

October 2016 - September 2017



**AL BAWSA**

**Al Bawsala**  
**Annual report on**  
**the work of the Parliament**

**T h i r d**  
parliamentary  
s e s s i o n



## Table of contents

<b>Introduction</b>	<b>3</b>
<b>Chapter 1: Rights and freedoms</b>	<b>6</b>
I. The legislative function	8
II. The scrutiny function	19
<b>Chapter 2: Independent constitutional bodies</b>	<b>26</b>
I. The legislative function	30
II. The scrutiny function	37
<b>Chapter 3: Fight against corruption</b>	<b>41</b>
I. The legislative function	43
II. The scrutiny function	55
<b>Chapter 4: Decentralization</b>	<b>63</b>
I. Delay in filling vacant positions in ISIE	65
II. Delays in approving the draft law on Local and Regional Elections	69
III. The late adoption of the law on local authorities	73
<b>Chapter 5: The judiciary</b>	<b>80</b>
I. The legislative function	83
II. The scrutiny function	90
<b>Chapter 6: Public finance</b>	<b>93</b>
I. The legislative function	96
II. The scrutiny function	105
<b>Chapter 7: Investment</b>	<b>107</b>
I. The legislative function	110
II. The scrutiny function	128
<b>Chapter 8: Social security and essential services</b>	<b>131</b>
I. The legislative function	133
II. The scrutiny function	144
<b>Chapter 9: Natural resources</b>	<b>147</b>
I. The legislative function	149
II. The scrutiny function	170
<b>Chapter 10: The Assembly's work process</b>	<b>172</b>
I. The Assembly's financial and administrative independence	174
II. The amendment of the rules of procedure	176
III. Committees of inquiry	177
IV. The deputies' representative function	180
V. The "Consensus Committee": Until when?	182
VI. The assessment of the deputies' work	183
VII. The efficiency of the scrutiny function	184
<b>Conclusion</b>	<b>187</b>

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# Introduction



In light of our strong belief in the vital role endorsed by the Assembly of Representatives of the People (“ARP” or “Assembly” or “Parliament”) in the political system, and with a view to implementing the requirements of the Constitution of the Second Tunisian Republic and laying the foundations of the democratic transition, Al Bawsala presents its annual report, the purpose of which is to monitor the ARP’s activities and assess the work that it performed as well as the performance of the elected representatives, during the third parliamentary session that spanned from October 2016 to July 2017.

This report also endeavors to examine the stages of the parliamentary work which was undertaken during the extraordinary session, which started in September 2017. It also describes the main steps of the Parliament’s work process. This report is not limited to a mere presentation of information. Rather, it alternates between the presentation of information and the analysis and assessment of the different roles that are endorsed by the Parliament, i.e. the legislative, the supervisory and the representative functions.

In the course of the third parliamentary session, in particular during the extraordinary session, the work of the Parliament was strongly linked to the country’s overall social, political and economic climate. As a matter of fact, the work of the third parliamentary session started immediately after the signing of the Carthage Agreement, which brought together various political forces, national organizations and parties, and led to the establishment of a National Unity Government headed by Youssef Chahed. As a way out of the social and economic crisis, the new government favored a priority-based approach revolving around the fight against corruption, the increase of economic growth, the establishment of the constitutional institutions, and the furtherance of the decentralization process.

In light of the major challenges lying ahead, the ARP was expected to take the lead in order to implement the Carthage Agreement, so as to: establish the institutions set forth in the Constitution, such as the Constitutional Court and the independent constitutional bodies; enforce Chapter VII of the Constitution on local governance, initiate the decentralization process and adopt the Code on Local Authorities; and fight corruption. Yet, six years after the 17 December 2010 – 14 January 2011 Revolution and notwithstanding the country’s general climate of political compromise, efforts aimed at consolidating the implementation of the Constitution stalled during the third parliamentary session. A series of crises affecting the constitutional bodies that were established during previous parliamentary sessions further aggravated the situation and affected the democratic transition process. This is particularly the case for the resignation of the President and two board members of the Independent High Authority for the Elections (“ISIE”) and for the resignation of members of the Truth and Dignity Commission (“IVD”).

The third parliamentary session was marked by rising social unrest and political turmoil – particularly the sit-in in El Kamour, Tataouine, which put pressure on the elected representatives of the regions, who ultimately intervened to ease the tensions. The country was simultaneously facing an ongoing economic crisis, serious public finance issues while the government’s budget deficit and the indebtedness were rising.

All these political, social and economic factors had an impact on the work of the ARP and jeopardized the balance between its legislative and supervisory functions.

This report is part of our efforts to assess the ability and the commitment of the Parliament to address the challenges that it faces and to assess the representatives’ legislative and supervisory performance.

This report is divided in two sections: a quantitative section and a qualitative section.

### ● The quantitative section

The quantitative section consists of a collection of sheets that aim to assess the work of the Parliament through figures and statistical information illustrating the ARP's performance

This report includes an annex containing four types of sheets:

- individual evaluation forms setting forth the representatives' legislative, scrutiny and representative performance;
- evaluation forms of the legislative, supervisory and representative functions carried out by the parliamentary blocs;
- evaluation forms of the parliamentary committees;
- evaluation forms of the legislative process of all the draft laws that were reviewed during the third parliamentary session; and
- a table compiling the conventions ratified by the ARP.

### ● The qualitative section

Unlike the previous reports of Al Bawsala, the structure of this report mirrors both the issues covered by the draft laws that were examined during the third parliamentary session and the ARP's objectives,<sup>1</sup> especially those reflecting the priorities listed in the Carthage Agreement.

The report is divided in ten chapters, namely: (i) rights and freedoms; (ii) independent constitutional bodies; (iii) the fight against corruption; (iv) decentralization; (v) the judiciary; (vi) public finance; (vii) investment; (viii) social security and essential services; (ix) natural resources; and (x) the Assembly's work process. The last chapter is dedicated to a holistic assessment of the Parliament's work process and the efficiency of its representative role.

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1 - Goals mentioned by the ARP's President, Mohamed Ennaceur, in most of his speeches, notably in the third parliamentary session's opening statement.

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# Chapter 1

Rights and freedoms

01





There is a major shift in the Tunisian Constitution of 27 January 2014 as regards compliance with the various generations of human rights and liberties. The Constitution incorporates constitutional mechanisms to protect them and provides the judiciary with a wide array of tools to ensure their protection. The legislative branch has a key role in this regard. First, Article 65 of the Constitution provides that organic laws shall be adopted for the purposes of regulating freedoms and human rights. Second, Article 49 of the Constitution states that the law determines the limitations to the rights and freedoms that are guaranteed by this Constitution and their exercise, provided that these limitations do not compromise their essence. The Parliament is therefore responsible for the set-up of the required foundations of a civil and democratic state.

