in terms of financial accounts for public administrations and institutions in the state is a real mine that would reveal many facts if they were referred to the Parliament, and the Finance and Budget Committee studied them.

The Access to Information Act could allow access to such financial accounts. However, the Central Bank invokes the existence of the Banking Secrecy Law, which requires the amendment of this law, which was developed in specific circumstances and for clear objectives.

Accountability is also absent in the judiciary and oversight bodies. The first is held by the political system and its role is limited, and the disciplinary judiciary suffers. Mekhayber points out that the former head of the General Disciplinary Council for Employees, Judge Marwan Abboud, stated in an official report that the regulatory bodies refer him only junior officials for accountability, and that senior officials are not referred in front of the authority, noting that the number of referrals per year is less than five employees!

In the absence of preventive measures from the various supervisory bodies, it is not surprising that corruption prevails in most joints of the public sector. Some of the available data allow for a preliminary diagnosis of what happened. In this context, the Lazar consulting firm, commissioned by the government of President Hassan Diab, indicates that the losses of the Central Bank are estimated at between USD 40,000,000,000 and USD 50,000,000,000 that were spent in the various financial operations of the bank.

Determining how these sums were spent and the financial operations that took place would determine where the corruption lies.

The scrutiny of his work started from some facts and data, the most important of which is that the funds were spent in three basic areas: financing government expenditures,

fixing the exchange rate of the Lebanese Lira and financial engineering. Political and financial officials overlooked all the operations carried out by the Central Bank in exchange for financing the budget deficit and stabilizing the Lebanese Lira. The cost of these destructive policies was very high.

In this context, an audit of government expenditures would make it a lot clearer. Available data indicate that these expenditures in 2005 were about USD 5,000,000,000 annually and jumped in 2020 to about USD 19,000,000,000. 50% of expenditures are spent on salaries and wages, which is a catastrophic figure in light of the surplus of employees, rampant corruption and the political employment that did not stop until 2018 when 5,000 people were employed in various departments and public institutions a few months before the parliamentary elections, despite the existence of a decision to prevent employment in all its forms.

Electricity accounts for about 10% of public spending. Over a period of 30 years, USD 45,000,000,000 has been spent on this sector, equivalent to 45% of public debt, to purchase fuel for power plants. Little went to investment expenses in electricity.

The public debt service and debt interest of the Central Bank and banks consume 25% of expenditures. Banks have benefited to varying degrees from high-interest rates on debt securities for many years.

Billions were spent to stabilize the exchange rate at 1500 pounds to the dollar in a way that contradicts all economic and financial rules. A large part of the funds of local depositors, scattered around the world and foreigners were used in these operations.

Financial engineering that began in 2015 has drained billions of depositors' money. Former Finance Ministry Director-General Alain Bifani cleared that benefits from these engineering amounted to between USD 60,000,000,000 and USD 65,000,000,000, which went into the pockets of beneficiaries. As a result of engineering, the Central Bank paid very high-interest rates to banks in exchange for more than 50% of depositors' money placed at its disposal. Depositors benefited from the high-interest rates in turn and transferred their money out of Lebanon. Part of the role of forensic auditing is to uncover financial engineering scandals, as the audit should show the names and numbers of the beneficiaries so that it can be determined who should bear the losses.

According to Bifani, the economic plan for the advancement developed by the government of President Hassan Diab provided the required solution by proposing that the major shareholders benefiting from financial engineering contribute between 15 and 20% of the value of the funds they benefited from, capitalizing banks again, provided that they recover these funds later, in addition to recovering a large part of the wasted funds and employing them in capitalization.

As for the alternative plan contemplated by the plunderers of depositors' money and public money, it is based on compensating losses through the use of public property, which leads to its volatilization, and freezing deposits, which means the adoption of Hair Cuts devouring savings, and the accompanying possibility of not recovering part of the deposits until after many years.

In the same context falls the refusal to restructure the internal debt without which Lebanon cannot recover its economic health.

**3- The decision of the Parliament:** The door to forensic auditing is opened, starting with the Central Bank, after a decision by the Parliament to audit the accounts of the bank, ministries, independent departments, councils, funds and public institutions without any obstacle or invocation of banking secrecy or otherwise.

But this decision is hybrid, according to former minister Ziad Baroud at the seminar "Forensic Audit... Towards a state of transparency and accountability?". It was probably taken on the basis of Article 145 of the Rules of Procedure of the Chamber of Deputies, which stipulates that when the President of the Republic sends a letter to the House, the latter shall discuss it and take the appropriate position, measure or decision. The question raised deals with the legal nature of the decision, as it does not fall within the decisions that the Parliament can take and stipulated in Article 40 of the Rules of Procedure, such as the decision to lift the immunity of a deputy. The decision has a mandatory character without the possibility of appealing it before the Constitutional Council, which makes it a higher rank than laws, including constitutional laws. However, the decision enshrined morally the principle of forensic auditing, which was later initiated at the Central Bank on the basis of it.

However, this does not exempt the adoption of laws necessary for conducting forensic audits in private institutions. The decision that

was issued includes public administrations and institutions, the Central Bank, funds and municipalities only.

It is not permissible to invoke banking secrecy because of the lack of forensic audit in the departments and institutions of the public sector. Thus, for example, the Council of Ministers can request through the Minister of Finance the financial accounts of the world, without the need to pass a law to lift banking secrecy. As for forensic auditing in the private sector, the matter is different, and the decision issued by the Parliament does not allow, for example, commercial banks to lift banking secrecy from the accounts of their depositors. And things won't be right unless passing a law to lift Banking secrecy.

It is necessary to note that the Banking Secrecy Act of 1956 is an exception, with its own circumstances and motives. The exception is always interpreted narrowly and within the limits of the purpose for which it was approved. According to the opinion issued by the Legislation and Consultation Authority in 2020, banking secrecy is removed when certain financial crimes are discovered by a bank through its financial department. Under Article 150 of the Monetary and Credit Law, it is not necessary to reveal the name of the customer when a financial crime occurs, and it can be referred to by a number or symbol, which pretends to be subject to the Banking Secrecy Law.

In exchange for securing bank secrecy, crimes must be reported when they occur. The Legislation and Consultation Authority considered that priority is given to the public interest, and therefore the obligation to detect crimes is presented on the basis of confidentiality.

Judge Dr. Rana Akoum pointed out in the seminar "Forensic Audit... Towards a state of transparency and accountability?" that "the violation of banking secrecy does not constitute a crime punishable by law unless it is committed intentionally with the intention of causing damage." Therefore, violating banking secrecy with the intention of revealing crimes is irreproachable.

#### **4- Accounts of the Ministry of Finance:**

The former Director General of the Ministry of Finance, Alain Bifani, admitted in the mentioned seminar that he does not know much about the financial accounts of the Central Central Bank, describing it as "one of the great ironies in the strange Lebanese

state." This indicates that there are reserves that prevent knowing how they spend public money.

Without forensic auditing, it is not possible to know where and how public funds were spent, and to determine the responsibilities and hold those responsible for the losses. This explains the reluctance of the political system to audit in order to avoid bearing losses. Instead, there was an attempt to pass it on to depositors through two things: the collapse of the Lebanese pound and the Hair Cuts operations.

Between 2000 and 2012, according to Bifani, the Ministry of Finance carried out a comprehensive audit of the state's financial accounts for 28 years. As a result, the team that accomplished this task was punished by being deprived of the annual bonuses given to employees in the Ministry of Finance.

The result of the audit has not been placed on the agenda of the Council of Ministers until today, and has not been referred to the Parliament for the information of deputies. The fear is that the fate of the forensic audit will be similar to that of the Ministry of Finance, as long as the intention of the ruling system is to blame the Lebanese for losses.

Former MP Ghassan Mekhayber proposed publishing these accounts and opening a public debate on them, as is the case in democratic countries, pointing out that he relies on citizen participation. He pointed out that there are independent institutions in these countries called "budget office", which are currently being worked to establish analogues in Lebanon, and explained that these institutions include economists and auditors to audit financial accounts because the latter is very complex, and studying them requires such experiences. He pointed out that the arrival of accounts to the deputies is not enough, and studying them by these institutions is necessary to draw conclusions and announce the facts.

As a result, a public debate is opened about them, and the commits are referred to the competent judiciary (criminal, administrative or disciplinary judiciary) for the necessary action.

**5- Launch of the audit:** The journey of resorting to a forensic auditing began with the proposal to contract with "Kroll" and then things faltered under the pretext that it was a company linked or connected to Israel. Another company with a commercial office in

Israel was contemplated, and it is contracted with the Central Central Bank for marketing tasks. Things settled after a big political tug-of-war over the company "Alvarez & Marsal".

In the legal part, the door opens to forensic audit by suspending the secret law banking for a year, and the company "Alvarez & Marsal" resumed its duties assigned to it by the caretaker government at the Central Central Bank in July 2020. The challenge remains whether suspending the law is sufficient to conduct the required scrutiny of ministries, public institutions, councils and funds.

What is required of "Alvarez & Marsal" is at the heart of the mission of the Court of Audit, in terms of the pre- and post-audit it conducts on public spending and the completion of the cutting of accounts from budgets. If this regulatory body had carried out its specific tasks on time, it would not have been done using this company.

What has been achieved in terms of suspending the banking secrecy law would open many paths for scrutiny. If the audit expands from the accounts of the Central Bank and account No. 36 to the accounts of public administrations and institutions and common interests, a lot can be discovered. For example, a project that has been awarded in accordance with the administrative and legal procedures and whose alimony has been held and whose necessary tender has been made, can be rebonded after a period of time in another public administration concerned with it. This is a situation that exists in many deals. Therefore, the audit is not enough, but it should be completed by investigating those involved in wasting public money by lifting banking secrecy from their accounts. Therefore, the law on lifting banking secrecy should be approved for all those dealing with public affairs. An attempt was made to pass this law but was aborted in the parliamentary subcommittee that was formed for it.

The results of the audit will claim prosecution, without excluding the application of existing legal texts.

**A- Prosecution and complaint:** The results of the forensic audit should be referred to the judiciary part for legal action. Some lawyers support the automatic publication of audit results unless they contradict certain special laws. As for the prosecution, it is related to the nature of each crime.

Popular follow-up is supposed to play a pivotal role in keeping pace with matters

leading to judicial rulings because Lebanese public opinion demands full facts without any equivocation.

**B- Existing laws:** The results of the forensic audit must be relevant in the event that crimes are proven at the judiciary. The initiation of proceedings is subject to complex mechanisms. The authority also does not often resort to initiating lawsuits. However, much can be done through existing laws. The law of illicit enrichment provides an effective means in this area. Illicit enrichment means achieving enrichment through sources through which the person concerned is not entitled to benefit from. The relationship between forensic auditing and illicit enrichment lies in the fact that when crimes of embezzlement of public funds, bribery or exchange of influence are discovered, a certain income is illegally available to the person concerned.

The Illicit Enrichment Law legislated on 16/10/2020 achieved a qualitative leap in terms of the concept of crime and its elements, and the principles of prosecution. Under the old law, anyone who claimed that a particular person had committed the crime of illicit enrichment had to convict him of another offense such as bribery, exchange of influence or embezzlement, which made prosecution difficult.

Today, illicit enrichment affects every person who does any work for the benefit of the Lebanese state or deals with public funds. Those covered by the law have become public employees of various designations, contractors and undertakers who benefit from public tenders and auctions.

It adopts standards, especially those embodied in the United Nations Convention against Corruption, which Lebanon acceded to on April 22, 2009, with 178 other countries. The legislator also achieved another qualitative leap and overturned the burden of proving guilt. Thus, instead of the Public Prosecution looking at enrichment through the abnormal increase in money and property, the suspect has to justify the wealth obtained when suspicion occurs, and its sources (inheritance - work of a former producer to work in the public service - winning the lotto award ...)

While the law required the payment of LBP 25,000,000 to claim in front of the Public Prosecution in the case of illicit enrichment, the amount was reduced to only LBP 3,000,000 to be placed in the fund of the Ministry of



Justice and returned as a judgment unless the plaintiff was considered arbitrary, and the lawsuit was dismissed.

The old law did not encourage people to report corruption, as it required a bail of LBP 25,000,000 to initiate the lawsuit. In the event that the lawsuit is dismissed, the plaintiff should be imprisoned and should pay a fine of up to LBP 200,000,000. The Financial Public Prosecution can now move the case without any bail.

The Law on the Protection of Whistleblowers issued in September 2018 encouraged every person who witnessed, involved or not involved to report the information he possessed, while the law provides the required protection.

The first article of Law 44/2015 on money laundering and combating terrorism is listed in 20 articles of illegal funds.

Article nine states that corruption is considered illicit property, including bribery, abuse of office, embezzlement and illicit enrichment.

The forensic audit would provide a lot of data, facts and evidence that help in the prosecution of corruption charges in accordance with all the mentioned laws.

**6- Steps required to complete the forensic audit:** It is necessary to create a suitable environment to combat corruption, and to resort to some specific procedures and steps that allow reaching the desired goal, the most important of which are:

**A- Activating supervision and accountability of the Parliament:** Although this oversight is independent of the work of forensic auditing, the exercise of the Council's oversight role opens the door wide to accountability. This is done by intensifying the government's question sessions, activating the work of committees, forming subcommittees to study specific files when necessary, and cooperating with civil society organizations and those with the required expertise.

**B- Amending the Banking Secrecy Law to allow the prosecution of corruption crimes:** It is no longer permissible to invoke the existence of this law to provide protection for the corrupt people and looters of public funds. The Banking Secrecy Act was passed in 1956 with the aim of attracting foreign deposits and economic investments. The reality today imposes the removal of banking secrecy from

the accounts of all those dealing with public money in order to detect any possible crimes.

**C- The comprehensiveness of forensic audits of all public administrations and institutions, councils, funds and municipalities:** The Parliament decided on the principle of comprehensiveness, which allows knowing all the paths of financial operations in the Lebanese state, and the formation of financial accounting data that allows the determination of responsibilities leading to supervision accountability.

**D- Transparency in announcing the results of the forensic audit:** It is represented by the publication of results that do not contradict the special laws. It should be required to be published as widely as possible in order to inform the public opinion and open the debate on the reached results.

**E- Monitoring and Accountability:** This is done by moving the judiciary and regulatory bodies to determine responsibilities based on the data provided by forensic auditing, leading to accountability and issuing judgments and decisions.

**F- Holding those responsible for public waste and looting of public money losses:** This is the heart of the matter because the perpetrators of corruption crimes and waste of public money seek to hold small depositors responsible for the losses caused through the Lira and Hair Cuts, while compensating for losses should be through the contribution of the major beneficiaries of financial engineering by capitalizing banks again, provided that they recover these funds later, in addition to recovering a large part of the wasted funds and employing them in capitalization.

The following diagram summarizes the required steps:  
Graph: Forensic audit application:



## Policy Review conducted in December 2022

The truth about the economic collapse and how public money was wasted and spent cannot be known without a thorough forensic audit. The forensic audit journey in Lebanon has been hampered more than once as a result of the lack of inclusive political will. Despite what Alvarez and Marsal did at the Central Bank after suspending the banking secrecy law for a year, things did not progress. Later, a new law was approved to extend the work of the aforementioned company, which was published in the Official Gazette on 10-3-2022. This extension has left a positive reality, especially in terms of the audit company's follow-up on the work that it had previously undertaken.

One of the observations on the law is that the phrase "Central Bank accounts, whatever the nature of these accounts," wasn't available which leaves room for the Governor of the Central Bank to circumvent the law and disable the forensic audit process.

The new amendment came so that the accounts became "all accounts that are involved in forensic audits, including information related to bank accounts belonging to Central Bank employees, with all operations recorded on these accounts." The comprehensiveness of the audit was thus ensured by extensive accounts.

Things have been in place for some time in the hope that they will move after the election of a new president of the republic. The comprehensiveness of forensic auditing is also required to address all ministries and public institutions.

The outcome of the audit and the work of the Ministry of Finance and the relevant supervisory agencies are essential to moving in the direction of accountability and reform. It is noteworthy that the forensic audit is one of the basic conditions imposed by the international community and the International Monetary Fund on Lebanon in exchange for support and assistance.

# ANTI-CORRUPTION LAWS

Friday, May 21, 2021



## Event Brief

Within the framework of achieving good governance, strengthening governance and combating corruption in the public and private sectors, the “Observatory of Public Function and Good Governance” at Saint Joseph University, in cooperation with the Konrad-Adenauer-Stiftung (KAS), organized a virtual seminar entitled “Fighting Corruption: What Prevents the Application of Laws”, on Friday, May 21, 2021, at the campus of the Faculty of Social Sciences on Huvelin Street.

The seminar was attended by the former Minister of Justice Pr. Ibrahim Najjar, the former MP Nehmat Frem, the head of the Central Inspection Judge Georges Attieh, lawyer Carine Tohme, a member of the administrative board of the Lebanese Association for Taxpayers’ Rights, the coordinator of the ACT project Ahmad Al Assi for the “We are all Against Corruption” campaign, in addition to the project manager at the Konrad Adenauer Foundation, Hamad Elias.

The beginning was with a welcome speech by the Director of the “Observatory of Public Function and Good Governance,” Pr. Pascal Monin, who pointed out that everyone knows the magnitude of corruption in Lebanon, but does the political will to fight corruption and follow the path of reform exist among the people of power and the people of politics? Dr. Monin considered that the state and its institutions today are in a state of disintegration and dissolution, and the institutions established by President Fouad Chehab are suffering, and the journey of restoring the spirit of the state begins with the fight against corruption.

Former Justice Minister Ibrahim Najjar considered that there is no “fight against corruption” in the absence of a state of law, and the rule of law means that the law must be respected in collecting taxes, creating an armed force, correct management and applying laws as required, stressing that “the fight against corruption is not only with slogans and speeches.”

Najjar added: “There is no longer a culture of law in Lebanon, “The smart one takes advantage of his intelligence and the hand that you cannot overcome, accept it and pray that it will be broken,” all these sayings and their application led to the absence of a culture of law in Lebanon, and we no longer have anyone applying the rule of law because Lebanon is disjointed today, and all sectors collapsed,” pointing out that “corruption is rampant in Lebanon, and the rule of good law does not exist in Lebanon today.”

The former justice minister continued: “The state must be strong, capable and fair, meaning that according to the law the state must collect taxes and through them, the public facility is secured, which results in armed forces and security forces that protect the country when there is a ‘responsible mentality’ we have a state.”

Najjar presented his experience during his tenure as Minister of Justice, noting that he tried to apply the law and did not respond to any political reference, but in every step he decided to take, he faced great political pressure.

He said: “As Minister of Justice, I transferred 18 files of corrupt judges to the judicial

inspection file, and only one judge was dismissed because political mediation did all that could be done to protect these judges, not to mention the huge millions of dollars offered several times in exchange for accepting to 'pass' corruption files that I rejected, of course."

In turn, the former MP Nehmat Frem pointed out that he ran to the prosecution to change the reality that we have reached today, stressing that he was never surprised by the reality, and added: "I saw that the main problem is that the current belief of political affairs is that state institutions are legitimized for captivity and can be exploited after entering the state, and this process began in 1991 when a law was passed that allows any partisan to assume administrative responsibility in the Lebanese state."

"Who speaks today on behalf of Lebanon?" he asked. He added that "the political system considers the state to be a spoil of war, and Lebanon can only be advanced by liberating the state from corruption."

He added: "We have a year to fight for the survival of Lebanon, and the vision is clear by rebuilding the state on productivity and effectiveness based on the art of building institutions," revealing that he is in the process of forming a political front across sects and regions to contest the upcoming parliamentary elections and bring about great change.

He continued: "We were late to understand corruption in Lebanon, as there is a very smart system that attracts and steals money, by attracting Lebanese tourists and expatriates with their money and stealing it in Lebanon by offering them illusions."

Frem warned of the current situation, pointing out that "we are facing the demise of Lebanon as we know it and there is an intention to destroy everything that Lebanon has possessed for many years, Lebanon's schools, universities, culture and everything we know about it is currently being destroyed, and today we are facing a real moment, either going to rebuild Lebanon by entering strongly into the Parliament or allowing the system to continue to destroy Lebanon."

Regarding the cost of corruption, Frem indicated that we must collect all the money that entered Lebanon since 1991 and subtract it from what is left of it today.

The head of the Central Inspection, Judge Georges Attieh, considered that "in Lebanon we have the best laws, but their application

was not correct and this application was not respected," and added: "The Lebanese administration works under the supervision of regulatory bodies that have marginalized their work by not developing them for thirty years, the owners have existed since 1959, only 30% of it remains today to monitor the public administration, and this is impossible to apply appropriately."

Attia continued: "The administrative path is not respected in the Lebanese state, administrative transactions must be directed from the bottom of the administrative ladder to the highest references, and this is the basis of work and laws set according to the administrative hierarchy, but to shorten the work in the minister's office and his advisers is corruption."

Attia pointed out that the decisions of the Central Inspection Board are not respected and there are dozens of decisions that have not been respected for twenty years and more.

Both Ahmad Al Assi and lawyer Carine Tohme explained the anti-corruption and transparency enhancement project in Lebanon with a project funded by the European Union and Expertise France, and the activities addressed by the campaign, which aims to reach the largest possible segment of citizens and promote a culture of anti-corruption, and to help them understand the definition of corruption, and how to confront it, through several training programs and conferences that affect school and university students.

It is noteworthy that the main objective of launching the "Good Governance Forum" is to create a motivational framework to build more applicable public policies, taking into account the standards of good governance, and providing a means of pressure in the hands of the Lebanese citizen by introducing him to his rights and duties, and also aims to provide available information on the work of the state, its departments and institutions, and to identify matters and aspects that can be improved in public administration.

This forum is a link between decision-makers and influencers on the one hand, and public opinion on the other. It also seeks to open up towards the private sector in the future, based on the firm conviction of the need to achieve governance standards in this sector, in addition to civil society institutions and in the legal and human rights fields and all community issues.



## PANELISTS

### Mr. Al Assi Ahmed

Mr. Ahmed Al Assi is a General Director of the campaign "All Against Corruption" by Deputy Coordinator of the ACT Project.



### Judge Attieh Georges

Head of the Central Inspection since 2017. He is a Judge. He served as the Head of the Enforcement department, the tribunal of violations and proceedings, and the court of execution of contracts for vehicles. Moreover, he is a professor of Law at La Sagesse University and Université Saint Joseph. He is also a trainer at the Institute of Finance Basil Fuleihan.

He is known to pursue the road of administrative reform stating that accountability should be readily achieved. He holds several degrees in Law from the Lebanese University.





### Dr. Frem Nehmat

Member of the Lebanese Parliament. Also served as the Chair of the National Economy, Trade, Industry & Planning Parliamentary Commission and as an active member in the Immigrants and Foreign Affairs Parliamentary Commission at the time. Moreover, he is known to be a businessman, and the CEO of INDEVCO group, also the Founder and board member of several associations. He launched the Better Lebanon initiative to provide sustainable development, humanitarian aid and social support. Nevertheless, he holds two US patents. Initially an engineer, Dr. Frem graduated from the American University of Beirut with a bachelor's degree in Electrical Engineering in 1991. He then completed a postgraduate diploma in leadership and business from Harvard University Business School, Georgetown University Business School and Stanford University Business School. In July 2018, he received a Doctorate Honoris Causa from the Holy Spirit University of Kaslik.