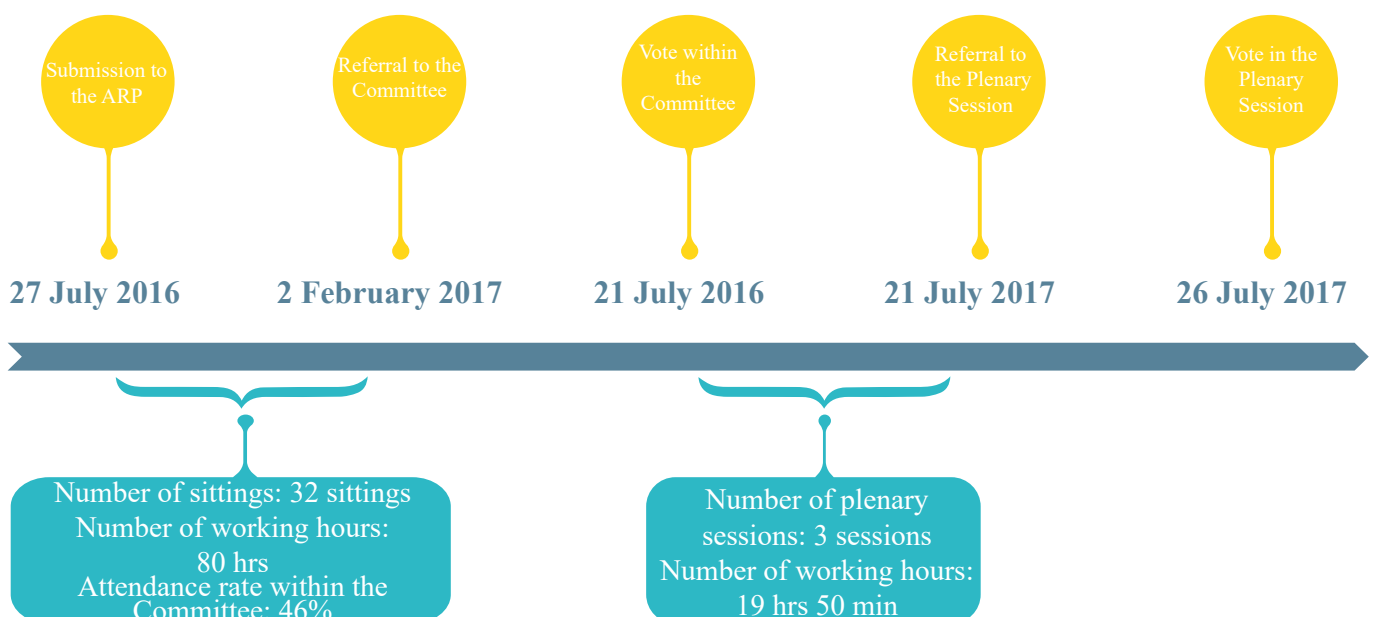
In light of the stark contrast between the new provisions on rights and liberties in the 2014 Constitution and the pre-revolution legal framework, it is clear that the Parliament's legislative function is central to the democratic transition in Tunisia. To this end, safeguards for the rights of Tunisians shall be incorporated while the outdated legal framework shall be amended. In addition to its ordinary legislative role, the ARP is also responsible for the supervision of the government and for the prevention of violation of the citizens' rights and freedoms by state entities.

We set out below an overview of the ARP's legislative and supervisory work as regards rights and freedoms.

### I. The legislative function

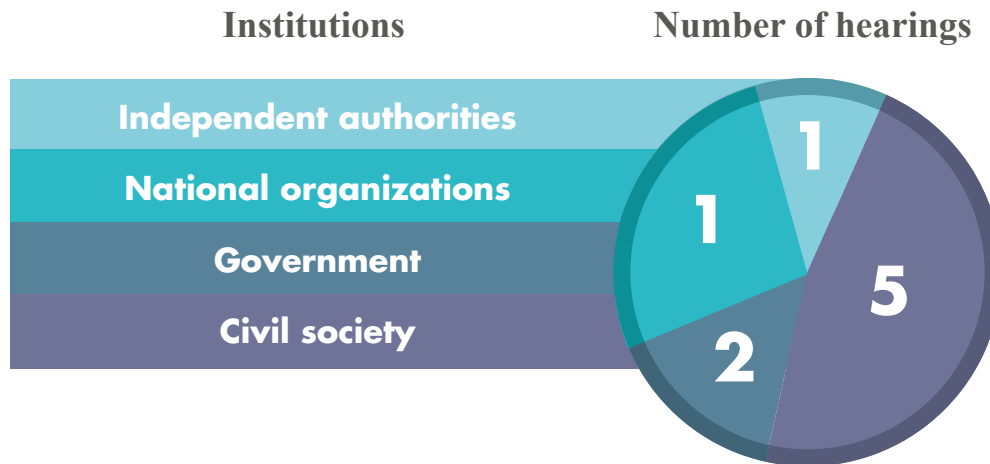
This section examines the Parliament's legislative work on the laws pertaining to rights and freedoms. We track the process of the adoption of the laws, starting from the submission of bills and their referral to the relevant committees for review, to their adoption or rejection in plenary session. We then proceed to list the main points of conflict that were raised during the review of the draft laws.

#### 1. Draft Organic Law No. 2016/60 on the Elimination of Violence against Women



### Chart 1: Life Cycle

During the debate on the draft law, the Committee organized 10 hearings with government parties and with actors civil society.



The following table provides a detailed list of the parties that were heard.

Government parties	Minister of Justice	2 February 2017
	Minister of Women's Affairs	
	Minister of Justice	21 April 2017
National organizations	National Union of Tunisian Women	16 February 2017
Independent authorities	Committee for Women of the Truth and Dignity Commission	1 March 2017
Organizations and associations	Tunisian Association of Democratic Women (ATFD)	2 February 2017
	Parliamentarians for the Family	23 February 2017
	League of Tunisian Women Voters	
	Children's Voice Association	1 March 2017

Article 46 of the Constitution provides that the State undertakes to protect women's rights and ensures that those rights are further consolidated and promoted.

In this context, the draft law on the elimination of violence against women was submitted to the Parliament for its review and adoption, in order for the State to take adequate measures to address this issue and comply with the obligations arising from international treaties that Tunisia had ratified, in particular the Convention on the Elimination of All Forms of Discrimination against Women which was ratified in 1985 and whose reservations were lifted by the State on 24 October 2011.

In line with Article 46 of the Constitution, this draft law highlights the struggle of several components of

the Tunisian civil society, in particular women associations, who have consistently called for the adoption of a law on the elimination of violence against women, since the 1990's.<sup>1</sup>

Statistics about violence against women in Tunisia confirm the critical importance of this law. A study conducted by the National Office for Family and Population found that half of Tunisian women have experienced one form of violence during their lifetime. The Minister of Women and Family Affairs, Neila CHAABANE, prepared – with a participatory approach inclusive of civil society – a bill that was issued on 13 August 2014. However, this bill was never submitted to the legislative branch, due to the controversy that it raised. The Ministry of Women's Affairs then resumed its work and prepared a second draft law.

The adoption of the second version of the draft law by the Cabinet took quite some time. Initially, the Minister of Justice was reluctant to approve the draft law because of the articles that would amend the Criminal Code – his ministry was already undertaking a comprehensive review of the Code at that time.<sup>2</sup> However, in response to civil society pressure, the draft law was finally approved by the Cabinet and submitted to the ARP in July 2016.

In a decision issued in December 2016, a court in the Governorate of El Kef approved the marriage of a 13 year-old girl to her rapist in compliance with the provisions of Article 227 bis of the Criminal Code.<sup>3</sup> The incident gave rise to a wave of public outrage and dismay. In the aftermath of this event, a draft law amending Article 227 was submitted by the Government. The Committee on Rights and Freedoms called for the withdrawal of this draft law, arguing that this issue was already covered in the draft law on the elimination of violence against women which had already been submitted to it.

This incident and the wide range of reactions that it triggered sped up the Committee's review of the draft law on the elimination of violence against women, which began in February 2017.

## Points of conflict

The draft law on the elimination of violence against women was fiercely debated within the Committee on Rights and Freedoms and raised many controversies which were, most of the time, an illustration of ideological differences.

- Use of the term “gender”: some members of Parliament called for its removal and argued that it “does not take into account the cultural and religious specificity of the Tunisian people,” while other MPs advocated for its use and argued that this term is frequently used in sociology and is consistent with the general philosophy of the draft law. Another strand of opinion stated that the term should be used but that a definition should be added to dispel doubts and fears.
- Use of the wording “incestuous adultery” and the definition of this crime: a number of MPs insisted on the use of the wording “incestuous adultery” because it covers cases in which the victim consented, while others disagreed and argued that the family relationship demonstrates lack of consent and that it is better to use the term “incest” to avoid any confusion with the term adultery and to remove any ambiguity.

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1 -Hafidha CHEKIR: “The law is the culmination of the battle of civil society organizations,” Legal Agenda – Tunisia, Issue 9, pp 6-7

2 - Hafidha CHEKIR: “The law is the culmination of the battle of civil society organizations,” Legal Agenda – Tunisia, Issue 9, pp 6-7

3 - Article 227 bis, para 3, of the Criminal Code provides that the marriage of the offender with the victim drops charges or the enforcement of the sentence in cases where a sexual act is committed without violence on a girl aged 13 to 20 years old.”

- Amendment of Article 227 bis of the Criminal Code: some MPs argued that the provision that enables the offender to marry its victim and drops charges against him should remain unchanged in order to “avoid a scandal” and “preserve the reputation of the victim”. Others argued that this idea was not valid because the institution of marriage is based on absolute consent and freedom of choice rather than on reparation. Meanwhile, a third strand of opinion suggested that this should be left to the discretion of the judge.

## **Amendments made by MPs and incorporated in the final draft**

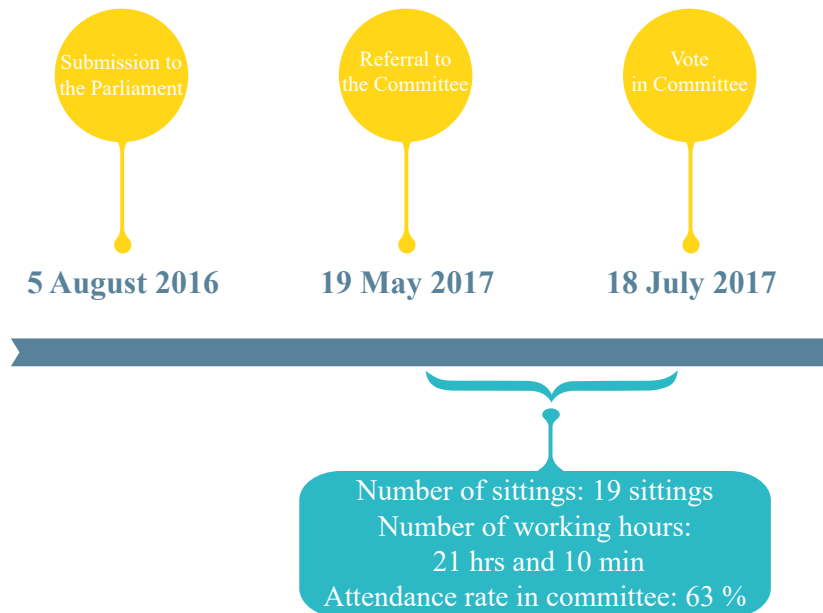
The fierce debate on the draft law on the elimination of violence against women is illustrated by a number of amendments and alterations to the draft law that were made both within the Committee on Rights and Freedoms and during the plenary session. Some of these major amendments are listed below:

- Criminalization of political violence which is defined as “any gender-based violence or conduct whose purpose is to impede women’s political or associative activities, or deprive them of their fundamental rights or freedoms.” (Articles 3 and 18);
- protection of anyone who reports cases of violence from any legal action and refraining from disclosing his or her identity except with his or her consent;
- the age of sexual consent is raised to 16 years old: it follows that sexual intercourse is considered as rape if the victim is under 16 (it used to be 13 years old);
- incorporation of the crime of incest in the law and extension of its scope so as to include the father-in-law, step-father or step-mother and other relatives; and
- legal proceedings in relation to sexual acts with a minor are now still pending even if the victim reaches the age of majority.

Despite the adjournment of the plenary sessions on several occasions, because of the heated debate among the deputies and the time needed to secure a broader consensus, the ARP unanimously approved the draft law on 26 July 2017 (146 deputies voted in favor of the law).



## 2. Draft organic law No. 2016/62 amending Law No. 93-27 on the National Identity Card



On 19 May 2017, the Committee on Rights and Freedoms and External Relations began its review of the bill amending the Law of 1993 on the National Identity Card, after the Draft Law No. 16/2016 was withdrawn and replaced by the bill proposed by the Ministry of Interior.

The draft law provides for the removal of the “occupation” section from the National Identity Cards as it may have a discriminatory effect on citizens. It also provides for a comprehensive review of the traditional identification system in order to replace it with a biometric system.

This initiative aims at providing fast and efficient administrative services such as a national database that will allow citizens to access other services via a national unique number.

The development of a new National Identity Card is also part of a larger project whose goal is to put in place a biometric passport for Tunisian citizens, in accordance with the recommendations of the International Civil Aviation Organization. The documents would be embedded with a chip, in order to ensure that more accurate identity checks are carried out by security services.

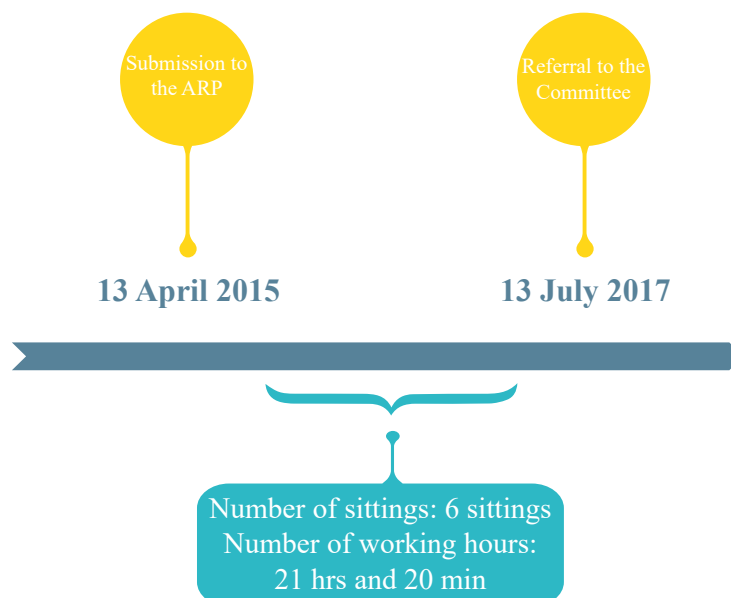
The draft law also seeks to ensure that the constitutional guarantees of equality and non-discrimination of all citizens are transposed into the new ID Card system. This is particularly true for the removal of the card holder’s occupation and the removal of any reference to the name of the husband for married and widowed women.