### MP. Najjar Ibrahim

Former Minister of Justice (2008-2011). His Excellency is a professor at USJ, faculty of law and a lawyer. His legal research has contributed to the modification of the French laws. His Excellency has advocated and signed important bilateral judicial cooperation treaties with several European and Arab countries. In 2010 he was awarded the National Medal for Human Rights in recognition of his draft law to abolish death penalty in Lebanon, and many other distinctions. Ibrahim Najjar is the author of numerous and important legal books and articles in Lebanon and France (Dalloz Encyclopedia, Dalloz Journal, etc...) He studied at the University of Saint-Joseph in Beirut and in France. He is the founder and editor of The Lebanese Review of Arab and International Arbitration and has published for 35 years the Saint Joseph Faculty of Law Journal. He was appointed as President of the Disciplinary Board of the Special Tribunal for Lebanon, and held numerous honorable positions. He also founded the Ibrahim Najjar NGO for Culture and Freedom.



### Me Tohme Carine

Member of the Beirut Bar Association since 2004 and managing partner of Tohme Law Firm since 2014. She is also a member of ALDIC - The Lebanese Association for Taxpayers rights, aiming to promote tax ethics and compliance by informing citizens about their rights and obligations and by enlightening them on issues and challenges of taxation. Carine Tohme is a lawyer holding an MBA degree and a higher master's degree in international cooperation, humanitarian and development policy, as well as a diploma in mediation.

# FIGHTING CORRUPTION: WHAT PREVENTS THE APPLICATION OF LAWS?

Published on Monday, November 8, 2021

No one can deny that Lebanon has been immersed in corruption since its independence, and the Lebanese have paid a tremendous price for it in economic, political, social, and environmental aspects. Some have complained of a corruption culture in light of the government's limited achievements in fighting this problem. An examination of the yearly reports of oversight organizations reveals the amount of corruption in public administrations and institutions, municipalities, and other governmental institutions.

Since independence, statements and political attitudes have confirmed the deepening of corruption. Almost all ministerial statements and the projects of parties and currents reclaim that fighting corruption is their goal.

The international community and international economic entities such as the International Monetary Fund and the World Bank have repeatedly urged Lebanon's leadership to fight corruption and have made it a condition for receiving economic and financial support. In a press conference on January 29, 2021, French President Emmanuel Macron criticized the current condition in Lebanon, pointing to "an alliance between corruption and intimidation."

The popular movements that began on October 17, 2019, emphasized the importance of fighting corruption, and participants in the sit-ins and protests did not hesitate to call out the corruptors by name, and put forward the slogan "All of them means all of them" in reference to the fact that corruption is generalized to the entire ruling system.

It is no secret that resolving Lebanon's economic crisis demands immediate improvements, the most important of which is the battle against the prevention and of corruption.

**1- The definition of corruption:** The World Bank defines corruption as "the abuse of power for personal gain". However, the reality

shows that the spread of corruption is far larger, as it involves exchange of authority, bribery, embezzlement, fraud, manipulation of public procurement transactions, illegal enrichment, administrative appointments based on clientelism rather than competency and merit... All of them are forms of violating the law, the regulations, and the ethical principles that should control public-sector labor.

Corruption is not confined to this sector; it also exists in the private sector through tax evasion and cooperation between contractors in public procurements on the one hand, and with public sector personnel and employees on the other, as well as circumvention of legal texts and duty avoidance...

The findings of international agencies concerned with corruption relate to the current Lebanese reality. According to Transparency International's most recent ranking, Lebanon is rated 137th out of 180 countries.

## **2- Lebanon and the fight against corruption:**

To combat corruption, a full system of institutions, regulations, and processes must be established within the context of working to achieve the intended aim.

In this context, the founding of the Ministry of Administrative Reform in the 1990s was later renamed the Ministry of Administrative Development.

Lebanon's international legal commitment came with its membership in the United Nations Convention Against Corruption on April 22, 2009, with 178 other nations. The Lebanese government agreed to implement a series of fundamental law measures aimed at combating corruption as part of this agreement. It also agreed to report on the steps it had taken to carry out its commitments.

After 12 years of this development, it can be said that Lebanon has not provided much in practice in the context of combating corruption, even if many related laws were passed.

**A- The booty state:** It is certain that the problem is not in the laws, and corruption may be tackled by the application of current and new laws that have been adopted, if there is political will to do so. Jurists agree that the culture of the state of institutions is absent, while the culture of impunity and law-breaking dominates.

One factor contributing to the rise of corruption is that the majority of politicians



regard public administrations and institutions as prizes of war to be used for personal gain rather than in the public interest. Thus, politicians, parties, and currents strive to place their loyalists and patronage system in administrative posts wherever possible in order to ensure that they and their followers obtain services regardless of the law.

Legislative Decree 112/1959, Article 15, paragraph one restricts employees from "participating in political affairs, joining political parties, or wearing the sign of a party...". With the end of the war and the admission of its rulers to the government, party membership became a requirement for nomination to major administrative positions, dealing a devastating blow to public administrations and institutions.

Employees and senior cadres in public administration during the Chehab period, such as Fouad Boutros, Elias Sarkis, and Farid Al-Dahdah, played significant roles in the construction of productive and innovative government institutions, as recorded in history.

The hiring of 5,000 persons in 2018 despite the existence of a resolution by the Council of Ministers to prohibit employment in its many forms is one of the most obvious examples of intentional sabotage of the public administration. The confirmation of the salary scale for public sector employees in 2017, which was viewed as a political bribe month before the legislative elections, falls under the same umbrella.

Approximately 320,000 people work in the public sector today, including employees, workers, contractors, and wage earners. According to estimations, no one in the Lebanese government has a definite and correct data for the number of employees. This fact was examined by Dr. Nehmat Frem, the former head of the parliamentary economics and planning committee, who failed to discover the required number at the relevant control organizations.

**B- The prevailing administrative reality:** The Central Inspection is in charge of supervising the work of public sector employees. It works with personnel dating back to 1959, therefore the changes and developments that have occurred necessitate a fundamental shift. Furthermore, the political will strives to marginalize and weaken the role of regulatory authorities, including inspection. The statistics on the inspection apparatus are sufficient to convey the disastrous state that

exists within it. The Inspection Department oversees 1100 towns and 150 governmental offices and institutions that employ around 130,000 people. Ten administrative inspectors supervise the administrative inspection, ten financial inspectors supervise the financial inspection, seven engineers supervise the engineering inspection, two doctors supervise the health inspection, two agricultural inspectors supervise the agricultural inspection, two agricultural engineers in agricultural inspection and 16 educational inspectors monitor 1,350 public schools and 350 technical colleges.

Despite the head of the Central Inspection's demands and evaluations to solve the issues, he only received promises that remained lifeless letters.

Another administrative fault as bad as the previous one is a disregard for the administrative flow of transactions. Laws, particularly Legislative Decrees 111 and 112 published in 1959, demand that transactions be lifted from the bottom of the administrative ladder to the top of the pyramid, which is necessary so that each employee may express his or her opinion based on his or her specialty. When his superior contradicts his opinion, Article 14-paragraph two relating to employee duties imposes the following: "The employee in general must submit to his direct supervisor's orders and instructions, unless these orders and instructions are in explicit and clear violation of the law. In this situation, the employee must bring the violation to the notice of his superior in writing and is not required to carry out these orders until verified in writing by the supervisor, and he may submit copies of the communication to the Central Inspection Department".

Instead of taking this protective administrative path, most ministries minimize administrative labor in the minister's office and his advisers, and administration is reduced to them, which is clear evidence of corruption.

The current devastation is completed by illegally assigning employees to tasks, places, and centers. For example, all secretaries of the Continental Registry, heads of urban planning centers, and mayors currently hold their positions by appointment rather than by election, robbing them of the necessary immunity because their appointment is linked to the decision of the Minister alone, who can charge whoever he wants any time he wants. As a result, the selected employee is reduced to the status of "slave" in the hands of the

minister.

Contrary to several rulings made by the Civil Service Council and the Central Inspection, the majority of the first category centers are presently filled by commissions.

Administrative corruption is largely caused by political influence. Ibrahim Najjar, a former minister of justice, recalls that he sent to judicial inspection the files of 18 judges who were charged with corruption, pointing out that there was a significant political intervention with him to prevent him from moving further with accountability. It was therefore restricted to the removal of one of the 18 judges!

Najjar also made note of the fact that he wrote a book titled "In the Ministry of Justice" but did not dare to discuss all the attempts of bribery that were made to influence his judgments and cause judges' workloads to be affected.

**C- The financial reality:** There are numerous projects where the division of costs is used in contravention of the Public Accounting Law, and the project occasionally multiplies into more than 50 projects, each worth LBP 75,000,000, in order to avoid any involvement from the management of tenders and the oversight of the Audit Bureau. The rules and regulations are frequently broken when transactions are made in public institutions and agencies outside of the tender department. A sizable number of public institutions and administrations also disobey the rulings made by the State Shura Council and the supervisory authorities.

The yearly budgets allocate money for many made-up organizations that President Michel Aoun frequently mentioned in his speeches. For instance, despite having no worthwhile activities, the "Arabian Horse Breeding" and "White Carnation" clubs received yearly financing from the general budget. In a similar sense, organizations controlled by leaders' wives conduct operations that are similar to those of governmental bodies.

Due to this fact, a thorough forensic audit is necessary to ascertain how public funds are spent, who is responsible for doing so, and how depositors' money was stolen from banks.

**3. Anti-Corruption Laws:** Lebanon should actively participate in regional and global anti-corruption institutions and create a clear plan for doing so. Additionally, current laws should be improved and new ones should be

introduced in order to prevent corruption. To achieve this aim, reform-minded politicians, people, and civic organizations should be urged.

Despite the adoption of several rules intended to fight and prevent corruption, more work still has to be done on the legal front. Many of the mentioned UN Convention's provisions have not yet been implemented. Additionally, certain current laws need to be revised to contain obvious gaps that prevent them from accomplishing the desired result.

Among the most prominent laws that have been approved are the following:

**A-** The National Anti-Corruption Commission was established by Law No. 175/2020, which also addresses public sector corruption. The creation of the Commission is presently at a standstill.

**B-** The Right to Access Information Law was implemented in February 2017. However, the implementing decrees necessary for the law's provisions to be put into effect have not yet been published. There is no defined individual in charge of providing information within the Ministry of Justice, which is in charge of presenting these regulations. As a result, it is still difficult for the general public to acquire information about contracts and negotiations, for example. While many democracies have adopted the requirement to publish a variety of information related to the use of public funds in order to facilitate monitoring and accountability.

The main feature of the aforementioned law is that it gives everyone the ability to exercise their right to access information and documents held by the relevant public administration or institution. The law has extended the reach of this institution's field of view to include the judiciary, municipalities, independent bodies, and privatized businesses. The prohibition was viewed as an exception and was restricted to a certain list. The legislation also makes it clear that administrative reports and papers must be published, particularly when they concern the use of public funds.

Although some have connected the implementation of the Access to Information Law with the creation of the National Anti-Corruption Commission, several decisions made by the State Shura Council and a group of advisory opinions released by the Legislation and Consultation Authority have confirmed that neither the existence of this body nor the adoption of implementing decrees are

necessary to implement this law.

It is obvious that a lack of political will is to blame for the law's non-enforcement.

**C-** The Law on the Protection of Whistleblowers: It was approved in September 2018, and its implementation is linked to the formation of the Anti-Corruption Commission.

Legal protection for persons who report corruption is thought to be crucial in the battle against it. It addresses three issues: personal and legal protection for whistleblowers, monetary and legal incentives that represent a portion of the funds provided or recovered by the state, a reduction in the misuse of prosecutions related to defamation and slander against whistleblowers when disclosing cases of corruption, and protection for detectors in terms of their personal security and maintaining their jobs. Additionally, it serves as both protection and an incentive for people who desire to alert the media and other oversight agencies to instances of corruption.

The importance of this law stems from the prevailing Lebanese reality, as what hinders investigations and prosecutions in corruption crimes is the scarcity of evidence and the difficulty of providing the testimonies of witnesses, who fear for their lives, jobs and interests. Nothing encourages or motivates them to testify and present their evidence. Many media professionals complained that they were being prosecuted for libel after revealing information about documented cases of corruption.

**D-** Illicit Enrichment Law: Approved in September 2020. Article 20 of the UN Convention against Corruption, to which Lebanon is a party, declares that in order to combat illicit enrichment, each State Party shall consider adopting, in accordance with its Constitution and the fundamental legal principles of its legal system, such legislative and other measures as may be necessary to criminalize the employee of the public sector for achieving illicit enrichment, defined as a significant increase in his property in kind and cash.

On the other hand, there are many laws that are being enacted and approved, including the Public Procurement Law, which represents a qualitative leap in the spending of public money, especially in public procurements, and gives the Public Procurement Department a comprehensive authority to control all procurement operations in public administrations, institutions and

municipalities, and to prosecute before the judiciary when there are violations.

**E-** The Recovery of Stolen Assets Law, which was passed on March 29, 2021. So far, no procedural order has been issued.

#### **4. Steps required to combat corruption:**

Corruption cannot be combated without the existence of the rule of law, which is manifested through the imposition of compliance with laws and regulations, the presence of capable armed legitimate forces, an independent judiciary, the imposition of tax collection... These are all things that do not exist in Lebanon, where a culture of breaking the law prevails today. This is expressed through a set of popular expressions such as "Lying is the salt of men", "Who marries my mother becomes my uncle" ...

In order to get out of this reality, a culture of respect for the law and submission to its provisions must be established. The fight starts with the following steps:

**A-** Agreeing on a real political program to create the rule of law, on the basis of which forces and personalities from many religions and areas would run in parliamentary elections and endeavor to execute it if they reach the parliamentary seminar. There is no way to achieve the necessary significant transformation without a balanced political force functioning from within institutions.

**B-** Developing the Parliament's oversight role, which presently does not play the role of political supervision at the General Assembly level as it is expected to. This function is restricted to the activity of a few parliamentary committees and the ideas of a few reformist representatives. This task has no impact as long as reports on committee and deputies' oversight activities are not provided to the General Assembly.

Since 1992, the average number of question-and-answer sessions in the Lebanese parliament has been fewer than one per year, compared to once a week in democratic parliaments.

It is necessary to strengthen the Council's oversight role by discussing and approving public budgets and cutting off their accounts, as well as using parliamentary committees with civil society associations and experts to improve the quality and effectiveness of legislation, particularly in the fields of finance, public money management, and corruption.

The function of oversight can also be increased by forming specialized parliamentary

committees to examine certain files as needed. It may request the aid of whoever it likes from among the experts, provided that it delivers to the General Assembly a final report on the results of its work.

**C-** Adopting a legislative approach based on the adoption of laws with the necessary decrees, so that the application of the law is not disrupted by the non-issuance of these decrees. The expertise of civil society can be used in this context.

**D-** Implementing the Mediator of the Republic Law, which was passed in 2004. The mediator is an independent personality who does not take orders from an authority and whose duties are limited to attempting to facilitate the citizen's dealings with the administration, receiving complaints from him, assisting him in obtaining his rights and obtaining public services as quickly as possible, resolving any disputes that may arise from this dealing, and bringing the administration closer to citizens.

The law provides for 5 deputies to assist the Mediator of the Republic in carrying out his responsibilities. The law must be activated as soon as possible.

**E-** Putting the laws related to combating corruption into effect, namely: Law No. 175/2020 on combating corruption in the public sector and the establishment of the National Anti-Corruption Authority, the Law on the Right of Access to Information, the Law on Corruption Detectors, the Public Procurement Law, and the Law on the Recovery of Stolen Assets.

**F-** Creating a variety of laws, most notably the Illicit Enrichment Law, to precisely define the crime of illicit enrichment and provide adequate severe penalties.

**G-** Obtaining judicial independence: The battle against corruption is connected to obtaining this independence and keeping political influences away from the judicial body, as well as the integrity of judges. Without it, absolutely nothing will be right. As a result, the law on judicial independence currently before the Administration and Justice Committee must be passed as soon as possible.

**H-** Strengthening the role of the supervisory bodies and giving them the powers and capabilities required to combat corruption, public administrations, institutions and municipalities, and reviewing and updating their old staff in accordance with the requirements.

Ministers, directors' general and other leading officials shall exercise control and accountability over the officials' subject to them, each according to his powers. Regulatory bodies also exercise this power, namely:

- Court of Audit.
- Central Inspection Board.
- Civil Service Board.
- Supreme Disciplinary Board.

Strengthening this function is accomplished by removing political pressures from these bodies and drafting legislation connected to them in terms of implementing preventative control in their work in order to avoid violations by public administrations, institutions, and municipalities. The majority of the staff assigned in 1959 should be examined and updated in light of the changes that have happened and the administration's present responsibilities.

A mechanism for recruitment to the first category positions based on the adoption of competence away from political influences should also be established.

**I-** Completing the forensic audit in the Central Bank and conducting it in public administrations and institutions, and carrying it through to completion, in order to identify the reserves of corruption and corrupt people, and to know how billions of dollars were spent in Lebanon beginning in 1992, and how depositors' savings in banks were lost, and to announce the audit's results to public opinion in complete transparency.

**J-** Approval of administrative reform processes aimed at simplifying transactions and establishing e-government. This simplicity, as well as the elimination or limiting of direct interaction between citizens and those in charge of the public sector, would remove or reduce bribery and misuse of the administrative site for private gain. Those worried about this issue believe that the Lebanese government may be converted to an electronic system in as little as six months.

The following chart summarizes the steps required to combat corruption:



### Policy Review conducted in December 2022:

Lebanon cannot recover without putting an end to corruption. The fight against corruption is the biggest challenge to achieving reform in Lebanon, and it controls the majority of the public sector.

Despite the passage of several laws, most notably Law No. 175/2020 on combating corruption in the public sector and the establishment of the National Anti-Corruption Commission, the judiciary is unable to implement laws due to the loss of independence and political interference in its work.

Corruption has become for granted to the Lebanese, so that bribery, for example, is treated as normal to complete a transaction.

No one can determine the true cost of corruption annually in Lebanon. The United Nations measured it in 2001 at USD 1,500,000,000. According to experts, this cost rose to USD 4,000,000,000 a year in the period before the economic collapse.

The doors of corruption vary in different sectors such as electricity, petrol, quarries, crushers and waste... A real revival of Lebanon cannot be contemplated without a radical fight against corruption. It has become a key demand of international bodies, especially the International Monetary Fund and donors.

# THE RIGHT OF ACCESS TO INFORMATION LAW: A STEP TOWARD GOOD GOVERNANCE

Wednesday, July 14, 2021



## Event Brief

Hybrid Conference in collaboration with the University of Saint-Joseph (USJ) in Beirut, Lebanon

On 8th July 2021, the Rule of Law Program Middle East & North Africa of the Konrad-Adenauer-Stiftung (KAS), in cooperation with L'Observatoire de la Fonction Publique et de la Bonne Gouvernance of the University of Saint-Joseph (USJ), organized a public hybrid debate on the topic: "The Right of Access to Information Law: A step toward Good Governance". The two-hour hybrid debate took place outdoors at the beautiful USJ campus in Huvelin and was streamed live over zoom, so that the public could take part and join in the debate.

This symposium was hosted and moderated by Pr. Pascal Monin of the Observatoire, with the participation of five panelists. Mr. Philipp Bremer, the new Director of the Rule of Law Program, held the opening remarks.

In these opening remarks, Mr. Bremer welcomed the panelists and guests and introduced them to the Konrad-Adenauer-Stiftung, its program as well as the topic of the symposium.

In regard to the Right of Access to Information Law, he noted, "Lebanon has signed the UNCAC (United Nations Convention Against Corruption). It is therefore required to

implement the right to access to information". He added that "a stronger implementation would benefit the country". "With the recurring crisis in Lebanon the need for the application of this law is one of the priorities to ensure state transparency and accountability in order to prevent corruption".

In his following opening remarks Pr. Monin pointed out that "everyone knows that the freedom of access to information in Lebanon has historically been restricted by some legal texts and practices that expanded exceptions and prohibitions under elastic headings, including the protection of national security, the public interest, and the preservation of private life". He added: "Today, with the promulgation of the Right to Information Law, we are entering a new era, and the biggest challenge is to implement this law and not to create fictional boundaries".

Afterward, the expert remarks were as follows:

- MP Mr. Georges Okais
- Mr. Ghassan Mekhayber
- Judge Dora Al Khazen
- Dr. Halima Kaakour and
- Dr. Charbel Maroun.

In his speech, MP Georges Okais shed light on the importance of the amendments to the

Right of Access to Information Law. He also referred to a study prepared by the “Gherbal initiative” that shows that only 34 out of 133 official administrations responded in 2017/2018 to official requests for information based on this law. This would mean in a sense that “74 percent of all public administrations in Lebanon deliberately refrained from implementing the law”.

MP Okais went on stating that “on September 27, 2019, two and a half years after the law was promulgated, Human Rights Watch issued a report in which it indicated that since the law was issued, it had submitted 72 requests for information from various state courts and institutions, only 18 government agencies responded to its request and only ten were returned on time. Which means that the state is not giving any importance, not just to “Gherbal” but also to the work of an organization as important as Human Rights Watch, which is a shame”.

Former MP Mr. Ghassan Mekhayber spoke about the stages the law had gone through, since it was presented by a group of activists in 2006 and finally passed in parliament in 2017. He also spoke about the recent approval of amendments to the law. He said: “The discussion of the Right to Access to Information Law today may seem trivial compared to the collapse that is currently taking place in the economy and in other fields, but one of the reasons for this collapse is the lack of enforcement of laws, this is why our conversation is rather important because the idea of the state is currently absent”. He stressed that “people must use the right that was given to them, otherwise they will lose it. In Lebanon we wouldn’t have reached such a deteriorating situation if each citizen was aware of his rights and was using them, because the resignation of an individual from his duties as a citizen will eventually lead to the collapse of the state and that is what has happened in our country”.

As for Judge Dora Al Khazen, she explained in detail the effects of the law and the obstacles it encounters. She listed the loopholes “that still exist and that impede the implementation of the law as it should be”. She said: “one of the effects of this law is that it forces the administration to publish on its websites all the information related to activities and operations it has conducted, but a fast search shows that most of the websites are free from publications”.

Financial Attorney General El Khazen

revealed that “the law on the right to access to information included exceptions and specified documents and information that could not be accessed and viewed”, stressing that “the Lebanese authorities have not, to a large extent, committed to implementing the law on the right to access information”. She further pointed out that “any administrative reform needs a political reform prior to it and not the other way round. In order to fulfill such a goal a decent political leadership is required”.

Pr. Halima Kaakour addressed the role of the Right of Access to Information Law in promoting democracy and citizenship. She said: “the crisis we are experiencing is due to a crisis of democracy, citizenship and the state”, stressing that “the time has come to replace the current behavior with a new behavior that is compatible with building the state and not building leaders”. She considered that “the right to access information is a human right, and it is a cornerstone for other freedoms and other rights. And that without knowledge no plan of action can be put on track”.

Pr. Halima gave the example of Morocco where a partnership between the public and the private sector was made concerning the evaluation of government policies and such a collaboration is consecrated in the Moroccan constitution also. With this example, she underlined that “state institutions are here to serve the citizen and citizenship, and that today our society needs some reforms that should be addressed with a new social contract”.

Finally, Dr. Charbel Maroun spoke from a media perspective about the importance of accessing information, presenting his experience in the media field and the difficulties that any journalist faces in his work to reach accurate information.

As a journalist, Dr. Maroun presented the most prominent points of the law, and stated that “we will have less fake news and less unverified resources. Information is no longer a state secret hidden from anyone, but on the contrary, it is public information that should be published transparently, this way a public opinion will be forged. The participation in evaluating public affairs is an obvious necessity”. At the end he added that the country also needs a law “that regulates digital and electronic media”.

The symposium concluded with a small discussion between the experts and questions asked by the public, attending over zoom.

## Panelists

### Judge Al Khazen Dora

General Financial Attorney in Beirut in 2018. She is a Lecturer at the Trainees' Institute at the Beirut Bar Association. She occupied various positions as a first instance, then as a unique judge (personal status, rent litigations, etc.) and presided over the law enforcement court in Mount Lebanon for 14 years. Judge Al Khazen studied at the USEK Faculty of Law and graduated in 1995. Joined the Institute of Judiciary Studies and graduated in 1999.



### Dr. Kaakour Halima

Member of the Lebanese Parliament. Dr. Kaakour is a Professor at the Faculty of Law and Political & Administrative Sciences at the Lebanese University. She previously held teaching positions at the Beirut Saint-Joseph University, the American University of Science and Technology, and the Lebanese International University. She is a trainer, a consultant, and a researcher for a variety of international and local organizations in fields relating to gender, leadership, good governance, and local development. She dedicates her work to the promotion of human rights, women's rights, and environmental rights. She is a prominent campaigner against corruption and outspokenly favorable to secular governance and inclusive democracy, through which equal rights can be assured for everyone without discrimination. After Dr. Kaakour obtained a university degree in political science with a diploma in international relations and diplomacy, she pursued her Master's degree on the universality of human rights and cultural specificities in France. She crowned this specialization with a PhD in public law.



### Dr. Maroun Charbel

Dr. Maroun is a professor at Antonine University, the Lebanese University, and Saint Joseph University and the editor in Chief and Senior presenter at Radio Voice of Lebanon. He holds a PhD – Doctor of Philosophy, Communication and Media Studies, a Master's degree in communication and Media Studies, and a Bachelor's degree in Journalism from the Lebanese University – Faculty of information. Dr. Charbel Maroun has been participating as a Lecturer in local and international conferences.





## Me Mekhayber Ghassan

Former Member of the Lebanese Parliament (2002-2018), a lawyer and a Human Rights and anti-corruption activist. In addition, Me Mekhayber is a member of the Parliamentary committees on Law and administration, and on the environment. He is also the rapporteur of the Parliamentary Committee on Human Rights. Me Ghassan is known to have sponsored the Access to Information Law and followed it through the elections. He obtained his law degree from Université Saint Joseph in 1981 and his LL.M. from Harvard Law School in 1983.



## MP. Okais Georges

MP. Okais is a member of the Lebanese Parliament since 2018, and a Member of the Parliamentary Committee on the Public Procurement Law. His Excellency started his career as a judge in Lebanon for 17 years where he presided over the First Instance Tribunal in Beirut. He then pursued a career in the Legal Profession and was soon appointed as Head of the Strategic Planning and Performance Management Bureau in Abu Dhabi in 2010, and eventually served as an adviser to the Minister of Justice in the UAE from 2014 to 2018. MP. Okais was successfully elected for the first time in Lebanon as a Deputy. Moreover, he is a partner at EKP Legal Counsel, and actually heads EKP's dispute resolution department in Lebanon. MP. Georges Okais is a member of multiple organizations in the legal and judicial fields. He is also a regular lecturer at various Lebanese Universities and legal and legislative Fora. Nevertheless, he is known for handling complex litigation and arbitration.



# RIGHT TO INFORMATION ACT; A STEP TOWARDS GOOD GOVERNANCE

Published on Thursday, July 8, 2021

An important milestone was constituted by the Parliament when the Right to Access Information Law was adopted on February 10, 2017, establishing a new reality that allows the circulation of information in Lebanon more freely and transparently, leading to oversight and accountability, and thus combating, avoiding and preventing corruption.

On June 30, 2021, the Council approved the Amendment Law of the Right to Access Information Law, which allowed the filling of many loopholes that were invoked by public administrations for not responding to requests for information.

#### **This was accompanied by other basic steps:**

- The issuance of executive decrees of the law by the Ministry of Justice.
- The issuance of the national plan for the application of the law.
- Completing the nominations of the National Anti-Corruption Commission stipulated in Law No. 175/2020, which is the reference that is supposed to consider appeals related to requests for information and monitor the proper implementation of the law.

The democratic world preceded Lebanon in establishing the legal basis for obtaining information. In 1978, France approved the Law of Informatics and Freedoms and the Law of Access to Administrative Documents.

With the adoption of the law, Lebanon became among the list of one hundred countries that approved a special law that guarantees the right of access to information, knowing that the constitutions of 50 of these countries stipulate this right.

#### **First: Application of the law:**

The law has given citizens the right to submit a request to the concerned department to obtain information and documents within 15 days starting the date of submission of the application.

The law also obliges public administrations to publish their activities and decisions including all legal and financial documents and prevents them from invoking the

principle of confidentiality in certain cases and situations to evade the dissemination of information.

On the other hand, the law provides exceptions and specifies the information that cannot be obtained, which are related to:

- Secrets of national defense, national security and public security.
- State's foreign relations that are of a confidential nature.
- What affects the financial and economic interests of the State and the integrity of the national currency.
- Individuals' private lives, mental and physical health.
- Secrets protected by law such as occupational secrets.
- Proceedings of investigations before being read out in a public hearing, secret trials, and trials related to juveniles and personal status.
- Minutes of secret meetings of the Parliament or its committees, unless otherwise decided.
- Council of Ministers' deliberations and decisions of a confidential nature.
- Preparatory documents and unfinished administrative documents.
- The opinions issued by the State Shura Council to non-stakeholders.

#### **1- Those included by the law: are distributed as follows:**

- Public law persons: according to the law, they are public administrations and institutions, independent administrative bodies and other public law persons.

- Private law persons: these are some private institutions and companies entrusted with the management of a public facility or property and mixed companies and institutions of public benefit.

- Judicial and arbitration bodies, i.e., courts, bodies and councils of a judicial or arbitration nature without religious courts.

- Local bodies, i.e., municipalities and municipal federations.

## 2- Definition of Information:

The law deals with information of all kinds and types. Administrative documents include written and electronic documents, audio and photographic recordings. These documents are reports, studies, minutes, data, statistics, circulars and decisions issued by the administration, and documents of the national archives, including contracts conducted by the administration of any kind.

A problem arises as to whether the right of access is limited only to the documents issued by the administration to which the request for information is addressed, or does it also include the documents in its possession even if they belong to another department?

**Second: Gaps and observations on the law:** The Right to Access Information Law includes unjustified exceptions, including those related to the financial and economic interests of the state, some of which are related to the waste of public funds. This would limit the effectiveness of the law, as it allows the concerned administration to invoke this exception to reject a request for information.

There is also an exception related to the minutes of the sessions of the Parliament or its committees to limit the right to access them, which restricts the right of public opinion to access information related to financial matters related to public spending for example.

The exception related to the deliberations and decisions of the Council of Ministers restricts the right of access to information, especially those related to corruption and public waste.

In this context, Judge Dora Al Khazen, Attorney General at the Financial Public Prosecution, pointed out that the General Directorate of the Council of Ministers invoked this exception, and received a request to obtain the minutes of the Council's meetings related to fuel tenders, which is one of the most important public procurement operations in the Lebanese state.

In late 2019, the General Director of the Presidency of the Council of Ministers rejected a request from the "Kulluna Erada" association for information regarding the decision of the Council of Ministers related to the Deir Ammar plant for the production of electric power, arguing that the law is not effective yet and that it is dependent on the issuance of implementing decrees and the

formation of the National Anti-Corruption Authority.

The Ministry of Public Works and Transport did not respond to a request by the Lebanese Judges Club for information regarding the contracts signed for the restoration of the Justice Palace in Beirut.

The Ministry of Energy and Water refused to give information about the contract signed between the Lebanese state and a Russian company to develop oil storage facilities in Tripoli, invoking the international nature of the contract.

In the same context, MP. George Okais referred to a study prepared by the "Ghirbal" initiative, which showed that 34 out of 133 public administrations responded in 2017 and 2018 to their official requests to obtain information in support of the right to access information law, meaning that 74% of the total public administrations in Lebanon deliberately refrained on the application of the law before its amendment on June 30, 2021.

A report by Human Rights Watch issued on September 27, 2019, listed that since the issuance of the law in February, the organization has submitted 72 requests for information from various ministries, courts and public institutions, with the result of which it received only 18 responses. It also received five responses indicating that the concerned department could not provide the required information.

### Among the obstacles to the application of this law:

- The law does not include provisions guaranteeing its implementation. It did not provide sanctions against people in charge in these concerned departments for violating the legal text or their refusal to abide by it.
- Lack of infrastructure and resources necessary in the concerned departments to implement it, for example, the lack of a special website in some of these departments to publish annual reports and decisions related to large financial operations.
- The Lebanese courts do not adopt mechanization, which constitutes an obstacle to the application of the law, as it is impossible to extract the required information from its request.
- Incomplete establishment of the National Anti-Corruption Commission.

- Invoking the Banking Secrecy Act passed in 1956 September in order not to give certain information.

There is a fear that implementing the Right of Access Information Law will be hindered by other provisions that conflict with it. Therefore, awareness should be taken in the future to avoid any legislation that contradicts the right of access to information or feeds the culture of secrecy prevailing in Lebanon.

### Third: Achievements of the law:

The application of the law allows the promotion of many aspects in the practice of public affairs, which can be summarized by four:

**1- Transparency:** The law puts at the disposal of public opinion valuable information related to public affairs and how to manage it through the obligation to publish. It also allows those concerned to apply for the information they want. Thus, the inquiry enters a new phase in Lebanon based mainly on transparency.

**2- Control:** The more information, the greater the knowledge. It means allowing public opinion to control the functioning of the official sector. People will have access to how public utilities work, obstacles if any, and responsibilities involved in case of default and negligence.

The additional information provided by the implementation of the Access to Information Law will strengthen public and institutional oversight of activity in the public sector. This role will be strongly available, especially with technological developments in the work of the media, and the spread of social media.

**3- Accountability:** The information available as a result of the application of the law will increase the possibilities of accountability. The discussions maintained about the work of public sector departments and institutions lead to the identification of responsibilities, so the successful work is noted, and corrupted work is also highlighted. Accountability may be administrative, legal or moral.

**4- Democracy:** The circulation of information freely is a condition of democracy. The lower the level of this circulation, the more societies lack a sense of democracy. In addition, oversight and accountability help strengthen democracy.

Certainly, the media will become freer with the implementation of this law and become more capable of bringing change and reforming in people's lives.

### Fourth: Development of media

**work:** The application of the law allows the development of media work and the opening of new fields for it.

#### Some of its aspects:

**1- Effectiveness:** This work will become more effective, firstly because of the availability of information, especially those that were previously obscured, and secondly because it is based on reliable references and documents. The waste of time in media work will decrease as a result of searching for information, and this time will be invested in the development of media service.

**2- Professionalism and validity of information:** This law will produce professional journalists since the basis of their work is reliable information. The role of resources and leaks as well as unreliable, incorrect and fake news will decrease, and the media will become more valid.

**3- Credibility:** The information will become documented, more solid and have a clear source that can be referred to for clarification, justification and elaboration. Question marks about the source will become less, which raises the degree of security and makes the required specifications for news available on a large scale.

**4- Transparency:** Some intuitive information will no longer be a secret that wastes the time accessing it. It will be clear to its source or the person who is asking about it. The level of transparency will increase, and information will become more available to the media, than to public opinion.

**5- Media independence:** The role of mediator between the media and information will decline a lot, and the former will enjoy more independence towards his news sources.

**6- Development of some media categories:** The law will help to promote some categories. For example, investigative journalism will be among these categories that will benefit from the information provided by law.

## **Fifth: Obstacles and suggestions to ensure the implementation of the law:**

Initialized by former MP Ghassan Mekhayber with the help of the expertise of specialized bodies and individuals, the proposals and the plan are developed for the proper application and implementation of the law.

The mentioned plan was approved as part of an anti-corruption plan, and it concluded with 10 points that identified the obstacles to the application of the law.

### **The steps required for the good application can be summarized as follows:**

**1-** Enhancing the awareness of the citizen based on its partnership in the application, as it is not possible to achieve the goal of the law without the necessary awareness to benefit from what the law provides.

**2-** Addressing the rejection of the majority of administrations concerned with the law because it introduced a new logic, based on the obligation of these administrations to apply the law. The judiciary and private companies that operate public facilities are reluctant to implement them.

**3-** Media and advertising campaigns should provide information related to the concerned law. To date, there are many departments concerned who are not aware of the existence of this law. Many, such as municipalities, have refrained from publishing intuitive information about the spending of public funds.

The new amendment to the law on June 30, 2021, approved that the Official Gazette will be free of charge, and this is important to allow information to reach people without cost from an important source.

**4-** Providing training and support to those involved with the application of the law.

**5-** Developing electronic tools in the various departments concerned with the implementation of the law.

**6-** Appointing or assigning information staff in the concerned departments to facilitate the fulfillment of requests for information.

**7-** Assigning an official body to conduct oversight of the proper application of the law. In the absence of this body, which may be the "National Authority for the Implementation of the Right to Access to Information Law", the Ministry of State for Administrative Reform temporarily assumes this task.

**8-** Determining the concerned authority to decide on reviews and complaints. The objectors resorted to the State Shura Council many times to no avail, as the Council informed the objectors that they did not have a capacity or interest.

**9-** The need to organize the concerned departments, especially the files in them, in order to allow the delivery of information upon submission of the application.

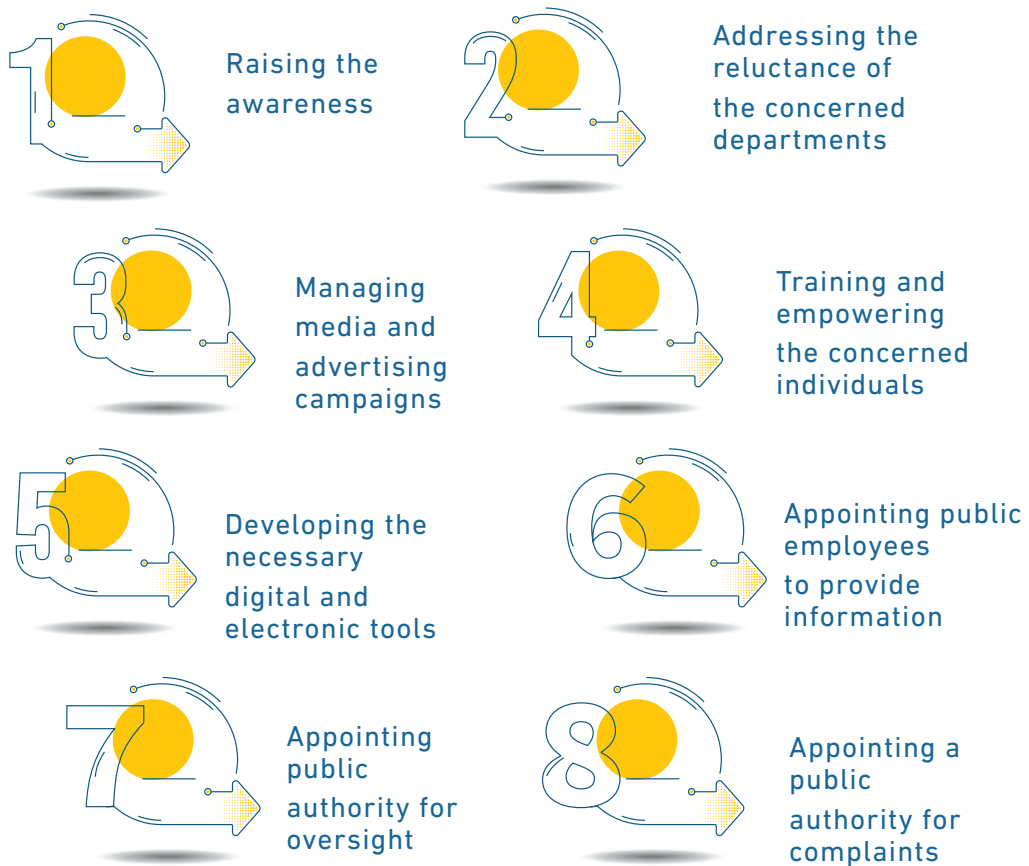
MP George Okais emphasized the need to apply the following measures **to accompany the implementation of the law:**

**1-** Amending Article 34 of the Rules of Procedure of the Parliament to make all sessions of the parliamentary committee's public, noting that proposals in this regard have been submitted and have not yet been approved.

**2-** Passing a law or an electronic voting mechanism in the parliament to enhance transparency and allow to identify the deputies who voted for or against the proposed laws.

**3-** Approving the law of public consultations, in which deputies and a group of associations, advisers and experts have finalized its drafting.

The following diagram summarizes the steps required for the proper application of the law:  
Proper implementation of the right to access information law



With these necessary steps, action should be done to prevent circumvention of the law, by insisting on its application, seeking to change the culture of the people, and adopting planning in implementation. Access to information may be one of the basic steps to get Lebanon out of its great crisis and recover again, because the information is the necessary pillar for the formation of awareness among public opinion leading to accountability.



## Policy Review conducted in December 2022:

Despite the passage of more than four years since the adoption of the Law on the Right to Access to Information, and about a year and a half since the issuance of the amending law, and later the legal texts, many obstacles still hinder implementation.

Lebanon has not yet moved to the ranks of countries that abide by and enforce the law. The lack of political will may be the main reason, as many public administrations and institutions have refused to apply the provisions of the law. Even the judiciary did not receive the required response when it requested information from the departments concerned at certain times. Media professionals also complain about the difficulty of accessing much information.

To date, no clear effects of implementation have been seen in the absence of a culture of access to information among a large part of the Lebanese population.

Lebanon fought the battle of endorsement of the law, and today it faces the most difficult battle: enforcing its implementation.

# MEDIA ROLE IN ESTABLISHING THE GOOD GOVERNANCE

Wednesday, October 6, 2021

## Event Brief



The Observatory of Public Function and Good Governance (OPF) at Saint Joseph University in Beirut, in cooperation with the Konrad-Adenauer-Stiftung (KAS), organized an online seminar entitled “The Role of Media in Establishing Good Governance,” at the campus of the Faculty of Law and Political Science - Huvelin, on Wednesday, October 6, 2021.

The discussion rolled, in the seminar, which was opened by Pr. Pascal Monin and moderated by Dr. Charbel Maroun, with the Dean of the Faculty of Business Administration at Saint Joseph University: Pr. Fouad Zmokhol, Editor-in-Chief of “MTV News”: Mr. Walid Abboud, Editor-in-Chief of Al-Joumhouria newspaper: Mr. George Solaj, Executive Director of “Maharat” Foundation: Ms. Rola Mikhael, the director of “Fe-Male” institution and Editor-in-Chief of “Partner But”: Mrs. Hayat Merchad, and also attended by the Director of the Konrad Adenauer Foundation Office Michael Bauer and the Foundation’s Project Manager, Mr. Hamad Elias.

The beginning consisted of a welcoming speech by Professor Monin, who stressed that “the media is the fourth authority, and for several researchers it is the “X” authority to indicate its great and effective influence in many matters in public life.”

He added: “There is no need for media without freedom. Without it, one voice prevails, even if there are many means, and society lacks areas for healthy debate, leading to the death

of democracy. It is no coincidence that the most democratic societies are those with free and independent media.”

Monin continued: “It is stable that the effectiveness of the media is linked to its honesty and professionalism. Therefore, it is necessary to expedite the review of the various media laws and introduce the necessary amendments to allow the provision of a legal environment that incubates media work. The concepts of media ethics must be promoted to fortify and protect the media professions.”

For his part, Bauer welcomed the attendees, stressing in his speech the importance of the role of the media in building an effective state of law, and shedding light on corruption, nepotism and everything that hinders the development of the state in general.

He also spoke about the Good Governance Forum, which began in 2020 in cooperation with Saint Joseph University and addressed many important topics to develop governance in Lebanon.

The interventions began with Zomkhol, who pointed out that “the main role of the media is to be the mediator, as its role is more than a fourth authority, as it is the one who delivers the voice to everyone, and police regimes always work to seize the media by silencing it and buying the voices and pens of media professionals, which hinders its work, and this is unfortunately what happens in Lebanon.”

He considered that “the role of the media



in good governance is first, awareness and promotion, second, transparent participation, third, respect for human rights, fourth, the rules of law, and the fifth point is investigation and exclusion, and an example of this is that the first investigation into the Beirut port explosion began in the media, and the sixth point is the effective role in fighting corruption in a transparent manner, and the last point is access to information.”

In turn, Solaj considered that the media in Lebanon is not like any model in the world, as media freedom exists, but not all media are free, adding: “There are media outlets that are somewhat independent and therefore exercise freedom according to their capabilities, while the second category of media is affiliated with parties and there are financial and economic references that have media outlets affiliated with them, and the third category is websites that are created quickly, everyone who has not found a job, decides to publish a site and positioning himself as editor-in-chief; at a time when we needed many years to get to where we are, and this is called media piracy, at a time when intellectual protection is absent.”

Solaj considered that “the influence of the media in the process of building good governance is impossible in a country like Lebanon according to the existing structure,” stressing that “the work of the media today is very difficult in light of the economic crisis, the absence of funding and the disappearance of the return from advertising,” pointing to the decline in the percentage of advertising in the media to 90%, summarizing it as an “existential battle.”

Abboud began his intervention by rejecting “demonizing parties every time we say that parties control the media,” stressing that they have the right to express their opinion in the way they find appropriate.

“On the issue of funding, this is not new, hence there must be censorship of all media outlets, not just media outlets that belong to parties,” he said.

Abboud stressed that “freedom in Lebanon is available, but the problem is in two other places, democracy is absent with the absence of rotation of power, and change is absent even among people who feel desperate about this situation.”

He continued: “There is no follow-up to the news issued by the media, as no one moves despite the revelation of scandals through the media, not from the people or even from

the judiciary.”

Abboud stressed that the public media, such as Lebanon TV, the national radio and the national agency, should play their natural role, while he considered that diversity in the media is a source of richness and not a source of questioning.

In her intervention, Mikhael considered that the Lebanese media system is similar to the existing political system, pointing out that despite all the media investigative work and the detection of corruption files, nothing changes because of the existing system.

She added: “There is no doubt that the work of the media in such a political system in the absence of the required transparency is a posed problem, and the question that arises is the ability of the media to get out of its reality and its obligations and its dependence on funding sides?”

She pointed out that “digital media has become today an alternative media to the traditional, which helped the media scene to develop, especially with the large margin of freedom enjoyed by digital media, such as the “Daraj” website recently with the publication of investigations on the “Badura Papers” scandal.

On the role of media and good governance, Mikhael said: “There is diversity in the Lebanese media and there must be a clear management of this diversity, which contributes to promoting it and showing the positivity of diversity in Lebanese society.”

She spoke about a draft law to regulate digital media, “which raises our fear, as we must preserve the role of alternative media or digital media because of the importance of its role, and the work of the state and the competent authorities are protection and not repression.”

“Unfortunately, there is still no accountability or evaluation of the role of the media in good governance in Lebanon, but it is important to discuss where the media stand today in terms of everything that is happening in society? It is necessary to put the media before their responsibilities and the issues they address.”

She continued: “There is a breach in the media landscape today, as it has kept pace with various issues, during, before and after the revolution, but the problem is that the culture of accountability towards the media is absent among the viewer, who remains a recipient and not an accountant.”