Despite the importance of this initiative, certain constitutional issues were identified and concerns were raised about the draft law’s compliance with the rights and freedoms enshrined in the Constitution.

## Points of conflict

- Some MPs insisted that the residential address must continue to appear on the ID Card for important security reasons, while other MPs asked for its removal because it can be discriminatory towards citizens and it can change over time albeit not be updated. A third point of view is that the address should be removed from the ID Card and be stored in the embedded chip;
- Concerning the name and surname of the husband on married and widowed women’s ID Cards, some MPs argued that it is mandatory to add the husband’s name while others called for gender equality in this regard. The Committee adopted by a majority the proposal for the mandatory reference to the spouse’s name for both men and women while allowing ID Card applicants to request its removal;
- The use of the data stored on the chip and the extent to which it poses a threat to the right to the protection of personal data particularly in the absence of legal, institutional and technological safeguards protecting such right;
- Banning ID Card holders from accessing their personal data that are stored in the encrypted part of the biometrical card, which is only accessible by security agents;
- The fact that the specifications of the ID Card and its validity period are set by government decree and not by the legislator;
- Suspicions of corruption in relation to the acquisition of ID printing machines: the Minister responded to the queries on this issue and confirmed that the call for tenders did not take place yet.

### 3. Draft Law No. 2015/25 on Repression of Attacks Against Armed Forces



The Draft Law was submitted to the Parliament's General Legislation Committee on 13 April 2015. The draft law gave rise to a widespread public opposition expressed through social media and civil society organizations. The latter voiced their disagreement and issued numerous statements<sup>4</sup>. In July 2017, a number of these organizations – including Al Bawsala – entered into a preliminary agreement with the Union of Internal Security Forces to disapprove the draft law<sup>5</sup>.

In the aftermath of the incident which took place on 22 June 2017, during which Majdi Hajlaoui, a security agent, succumbed to the injuries that he suffered during a clash between two clans in the region of Sidi Bouzid, the Union of Internal Security Forces organized a demonstration in front of the Parliament and requested the prompt review of the draft law.

The Parliament responded to the security agents' request and the General Legislation Committee promptly started its review of the draft law on 13 July 2017. The Committee organized a series of hearings with the Ministers of Interior and Defense, a number of security forces unions and the General Directorate of Customs.

## Points of conflict

The controversy surrounding the bill fueled the debate within the General Legislation Committee. Points of conflict essentially revolved around the balance that needs to be struck between the moral and physical protection of security forces and the safeguarding of the citizens' rights and liberties. More importantly, the question was raised as to whether a law on the repression of attacks against armed forces was needed and whether it could realistically protect them. We set forth below some of the issues that were discussed:

- the need to adopt a law protecting security agents in light of the fact that the Criminal Code comprises many articles that protect public officials in the course of the performance of their duties;
- the issue of whether the law on repression of attacks against armed forces breaches the principle of equality among citizens;
- it was argued that Title 2 of the draft law pertaining to national security secrets could conflict with the right of access to information, in particular because of the ambiguous definition in Article 4 and its impact on the freedoms of press and expression;
- it was also argued that the criminalization of the "humiliation" of armed forces in Article 12 of the draft law threatens freedom of expression, because the concept is vague and leaves room to interpretation.

During the debate, the prevailing position – on which there was a general consensus – was to refrain from passing a law that may affect individual rights and freedoms. A minority of MPs, however, were of the opinion that the adoption of the law on the repression of attacks against armed forces does not infringe such rights and freedoms and that this draft law is consistent with the protection of state institutions.

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4 - See, for example, the statement of civil society organizations issued on 14 July 2017:

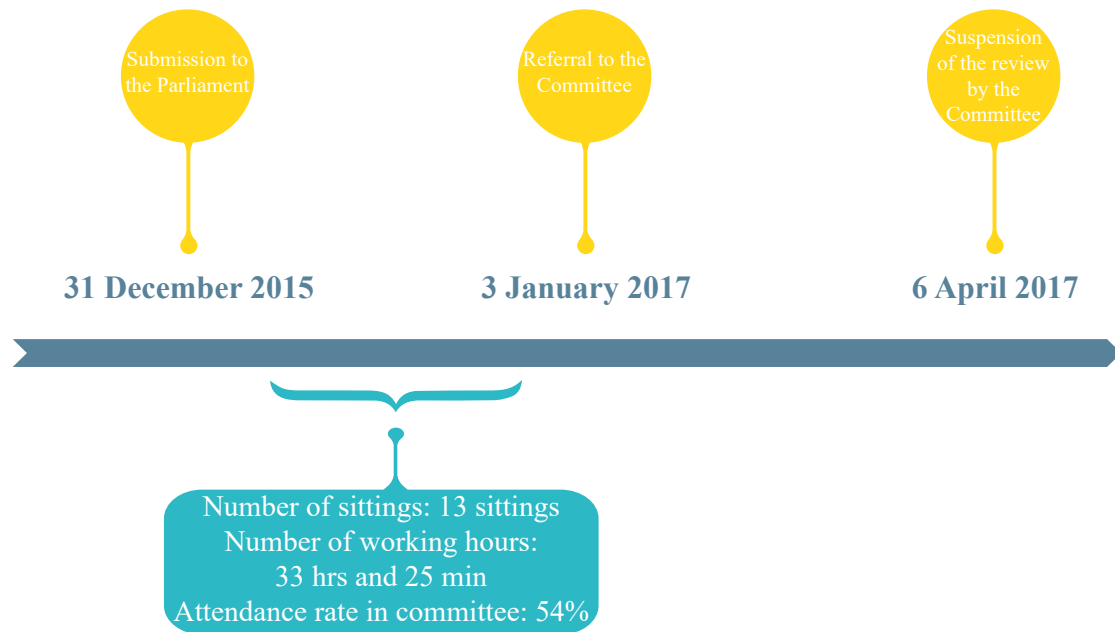
<https://goo.gl/EwtTyx>

5 - See, for example, an online newspaper article on the meeting held between the Union and the organizations:

<http://goo.gl/AKewa7>.



#### 4. Draft Organic Law No. 79/2015 on Narcotics



The Government submitted a draft law on narcotics to the ARP on 31 December 2015, the purpose of which is to repeal Law No. 92/52 dated 18 May 1992 on Narcotics, commonly known as “Law 52”.

The draft law comprises 84 articles and aims at creating mechanisms for the prevention and treatment of addiction. The draft law distinguishes between first time and recurrent users of narcotics. It is less punitive in nature, especially as regards the first category of users. In this regard, it is worth noting that cases of drug use systematically rendered the offender liable of a fine and imprisonment and that no mitigating circumstances could be found.