## Panelists



### Mr. Abboud Walid

Editor-in-chief of news at MTV. Mr. Abboud has coached all types of press since 2001. He worked with An-Nahar, LBC, the Ministry of Education and Higher Education, and countless programs. Moreover, he is a member of the Syndicate of Editors, and a member of the Press Club – Alumni Association of the Faculty of Press and Documentation. He is the Owner of Dar Rouwad Al Nahda and member of the Syndicate of Publishers' Union in Lebanon and the Secretary general of the Maroun Abboud Foundation. Mr. Abboud Completed his university studies and received numerous degrees, including: (1) BA in Arabic Language and Literature from the Saint Joseph University – Beirut (USJ), (2) Degree in Media from the Lebanese University, (3) BA in Philosophy from the Holy Spirit University of Kaslik (USEK), (4) Law Degree from the Lebanese University, (5) MA in Arabic Language and Literature from Saint Joseph University – Beirut (USJ) and (6) Diploma of Advanced Studies in Philosophy from the Holy Spirit University of Kaslik (USEK).



### Ms. Merchad Hayat

President of Female NGO and editor-in-chief of the website «شريكة ولكن», and Head of communications and campaigning at the Lebanese Women Democratic Gathering- RDFL. Hayat Mirshad is a feminist activist, researcher, trainer and journalist. She has secured more than 11 years' experience in coordinating and leading various projects and campaigns about gender equality and women's rights. Her educational background included Gender in Development and Humanitarian Assistance (GDHA) Diploma from the Lebanese American University- Beirut and BA in English literature from the Lebanese University.



### Ms. Mikhael Rola

Founder and Executive Director of the Beirut-based Maharat Foundation which operates Maharat-News. At the national level, Mrs Mikhael contributed to the launching of the national Lebanon IGF and is currently the chair of the Lebanese Multistakeholder Advisory Group. She was the convener of the board of the International Freedom of Expression Exchange, IFEX for the 2017-2019 mandates. She has more than 20 years of national, regional, and international experience ranging from senior reporting, editorial positions, to media development, activism and civil society engagement in a challenging and hostile environment and conflict zone. Mikhael is the founder of DIGITAL MEDIA VIABILITY LAB, an initiative to support independent media platforms in the MENA. She has contributed to many research and policy papers. Ms. Mikhael has an MA in journalism from the Lebanese University and Paris II University.



### Mr. Solaj George

Editor-in-chief of Al-Jumhuriya newspaper. Mr Solaj is the Vice of the Press Syndicate. Deputy Prime Minister's Advisor MP Elias Al Morr.



### Pr. Zmokhol Fouad

Dean of the Faculty of Business Administration at Saint Joseph University, also President of the International Confederation of Lebanese Businesspeople – MIDELE. Board Member of BSEC, and Advisor to the Board of Directors at HOLCOM Group. He is the co-owner of Zimco holding, one of the leading commercial printing groups in Lebanon. He was also the managing partner and CEO of SAPDIB (Africa), manufacturing and distributing F&B products in the area. Fouad Zmokhol is a professor of managerial strategies, entrepreneurship, and leadership. He holds a Bachelor's degree of Business Administration and Management, and a Bachelor of Applied Science, Management and Economics, from the Lebanese American University, as well as a Doctorate in Business Administration and Management from Newport University.

# MEDIA ROLE IN ESTABLISHING GOOD GOVERNANCE.

Published on Thursday, October 7, 2021

The role of the media in public affairs and the life of societies has been openly discussed, and it has been established that this role is critical based on the media's goal of influencing behavior and practice. This function has become increasingly significant as a result of technological innovations, which have increased its effectiveness and made a bigger impact.

Gebran Tueni, the founder of the newspaper "An-Nahar," defined the press as a force equal to the power of fleets and armies, and Robert de Joinville referred to it as the fourth authority in the state as the parliamentary division, which made the authorities of the state three: the legislative authority, the executive authority, the judiciary, and then the press authority, which is legally outside the parliamentary division but is customarily affiliated with it.

A lot of media affairs researchers feel that the media in general has become the "X" authority since it often outperforms other authorities in terms of impact and activity.

Today, the media plays a critical role in the development of public opinion, and it is used by public affairs professionals, numerous institutions and individuals in the public and commercial sectors, and ordinary people wanting to communicate and influence. The media creates "the truth" from which ideas and behaviors are developed. Many people rely on these tools to achieve the common good and promote good government. In this context, Pope Francis emphasizes the intimate link between the media and the good.

The most difficult problem for media owners is retaining a certain level of independence and economic and political liberalization to allow these media to keep their self-dignity and play their role in attaining this good. Some even went so far as to suggest that the media is the narrative of the truth in order for it to be known, emphasizing its apostolic function. It goes without saying that freedom is required for the establishment of the media, because there is no media without freedom, and no freedom without media.

"The influence of the media in the process of

building good governance is impossible in a country like Lebanon because of the existing structure," says George Solaj, editor-in-chief of the newspaper "Al-Joumhouria," explaining that "the work of the media today is facing many difficulties in light of the economic crisis, the lack of funding, and the 90% decline in advertising revenue," adding that "the media is fighting for its existence."

## First: The prevailing of the Lebanese reality:

The current political structure casts a shadow on the current media reality "Lebanon's media is unlike any other in the world. There is media freedom, but it cannot be argued that all media are free." In truth, certain news sources have independence and perform their job quite freely, but others are controlled by political parties, currents, and individuals involved in public events, limiting their freedom.

Workers in the media defend the right of parties and currents to own media organizations as components of society, rejecting the demonization of parties in this domain.

For decades, funding for Lebanese media has been a source of contention. When the late President Charles Helou welcomed members of the Council of the Press Syndicate to Baabda Palace following his election, he said, "Welcome to your second motherland, Lebanon!" intending that they are accepting funds from their homeland.

Even today, many media institutions rely on internal or external political funding that fills the gap between expenditures and revenues resulting from purely media work.

**1- The spread of electronic media:** The spread of news websites has become a phenomenon in Lebanon. The number of such sites today stands at about 1,700 according to Information Minister George Kordahi. Sites are often based on individual initiatives that make them have little impact on the public scene. But some of them are very effective and at an acceptable

operational cost compared to the expenses of traditional media. The price of a paper copy of the Lebanese newspaper is equivalent to about ten cents of the US dollar, a price that does not exist in any country in the world. The cost of television and radio production is very high in light of the economic crisis that Lebanon is experiencing.

**2- Traditional media presence:** Traditional media, particularly television, has maintained a strong presence in Lebanon's media. These means are divided into independent means and those owned by parties, currents, and political leaders, as well as those owned by economic and financial entities.

According to media research studies, television is still the most popular source of news for the majority of Lebanese. Radio and daily newspapers, which have profited from modern technical methods, continue to play an active and significant role as Lebanese news sources.

**3- Weak follow-up to what is presented by the media:** Many media sources are preparing media materials that will serve as news in order to draw the attention of the judiciary to corruption cases that have been recorded with information and witnesses. The curious thing is that most of these articles went unnoticed, and the relevant judicial authorities did not take action. This reflects the overall political reality and its influence on the media field, so that the function of the media becomes limited and does not go beyond the boundaries of information and reporting, at least not to the point of changing reality for the better, as is the case in democratic nations.

**4- Sagging media structures:** Sagging has hit a number of basic institutions concerned with media matters, such as the Ministry of Information, the National Media Council, the Press and Editors' Syndicates. It has become necessary to reconsider the existence of some of them and to define a new effective role for others that justifies their existence.

The audio-visual media legislation, introduced in 1994, has been outpaced by significant advancements in the media and in Lebanese reality, necessitating the adoption of important revisions to it. There is also a lack of regulation governing electronic media.

## Second: The role of the media in promoting good governance:

The media plays a pivotal role in highlighting the practices of good governance and its rules, through the following:

**1- Awareness and Promotion:** One of the media's primary functions is to educate and guide people. It seeks to spread the ideals of good governance and highlight the benefits it gives to society in its effort to provide the common good over private and factional interests.

**2- Forming a link between the stakeholders:** The media provides a meeting ground for the parties concerned with a particular issue or topic, and provides a ground for discussions and exchange of views in a way that enhances participation, especially when the required transparency is available.

**3- Respect of human rights:** The media has an active role in ensuring and preventing violations of basic human rights. This is the core of good governance as a tool for assisting man in preserving and maintaining his rights.

**4- Respect of laws:** It is the media's responsibility to work to establish a state of law and justice, as well as to persuade people to follow laws that prevent injustice and tyranny and provide an effective way of preserving rights.

**5- Exposing corruption files:** Investigative journalism seeks to expose the truth, particularly corruption cases. In democratic societies, the phrase "media is for media" is insufficient, because media content includes news and communications that influence the courts and control and accountability authorities. In Lebanon, corruption cases stay often without any follow-up after they have been raised to the media, e.g., Solidere's violations, electrical sector contracts, particularly the import of Turkish ships, the disposal of public funds, and financial policies that led to public debt and, eventually, economic devastation.

**6- Ensuring the right of access to information:** Information is a powerful tool for accountability and control. This right has been codified in democratic nations at many levels, ranging from the public to the media's employees.

The Parliament' passage of the Right to Access to Information Law on February 10, 2017, was a significant step toward creating a

new reality in Lebanon that permits the freer and more open flow of information.

The Right to Access to Information Law was amended on June 30, 2021, with Council approval. This permitted many of the gaps that public administrations had used as an excuse for not providing information to requestors, to be closed.

**This was accompanied by other basic steps, including:**

- The issuance of executive decrees of the law by the Ministry of Justice.
- Issuance of the national plan for the application of the law.

Despite this achievement, a large number of public administrations and institutions, including the Presidency of the Council of Ministers, do not respond to judicial requests for specific information. The same is the case directed by the media in their work.

### Third: Suggestions for activating the role of the media in establishing good governance:

It is assumed that there is a healthy media in a healthy public atmosphere so that these media play an active role in promoting good governance. Among the things that are obligatory in this area are:

**1- Media independence:** On the ground, it is challenging to be achieved. The majority of media organizations are controlled by parties with agendas and interests, making it nearly difficult for them to be supported by advertisements and strictly professional work. The severe economic situation in Lebanon has made the media's difficulties and challenges worse.

To close the gap between revenues and expenses, work must be done to create additional sources of revenue in these media based on the sale or display of media items.

Although it is acknowledged that it is difficult for the media to escape reality, obligations, and their dependence on funded parties, the high level of independence of these media inevitably leads to increasing their liberalization and strengthening their role in supporting good governance practices.

**2- Promoting freedom of expression:** Adopting the necessary legal measures that protect the media's right to play its part, advance individual liberties, and restrict legal actions against people for expressing their opinions are all important.

The executive authority is also responsible for creating the vital conditions for the enjoyment of this freedom. Social, cultural, and educational institutions as well as civil society groups contribute to preserving this environment.

**3- Investment in modern media:** The cost of the media content created for social media, particularly websites, is not comparable to the cost of the content produced for conventional media, according to facts and figures.

Digital media are now a viable alternative to traditional media, which has helped in the growth of the media industry.

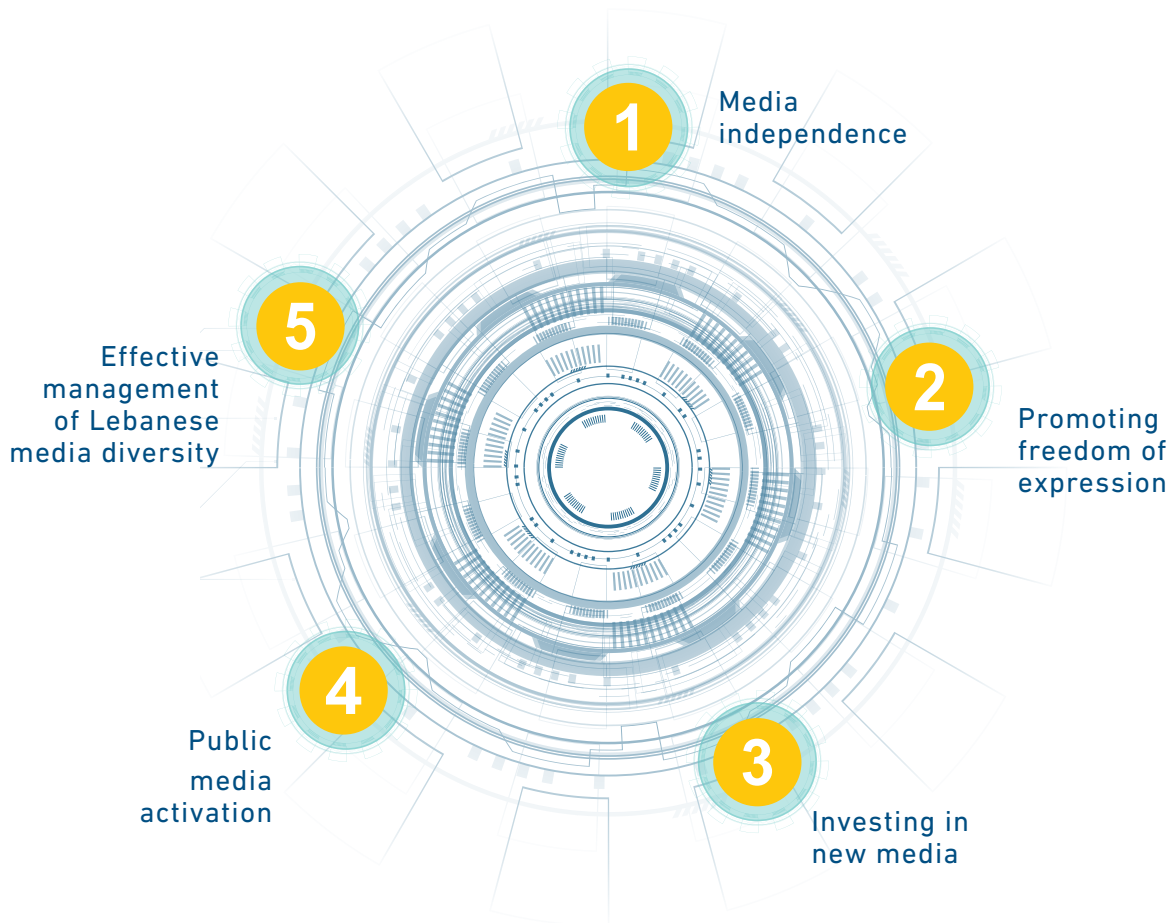
In parallel, we must work on the adoption of a law to regulate digital media to preserve and protect it.

**4- Activating the public media:** A significant part in encouraging good governance may be played by Lebanon TV, Lebanese Radio, and the National News Agency. Instead of being the voice of power and rulers, covering their actions and expressing their opinions, it should shift from being "official media" to "public media," speaking in the name of the Lebanese and expressing their issues and desires.

Websites and social media platforms must be a tool for action, and the public media must be present in the domain of new media.

**5- Effective management of Lebanese media diversity:** Considering the failing of media institutions, it is impossible to keep up in the media world. It's important to consider the National Media Council, professional syndicates, and the Ministry of Information's responsibilities in this.

Activating the role of the media:



### Policy Review conducted in December 2022:

The media in Lebanon play an influential role in the political and social scenes, as in democratic societies. It also has a pivotal role to play in establishing good governance, highlighting corrupt practices and defending people's rights.

The influence of the media in the Western world reached its peak with the Watergate scandal revealed by the Washington Post, which prompted US President Richard Nixon to resign.

The Lebanese media recorded some successes by raising files related to corruption in various sectors (public money management, electricity, telecommunications, marine property and wastes...).

However, the lack of independence of several media outlets and their direct association with political forces limits their effectiveness.

# THE CHALLENGES OF DIGITAL TRANSFORMATION IN PUBLIC ADMINISTRATION

Friday, November 19, 2021



## Event Brief

A webinar in Collaboration with The Observatory of Public Function and Good Governance (OFP) at Saint-Joseph University in Beirut (USJ)

On Friday, the 19th of November 2021, the Konrad-Adenauer-Stiftung Rule of Law Programme Middle East and North Africa in cooperation with The Observatory of Public Function and Good Governance (OFP) at Saint-Joseph University in Beirut (USJ), organized a hybrid seminar entitled: "The Challenges of digital transformation in Public Administration". The debate took place in an outdoor open space at the beautiful USJ campus in Huvelin and was streamed live over Zoom and Facebook, so that interested participants could take part and join in the debate.

The purpose of digital transformation is, among other things, to simplify and transform governmental procedures into digital services by leveraging existing and emerging technology to serve the needs of Lebanese citizens, residents, and visitors effectively.

The hybrid seminar was hosted and moderated by Pr. Pascal Monin of the Observatoire along with Mr. Philipp Bremer, the Director of the Rule of Law Programme where they held the opening remarks. In addition, six experts in the related field were invited to speak at the seminar.

Mr. Philipp Bremer, the head of the Rule of Law Programme Middle East and North Africa at the Konrad-Adenauer-Stiftung in his following opening remarks, welcomed the panelists and guests and introduced the



attendees to the Konrad-Adenauer-Stiftung, its programs in Lebanon and in the region. He then highlighted the importance of the Digital Transformation and its vital role for the State development since it affects public administration and state services and has an impact on the economy, society and politics alike. It is true that digitalization is a necessity however, it brings along many questions and risks.

The second opening remark was held by Pr. Monin, where he presented the current situation in Lebanon, and showed the importance of the presence of the Digital Transformation on the worldwide map and especially in Lebanon. He considered that the Lebanese Government must implement new ways for economic development in order to transform the economic crisis into an opportunity for a promising future since it is no longer possible to invest in old ways.

Afterward, the speakers were as follows:

- Pr. Mona Al-Ashkar Jabbour
- Dr. Sarah Hariri Haikal
- Pr. Lina Oueidat
- Mr. Cyril Cuvillier
- Judge Dr. Wassim Hajjar
- Dr. Charbel Maroun

The Head of Policy and Legislation at the Digital Transformation Network Pr. Mona Al-Ashkar Jabbour tackled the subject of “the establishment of a National Authority for Informatics and Freedoms: A Secure Digital Transformation”. She shed light on the importance of the proper and fair use of personal data since it is not limited only to pictures and videos but also to our interaction on social media. The creation of a National Authority will be the best solution to protect our personal data.

In her speech entitled “Digital Transformation in Lebanon: A Step to Promote Good Governance and Public Administrative Reform”, Dr. Sarah Hariri Haikal, Professor of Economics at Saint Joseph University, believes that the Digital Transformation is an important way to end the Lebanese economic crisis. She spoke about the adoption of simplified procedures in order to cooperate between the various national departments to speed up the implementation of this system.

Advisor to the Prime Minister on Technology and Coordinator of the National Cybersecurity Strategy, Pr. Lina Oueidat’s speech was entitled “Facilitating Transactions and Procedures in the Public Administration”

and she considered that “ the Technological development is very fast and the public administrations are not working in the same speed, so there must be a cooperation among all parties in order to make the digital transformation work, however the process is not easy since all state records must be studied in an efficient way”.

Mr. Cyril Cuvillier, an expert in the Cybersecurity field, in his speech considered that “Cybersecurity is a Cornerstone of Digital Transformation” and he pointed out that the information system must meet four criteria: confidentiality, access to information, integrity through non-altering data, and finally tracking data consultation.

Judge Dr. Wassim Hajjar, the supervisor of Informatics and Legal Center at the Lebanese Ministry of Justice, tackled the subject “A reading of the Electronic Transactions Law and its Role in Digital Transformation” and stated that “the Law criminalizes illegal access to an information system. These are offenses created in the Lebanese legal system that did not previously exist. The law also includes a detailed regulation of the procedure for the evidence control for judicial investigations in criminal proceedings”.

Dr. Charbel Maroun, University Professor and Journalist in his speech entitled “Summary and Suggestions for Digital Transformation in Lebanon” presented a recap of the seminar and believes that the Digital Transformation is a need, not an option. He added: “digital transformation is a step towards the elimination of bureaucracy and corruption in public administration. In addition, the Digitalization helps good governance in promoting productivity, transparency and the cooperation between service providers and their recipients”.

In conclusion, the goal of the hybrid seminar is to develop a road map for the digital transformation in Lebanon, especially to find solutions for the challenges that the country will face during this process and to the proper application of the personal data protection law.



## Panelists

### Pr. Al-Ashkar Jabbour Mona



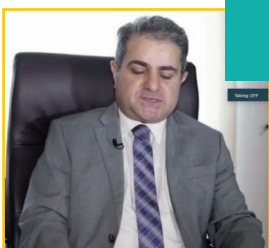
Mona Al Achkar Jabbour is a member of the national cybersecurity strategy team and president of the Lebanese Information Technology Association (LITA). She is the Founding member of the Pan Arab Cybersecurity Observatory and a Founding Member and Coordinator of the Legislation, Policy and Human Rights Sector at the Governance and Digital Transformation Network

### Mr. Cuvillier Cyril



Deputy Head of the Strategy Department. He joined the National Cybersecurity Agency of France in 2016 where he is Deputy Head of the Strategy Department and as such, manages highly skilled teams in the areas of cyber risk management, awareness raising and crisis communication, critical infrastructure regulatory framework and international political affairs. Mr. Cuvillier graduated from the French Military Academy of Saint Cyr and from the National College for Advanced Technologies, Cyril Cuvillier has been assigned time after time as head of law enforcement and public safety units and as a manager in charge of information and communication system projects for homeland security.

### Judge Dr. Hajjar Wassim



Judge Supervisor of the IT Unit at the Lebanese Ministry of Justice. He is an Expert in ICT Laws. Dr. Hajjar holds a Phd in ICT Laws (Dr), and CCE- Computer and Communication Engineering.



### Dr. Hariri Haikal Sarah

Associate Professor at Saint Joseph University of Beirut. Dr. Sarah has been teaching in several colleges, in Lebanon and abroad. For instance, she focused on political economy and sciences. She is also the publisher of numerous researches in the field such as MERPA, and a research assistant in CEDREC, as well as a member of ALPES and a participant in international relevant conferences such as LAAS 2015 and Barcelone 2017 treating corruption in general. Dr. Haikal firstly graduated from USJ in Economical Sciences, then pursued her Master's degree in Political economy. She is a holder of an ESCWA - UN House Diploma, also another one from the British Council in English for Business-speaking. Dr. Sara also obtained her DEA from USJ, then a doctorate with honors from Université Paris II, Panthéon Assas.



### Pr. Oueidat Lina

Advisor to the Prime Minister on ICT. She is the National ICT Coordinator and a member of the National Committee for Cyber Crime at the General Secretariat of the High Council of Defense. Dr. Oueidat has advised several public and international entities, such as the Ministry of Interior and Municipalities, PCM, Beirut Municipality, Ministry of Health, WHO, Ministry of Energy –Water sector, & World bank, on Government Information Systems and Digital transformation & Public administration modernization. She is the Founder of ECS Consulting Firm and EDITRA Professional Technical Translation firm. She is also a Professor at the Lebanese University – Faculty of Engineering. Dr. Oueidat holds a Double Major PHD in Electronics – Telecommunications and Biomedical Engineering from Ecole Supérieure d'Electricité France & Paris XI.

# THE CHALLENGES OF DIGITAL TRANSFORMATION IN PUBLIC ADMINISTRATION

Published on Wednesday, December 15, 2021

Digital transformation has become a reality in many democratic states. It has been synonymous with a future built on production, knowledge, technology, and the service of man. It is defined by some as the use of technology to provide solutions and services.

In 2003, Lebanon established the first plan to use technology, and in 2005, successive governments started introducing the terms "information technology" and "e-government" to the public administration. In 2018, a digital transformation strategy was developed to facilitate administrative transactions, reinforce transparency and accountability, and achieve a good model in various State administrations. However, said strategies have not been implemented, which led to a significant decline in administrative performance and effectiveness, according to the latest surveys conducted by the United Nations titled "E-Government Development" and "E-Participation."

First and foremost, digital transformation is a form of radical change that improves reality. When it comes to the public sector, digital transformation aims at offering the best, fastest, and cheapest service. In fact, Lebanon needs digital transformation for the following reasons:

- 1-** Eradicate the widespread corruption and bureaucracy
- 2-** The need for a good administration doing everything in its power to reinforce productivity, quality, and transparency. Indeed, Lebanon is in dire need of such administration within the framework of reforms required to overcome the current economic crisis.

## First: existing administrative reality

The public sector is facing numerous challenges in fulfilling its role, aggravated by the pervasive economic crisis that started in October 2019. The current reality can be summarized as follows:

**1- Widespread corruption and bureaucracy:** corruption is indeed the fundamental malady of the public sector, amid the mitigation of the judicial system's role as well as the role of the supervisory authorities represented by the Central Inspection, the Civil Service Council, and the Court of Accounts in fighting corruption. Since Lebanon's independence, the ministerial statements of all successive governments were never written without mentioning the priority to achieve reforms and purge the administration. However, no radical measures that would address the situation have ever been taken.

**2- Absence of a comprehensive and clear vision to implement the digital transformation strategy:** random and fragmented policies have characterized the general performance of successive governments since 2003, and have not offered the required comprehensive administrative reforms, which has been reflected in the failure of suggested initiatives. Today, Lebanon is suffering from the absence of a comprehensive, clear, and implementable vision for digital transformation.

**3- The downgrade of the level of services provided:** the absence of administrative reform, bureaucracy, and the aggravation of the economic crisis contributed to the downgrade of the level of services provided. The overcrowding and long wait to carry out an administrative transaction, as well as unfulfilled requests, have become an existing phenomenon in most public administrations. These administrations also suffered from electricity cuts, lack of fuel, and the absence of staff and employees from duty, which negatively impacted the provided services.

Also, a large number still adopt traditional and manual techniques, and other administrations make modest use of technology.

**4- Human resources inefficiencies and vacancies:** The public sector suffers from employee inefficiency because politicians interfere in the recruitment process, and highly qualified staff lack interest in working in the public sector and are rather tempted to work in the private sector for the material incentives and motives it presents. The economic crisis aggravated the situation, and administrations and institutions also suffer from a significant number of vacancies surpassing a percentage of 50%.

**5- Lack of technological means:** mechanized transactions in the public sector were introduced with the issuance of identification cards, which are one of the first biometric

cards in the world. However, this process was not completed as it should be. Although Law No. 81 relating to Electronic Transactions was passed in 2018, manual transactions have been prevailing in the public sector. The use of technology remained minimal, although the Ministry of State for Administrative Reform exerted huge efforts to supply the public administrations and institutions with technological means and to train and re-educate employees. Said administrations and institutions have not used technology tools and means stipulated by the Law (Electronic payment cards, electronic signature, etc.)

**6- Political interference in the administration:** the interference disabled numerous plans and strategies, and political infighting negatively affected the administrative performance. The most prominent example in this frame is the power sector that consumed about 45% of the public debt estimated at \$100 billion, without having this vital energy available for production and development. The latest strategy for this sector was established in 2010.

The same goes for other sectors such as garbage, telecommunications, and public works.

Political interference was witnessed in the public sector through random recruitment, especially in 2017, whereas around 5000 employees were recruited according to a power-sharing agreement between various political forces, later known as the “electoral recruitment,” although the decision of not recruiting employees for the public sector had been already made.

## Second: Challenges of digital transformation in Lebanon

Digital transformation presents two challenges: required legislation and means of personal data protection.

**1- Electronic Transactions Law:** awaiting the required laws, especially the ones relating to the protection of personal data, Law No. 81 relating to Electronic Transactions passed in 2018 can be treated as a legal basis and essential legal infrastructure to legalize electronic transactions in Lebanon. Law No. 81 introduced basic legal principles to Lebanon’s legal system, most importantly the legal recognition of electronic documents and signatures.

The contribution of this law lies in the legal recognition of electronic documents and signatures, and in equating them with paper

documents and manual signatures, according to legal conditions requiring that the person signing the document is recognizable and that the document is regulated and preserved in a way that would ensure its safety.

Digital transformation has also become one of the core functions of the private sector, whereas Law No. 81 gave the authority to a public body, which is the Lebanese Accreditation Council established by virtue of Law 572/2004, to accredit service providers electronic authentication certificates and authentication certificates for electronic signatures.

Said Law also gave the authority to another public body, which is Banque du Liban, to issue electronic authentication certificates solely for banking and financial transactions. The Law also gave the State Council the authority, as a public body, to supervise the decisions taken by the Lebanese Accreditation Council, by providing the possibility to appeal the latter’s decisions to the State Council.

Electronic Transactions Law includes the regulation of electronic commerce issues. It set out detailed provisions to protect consumers in said field, which poses challenges for public administrations in terms of digital transformation and dealing with such kind of commerce. It also poses a challenge for the customs administration and Ministry of Finance having to pay duties and taxes on purchased goods from foreign electronic websites.

Said Law also includes a detailed regulation of electronic payment operations and means, such as banking cards, electronic transfer, electronic money, and electronic checks. It allowed public administrations and institutions to adopt electronic payment means for the payment of taxes imposed on official transactions requested by citizens.

The Electronic Transaction Law also stipulates the establishment of the “Lebanese Domain Name Registry” comprised of representatives from the concerned public administrations and the public sector. It manages and registers the names of electronic websites featuring the Lebanese domains, making the public administration the driving force behind the management and registration of electronic websites. It also provides a legal basis to register the electronic websites’ names of various administrations.

The Electronic Transactions Law regulates the processing of personal data in the private sector and imposes restrictions, whereas

processing officers commit to declaring to a public administration, which is the Ministry of Economy and Trade, for any concerned person to exercise their right vis-à-vis their personal data (such as their right to view their data, ask to correct them, and object processing). Said restrictions also ensure that licenses from public administrations are obtained in exclusive and specific cases (for instance, processing related to State Security requires a license from the Minister of Defense and the Minister of Interior, processing related to health cases and genetic identity requires a license from the Minister of Health, etc.). However, processing personal data in public administrations, which is necessary when requesting an official transaction such as the registration of a car or a construction license, is subject to legal texts that were in force before the promulgation of the Electronic Transactions Law, and that regulate the procedure and requirements of official transactions. According to Article 104 of the Law, any usage of personal data for a purpose besides the ones they were initially requested for requires a license issued by a decree from the Council of Ministers and suggested by the relevant Minister.

**2- Protection of Personal Data:** protection of personal data is linked to two factors, which are the Right to Access Information preserved in many international laws and regulations and maintaining the secrecy of some information related to emotional, professional, and family life. Personal privacy is a classic right among the fundamental rights preserved in the Charter of Human rights and international and local regulations.

The success and effectiveness of privacy protection are linked to the performance of State administrations entrusted with that role.

**A- Value of Data:** personal data have an economic value, and they also represent an essential value to the state and its bodies, as personal data assists the State in managing citizens' affairs to offer the required services. The personal data collected are not limited to pictures or items related to one's personal life. They also include orientations, opinions, and social media activity. Such pieces of information are not collected by concerned stakeholders only, but by the public administration as well.

As for the value, the economic value of personal data is of great importance as mentioned above. For instance, an email

belonging to one person could be sold at \$80. An American study indicates that the personal data value of one person could reach \$35. However, in Lebanon, personal data are provided to companies without any compensation.

**B- Data Protection:** data owned by the public sector should be protected. In the absence of the required protection, data could be leaked and stolen by hackers and criminals wishing to invest in personal data.

The concept of data protection was launched in the 1970s, by emphasizing the need to protect individuals from the authorities' abuse of power and their attempts to violate the right to personal freedom through discrimination and oppression based on racism or sectarianism.

**C- Role of Commission on Information Technology and Liberties:** Law No. 81 issued in 2018 relating to Electronic Transactions clearly suffers from many imperfections and loopholes, in the absence of a National Commission on Information Technology and Liberties, without which a legal and administrative frame could not be established for the protection of personal data.

For instance, in France, the abovementioned commission is totally independent in its mission, aiming at putting information technology at the service of citizens, and at preventing any violation of human dignity and basic rights, including privacy protection.

The parliament should pass the law establishing the commission in Lebanon, all while ensuring its independence and isolating it from political interference. The commission should comprise elements with the required scientific and professional expertise and capacities.

The commission's main mission is to supervise the implementation of the law and not the employees, and to ensure that data are not used in a way that would harm them since privacy has to be respected. The commission could follow up with the technological developments and have an impact when it comes to rights and liberties, especially in private life.

Indeed, Lebanese law takes privacy into consideration. However, considering it does not indicate that the right to privacy is protected, whereas the law did not mention it and the constitution did not preserve it. Data protection is legally provided through the authority of a "National Commission for Data Protection" which would be responsible for

data protection.

Relying on data became essential for both public and private sectors, and data is treated as one of the assets adopted in offering goods and services.

Concerning the topic's external aspect, data protection currently represents a basis for existing in the digital economy. To allow the use of personal data, the latest European laws require the state or the company that is receiving personal data to ensure the needed protection. Therefore, the digital economy could not be developed without committing to data protection.

The issue raised is the following: what are the means that would keep the proper use of personal data subject to the law, in a way that would not endanger data holders? What should be done to avoid the use of data outside the frame of the law and public interest, especially that Lebanon has not complied with the norms of individual rights protection, of which personal data are a part?

Therefore, establishing personal data protection laws to ensure good protection requires awareness, education, and legal knowledge, in addition to an understanding of information technology and communication. That way, the required security could be achieved, the State could work with its various administrations to protect personal data, and safe digital transformation based on respecting the rule of law and human rights could be partially achieved.

### Third: Digital transformation outcome and required steps for its adoption

The adoption of digital transformation in several states led to a qualitative leap forward. Based on experience in this field, taking some helpful measures should be sought.

#### 1- Digital transformation outcome

It can be summarized as follows:

- A-** Decreasing expenses and costs bared by both the administration and citizens requesting a service. Therefore, the adoption of digital transformation is a vital reform.
- B-** Mitigating administrative corruption, as digital transformation limits or cancels communication between the requestor and the public sector employee.
- C-** Increasing productivity in compliance with quality standards.

#### 2- Required measures

The need for digital transformation should not ignore the existing challenges, most prominently:

- A-** Find a link between digital transformation and the Commission on Information Technology and Liberties. No clear mechanism for personal data protection has been established so far.
  - B-** Support the draft law relating to the establishment of the Commission on Information Technology and Liberties
  - C-** Provide said Commission with independence and make needed human and financial resources available for it to carry out its mandated tasks.
  - D-** Provide financial resources to establish the needed technological infrastructure in the public sector. The administration should be developed into a specialized administration with the promulgation of the digital transformation law, all while providing necessary supervision over the use of personal data. The role of the Commission on Information Technology and Liberties falls in this context, as it should determine whether or not personal data can be externally transferred.
  - E-** Train employees and staff working in the public sector, through organizing upgrading transformative training for the administrative body, for it to comply with the digital revolution and meet its requirements.
  - F-** Launch a national awareness campaign to familiarize the public with the concept and requirements of digital transformation and consolidate the protection of the right to privacy.
- The Lebanese people have proven to be open and responsive to technological applications adopted by the public sector, especially when dealing with the Corona pandemic and vaccination campaigns.
- The focus should be on providing a comprehensive application of digital transformation that would include Lebanese individuals without excluding social categories such as residents of distant regions who might not be able to bear the financial costs during the economic crisis Lebanon is witnessing.
- G-** Adopt laws ensuring personal life protection through personal data protection.
  - H-** Amend the electoral law in terms of restricting the sale and misuse of personal information mentioned in electoral rolls and personal data.

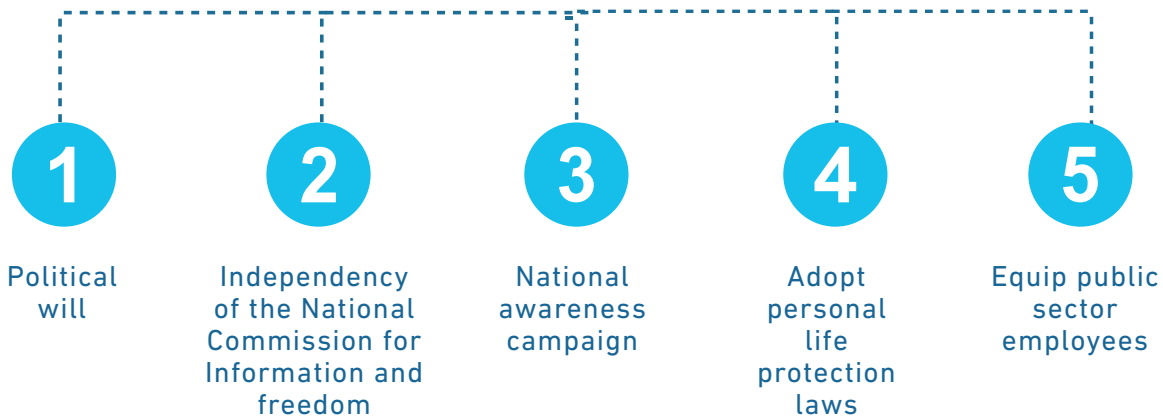
**I-** Develop necessary legal frameworks that would meet digital transformation standards required by the United Nations and Europe.

**J-** Accelerate the issuance of implementation decrees related to the Right to Access Information and the elimination of administrative obstacles, while taking into account security caveats related to the secrecy of some information.

**K-** Provide the required political will to adopt digital transformation, as this necessity is one of the main pillars of good governance.

Impose digital transformation in the public sector as a reform measure that should be included in the economic recovery plan. The economic crisis could turn into a chance to implement reforms provided officials have the required intention.

The following graphic represents the most significant measures required to achieve digital transformation.



### Policy Review conducted in December 2022:

Digital transformation is a tool to introduce technology and achieve public sector reform in Lebanon simultaneously radically and broadly at the same time.

The economic crisis has led to a bad reality in this sector and paralyzed most public administrations and institutions so that reform has become a duty to provide services to citizens better, faster and at a lower cost.

The introduction of technology and the rethinking of existing governance structures may be a duty and a necessity for the future of the sector. The public sector is currently facing two structural problems: the migration of talent, especially in senior and leadership positions, and the severe shortage that reached about 80% in the second category jobs, in addition to the poor efficiency of a large number of workers in this sector.

The sector is no longer attractive to young talent, and it cannot remain the same. International institutions such as the International Monetary Fund, the World Bank and donor agencies have called for radical reforms in this sector. Based on this, we can look at the effects of the economic crisis as a golden opportunity for reform, as it is possible to start from the administrative collapse that took place to approve the steps required to adopt digital transformation, which is outlined in the developed working paper.





# ELECTIONS; A GATEWAY FOR CHANGE AND GOOD GOVERNANCE

Thursday, December 9, 2021

## Event Brief

Beirut, December 9, 2021: Under the good governance forum, the Observatory of the Public Service and Good Governance (OPF) at Saint Joseph University in Beirut (USJ), in partnership with Konrad Adenauer Foundation (KAS) and in the presence of the Minister of Interior and Municipalities Judge Bassam Mawlawi, is organizing a conference entitled "Elections, the gateway to change and good governance". The conference included two sessions, the first entitled "Parliamentary elections, a democratic act to achieve change and apply good governance" and the second "Municipal elections, a tool to achieve participation and good governance".

During the opening ceremony, the President of OPF Pr. Pascal Monin prepared a speech saying, "We've been through a lot in Lebanon: black and white, good and bad, the beacon of the East and the darkness of the East. And here we are today at a crossroads where we are waiting for the future to unfold. We don't exaggerate when we say that the awaited

upcoming municipal and parliamentary elections are the most important in decades and some even say since the birth of Lebanon. They are so because Lebanon is going through an existential crisis and Lebanese people are invited to choose which Lebanon do they want? Do they even want Lebanon, this democratic country that loves life, where citizens strive to stay, where the government is the reference and no power is above its authority?"

He continued saying, "I ask the question most Lebanese ask: are the required conditions to achieve change available, months before the elections' date? Can elections embrace the powers of change represented by the civil society and the intellectual elite? How much does the current electoral law allow change?"

From his end, the Resident Representative to Lebanon at Konrad Adenauer Foundation (KAS), Mr. Michael Bauer said, "Democracy is about political participation and that means that those who are governed,

who should obey certain laws and should follow certain policies should have a say in formulating those policies and laws. And the most obvious way of doing so is through elections that are essential to legitimize or if needed to remove political decision makers, and to select between political alternatives and alternative political programs."

He concluded by saying, "Let's join forces and work together to make sure that the upcoming elections are indeed a gateway to change that the country urgently needs and the people deserve."

As for the President of Saint-Joseph University of Beirut (USJ) Pr. Salim Dacchace, he mentioned in his speech that "today we are combining the mission of a university which is education and research and its commitment to the country's issues. Elections are an essential national topic that we must delve into. And the university is the best place to do so because it allows participants to express themselves and to

share their ideas in order to organize beneficial elections.”

He continued, “If we want to apply the right form of democracy, we must do some change. This change shouldn’t occur after the elections but before and during. Our hope is that these upcoming elections will be an occasion to remove corruption and not drown us deeper in collapse. Lebanon deserves us when we work for it and therefore we deserve it if we work towards freedom and building good governance.”

Concluding the opening ceremony, the Minister of Interior and Municipalities, Judge Bassam Mawlawi, said, “Transparent parliamentary elections are a democratic gateway towards change and towards reinforcing the bases of good governance. The Lebanese government has pledged in its ministerial statement to organize these elections. I stand in front of you today to reiterate the full commitment of the Ministry of Interior to organize these elections and the proof is the decision issued by the ministry to form committees for this purpose.”

Then, the minister invited international organizations and civil society associations to join the Ministry of Interior in accompanying and controlling the electoral process, to reassure the Lebanese wanting change and good governance that the elections will be fair. He also invited donors to help the ministry in providing logistical needs without interfering in the national sovereignty due to the difficulty of the financial and economic situations. Then he invited all citizens to

“participate abundantly in the elections that will definitely take place next spring.”

After the opening ceremony, Father and Professor Salah Abou Jaoude talked in the opening session about the possibility of a transition into a modern government amidst sectarianism. Then the first session, moderated by the President of OFP Pr. Pascal Monin, began discussing the environment with the Minister of Environment Nasser Yassine, the political aspect in 2022 elections with member of Parliament Mr. Fouad Makhzoumi, a legal perspective into the current elections law with the professor at the faculty of law and political sciences at USJ and the appeal lawyer Dr. Rizk Zoughaib and the required criteria for sound parliamentary elections with the professor at USJ and the lawyer in the syndicates of Beirut and Paris Dr. Antoine Sfeir.

As for the second session, it was moderated by the journalist and University professor Mr. Charbel Maroun, and discussed participation in municipal work with Beirut Governor Judge Marwan Abboud, the role of municipalities in development with the President of Saida Municipality Mr. Mohamad Al-Saudi, administrative decentralization and decentralized cooperation to reinforce municipalities with the President of United Cities and Local Governments association in Lebanon and Director of the Technical Office of the Lebanese Municipalities Dr. Bechir Odeimi, the political and development aspect in the municipal elections – case study of Jbeil municipality with the

consultant in development projects and the former member of Jbeil municipal council Mrs. Najwa Bassil Piéton, and modernizing the municipal law with the country representative of the Democracy Reporting International Dr. André Sleiman.

Former Minister Dr. Tarek Mitri concluded the conference by giving four remarks about the discussions that took place. The first remark is that “Our current electoral law doesn’t help us, the citizens, in taking political decisions.” The second remark is about the change opportunities where Mitri says that “What matters in elections is transitioning into democracy. Elections are a tool and the ballot box has been put under the light as arbiter of disputes between people, but in the end it is one tool of democracy. There is no future for democracy without true separation between government and authority.” The third remark is that “We are adopting an electoral law that won’t necessarily lead to new people in power because it is revolving around sectarianism and is pushing us towards traditional choices.” As for the fourth and last remark, Mitri summarized it by saying that “Upcoming elections may bring new people in power even though candidates of change advocates haven’t been recognized yet. But electing new people isn’t strictly choosing the right candidates but it is updating politics and its application methods. Till now no new political language driving us towards the future has surfaced.”

## Panelists



### Judge Abboud Marwan

Beirut Governor Since June 2020. He was previously President of the Supreme Disciplinary Authority, appointed to the role on 14 November 2012. He had responsibility for reviewing allegations of corruption among civil servants. Governor Marwan Abboud is originally an expert in law, serving as Judge in the Lebanese courts.



### Father Abou Jaoude Salah

Vice Rector of Saint Joseph University of Beirut, also Dean of the faculty of Religious Sciences. He has numerous official publications, mainly focused on Christian and Islamic studies. Moreover, Father Salah is a partner at Dar El Mashreq sarl.



### Mr. Al- Saudi Mohamad

President of Saida Municipality. He is also a Member of the Board of Directors of the Consolidated Contractors Group (CCC). Mr. Al-Saudi graduated with a Bachelor's degree in Civil Engineering, a Master's degree of Business Administration.



### Ms. Bassil Najwa

Member of Byblos Municipality. Ms. Najwa has more than 20 years of experience in local development. She has been an independent consultant at Enfants du Monde, a team leader at Euro Funding, and a Gender Mainstreaming Consultant at the UNFPA. She also served the Embassy of France in Brazil in order to establish a guide to Brasilia for new arrivals. Ms. Najwa holds a Master's Degree in social work from USJ Beirut and a bachelor's degree in the same field.



### Pr. Daccache Salim S.J.

Rector of Saint Joseph University of Beirut, previously acting as Director of the Institute of Oriental Letters, and Dean of the Faculty of Religious Studies-USJ, along with several honorable positions. Pr. Salim joined the Society of Jesus in 1975, in Egypt, and became, until present, the Editor-in-Chief, and Associate Director of the Society of Jesus' Arab Cultural magazine Mashreq. He has been responsible for more than a hundred articles and publications, conference proceedings, and studies in the Arabic, French, English, and Italian languages, in the fields of education, Syriac spirituality, moral and political philosophy, Islamic Jurisprudence, cross-cultural meetings, interfaith dialogue, Muslim-Christian relations, etc.. Pr. Salim is a double PHD holder; one in Literature and Philosophy from Panthéon-Sorbonne University (Paris 1), and another in Educational Sciences, University of Strasbourg – France. He also holds a certificate in Political Science, a Bachelor of Arts in Philosophy from USJ, a Master of Arts in Theology and Philosophy from the Sèvres Institute, as well as a Diploma in Islamic Sufism and Syriac Spirituality.



### MP. Makhzoumi Fouad

Member of the Lebanese Parliament. Known to be a successful businessman, MP. Makhzoumi was the co-founder of Future Pipe Industries. He has bachelor's and master's degrees in chemical engineering from Michigan Technological University.



### MP. Judge Mawlawi Bassam

Minister of Interior and Municipalities. Former Judge Bassam Mawlawi has been appointed as Interior Minister in Lebanon's new cabinet. As a judge, Minister Mawlawi presided over Beirut's Court of First Instance and headed the North Lebanon Criminal Court. His Excellency initially studied law and was the first judge in Lebanon to hold a virtual hearing in the history of the North Governorate, which he did during the pandemic-induced lockdown that affected courts across Lebanon.



### Dr. Mitri Tarek

Former minister. Mitri served as a visiting professor in several international institutions. He has extensive experience promoting Christian-Muslim relations and has published on the subject. Mitri was the environment and administrative development minister in 2005. He was the minister of culture and foreign ministry the cabinet formed in 2005. He was appointed information minister to the cabinet led by then prime minister Fouad Siniora on 11 July 2008 and the following government of Saad Hariri in 2009. He was appointed by the United Nations Secretary-General Ban Ki-moon as his special representative and head of the United Nations Support Mission in Libya (UNSMIL), and director of the Issam Fares Institute for Public Policy and International Affairs at the American University of Beirut. He also sits on the Board of Directors of the Arab Center for Research and Policy Studies. Dr. Mitri has a PhD. in political science from the University of Paris X.