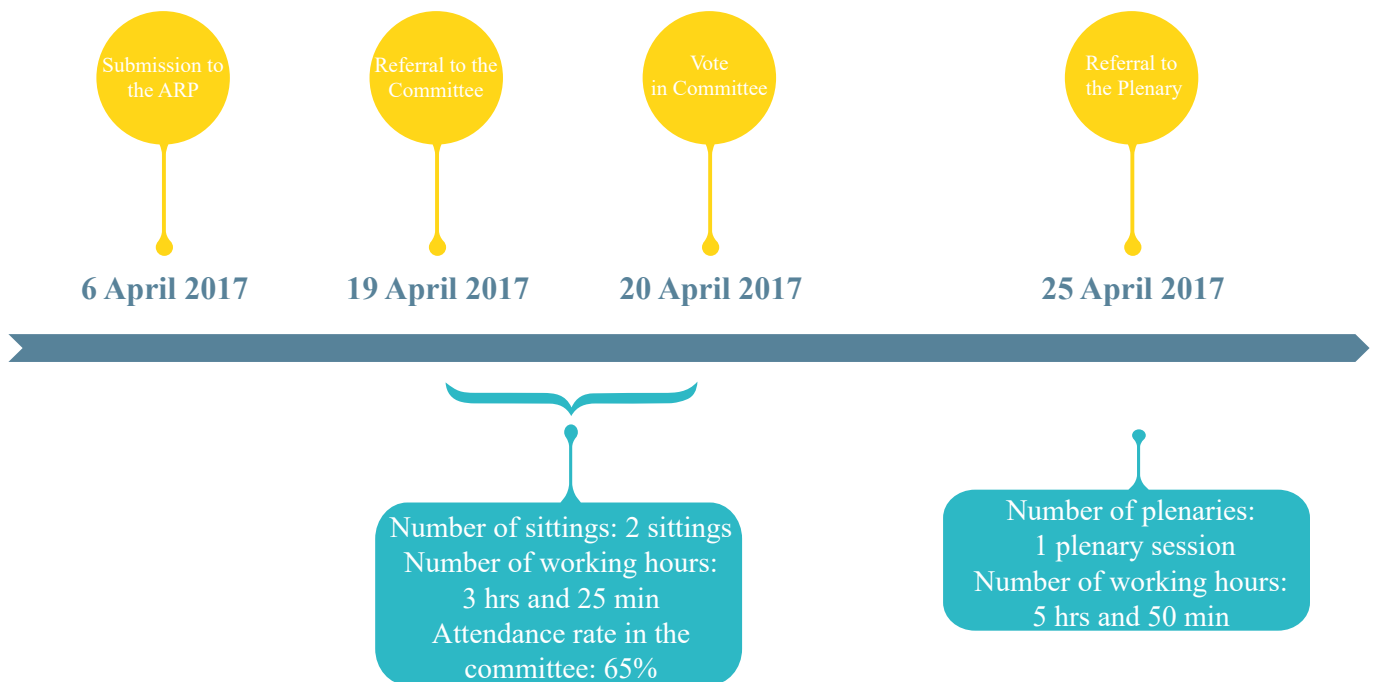
It should also be noted that thousands of youngsters have been jailed for use of cannabis. Indeed, Law 52 leaves no discretion to the judges and prescribes a mandatory one-year prison sentence and a fine in the minimum amount of 1000 dinars.

Despite the importance of this matter and the urgent need to review the law, the General Legislation Committee only began its review of the draft law on 3 January 2017, more than a year after its submission to the ARP. Many hearings with representatives from the Government and civil society were organized. On 12 January 2017, the Committee began the review of the draft on an article-by-article basis.

Concurrently, the President of the Republic, Beji Caied Essebsi, announced in an interview on Nessma TV on 19 February 2017 that he would convene a meeting with the National Security Council in order to consider the possibility to terminate all legal proceedings against cannabis users until “a new legal and viable solution” is found. In response to this commitment, the government introduced the Draft Law No. 2017/42 to the ARP on 6 April 2017, which repeals Article 12 of the Law of 1992 and allows judges to exercise discretion. The General Legislation Committee has not resumed its review of the Draft Law No. 2015/79 since then.



## 5. Draft Law No. 2017/42 amending Law No. 92/52 of 18 May 1992 on Narcotics



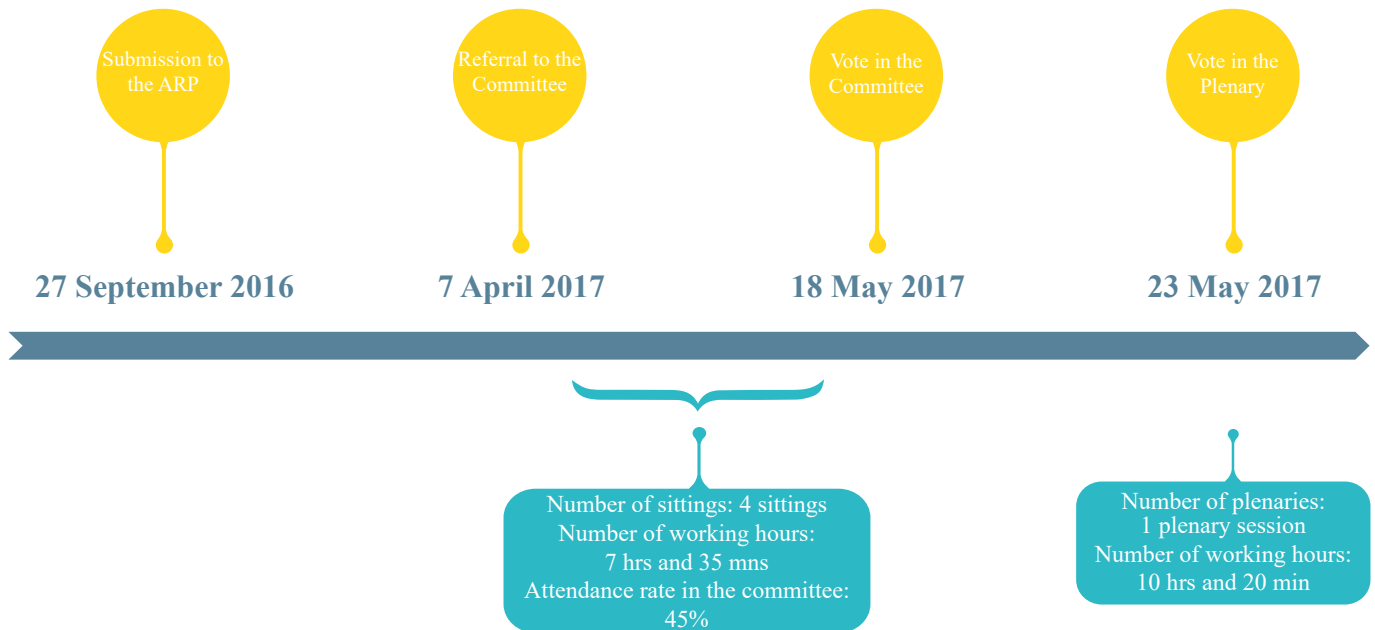
Upon its submission, the General Legislation Committee started the review of the Draft Law No. 2017/42 amending “Law 52”, in the course of two meetings held on 19 and 20 April 2017. The Draft Law incorporates an article which amends Article 12 of Law 52 and which enables judges to consider mitigating factors.