### Dr. Odeimi Bechir

President of United Cities Lebanon and Director of the Technical Office of Lebanese Municipalities. Representative of Lebanon at UCLG. Doctorate Degree holder.



### Dr. Sfeir Antoine

Lawyer and Franco-Lebanese Journalist. He practices as an attorney at law at the Paris and Beirut Bar associations. He is an arbitrator as well as an affiliated partner in Montréal. He lectures at the Université Saint Joseph in Beirut, lectured at the American University of Beirut, and served as a member of the UNESCO National Commission. He is a counsel before the International Criminal Court and regularly offers analyses on legal and political issues in local and international media outlets. Antoine Sfeir earned a PhD in international law from the Université Paris Descartes.



### Dr. Sleiman André

The Democracy Reporting Institute (DRI) country representative. Dr. Sleiman has been a Senior Governance Consultant for VNG International, a lecturer in sociology at the LAU, and occupied numerous honorable positions such as Programme Manager, Regional Rule of Law Programme (MENA) at Konrad-Adenauer-Stiftung. Dr. Sleiman is a volunteer and coordinates with Beirut Madinati, and EDAN. His educational background consists of a degree in Public policy, leadership, ethics, and decision-making from Harvard Kennedy School, a PhD. in Sociology from EHESS - France, and a Master's degree in Social Sciences from this same University. He was also Certified by EPFL in the field of Municipal Solid Waste Management in Developing Countries.



### H.E. Yassine Nasser

Minister of Environment. His Excellency has been an associate Professor of policy and planning, and Director of the Issam Fares Institute for Public Policy and International Affairs. Senior Fellow at the Institute for Environmental Security, and also served with the UNDP. His educational background consists of a PhD in development planning from UCL, a Master of Science, Development studies from the London School of Economics, and another MSC in population studies from the AUB.



### Dr. Zoughaib Rizk

Dr. Zoughaib is a doctor of International Law from Pantheon University, Paris II, and holder of a Lebanese Bachelor's degree in Law and a Bachelor's degree in Political Science from Saint Joseph University in Beirut. He is a lecturer in International Law and Constitutional Law at the Faculty of Law and Political Science at Saint Joseph University. He is registered with the Beirut Bar Association and a member of several committees, especially the Legislative Committee. Dr. Zoughaib is a member of the Academic Promotions Committee at the Arab Center for Legal and Judicial Research of the League of Arab States, Founder and Secretary of the Lebanese Center for International Studies and a Member of L'Institut International de droit d'expression et d'inspiration françaises IDEF-Liban. He has many human rights articles published in specialized magazines, as well as many press articles and interviews.

# PARLIAMENTARY ELECTIONS ARE A DEMOCRATIC ACT TO BRING ABOUT CHANGE AND ESTABLISH GOOD GOVERNANCE

Published on Monday, January 10, 2022

Parliamentary elections are the best way in democratic countries for the people to choose their representatives. Despite the many flaws in the Lebanese system that limit people's ability to choose their representatives, elections remain the most powerful weapon to change for the better.

The parliamentary elections scheduled for the spring of 2022 are of paramount importance as they are the first to be held since the revolution of October 17, 2019, and the subsequent campaign against the existing political class, the economic crisis, and the Beirut port explosion on August 4, 2020. Therefore, it constitutes a popular referendum on the performance of those who assume responsibility, and what emerged from the mentioned, especially at the level of the opposition, civil society forces and active political movements.

Despite the limited change that elections have historically carried in Lebanon, this station remains a means of accountability, rotation of power and people's choice of who represents them. It remains noted that some electoral stations produced a profound change that moved Lebanon from one political shore to another, as happened in the 1968 elections, which marked the end of Al Chehab era after the loss of the approach to the Triple Alliance.

## First: Criteria and conditions required for parliamentary elections:

The criteria and conditions are necessary in order to achieve the main purpose of the elections, which is to express the will of the people in choosing their representatives. It is obvious that the obligation to hold elections on time is a duty. Any extension of the mandate

of the Parliament is a violation of Article 24 of the Constitution,

**The required criteria can be summarized as follows:**

**1- Equality:** Equality should be ensured in two things:

**A- Division of electoral districts:** which is lacking in the current electoral law in which the constituencies ranged between large and small without any legal standard. The judiciary was adopted at times such as the northern Metn, Zahle and Baabda, and the two districts at other times such as Keserwan, Byblos, Chouf and Aley, and the merging of 4 districts such as Batroun, Bcharre, Koura and Zgharta, in addition to the merging of a governorate and 3 districts such as Nabatieh, Marjayoun, Hasbaya and Bint Jbeil, and the governorate of Baalbek - Hermel. This has created a glaring imbalance and discrimination.

**B- Number of voters:** The imbalance and disparity are shown in the number of voters in the 15 districts. Beirut The First constituency had the lowest number of voters, and the third constituency of the south had the largest number. Antoine Banou was elected as a deputy for the first constituency in the capital with 539 votes, and Mohamed Raad as a deputy for the third constituency of the South with 43,797 votes.

Preferential voting in the judiciary without the district deprived many voters of choosing candidates in their district, which constitutes a violation of the principle of freedom to choose representatives of the people.

**2- Activating the work of establishing the Electoral Supervisory Commission:** The Electoral Supervisory Commission has turned into a permanent body in Lebanon, but its activity has remained very limited, while in a large number of democratic countries it manages and supervises the electoral process from A to Z.

The facts indicated that the 2018 elections and previous sessions indicated the inability of the Commission to monitor compliance with the electoral spending ceiling due to its weak capabilities. Its role was also almost absent in preparing for the elections and spreading awareness and education among candidates and voters. Many remained ignorant of their rights in this regard.

It is necessary to develop the necessary legislation that guarantees the independence of the Authority and strengthen its powers to enable it to carry out the tasks entrusted to it.

**3- Eligibility of judges and employees:** Many gaps emerged in the electoral process in 2018 as a result of the lack of familiarity of a number of judges and administrative staff with electronic programs for the elections, which requires the rehabilitation and training of these people. Among the incidents recorded in 2018 was the cancellation of the results of 49 ballot boxes deployed.

In order to ensure transparency, all necessary information should be available to the public through the Ministry of Interior and Municipalities and the Election Supervisory Authority.

**4- Integrity:** Article 62 of the Electoral Law - the second paragraph, excluded from prohibited works obligations, expenses and services if the candidates have been presenting them normally for at least three years before the start of the electoral campaign. But monitoring to ensure compliance with this article is difficult in the absence of resources at the Election Supervisory Authority. As a result, a class of affluent candidates and capitalists emerged, which violated the rule of equality and equal opportunities between candidates. One of the candidates in one of Mount Lebanon districts revealed that his electoral expenses amounted to USD 200,000, while his colleague on the list spent about USD 20,000,000 in his election campaign in 2018!

The impact of the financial factor could be significant as the economic crisis in Lebanon intensifies.

**5- Neutrality of authority:** This criterion requires that the authority be at the same distance from the candidates. But in reality, it has often been, most recently in 2018, a direct party. In this session, the government included candidates for the elections, including its president and the Minister of Interior, which stripped it of its neutrality.

**6- Controlling electoral spending:** The form of candidates' spending without controls is a reason that disrupts the will of voters. With the severe economic crisis, this factor greatly affects the results of the electoral process, especially with the decline in the value of the national currency, so bribery becomes easy at a relatively limited cost.

The electoral law stipulates that the disbursement of prohibited electoral expenses is considered an offense of bribery, but it dropped it over time within six months from the date of announcing the results.

**7- Ensuring justice in electoral media and advertising:** It should be possible for all candidates to deliver their electoral programs to voters, through the means of media and electoral advertising. Therefore, the "monopoly" of financially capable candidates over the media and advertising should be prevented, the required spaces should be provided to candidates according to the balance of power, and no programs should be withheld from voters.

**8- Educating citizens and employees:** Democratic countries are keen on awareness and education in a way that provides the necessary knowledge of rights and duties, and alleviates the impurities of the electoral process. The role of the media and civil society organizations is pivotal in this area. For example, 38,309 ballot papers were canceled in 2018, and the percentage of canceled ballots in a district was 5%, which is a high number.

## Second: Critical reading of the electoral law:

The electoral law No. 44 was issued on June 17, 2017. It was noted that the elections will be held on one day in all 15 electoral districts, during the sixty days preceding the end of the term of the Parliament. It was also noted that non-resident Lebanese voted for the first time in the history of the elections.

**The two positive points of the law are as follows:**

**1- Adoption of proportionality:** The law adopted for the first time in the history of Lebanon the system of proportional sponsorship on the basis of closed lists with a preferential vote according to the rule of the largest fraction in 15 electoral districts. According to the law, candidates are included in closed lists that include at least 40% of the number of seats in the electoral district, and not less than three seats having at least one of each minor constituency consisting of more than one minor constituency. Secondly, parliamentary seats shall be distributed to relatively competing lists based on the number of votes obtained. Elections shall be made by adopting the preferential vote of one candidate on the list chosen by the voter who shall be exclusively in his small district. Whoever obtains the highest percentage of preferential votes wins from the list.

The adoption of proportionality was a revolution in a country that has been

applying the majority voting system without interruption since 1922, and before that in the Mutasarrifate of Mount Lebanon in 1864. This led to a noticeable grumbling among a large number of voters about the closed list mechanism established by the new law, and restricting their freedom to choose candidates by finishing.

**2- Expatriate voting:** The electoral law allowed the realization of an old dream of the Lebanese expatriate, so the expatriate voters registered in the electoral process participated for the first time in the history of Lebanon. The number of registered voters reached 82,965 voters, of whom 46,799 voted or 56.4%, and constituted 2.5% of the total voters. The number of registered voters for the 2022 elections rose to 244,442 voters.

**3- The most prominent criticisms of the election law are the following:**

**A- Lack of unity of standards in the division of districts:** The division of the 15 electoral districts varied, some of which included a single district, and some included more than one district, down to the governorate.

The division led to a stark disparity in the size of the electorate from one district to another. For example, the number of voters in the third southern constituency, which includes the governorate of Nabatieh, Marjayoun, Hasbaya and Bint Jbeil in 2018, reached 450,694 voters, while the number of voters in the first constituency of the south, consisting of the city of Sidon and the district of Jezzine, reached 120,765 voters, and the number of voters in the First Beirut constituency, consisting of the neighborhoods of Ashrafieh, Rmeil, Saifi and Medawar, 133,806 voters.

The electoral law adopted the geographical criterion, not demographic, in the division of districts without any equality, so the governorate was in Akkar, Baalbek-Hermel, and the judiciary in Metn, Baabda and Zahle, and the merger of two districts in Kessrouwan, Byblos, Chouf and Aley, and four districts in the third northern district (Batroun, Koura, Bcharre and Zgharta).

It is not possible to justify some anomalies and scandalous cases that do not respect the principle of geographical contiguity, as is the case in the first southern district consisting of the city of Sidon and the district of Jezzine, where villages east of Sidon separate them. In this department, the city of Sidon was also separated from its villages which constitute one district with them.

It should be noted that it is difficult to adopt the

governorate criterion as an electoral district in all Lebanese regions after the modern administrative divisions, and the randomness adopted by Lebanon through establishing in 2013 and 2017, three new governorates, one of which consists of one district, Akkar, which created a disparity in the size of the governorates.

However, the criterion of social, geographical and historical homogeneity has been adopted in constituencies composed of geographical units characterized by social cohesion among their residents. Baalbek-Hermel, Keserwan-Jbeil, and Chouf-Aley for example, have always formed political-administrative units.

**B- High ceiling for electoral spending:** Article 61 of the Electoral Law stipulates the spending ceiling. theoretical expenditure after a calculation based on the number of candidates in 2018 amounted to USD 680,000,000, which is a high amount. According to Article 58 of the law, electoral spending includes the expenses of transportation for internal voters and transportation for voters from abroad.

Obligations and expenses, which include the provision of services or payment to voters, are excluded from prohibited acts during the electoral process (Article 62, paragraph 2). These obligations include, but are not limited to, in-kind and cash donations and assistance to individuals, charitable, social, cultural, family, religious and other associations, or sports clubs and all official institutions, in conditions that candidates have been providing them in the same volume and quantity in a regular manner for at least three years before the start of the electoral period, which constitutes a violation of the principle of equality between candidates in terms of electoral burdens, and legislation prescribed for bribery.

**C- Weak capabilities of the Electoral Supervisory Commission:** The Commission does not have the legal personality and the required capabilities, compared to the large tasks entrusted to it, especially in terms of monitoring electoral spending, and respecting competition in the field of electoral media and advertising.

The Commission also does not enjoy complete independence from the Minister of Interior and Municipalities, who provides it with its own headquarters and can attend its meetings.



### Third: Conclusions and suggestions:

In order for parliamentary elections that carry radical and profound change, and provide people with the opportunity to freely choose their representatives, the following should be done:

**1- Amending the electoral law:** Work must be done to approve amendments that ensure equality in terms of dividing districts, and granting preferential voting at the constituency level, not the district.

**2- Neutrality of power:** This is secured by not running the candidature of the Prime Minister and ministers and not harnessing the capabilities of the public sector or using influence for the benefit of specific candidates or lists.

**3- Controlling electoral spending:** the law must be applied and the necessary supervision must be conducted, and work to set a maximum limit for donations, and oblige the lists and candidates to publish their budgets and candidates to announce their financial receivables and their families' receivables, and then make a comparison between the reality of those receivables when assuming power and when leaving it.

**4- Strengthening the role of the Election Supervisory Commission:** The Election Supervisory Commission should be given wider powers and greater autonomy to carry out its specific tasks.

**5- Ensuring equal access to media and advertising:** The media and advertising should be at the disposal of all candidates without discrimination, while giving fair opportunities to all. The ownership of media confined to parties and personalities prevents this, which hinders the securing of sound elections that reflect the choices of public opinion.

**6- Reconsidering the electoral divisions:** In order to ensure the effectiveness of the proportional system and provide a fair representation of voters, the number of seats in the electoral district must not be less than 20, so the electoral quotient decreases, allowing the largest possible number of political trends to be represented.

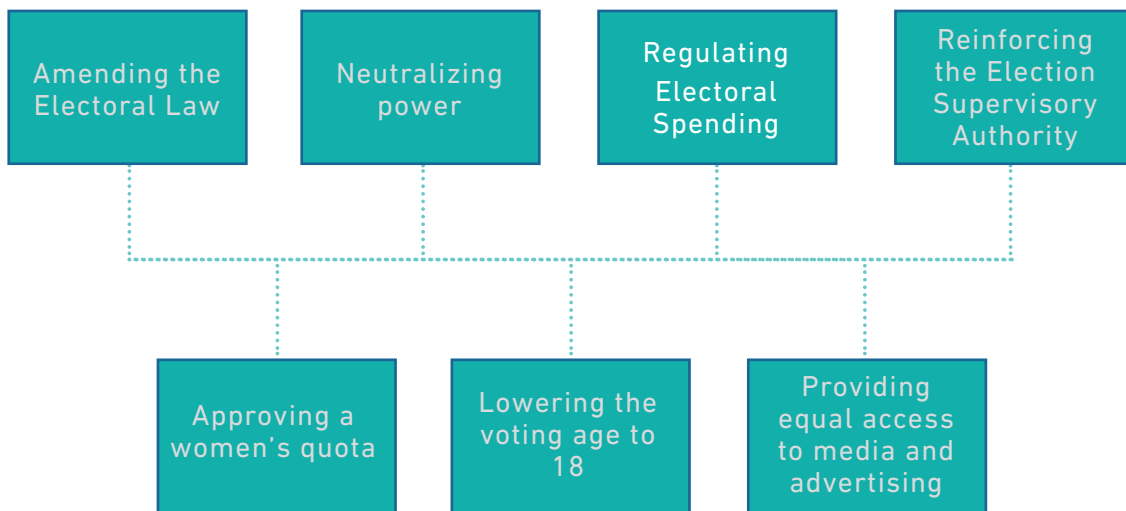
**7- Approving a women's quota:** In order to enhance women's participation in candidacy and voting, a quota for women must be determined in the seats of the Parliament. It is a method adopted in many democratic countries, and allowed to be established in

order to activate women's participation in parliamentary life.

**8- Lowering the voting age to 18 years:** This measure will activate the participation of young people in the selection of representatives of the nation, and ensure one of their basic rights. It is not possible to think of a healthy political life without the active participation of young people.

**9- Producing electoral educational programs:** The programs are addressed to voters, judges and employees in charge of the electoral process in order to inform them of their rights and duties, which contributes to spreading awareness and reducing the impurities of the electoral process.

The following chart summarizes the most prominent steps required to hold sound elections:  
Required Parliamentary Elections Intact



### Policy Review conducted in December 2022:

The parliamentary elections were put forward for study and discussion as the most influential democratic work in the life of societies, and the door to change and rotation of power.

Throughout its history, Lebanon has known a large number of electoral laws. The falsification of the will of the voters often began with the electoral law, where the incumbent authority sets the law that satisfies it, and believes that it provides the candidates supported by it with the likelihood of winning.

Despite the adoption of proportionality in the electoral law based on which the elections of 2018 and 2022 were held, the majority of legal experts agree that this law did not ensure the validity of the required representation due to its shortcomings and the absence of unity of the approved standards.

There is no doubt that amending this law is the first step in the process of the needed political reform.

# MUNICIPAL ELECTIONS ARE A MEANS TO ACHIEVE PARTICIPATION AND GOOD GOVERNANCE.

Published on Monday, January 10, 2022

The roots of municipalities in Europe can be traced back to the Middle Ages when feudal order prevailed. During that era, the “master” owned the land, the people and the properties on it. These prompted peasants who rejected the “master” system to establish independent and free residential communities that were given names that express their reality: Freetown in Britain, Ville Franche in France and Freiburg in Germany. The inhabitants of these cities established local councils to defend them and manage their local affairs, which served as the foundation for the local councils.

Municipal work has developed significantly in recent years, and after being limited to traditional services summarized by the popular concept of “guarding and sweeping,” municipal councils are now taking on extensive life affairs related to public repair, sanitation, environment, industry, agriculture, trade, and services... The municipal councils form an example of administrative decentralization in action. Democratic countries provide examples of beneficial and profitable municipal functioning. In Lebanon, powers are conflicted between the central authority and its departments on one hand, and municipalities on the other, in addition to the low autonomy of municipalities, limited financial revenues and the large number of municipalities are real obstacles to successful municipal action.

Development and public interest often do not play a role in the municipal electoral competition in Lebanon. Practices in a wide number of towns show that alliances are formed based on political and familial concerns, with a primary goal of overturning the opponent. These partnerships are often formed by the apex of the list, with little regard for the development project. The emphasis is on the position of persons connected to the party or movement in the municipal council,

rather than on development concerns such as public property and how to use it, the use of public spaces, waste management, position on building violations.

The electoral programs remain secondary, receiving insufficient attention from both competing candidates and voters.

## First: The municipal reality:

The municipal reality in Lebanon suffers from many impurities and obstacles that hinder municipal work and its output. The severe economic crisis which Lebanon has been undergoing since 2019 has demonstrated that relying heavily on the state is not an option. Instead of public administrations helping municipalities, it is the latter, even those in small towns, which have provided the necessary support for public administrations and institutions operating in the municipal area of logistical equipment, stationery and equipment..., and helped it provide services to citizens. Thus, it was evident that municipalities in Lebanon are the main solid assets for the development process and the development of regions. Success in selecting competent mayors and municipal council members provides the basic foundation for the launch of the development process in various regions.

Despite the supportive role of municipalities, the majority lack a competent and qualified human apparatus. The mayor and the municipal council have primary duties, and they are elected solely on the basis of familial, political, and sectarian representation.

The municipal reality complains of many defects that hinder the development process, which can be summarized as follows:

**1- The High number of municipalities:** Lebanon may be the country with the largest number of municipalities in the world compared to its area and population. The reason for this is that the decision to establish a municipality is the prerogative of the Minister of Interior. Political, electoral and personal factors often interfere in the decision, regardless of the extent to which the municipality has the financial capabilities required to carry out its tasks. The number of municipalities currently stands at about 1058, the majority of which are unable to secure basic expenses to carry out their responsibilities.

**2- The spread of bureaucracy:** Bureaucracy prevails in municipal work widely, which causes a waste of public money and time, and obstructs the provision of services, especially in cases that require rapid action. For example, a simple obligation may require two or three months to complete the transaction belonging and the alimony contract. In some cases, as happened in December 2021 with the explosion of water pipes in Beirut, it was not possible to break down in classic ways that took a long time. In most cases, the laws and the administrative and financial regulations are violated in order to achieve the public interest!

Paradoxically, according to what was revealed by the Governor of Beirut, Judge Marwan Abboud, at the seminar "Municipal elections as a means to achieve participation and good governance" organized by the Good Governance Forum of the Observatory of Good Governance and Public Service at Saint Joseph University in cooperation with the Konrad Adenauer Foundation, within the framework of the conference "Elections Crossing to Change", it was discovered that using financial advances to clean sewage and canals in the municipality of Beirut was 15 times less expensive. What is the point of holding periodical tenders? It is worth noting that using advances to divide alimony is considered a breach of financial and administrative norms and laws.

The facts in the Beirut port explosion on August 4, 2020, and its aftermath also showed that the municipal work mechanisms are unable to face major events due to the bureaucracy and the principles of administrative law to which the Beirut Municipality is subject in its work. The law, which prohibits the municipality from working on private property, was an obstacle to intervention to support and assist the owners of demolished houses.

The General Budget Law for the year 2020 also prohibited municipalities from granting aid and subsidies to individuals and associations. This hinders the intervention of municipalities in development or relief work.

**3- Multiple controls on municipal work:** Municipalities are subject to multiple controls distributed between the control of the guardianship authority represented by the Ministry of Interior and Municipalities, the control of the District Commissioner and the Governor, the control of the Court of Auditors, the control of the central inspection,

and the control of accounts... which impedes municipal work.

**4- The special status of the Municipality of Beirut:** The Municipality of Beirut constitutes a unique exceptional case among the municipalities in Lebanon, where the Governor of Beirut presides over the executive authority in it, which enshrines the principle of separation between the executive and decision-making powers, and the second represented by the municipal council.

Attitudes towards the current situation vary, whereby some view it as healthy others criticize it and consider it unfamiliar. This disagreement is evident through the debates amongst the parliamentary blocs at meetings conducted by sub-committees specialized in studying the amendment of Municipal Law.

Deputies did not reach a unified opinion on the status of the municipality of Beirut and the authority of the governor in their discussions in parliamentary committees on the draft decentralization law, which extended from 2017 to 2019.

**5- Municipal successes:** Many municipalities and municipal unions have achieved many projects, the most outstanding of which can be summarized as follows:

**A-** Addressing the problem of waste in the city of Sidon with an effort by the municipality and partnership with the private sector. In this context, the municipality has developed an area for backfilling in the sea, with which the city gained an additional 550.000 meters of area, part of which was allocated to the establishment of an isolated sanitary landfill that contained all the old waste mountain after its treatment. An area of 35.000 meters has been allocated for the establishment of a public park. The rest of the area will be allocated for the construction of public facilities and the completion of other vital projects such as wastewater refining and others.

The project was accompanied by the completion of the processing an advanced laboratory for the treatment of solid household waste in Sidon, which receives daily 500 tons of solid waste belonging to the capital of the south and its surroundings, Jezzine and Beirut (250 tons), the plant sorts it into materials suitable for recycling and organic fertilizers, and toxic gasses resulting from waste are disposed of by using them to generate energy that operates the plant itself and illuminates the surrounding streets.