On 25 April 2017, the Draft Law was approved in record time compared to other draft laws which required more time to be examined at the committees and plenary session levels.

### Legislative proposals on narcotics

It should be noted, in this context, that the El-Horra bloc submitted a draft law on 21 February 2017, prior to the legislative proposal of the Ministry of Justice that aims at amending Article 12 of the Law of 1992. In addition, 10 MPs from the Popular Front submitted a legislative proposal on 31 December 2015 to fight illicit drug use, to enhance drug prevention and assist drug addicts. The objective of this text, as set forth in its preamble, is to include both a curative and a preventive approach to replace the deterrent logic that was dominant in the Law of 1992. This approach clearly proved counterproductive and contributed to the rise of recidivism. The transitional provisions of the draft law provided for the need to repeal the Law of 1992.

## 6. Draft Organic Law No. 69/2016 amending Law No. 75/40 of 14 May 1975 on Passports and Travel Documents



The draft law is consistent with the right to freedom of movement guaranteed and enshrined in Article 24 of the Constitution and is in line with international agreements related to this matter. Indeed, the draft law protects passport holders from arbitrary passport withdrawals and travel bans, as these decisions need to be duly justified and to comply with the existing legislation. The draft law also states that these decisions cannot be permanent; travel bans are for example systematically lifted 14 months after the decision is taken –this is meant to ensure that a travel ban does not remain indefinite and cannot become a permanent preventive action as travel bans are a violation of basic human rights.

Before discussing the draft law article-by-article, the Committee decided to hear the Minister of Justice on 21 April 2017.<sup>6</sup> The Minister expressed the need to amend Law No. 75/40 because it is incompatible with the Constitution and international agreements. He added that the Law does not comply with the deadlines provided for the commencement of legal proceedings and that there are citizens who “remain prohibited from traveling without being summoned or interrogated for almost 6 years, which amounts to detention.”

The draft law substantially amends the Law of 1975 and is compliant with constitutional principles, notably the right to appeal. In addition, the Law of 1975 does not cover pre-trial detention, where no time limit is specified for the travel ban. The draft law sets a 14-month time limit for the travel ban, in order to enable the judge to perform his duties.

6 - <http://majles.marsad.tn/2014/chroniques/58fa01d1cf4412226ec752be>

## 7. Draft Law No. 2016/54 on the Elimination of Racial Discrimination

A number of MPs submitted a legislative proposal on the elimination of racial discrimination on 16 July 2016. The Committee on Rights, Freedoms and External Relations was tasked with the review of this draft law; however, it did not begin its review despite the fact that repeated assaults, violence and cases of discrimination based on color or race were documented.

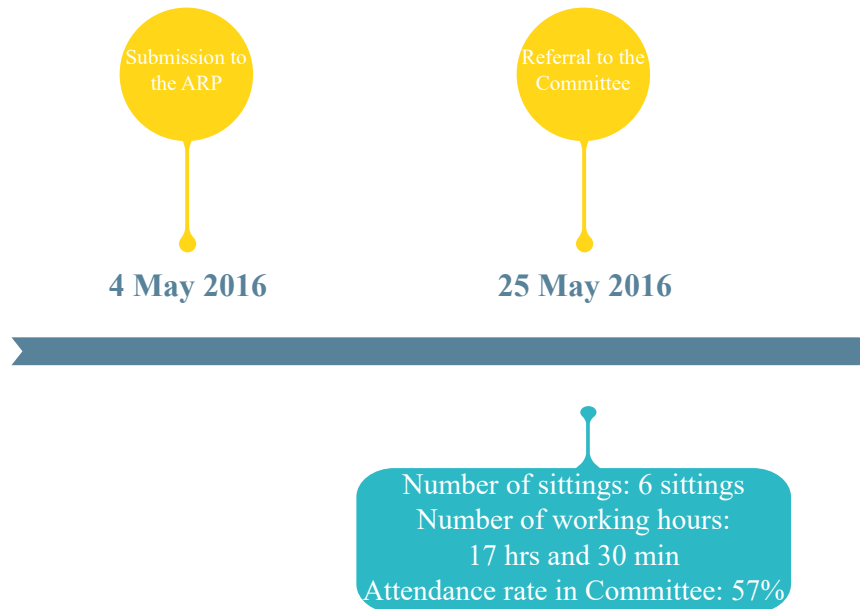
On 27 December 2016, after Ms. Jamila Debbech reported an act of violence and discrimination committed against two Congolese girls because of the color of their skin, Mohamed Ennaceur, the Speaker of ARP, called for the need to speed up the review of this legislative initiative in the plenary session.

This draft law seeks to eliminate all forms of discrimination based on race, color, descent, national origin, ethnic origin or religion by prosecuting offenders and protecting victims.

Mohamed Fadhel Ben Omrane	Nidaa Tounes
Abderraouf Cherif	El-Horra Bloc of Machrou Tounes Movement
Houcine Jaziri	Ennahdha Movement
Zied Lakhdhar	Popular Front
Karim Helali	Afek Tounes and the Call of Expatriate Tunisians
Bochra Belhaj Hmida	El-Horra Bloc of Machrouu Tounes Movement*
Jamila Debbech	Ennahdha Movement
Lilia Younes Ksibi	Afek Tounes and the Call of Expatriate Tunisians
Fathi Chamkhi	Popular Front
Sabri Dekhil	Democratic Bloc
Imed Daïmi	Democratic Bloc
Najia Ben Abdelhafidh	Nidaa Tounes Bloc

**Belongs to the Democratic Bloc\***

## 8. Draft Organic Law No. 2016/022 on Inheritance Rights



Although the matter is deeply tied to issues of rights and freedoms, given the fact that it represents a step towards gender equality, the Committee on Health and Social Affairs – not the Committee on Rights and Liberties – was tasked with the review of the draft bill.

The Committee organized a single hearing with the Tunisian Association of Democratic Women (ATFD). The discussions were subsequently halted. This is likely due to the Committee's reluctance to review a draft law that tackles societal issues, in addition to other priorities that came up in the course of the parliamentary session.

## II. The scrutiny function

The MPs exercised their supervisory role by way of a series of oral and written questions, in addition to hearings and field visits that were carried out by the committees.

## Chapter 1 : Rights and Freedoms

### 1. Supervisory work carried out at the plenary level

The table below sets forth the oral questions that were asked to Ministers:

Deputy	Bloc	Minister	Topic	Date of the plenary session
Imed Daïmi	Democratic Bloc	Minister of Interior	The objective from shifting to biometrics passports and ID Cards	26 November 2016
Imed Daïmi	Democratic Bloc	Minister of Interior	Authorities that overuse the travel ban	26 November 2016
Hager Ben Cheikh Ahmed	Afek Tounes and the Call of Expatriate Tunisians	Minister of Agriculture	Ministerial Circular regulating fishing and coastal tourism and its unconstitutionality as it breaches individual liberties	9 March 2017
Leïla Oueslati	Ennahdha Movement		Banning the granting leisure permits to fishermen	
Ghazi Chaouachi	Democratic Bloc	Minister of Higher Education	Violation of the right of access to information	16 May 2017
Imed Daïmi	Democratic Bloc	Minister of Interior	Banning entry to journalist Anouar Malek to Tunisia and expelling him because the entry ban list is not updated. His name was placed on this list after criticizing the deposed president on Aljazeera Channel	7 February 2017
Smia Abbou	Democratic Bloc	Minister of Cultural Affairs	Violation of the freedom of publication through the procedures adopted by the Ministry of Culture regarding the subsidies granted for paper supplies.	8 July 2017
Ghazi Chaouachi	Democratic Bloc	Minister of Environment	Serious violation of environmental laws committed by the brick factory in Kalâa Seghira.	22 July 2017
Noureddine Bhiri	Ennahdha Movement	Minister of Environment	Deterioration of the environmental situation in Ben Arous. Inhabitants are affected by the polluted beaches and forest of Rades.	22 July 2017

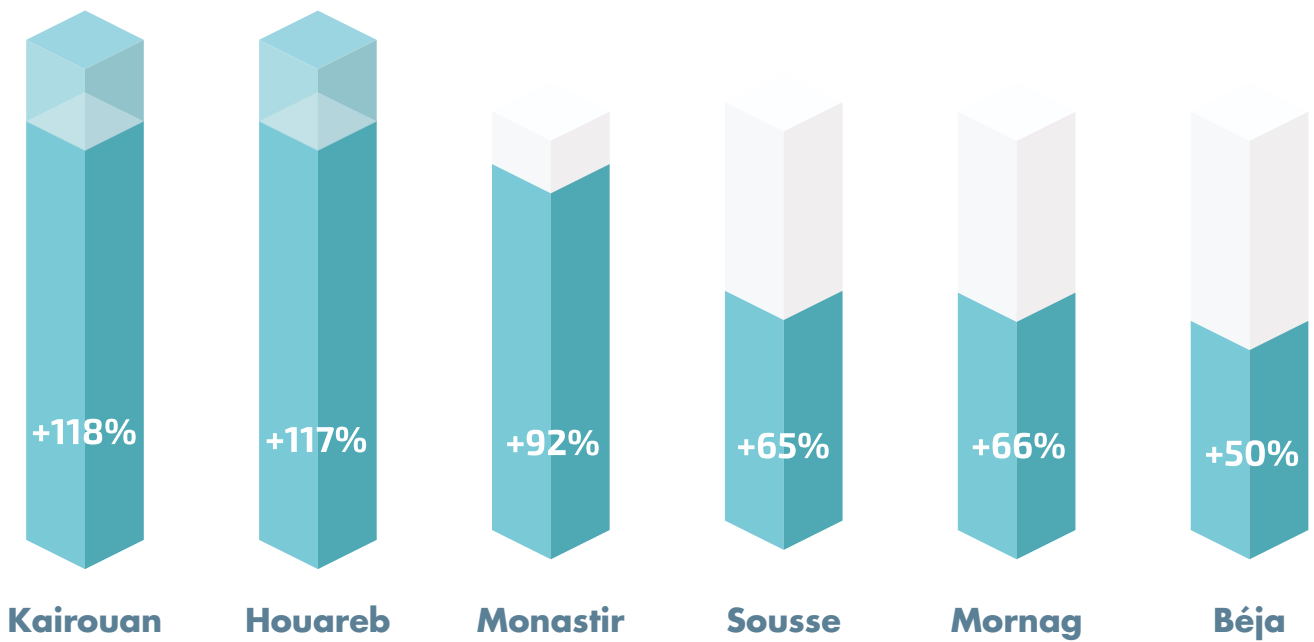
**2. Supervisory work performed by the Committees**

Each committee holds hearings and conducts field visits as part of their follow-up work on issues of rights and freedoms. Members of parliamentary committees may also submit written questions to Ministers in order to hold them accountable. Below is an overview of the supervisory role of committees on issues concerning the rights and freedoms of citizens.

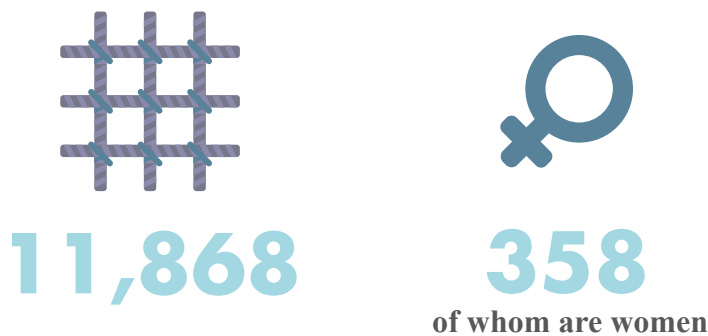
**Hearings**

The Security and Defense Committee summoned Mr. Ghazi Jeribi, Minister of Justice, for a hearing which took place on 3 January 2017 to provide figures and statistics on the status of prisons, the number of detainees and categories of crimes. The most significant figures presented by the Minister are outlined below.

**Prison capacity**



**Number of detainees**



Average cost per inmate : 32 TND

## Classification of crimes



## Number of death row inmates



The Committee on Rights, Freedoms and External Relations held a series of hearings with a number of organizations and bodies with an interest in rights and liberties. Mr. Imed Khemiri, the Chairman of the Committee, said that the Committee is finalizing a report addressing the issue of torture and abuses perpetrated since the Revolution.

The table below sets forth the dates and parties auditioned in the Committees:

Date of the Hearing	Party summoned for the hearing
23 February 2017	Amnesty International
10 March 2017	Tunisian Organization against Torture and Tunisian Observatory for Rights and Freedoms
17 March 2017	National Authority for the Prevention of Torture
31 March 2017	Higher Committee on Human Rights and Fundamental Freedoms
18 April 2017	Independent Commission for Audiovisual Communication (HAICA)
20 April 2017	Minister of Interior

### Field Visits

- On 26 January 2017, members of the General Legislation Committee conducted a field visit to a prison unit in Borj El Amri, to examine the detention conditions of a number of detainees charged with drug offences. This visit was organized in the context of the review of the draft law on narcotics, and its purpose was to report on the detention conditions of persons who were found guilty of drug-related offences.
- On 9 February 2017, members of the Committee on Rights, Freedoms and External Relations went on a field visit to the detention center located in Bouchoucha in order to examine the detention conditions. They stressed the need for improvement of these conditions and indicated that this could be done by training agents on how to respect the sanctity of the human body of detainees. On the same day, the Committee members also visited the juvenile correction center located in El Mourouj. They called for more support to training programs and for the reduction of prison overcrowding.
- On 3 April 2017, the Committee on Women, Family, Children, Youth and Elderly People Affairs went on a field visit to the “Amen” Center which gives shelter to female victims of violence in the governorate of Ariana and to the “Beity” Center, an NGO that accommodates women without shelter. This visit was organized in the context of the review of the bill on the elimination of violence against women. Its purpose was to adapt the bill to the situation on the ground and to ensure that it would be properly enforced.
- On 29 May 2017, as part of the follow-up work on rights and freedoms, the Security and Defense Committee conducted a field visit to Tataouine to examine the situation in the region after the outbreak of massive protests to demand development and employment. Tensions escalated after protesters closed an oil pump station in Al Kamour. Protesters clashed with the police and set fire to a police station. During the unrest, one of the protesters, Anouar Sakrafi, died – it was alleged that he was knocked over by a police vehicle. In order to obtain more information during this fact-finding visit, the Security and Defense Committee heard his brother to verify the accuracy of the facts of the incident.