The municipality of Zahle has also succeeded in addressing the waste problem in the city with basic funding from the World Bank. The city did not experience a garbage crisis like that witnessed in most Lebanese regions.

**B-** Securing clean alternative energy. Examples of this are numerous in the municipalities of Abbasiya, Munjaz, Hosh Moussa, Anjar, Ghalboun, Zahle...

**C-** Securing drinking water, drilling wells, constructing, repairing and maintaining networks. These matters do not fall within the competence of municipalities.

Many municipalities and municipal unions have developed joint transport projects and strategic plans for the development of regions, which the severe economic crisis that hit Lebanon prevented their implementation.

## Second: Good governance in the prevailing reality:

The facts have emerged that municipal work also suffers from scourges at the level of ethical behavior, transparency and sound financial management. In 2008, the EU Committee of Ministers issued a set of principles (12 principles) that local authorities had the duty to respect or adhere to in the exercise of good governance, including ethical behavior and financial management.

### 1- Ethical behavior:

Municipalities deal with public money directly through people's daily transactions that require permissions, licenses, business assignments, monitoring violations and other matters related to the management of the public affairs of the city. The municipal authority can resort to using its power, disbursing influence, and harnessing capacities in regard to citizens. The legal texts are not sufficient to control practices, because it fails to cover all the cases faced by the worker in the municipal sector. The solution may be to develop a clear draft of conduct based on the values of serving the public interest.

### 2- Transparency and financial management:

There is no transparency in the absence of exposed financial accounts. Therefore, the municipal budget statement and cutting the account for citizens is very important. In democratic countries, an annual meeting is held at the invitation of the municipality

in which people are informed about how to spend and disburse public funds, collect revenues, and achievements.

The strange thing is that the members of the municipal council themselves may not be informed with all the affairs in the municipality, as the powers are concentrated in the hands of the mayor, who can move in many matters and affairs separately from the council.

Despite the presence of financial controllers who actively analyze transactions and central supervision over the activity of local authorities, there are significant loopholes in managing the spending of public funds, at least in terms of their correct use.

The facts also show that it is simple to pass a number of projects and expenditures without the permission of the local council members. These methods are frequently carried out in coordination between the President and one of the Council members, without the knowledge of the other members.

### 3- Citizen Oversight and Accountability:

Article 42 of the Municipal Law permits citizens interested in municipal employment to inquire. It articulates that: "Every stakeholder in the municipality department may seek, at his own expense, a copy of the municipal council's or its president's decisions, verified by the municipality's secretary or the person in charge of its administration, and to study the annual accounts."

However, the trouble is that only a small number of citizens are aware of the presence of this law, which contributes to the loss of this right of supervision and accountability. In many circumstances, the municipalities often fail to meet citizens' requests for information and records. Citizens made complaints against this refrain but without fruitful results.

What is required for municipal work:

## Third: Conclusions and suggestions:

During the mandate period, French legislation was the base for the establishment of municipalities in Lebanon, and the Lebanese state continued this practice after independence, going so far as to allow each housing group with more than 800 citizens to establish a municipality and elect members and a president for its council. As a result,

cities with insufficient financial resources were established. Municipal income in a town of 800 people is insufficient to cover municipal expenses, and they barely cover the salary of a municipal clerk or a single police officer.

The following should be accomplished in order to enhance municipal work and stimulate participation in it:

**1- Merging municipalities:** The high number of municipalities forms a lesion that can be treated by merging municipalities together. Three-quarters of Lebanon's municipalities are small and unable to gain the required financial resources to carry out their responsibilities. The economic crisis widened the financial imbalance since figures show that just 4% of municipalities had financial and administrative authority.

The experiences of Jordan, Tunisia, the Netherlands, Japan and other countries can be benefited from to achieve this combination.

Meanwhile, the Minister of the Interior should refrain from making any decision to form a new municipality.

**2- Amendment of the Municipalities Law:** The Municipalities Law, established in 1977, was modern and progressive at the time. In 1997, major revisions were implemented that decreased the executive branch's authority and limited the "freedom" that this law provided.

Today, fresh revisions to the legislation are required as a result of societal developments and new methods. A legislative subcommittee to update the Municipalities Law has been constituted under the Interior, Defense, and Municipalities Committee, which is chaired by Deputy Samir Al-Jisr and has been meeting on a regular basis since 2019. The debate covered 35 draft articles, and the path to completion remains long, especially given the lack of a methodology for the legislative process in Lebanon, as well as a vision, fundamental principles, collective points from which the committees operate. Deputies often return committee members to their respective blocs for assessment, delaying deliberations and subsequent decisions.

The following amendments should ensure:

**A-** Increasing the engagement of local council members in taking on greater responsibilities, particularly in central and grand municipalities.

**B-** Endorsement the proportional voting method in elections, which allows for representation of all elements of local society

on the municipal council. This is a sort of internal control used by municipalities.

**C-** Giving citizens residing in the city or town the ability to vote even if it is not their home city, because they pay their due fees, allowances, and municipality taxes, so in exchange, they should be given the opportunity to pick their municipal representatives.

**D-** Create structures that allow the public to monitor and report and encourage local associations to engage in this accountability.

**E-** Established independent methods for reporting corruption if it occurs and seek to safeguard the reporters.

**F-** The Adoption of these modifications is critical, but it must be supplemented by additional actions, based on a radical review to ensure that the amendments are in accordance with current laws and regulations, leading to the construction of functional and autonomous local authorities.

**3- Achieving wider financial and administrative independence for municipalities:** This is accomplished through the endorsement of legislation that reduces multiple control over the municipalities, as well as the transition from monitoring the applicability of laws and regulations on transactions, especially the financial ones, to monitor the results, which leads to reduce the waste of public money and time.

Deputies' discussions in parliamentary committees between 2017 and 2019 while studying the draft decentralization law revealed that a large number of deputies do not want true administrative decentralization, which includes financial decentralization, but rather seek to keep financial matters in the hands of the center, preventing municipalities' independence.

**4- Securing the revenues of municipalities from the Independent Municipal Fund on a regular basis:** The fund's revenues are not paid consistently. Sometimes the municipality receives its dues at the end of the year, and other times it receives them two years or more beyond the due date, preventing the municipality from developing a program of projects to be committed to fulfilling it on particular dates.

A complete check-up should also be performed in which development criteria are used for computation and distribution on municipalities. The Fund cannot be held prisoner by the executive branch, which can distribute its assets whenever and wherever

it wants. This can only be accomplished by establishing an independent management body for it, which runs it efficiently by relying on openness in its operations, such as regularly and periodically releasing the Fund's accounts and the cash paid to municipalities.

**5- Reconsideration of municipal fees and allowances:** Because municipal development work is linked to the provision of the necessary financial resources, and with the worsening of the economic crisis, the foundations of the financial tax part represented by fees and allowances must be radically reconsidered, because an increase in revenues is reflected in the enhancement of developmental work. This is expected to be accompanied by a rise in using technological mechanisms in the modern collection aim, which saves the citizen in charge from spending time and transportation to the municipality to pay their dues.

**6- Training and qualifying municipal executive staff:** The team must have the essential efficiency in this technological period, as well as the ability to bridge the gap between it and modernity, in order to achieve the digital transformation required for a contemporary administration that delivers the finest services to the citizens.

**7- Activating the mechanisms and frameworks of participation in municipal work:** This is accomplished through approving the required mechanisms, enhancing transparency and endorsing the Law of the Right to Access Information which was approved on June 30, 2021. In accordance with Articles 45, 55, and 76 of the Municipalities Law of 1977, information that is in the public interest must be released. The right to make information accessible to the public was codified in the legislation and its implementing regulation. In this context, the publication should be judgmental.

The new proposed municipal legislation includes provisions for municipal and neighborhood committees, which are an efficient way to ensure greater participation in municipal operations and must be activated as one of the participatory mechanisms.

**8- Strengthening cooperation:** Municipal unions must be formed to foster collaboration among municipalities.

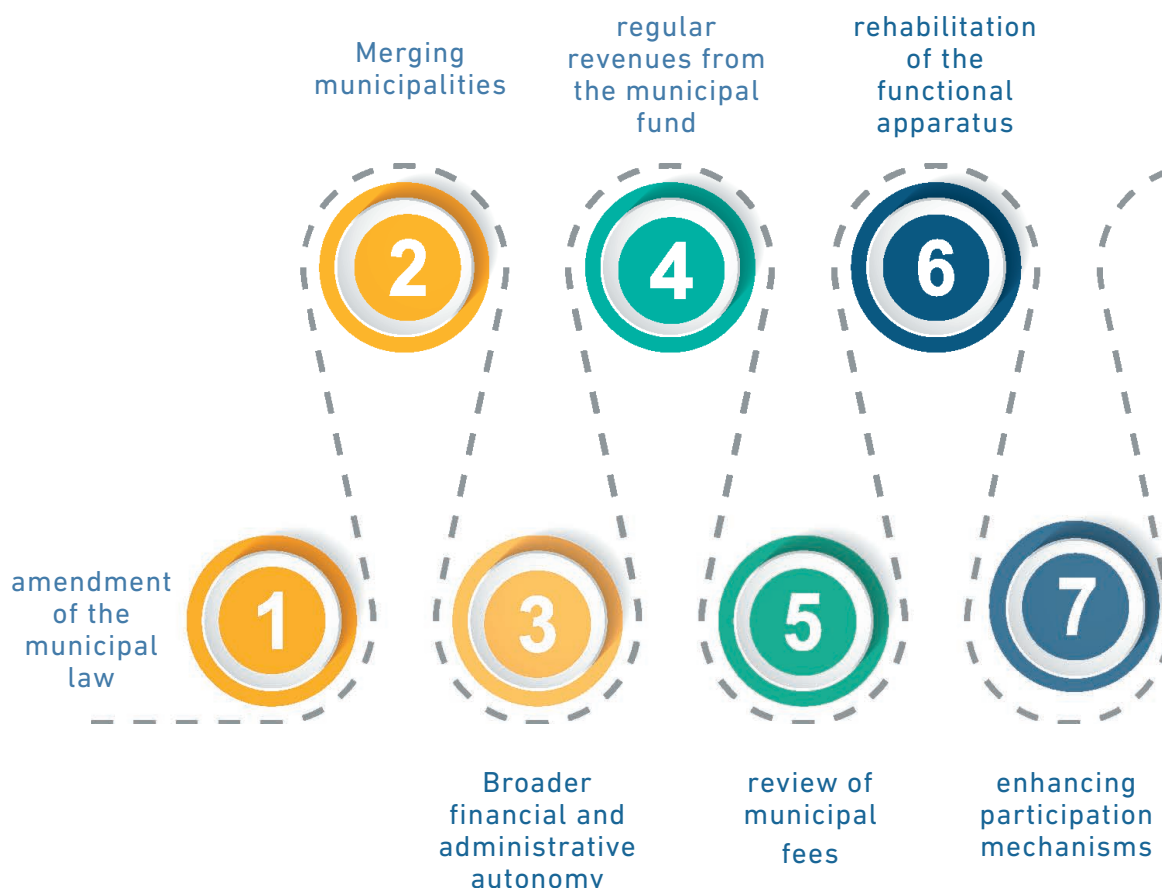
Decentralized collaboration between local governments from various cities that share knowledge and experience in the context of common interests should be promoted. The

equality between the two partners must be emphasized because the connection is not between a donor and a beneficiary or a creditor and a debtor. Advice, technical help, knowledge, training, aid in planning, accompanying, and following up on initiatives, procuring funds... are all available so the Lebanese municipality can benefit from.

**9- Promoting the culture of municipal work:** Awareness and counseling campaigns should be carried out to help people understand and be convinced of the culture of municipalities, which is somewhat lacking from the Lebanese culture, in order to acquire the finest services and enhance their standard of living.

One proposal that should be considered is to separate the Ministry of Interior's security work from municipal work, creating a Ministry of Municipal Development Work whose tasks are focused on monitoring and guiding local authorities, as well as providing the necessary training for them directly or in collaboration with specialized programs and institutions.

The following chart summarizes the most prominent steps required to enhance municipal work:



### Policy Review conducted in December 2022:

Municipal work is the only field for the practice of administrative decentralization in Lebanon. Lebanon was supposed to witness municipal elections in May 2022, but the Lebanese authority, which is unable to hold two elections, the parliamentary elections and municipal elections in the same year, decided to postpone the municipal and optional elections to May 2023 under the pretext of lack of financial and human resources. These elections have never been a priority for the authority, and history bears witness to that.

Municipal action is of paramount importance to promote decentralization in the absence of the law on extensive administrative decentralization stipulated in the Taif Agreement. There is an existing project in the Parliament that was drafted during the rule of President Michel Suleiman.

The economic crisis has negatively affected the role of municipalities in providing basic services to the population and the residents within the municipal area, and in implementing vital projects due to the lack of required funding.



# LEGAL FRAMEWORK OF THE LEBANESE RENEWABLE ENERGY SECTOR AND ITS GOOD GOVERNANCE

Tuesday, October 4, 2022



## Event Brief

A workshop in collaboration with the Observatory of Public Function and Good Governance (OPF) at Saint Joseph University in Beirut (USJ)

On Tuesday, the 4th of October 2022, the Rule of Law Programme Middle East and North Africa of the Konrad-Adenauer-Stiftung (KAS), in cooperation with the Observatory of Public Function and Good Governance (OPF) at Saint Joseph University organized a one-day seminar and panel discussion on the Legal Framework of the Lebanese Renewable Energy Sector and its good governance.

This event took place at Saint Joseph University, Campus of Social Sciences.

At 9:00 AM, the conference commenced with an opening session in which Pr. Pascal Monin - the Director of the Observatory on Public Service and Good Governance - stated that Lebanon has now entered the era of renewable energy, an era during which private sector participation in Renewable Energy production is as essential as the decentralization of the means of generation and distribution.

Mr. Philipp Bremer - the head of the Rule of Law Program Middle East and North Africa

in the Konrad-Adenauer-Stiftung - followed by mentioning an action plan for Lebanon's electrical sector which the KAS had published in collaboration with the Issam Fares Institute. What this action plan did not tackle though, said Mr. Bremer, was the legal framework upon which such a sector would be administered, a gap which this seminar would aim to fill.

Afterwards, the President of the Federation of Lebanese Engineers and President of the Order of Engineers and Architects in Beirut Mr. Aref Yasin took to the stage to emphasize the Order's pivotal



role in modeling the required legal framework by means of setting unified binding technical standards as well as participating in special parliamentary committees and subcommittees to help suggest legal reform.

Finally, both the President of Saint Joseph University Pr. Salim Daccache as well as the Head of the Lebanese parliament work and energy committee MP Sajih Atiyeh gave the final opening remarks to set the stage for the General Director of the Lebanese Center for Energy Conservation (LCEC) Mr. Pierre Khoury's subsequent intervention over Zoom.

The seminar was divided into two panels:

The first panel consisted of Mrs. Carol Ayat (Energy and finance professional and senior fellow at the Issam Fares Institute), Dr. Hassan Harajli (CEDRO Project Manager and UNDP energy advisor) and Mrs. Christina Abi Haidar (Attorney at Law and a governance and development specialist as well as an environmental and energy legal expert). This panel tackled the challenges of the energy sector between facts and laws and was moderated by Mrs. Diana Al Kayssi, an Energy governance expert and the director of Civil Society Engagement at IRI.

The second panel consisted of Mr. Aref Yasin, Pr. Joseph El Assad (advisor at the Lebanese Center for Energy Conservation) and Mr. Ali Berro (Attorney at Law and Energy Legal Expert). Moderated by energy expert Mrs. Laury Haytayan, this panel discussed the solutions and future prospects of the sector.

## **The First Panel: The Challenges of the Energy Sector between Facts and Laws**

Mrs. Abi Haidar set the scene by mentioning Decree No 16878 which currently forms the basic legal framework upon which renewable energy production relies, which covers individual generation and consumption. Mrs. Abi Haidar called for the promulgation of the first draft of Law No. 462/2002 which has been stuck in parliament for 20 years now; this law aims to establish the Electricity Regulatory Authority and allow private sector participation within EDL (at a maximum shareholding rate of 49%) in the generation and the distribution of energy, among other things. Mrs. Haidar also mentioned the DRE draft (distribution of renewable energy) which could very well play a complementary role to Law No 462 since the latter does not tackle distribution in a substantial manner.

Mrs. Ayat took on a more financial approach to the matter as she noted that Lebanon is a signatory of the Paris Agreement and should reach a threshold of 30% of renewable energy production in 2030, but the current bulk of the 350 Megawatts of RE that is produced in Lebanon is sourced from small-scale individual projects on which the people have relied out of sole necessity. Any large-scale infrastructural project in this regard could attract investors, but these investors would need to be welcomed by a robust legal framework administering the RE sector so as to provide them with legal guarantees when it

comes to their funds and the risks that may follow and provide some transparency in the bidding processes. Finally, Mrs. Ayat suggested digitizing the electrical bills as well as adjusting the tariffs along with an improvement of collection efforts to try and restore the EDL's financial stability. Voting on Law No 462/2002 alongside relaunching negotiations with the IMF could also play a role in restoring some trust in the state.

Dr. Harajli provided the audience with multiple recommendations and observations based on scientific research and evidence, some key recommendations would be: that more fossil fuel plants are NOT required, the currently available ones are more than enough to provide an adequate amount of energy should they be backed by renewable alternatives and gas-powered production. Moreover, he called for prices and tariffs to be as fair to the consumer as they are sustainable to the providers. Mr. Harajli also called for companies specializing in renewable alternatives to hold the adequate licenses and certifications. Finally, Dr. Harajli suggested that more surveys should be carried out on the field of renewable alternatives in Lebanon to promote research and development.

## **The Second Panel: Solutions and Future Prospects**

Mr. Berro presented the audience with a suggested trifecta by which the renewable energy sector should be governed: policymakers, the electricity



regulatory authority and private sector industries, all working together to provide the people with the best possible energy production outcome. Mr. Berro also mentioned “net metering”, a system by which private parties are able to convert their surplus of energetic generation to the EDL after which the latter would repay the former by lowering their electrical bills. Finally, Mr. Berro called for a modification of the law regulating the electrical sector so that members of the regulatory body would be comfortable when it comes to their salaries and benefits. Prof El Assad stated that in order to make past legislation effective, it is necessary to give it new life by ensuring a legal framework that is up to date, indeed he added that the median time to promulgate energy laws in Lebanon is much longer than the global average (see law No 462/2002’s situation). However, Pr. El Assad remarked that renewable energy is not a solution to the energy crisis but part of the solution. The professor

continued by stating that the private sector and the law are not in accord (when it comes to the energy sector) as the former’s needs have quickly surpassed the latter’s solutions, indeed, reliance on the State now seems less and less appealing to the average citizen, the people now realize that change starts on the individual level and not from the top of the governmental hierarchy. According to Mr. Yasin, the Order of Engineers remains a fulcrum in the field of standardization as well as scrutiny of past, current and future energy generating-installations. The Order is adamant on providing adequate training to engineers and technicians alike so as to ensure a high quality of operation of any and all renewable energy installations. For the time being, Mr. Yasin has called upon municipalities to scrutinize and monitor RE installations to provide a safe environment of operation, without having to wait for the supervisory power’s confirmation. In conclusion,

It was made clear to the audience that passing certain specific laws that have been stuck in parliament would be a big step in the right direction. Lebanon’s energetic sector’s problems are not technical but rather political and legal. Lebanon has shown great potential when it comes to generating energy via alternative sources and the country remains a prospect and an example of a green-oriented electrical infrastructure, perhaps even aiming to achieve the Paris Agreement goals in due course. Now that the people have chosen to take matters into their own hands by making their own renewable energy projects, the State is called upon now more than ever to erect an adequate legal framework to ensure that these ever-expanding projects are safe, sustainable, efficient and well-regulated.

## Panelists



### Mrs. Abi Haidar Christina

An attorney and legal expert in energy, environment and governance issues.

Mrs. Christina Abi Haidar is a practicing Attorney (member of the Beirut Bar Association), consultant to several companies, and Senior Legal Advisor for several EU, UNDP and USAID projects. She is Partner for Legal and PPP Design at the Partnership for Progress Platform. Mrs. Abi Haidar holds a Bachelor of Law Degree with Distinction from the Lebanese University, an MA in International Law from NDU, and Certification in Petroleum Law and Petroleum Contracts from the École Supérieure des Affaires (ESA) and a PHD in privatization. With more than a decade of broad experience in the legal field, she is specialized in the legal, regulatory, and environmental aspects of energy policy, contracts, and legislation and regulatory frame works in Lebanon and in the MENA region. She has an in-depth knowledge and a wide experience with Lebanese municipal and administrative laws and regulations with concentrated specialization in PPP.



### MP Atiyeh Sajih

MP Sajih Attieh has been elected as Chairman of the Public Works and Energy Committee. He served as mayor of Rahba in Akkar for three consecutive sessions and the president of the Federation of Municipalities of Al Juma- Akkar. Mp Atiyeh holds a master in Food Processing Technology. He was a member of the Board of Directors of the "Issam Fares Institute for Technology".



### Mrs. Ayat Carol

An energy finance expert and consultant with the Issam Fares Foundation.

Carol Ayat is an investment banker and energy finance expert. She founded and currently heads the energy finance department at Bank Audi, whose mission is to support private sector solutions to meet the energy needs of the Lebanese people. As part of the mandate to arrange financing for Lebanon's first IPP, the 225MW wind farms in Akkar, with four development banks, Carol has worked with the public sector and multiple international financiers on developing Lebanon's first power purchase agreement, reflecting international bankability standards. She is currently leading efforts to unlock financing for solar power projects in Lebanon as Bank Audi also serves as the lead arranger for select 15MW solar farms, which are part of the 180MW first licensing round.



### Mr. Berro Ali

Attorney at Law and Energy Legal Expert. Mr. Berro is a lawyer and legal expert in the field of energy participated in the panel.

Mr. Ali Berro is a graduate of the University of Detroit Mercy School of Law. He co-founded the Arab-American Law Student Association, which is premised on paving academic student success for minority students. Mr. Berro attended Wayne State University for his undergraduate degrees, where he studied Journalism and Philosophy. He also minored in French. During his academic career, he secured multiple national awards for persuasive speaking and debating.

Mr. Berro has several years of experience in the personal injury field and is one of the Firm's supervising attorneys in the PI Department. He is mostly known for his contract expertise, his knowledge in contracts expands Real Estate, Construction, Business, and UCC laws.



### Mr. Bremer Philipp

Philipp Bremer is the Director of the Konrad-Adenauer-Stiftung Rule of Law Programme Middle East and North Africa, based in Beirut, Lebanon, since July 2021. Previously, he worked as an attorney-at-law for an international law firm for three and a half years, during which time he also spent six months as an on-site external advisor in the Litigation Communications Department of an international German car manufacturer. He studied law at the University of Mannheim and completed his legal traineeship, among other stations, at the European Parliament with Axel Voss, MEP in Brussels and in the office of the Minister of State Pr. Maria Böhmer, MP at the German Federal Foreign Office.



### Pr. Daccache Salim

Rector of Saint Joseph University of Beirut, previously acting as Director of the Institute of Oriental Letters, and Dean of the Faculty of Religious Studies-USJ, along with several honorable positions. Pr. Salim joined the Society of Jesus in 1975, in Egypt, and became, until present, the Editor-in-Chief, and Associate Director of the Society of Jesus' Arab Cultural magazine Mashreq. He has been responsible for more than a hundred articles and publications, conference proceedings, and studies in the Arabic, French, English, and Italian languages, in the fields of education, Syriac spirituality, moral and political philosophy, Islamic Jurisprudence, cross-cultural meetings, interfaith dialogue, Muslim-Christian relations, etc.. Pr. Salim is a double PHD holder; one in Literature and Philosophy from Panthéon-Sorbonne University (Paris 1), and another in Educational Sciences, University of Strasbourg – France. He also holds a certificate in Political Science, a Bachelor of Arts in Philosophy from USJ, a Master of Arts in Theology and Philosophy from the Sèvres Institute, as well as a Diploma in Islamic Sufism and Syriac Spirituality.

### Pr. El Assad Joseph



Advisor at the Lebanese Center for Energy Conservation.

Pr. Joseph El Assad is an expert in renewable energies, developing studies on the appeal of renewable energy policies in Selected ESCWA and ECE countries, synthesis reports and comparative studies. On a national level, Pr. Joseph is in charge of doing the renewable readiness assessment (RRA) of Lebanon while participating in the renewable energy mapping and co-authoring the national energy outlook for Lebanon 2030. He has experience in planning engineering projects and follow-ups.

He is a member of the Lebanese order of engineers and architects, a member of the Lebanese Association for the Advancement of Science and a renewable energy and energy efficiency expert at the League of Arab States, LAS.

### Dr. Harajli Hassan



Dr. Hajrajli is a Project Manager at CEDRO and a UNDP Energy Advisor. He is a lecturer in the American University of Beirut.

### Mr. Khoury Pierre



Engineer and President and General Director of the Lebanese Center for Energy Conservation.

Pierre El Khoury is the General Director and President of the Board of the Lebanese Center for Energy Conservation (LCEC), Lebanon's national energy agency hosted by the Ministry of Energy and Water. El Khoury has been a member of LCEC for 17 years, starting as a UNDP officer and then as a founding member of the LCEC. Throughout his career with LCEC, El Khoury worked on the development of Lebanon's national energy efficiency and renewable energy action plans, developing Lebanon's first national financing mechanism, the first licenses for electricity generation from wind and solar, and the market strategy for solar water heaters. El Khoury serves as a member of the Advisory Board of the Electrical and Computer Engineering Department at the American University of Beirut (AUB), a member of the Advisory Board of the Electrical Engineering Department at Beirut Arab University (BAU), a member of the Advisory Board of the Electrical Engineering Department at Rafik Hariri University (RHU), and a member of the Advisory Board of the AUB Pro-Green Diploma Program. El Khoury is an alumnus of the US International Visitor Leadership Program. El Khoury holds a Bachelor degree in Electrical Engineering and a Master degree in Engineering Management, both from the American University of Beirut (AUB). He is a member of the Order of Engineers and Architects in Beirut.



### Pr. Monin Pascal

Professor Pascal Monin is the director of the Observatory of the Public Service and Good Governance (OFP) at Saint Joseph University in Beirut (USJ). Head of the Master's in communication and Political Marketing of the Institute of Political Sciences since 2015. Since 1998, he is a professor at USJ and the founder and former director of the Master in Information and Communication. He directed the book: "Democracy in Crisis, Democracy in Mutation: from Popular Mistrust to Citizen Participation" published in 2020 by the USJ. He is also the author of "The Ways of Freedom", a book published by Editions Dar An-Nahar; as well as numerous articles, conferences and studies on Lebanon, on the geopolitics of the Middle East, the impact of media, political communication and marketing, journalism in the digital age... He regularly speaks in local and foreign media. Pr. Pascal Monin was the advisor to the Lebanese minister of the Environment from 2011 to 2014. He is also a former member of the scientific committee of the Observatory of the French and national languages, the AUF amongst others.



### Mr. Yassine Aref

Engineer, President of the Federation of Lebanese Engineers and President of the Order of Engineers and Architects – Beirut. Arif Yassin is a Lebanese engineer, has held many positions in the Lebanese government, and has also served as the president of the Federation of Lebanese Engineers and President of the Order of Engineers and Architects. He is a graduate from the Arab University of Beirut Department of Civil Engineering and bachelor's degree. He has been in the engineering profession since more than 30 years.

# GOOD GOVERNANCE AND THE LEGAL FRAMEWORK IN THE RENEWABLE ENERGY SECTOR

Published on Friday, November 18, 2022

Investing in renewable energy from natural resources such as the sun, air, water, etc. has made its way to the agenda of many countries around the world, including oil countries, because of its significant positive economic and environmental effects.

Lebanon has been suffering from the problem of regularly and significantly securing electricity since the end of the war in 1990. The Treasury incurred very high costs by borrowing to provide electricity from fuel, which caused a financial drain that cost Lebanon about 45 billion US dollars, i.e., 45% of the public debt.

The renewable energy sector in Lebanon poses a major challenge in light of the economic crisis and its repercussions. Many Lebanese have resorted to benefiting from this energy, especially solar energy, in the absence of the necessary legislation. As a result, we are before a *fait accompli* that must be regulated, in addition to setting rules and conditions required to invest in it and maintain public safety.

A subcommittee of the Parliamentary Public Works, Transportation, Energy and Water Committee is studying the draft law contained in Decree No. 9000 of 04/06/2022, which aims to regulate the production of distributed renewable energy and connecting it to the public grid.

Renewable energy and energy conservation, effectiveness and efficiency constitute a viable alternative to traditional dirty energy. The Ministry of Energy and Water has set a practical goal, producing 30% of renewable energy from the total electricity production in Lebanon in 2030. This goal can be achieved provided the necessary legislation is passed, the required reforms are adhered to in several fields, and investment is made in the sector.

For any legal framework to regulate the sector, one of its goals must be to help poor families and individuals and those with limited income, by controlling investment and trade conditions in terms of considering the difficult economic

conditions of these people and preventing corruption.

Lebanon must adopt a clear policy that qualifies it to join the family of renewable energy producing countries, which includes 65 countries working on the development of the sector, including Costa Rica, the only country in the world whose production of renewable energy reaches 100% of public electric production, with all the resulting economic, environmental and health benefits.

This roadmap was prepared based on a symposium organized by the Observatory of Public Service and Good Governance at Saint Joseph University of Beirut with the aim of developing economic and environmental governance, in partnership with Konrad Adenauer Stiftung Rule of Law Programme Middle East and North Africa.

## First: The challenges of the renewable energy sector:

Lebanon is currently suffering from a catastrophic electricity situation, with about 50% of the Lebanese people deprived of electricity, while the majority receive it insufficiently.

Private generators provide a large part of the need at a high financial cost for the Lebanese, and with negative environmental and health effects.

The lack of power has a direct impact on the economic situation, as it is impossible to achieve economic recovery without electricity. The International Monetary Fund and similar international bodies and donor countries require the reform of the electricity sector before approving the required support programs.

Many found the solution in renewable energy, whose sector has witnessed a great development since 2010. Between 2010 and 2020, Lebanon witnessed the production of about 100 megawatts from renewable energy. In 2021, production reached about 100 megawatts.

Estimates indicate that the production in 2022 will be of around 250 megawatts, meaning that the general production over 12 years will be of around 450 megawatts, which is equivalent to the production of a small power plant.

Between 2010 and 2020, the number of projects operating on the solar energy system in Lebanon reached 2,500. In 2022, the number rose to 25,000 projects; a tenfold increase from the previous figure.



This was achieved through individual initiatives, in the absence of any legislation or regulation of the sector.

The volume of investments in the sector amounted to about 300 million dollars.

450 megawatts is a large number that constitutes a strategic situation in the production of renewable energy.

Lebanon, like other countries, is facing many challenges in terms of the development of this sector and investments in it, and in terms of the absence of the required legal legislation.

**1- The reality:** Chaos prevails in the sector, with many Lebanese people turning to solar energy to secure their electricity needs, sometimes without taking into account the provision of the required specifications and quality standards. The installation of power generation equipment is carried out by professional technicians and electricians, often without engineers. The logic of trade and profit prevails over specialized technical work, causing great chaos.

The attempt to produce renewable energy from air has also encountered obstacles.

#### **A- Renewable energy produced from the sun:**

Lebanon enjoys approximately 300 sunny days a year, which qualifies it for a large production of renewable energy.

Lebanon was preceded by many neighboring countries in this field, including Egypt, which established large solar farms, and offered to export its production to several countries.

Chaos prevails in Lebanon in the import and installation of equipment needed to produce renewable energy, without respecting the necessary technical specifications. As a result, there is a danger to the safety of users, in addition to squandering the funds of institutions and people in many cases.

As for the mechanism for obtaining a "facilitation letter" for the production of renewable energy, it includes submitting an application to the Lebanese Center for Energy Conservation, which is submitted to the Minister of Energy and Water, who transmits it to the Ministry of Interior. The person concerned shall be notified of the approval or rejection of his request from the Internal Security Forces station in the area in which he resides.

This mechanism lacks direct inspection and verification of compliance with the technical and required standards and specifications. The role of the Center is limited to ensuring the existence of the minimum required technical specifications.

#### **B- Renewable energy produced from air:**

In 2012, the Issam Fares Foundation conducted experiments on the production of energy from air, which included the coast and the mountains; as a result, it was found that the rate of air speed is ideal for energy production.

However, the politicization of the matter in the areas of partnership, the selection of appropriate sites, organization, etc. hampered the project, after acquisitions in Jbeil and Akkar.

Several projects were implemented in Lebanon to produce renewable energy from the air, including two projects based on public-private partnerships under the supervision of the Ministry of Energy and Water in 2018 and 2021 in Akkar with a capacity of 25 megawatts. Exceptional licenses issued by the Council of Ministers were granted to investors who secured the necessary funding from the European Investment Bank. The Lebanese Center for Energy Conservation, managed by the engineer Mr. Pierre Houry, prepared the two contracts between the two mentioned sectors, taking into account environmental and technical standards.

Today, after the economic crisis, it is assumed that such projects will be financed within the framework of a program with the International Monetary Fund.

Both parts of the renewable energy projects achieve clear financial feasibility, especially with the significant rise in oil prices.

The cost per kilowatt of renewable energy is estimated between 7-8 cents for individual projects, and 5 cents for large projects. The price of a kilowatt produced by Electricité du Liban (EDL) rises to 28-30 cents, while owners of private generators sell it for between 38-40 cents.

#### **2- The legal framework:**

Law No. 462/2002 defines the course of regulating the electricity sector. It also regulates the draft law on distributed renewable energy in the new sector.

##### **A- Law No. 462:**

Issued in 2002, Law No. 462 regulating the electricity sector constitutes a general framework for regulating the sector.

Although it came as a response to a wide international demand and a local need, it has not been implemented to this day.

The law was approved 20 years ago together with other laws, most notably the Aviation Regulation Law, the Telecommunications Law,

and Environmental Law No. 444, etc.

Over the past years, political interventions have obstructed the appointment of the regulatory authority for the electricity sector, as stipulated in the law, by amending Article seven of said law, and transferring powers to the Council of Ministers.

Today, the appointment of the commission has become a vital need for the reform and the regulation of the sector, and one of the main demands of the International Monetary Fund, the World Bank and donor agencies.

Law No. 462 stipulates a partnership with the private sector in a regular and transparent manner, to contribute to the production and distribution processes.

According to Law No. 462, EDL will be transformed into a public company, owning 51% of the shares, while the private sector owns the remaining 49% of the shares.

By merging the various powers and limiting them to one body, the law did not fully take into account the principles of governance. For instance, the regulatory authority is in charge of regulating the sector and setting policies. However, it also launches tenders and contracts with companies that will produce electricity. This makes it a regulator and a buyer at the same time.

The law did not address renewable energy except in one article, which gives people the right to produce up to 1.5 megawatts of electricity for private use, without obtaining a permit or license.

Also, it did not address production and distribution. Accordingly, the law needs a set of complementary laws, most notably a law on distributed renewable energy, and one on energy conservation.

The required amendments shall also be made. Among the amendments under discussion is the authority to conduct tenders. This power is given to the Ministry of Energy and Water based on the provisions of the Public Procurement Law, while the regulatory authority is responsible for granting permits and licenses to the private sector. Consequently, the appointment of the members of the authority became a mandatory condition for the application of this law.

#### **B- The Distributed Renewable Energy Draft Law:**

The draft law was elaborated as a result of great efforts over three years through the support provided by the European Bank for Reconstruction and Development. The

Lebanese Center for Energy Conservation, together with the Ministry of Energy and Water and EDL contributed to its elaboration.

The Council of Ministers approved the draft law on March 23, 2022 after it was initially withdrawn from it, and fundamental amendments were made to it, most notably the establishment of what can be described as an “intermediary” between the investor and the investment through the licenses awarded for production.

Even though the draft law stimulates the private sector to invest, depriving it of production, transportation and sale will hinder investments.

The project was referred to the Parliament, and despite the comments thereon, it is considered a legal framework that regulates the production process, constitutes a quantum leap for the regulation of the sector, and sets the sector’s basic rules.

A subcommittee emanating from the Public Works, Transportation, Energy and Water Committee is responsible for studying the project, with the assistance of experts and stakeholders, including the Order of Engineers and Architects.

**1- Scope of the Law:** The draft law, in its current form, provides, inter alia:

- Generating 1.5 megawatts of energy without permission.
- Generating between 1.5 and 10 megawatts of energy based on permission given by the regulatory authority.
- Generating more than 10 megawatts of energy based on the licensing system and energy purchase contracts between the regulatory authority and the private sector.
- This applies to the production of distributed renewable energy, which benefits from the various arrangements of the net metering system.

In light of the current situation, surplus production from renewable energy is wasted.

- EDL connects the energy producers who have obtained permission in accordance with the provisions of Law 462/2002 to the public network, and gives them approval to store the produced energy, according to the technical capacities, and the capabilities of the public network at the connection site, after ensuring that the renewable energy systems are in conformity with the technical specifications required by EDL. The institution may not fail to connect, except for cases related to technical matters.

- The possibility of selling energy to the private sector directly if the production is less than 10 megawatts, and through a contract with the EDL, according to which it is sold to this sector after paying a "transit fee" if the production exceeds 10 megawatts.

This assumes the existence of a minimum level of production that allows the public network to be stable.

**2. Importance of the Law:** The adoption of the law achieves a qualitative leap in the production of clean, low-cost energy, and achieves several things:

- Provides the necessary legislative framework for the development of renewable energy projects throughout Lebanon. It allows large investments, especially at the level of municipalities and local authorities.

- It is an essential step in the strategy of the Ministry of Energy and Water to combat climate change. The development of the renewable energy sector in the production of electricity is a cornerstone of the Lebanese government's policy to establish sustainable development.

- Provides energy security away from fluctuations and instability.

### **C- The Energy Conservation Draft Law:**

It is considered complementary to the Distributed Renewable Energy Draft Law, based on the fact that energy efficiency is a priority before production.

**1- Course of the Draft Law:** Preparation of the Energy Conservation Draft Law started in 2008, and it was referred to the Parliament in 2022.

It aims to enhance energy efficiency based on Lebanon's needs to rationalize energy consumption, and to fulfill international commitments given in terms of reducing emissions and improving energy efficiency.

The law imposes mandatory standards related to energy efficiency in buildings in terms of materials used in construction, and the use of energy-saving equipment, etc. It stipulates other mandatory matters, imposes penalties on violators, and requires conducting an energy audit for the pre-construction and post-construction phases.

On the other hand, it provided for tax exemptions in the event of the use of energy-saving equipment.

It also singled out a special chapter to energy efficiency in the industrial sector.

**2- The National Strategy for Energy Efficiency:** The Lebanese Center for Energy Conservation

has been working on energy efficiency and conservation for many years. It also developed a national strategy for energy efficiency, part of which was implemented before the economic crisis that afflicted Lebanon.

Moreover, it organized national awareness campaigns. Regulations and standards for energy consumption in buildings and some electrical equipment were defined before the stage of setting the legal framework began through the draft law that defines a mandatory framework for this strategy. Therefore, there are programs that need to be implemented at the level of different sectors (industrial, touristic, etc.)

## **Second: Future Prospects:**

**1- Future expectations:** Investing in the renewable energy sector can bring many positives. Most notably:

### **A- Increasing electricity production and reducing costs:**

By regulating the use, it is possible to produce between 800 and 1,000 megawatts and save about 400 million dollars annually. This investment can be recouped within two years.

### **B- Improving the environmental situation:**

The use of clean energy is reflected in a decrease in the pollution caused by power plants operating on fuel and private engines dispersed in cities and villages.

A study conducted by Saint Joseph University in February 2022 showed that air pollution, as a result of the increase in the number of private generators, has dramatically increased.

In addition, improving the quality of fuel currently used in electricity production plants leads to a reduction in air emissions.

### **C- Energy security:**

Lebanon experienced many obstacles and problems in importing diesel fuel and securing it for individuals in the summer of 2021 as a result of the effects of the economic crisis and the gradual lifting of fuel subsidies, which could be repeated because of the multiplicity of factors that control imports. Therefore, energy security is achieved to a large extent with renewable energy projects.

**2- Reform recommendations:** It is necessary to complete a number of measures aimed at regulating the renewable energy sector and promoting investments in it, in order to achieve necessary reforms and save Lebanon from the exorbitant electric bill.

**A- Establishing the rule of law:**

Things will be straightened out without it, for legislation alone is not sufficient. A good example of this is the Electricity Sector Regulatory Law of 2002; 20 years have passed since the law was approved, yet it remains unimplemented to this day.

In parallel, economic-financial-security stability must be provided to attract investments to the distributed renewable energy sector.

**B- Availability of political will:**

Lebanon has suffered a lot as a result of the absence of the political decision required to reform the electricity sector. As a result, the public treasury incurred \$45 billion to provide electricity without effective investments in production. The fear is that political exploitation and private and factional interests will lead to wasting the opportunity available today through the regulation of the renewable energy sector. Therefore, what is required is a comprehensive political will that facilitates the legal and procedural tracks for investment in this sector and removes political influences and personal interests.

**C- Accelerating the implementation of renewable energy projects:**

In 2019, the Ministry of Energy and Water prepared, with the assistance of the International Renewable Energy Agency, a scientific study that aspires that in 2030, 30% of the energy produced in Lebanon will be renewable. The electricity plan set by the Ministry in 2022 was in line with this study and its objectives. And if the plan is respected, Lebanon will produce, in 2030, about 4,500 megawatts from electricity production systems from renewable energy, which will achieve an estimated saving of about one billion dollars annually. The value of investments in the sector until 2030 is estimated at \$6 billion, which necessitates establishing the necessary legal environment to attract the required financing. It is imperative to expedite the adoption of legislation and executive steps that lead to achieving the declared goal.

**D- Appointing the authority regulating the management of the electricity sector:**

This reform measure stipulated in Law 462/2002 should be approved without delay, and without any modification in the authority's powers, especially since it is one of the most prominent demands of the international community and the International Monetary Fund to help Lebanon restore its economic

recovery.

Political forces justified that the delay in implementing the aforementioned law was because it had to be amended. However, 20 years later, it has neither been amended nor implemented.

**E- Developing a national energy strategy:**

The strategy must define the required policies in the electricity sector, especially in terms of rationalizing production through renewable energy and gas. Today, there is an opportunity to develop a strategy based on the integration of renewable energy sources and natural gas sources, especially after the demarcation of the southern maritime borders for the extraction of gas and oil.

As for the basis of the strategy, it will be the approval of the distributed renewable energy and energy conservation laws, together with sector governance.

It is imperative for the regulatory authority, companies and activists in the sector to participate in the development of the strategy so that it is comprehensive and obtains the approval of those concerned.

**F- Adopting the necessary accompanying laws:**

The most important of which is a law that allows the use of state public property in renewable energy production projects, through either an allocation, a lease or an ownership contract. This would provide the facilitations that are necessary for the investment, and provide guarantees and stability to the investing parties.

**G- Reforming the EDL situation:**

This should be made on several levels:

- Reconsidering the structure of the institution, by turning the collapse into an opportunity based on developing the current administrative structure, and creating an administrative unit in it and another in the Ministry of Energy and Water to handle renewable energy management, with the aim of motivating investors and reducing investment risks.
- The institution is also facing the risk of losing qualified human expertise as a result of the effects of the economic crisis. It is imperative to preserve it.
- Restoring EDL's fiscal balance by removing encroachments, raising the tariff price, and reinforcing collection.
- Reforming the public network by removing encroachments and reducing technical waste, which achieves the required energy exchange.

### **H- Strengthening the role of the Order of Engineers and Architects:**

The Order's role is pivotal in keeping pace with what is happening in the renewable energy sector. The Order actively participated in the meetings of the parliamentary sub-committee emanating from the Public Works, Transport, Energy and Water Committee, in charge of studying the draft law contained in Decree No. 9000 of 06/04/2022 which aims to regulate the production of distributed renewable energy and connecting it to the public grid.

#### **The role deals with 3 axes:**

- What the laws and regulations permit, through the presence of a representative of the Order in the Higher Council for Urban Planning, and the participation of its representatives in the meetings of the relevant parliamentary committees, especially the Works and Energy Committee. The Order presents its views and approaches in both positions.
- Ensuring public safety by law. This safety cannot be achieved without assigning a role to the Order of Engineers and Architects in securing the necessary technical conditions, which leads to addressing the prevailing chaos, distortion, and environmental and visual pollution that occurs. Among the suggestions is the need for an engineer to effectively consent the submitted request for the production of renewable energy, and to consult him to detect and examine the extent to which the project owner adheres to the required specifications.
- Developing the skills and expertise of engineers through trainings and workshops in cooperation with international bodies. The Order already has a training center.

The Order is working to set standards and specifications required for energy production equipment to put them at the disposal of the concerned authorities, and then present them to the public.

Training should also include specialized professionals working in the sector.

### **I- Giving the concerned authorities a role:**

On the following two levels:

- Specifications and experiments: Giving a role to the "LIBNOR" institution in terms of specifications, and the Industrial Research Institute in terms of experiments that are conducted for equipment and goods before entering Lebanon.
- A compulsory character should be given to adherence to the standards by issuing them through legal texts such as decrees.

- The procedural aspect: Municipalities have a fundamental and pivotal role. Since the municipality is an executive local authority, the Municipal Law of 1977 allows it to intervene to ensure public safety and impose certain standards and specifications.

### **J- Committing to environmental standards:**

This must be achieved on two levels:

- International and legal commitment: It is not possible to adopt renewable energy without adhering to environmental standards, especially since Lebanon made, through the Paris Agreement, a commitment to reduce carbon dioxide emissions by 31%.
- Reducing technical and non-technical waste on the EDL public network, relying more on gas in the EDL's plants, and achieving 30% of renewable energy production in 2030 will help achieve this commitment.
- Endorsing environmental solutions: environmental solutions must be sought for the equipment used after their expiration date, such as batteries and inverters, due to their disastrous environmental effects.

### **K- Transparency:**

It is a fundamental requirement to attract investors in a sector where financial activity is estimated at billions of dollars. This contributes to achieving trust and providing competition, thus reducing prices for consumers.

Speed is also an important factor in this matter, as investors cannot wait many years to complete projects. The mechanism must be clear, without red tape, bureaucracy and corruption.

### **L- Raising awareness and establishing a culture of renewable energy:**

The solution begins with the citizen and society, who have the main role in finding effective and required solutions.

Awareness through traditional and modern media, seminars and organized campaigns plays a role in promoting the culture of energy conservation, efficiency and the adoption of renewable energy.

A change in the behavior of the Lebanese must be reached, especially since it is no longer possible for EDL to adopt an electricity tariff that is lower than the cost.

The recommendations constitute a viable roadmap for action. The moral remains good management and the adoption of policies based on the rules of good governance.

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