### 3. Written questions

- **6 October 2017:** The Minister of Foreign Affairs answered a question asked by Abderraouf Cherif regarding the expulsion of a Moroccan national, Mr. Hicham Al-Alwi.<sup>7</sup>
- **1 August 2017:** The Minister of Interior answered a question asked by Mr. Salem Labiadh regarding the enforcement of a court judgment in an employment case.<sup>8</sup>
- **1 February 2017:** The Minister of Agriculture, Water Resources and Fisheries answered a question asked by Mr. Salah Bargaoui concerning the supply of drinking water in the areas of Sefina and El-Barama.<sup>9</sup>
- **10 February 2017:** The Minister of Transport answered a question asked by Mr. Bechir Ellazem on the reasons why an aviation training licence had been refused to Dr. Majid Dhaouadi.<sup>10</sup>

## Summary

The ARP is the first legislative body which was elected after the adoption of the Constitution of 2014, in which greater emphasis is placed on rights and liberties. The ARP therefore has great responsibility in the amendment of the laws in order to make them comply with the new constitutional framework. The performance of the ARP, however, on issues related to rights and freedoms was very poor during the 2016/2017 parliamentary session.

The scrutiny function of the executive branch was not satisfactory since very few oral and written questions on issues of rights and freedoms were addressed to members of the executive. Moreover, the field visits and hearings had very little effectiveness and did not have an impact on impunity. It should be noted that there were many oral interventions of MPs to comment on violations of rights and freedoms but such interventions were equally ineffective. This poor level of scrutiny – which was also due to the lack of clearly-defined and impactful accountability mechanisms – as well as the unsatisfactory legislative performance are thus clear indicators that the issues of rights and freedoms were not priorities during the third parliamentary session.

Besides, it should be noted that the legislative agenda of the ARP was recurrently amended to address external social and political events. This was notably the case for the Law on the Elimination of Violence against Women, the Draft Law on Repression of Attacks against Armed Forces and the Draft Law on Narcotics.

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7 - [http://www.arp.tn/site/main/AR/docs/reponses\\_gov/119.pdf](http://www.arp.tn/site/main/AR/docs/reponses_gov/119.pdf)

8 - [http://www.arp.tn/site/main/AR/docs/reponses\\_gov/93.pdf](http://www.arp.tn/site/main/AR/docs/reponses_gov/93.pdf)

9 - [http://www.arp.tn/site/main/AR/docs/reponses\\_gov/36.pdf](http://www.arp.tn/site/main/AR/docs/reponses_gov/36.pdf)

10 - [http://www.arp.tn/site/main/AR/docs/reponses\\_gov/37.pdf](http://www.arp.tn/site/main/AR/docs/reponses_gov/37.pdf)

The changes to the legislative agenda are also due to the fact that the Government introduced a series of bills and requested their prompt review. These draft bills tackled several issues that often overlapped with other bills that had been previously submitted to the ARP. This is notably the case for the Draft Law amending Article 227 bis of the Criminal Code and the Draft Law amending Article 12 of the Law No. 92-52 on Narcotics.

It is worth mentioning that the ARP did not examine any legislative proposal from MPs. This can be partly explained by Article 62 of the Constitution that gives priority to bills coming from the Government. This, however, does not absolve the Parliament from its slowness and poor legislative performance on issues related to rights and liberties. Indeed, only two draft laws were approved, one of which only offers a temporary solution to the issue of drug use. The second law which was approved is the one on the elimination of violence against women, which can be considered as an achievement in many respects. In addition to the fact that it had been drafted with a participatory approach, it combines preventive and repressive measures and is oriented towards the protection of victims. Further, the law amended several provisions of the Criminal Code and adopts both a modernist and a humanist approach. Lastly, it is in line with the Constitution.

Three and a half years after the adoption of the Constitution, and following three parliamentary sessions, the Tunisian legal framework on rights and freedoms that dates back from the period of despotism is still not compliant with the Constitution and with international treaties ratified by Tunisia. Both the ARP and the Government are responsible for the lack of implementation of the constitutional provisions and for the delay in the reform the Criminal Code. More importantly, the ARP is primarily responsible for the huge delay in the establishment of the Constitutional Court. Indeed, the ARP failed to elect one-third of the members of the Constitutional Court, which is the first step that is required before the Supreme Judicial Council and the President of the Republic can proceed with the appointment and election of the remaining two-thirds of the Court's members.

In addition to the slow work process and the lack of political will to conduct a comprehensive legal reform to implement and protect rights and freedoms, the Constitutional Court remains the most important tool to ensure the protection of rights and freedoms of the Tunisian people.

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# Chapter 2

## Independent Constitutional Bodies

02

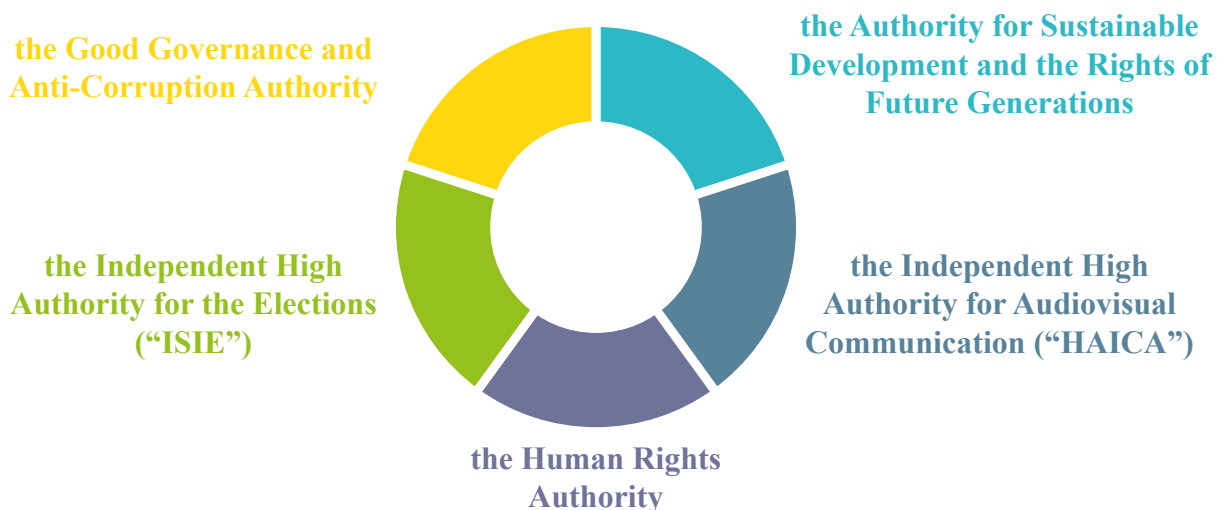


## Chapter 2 : Independent Constitutional Bodies

In many countries around the world, independent authorities have been established to play an additional role to the one that is traditionally performed by the three branches of the State. These independent bodies specialize in specific areas; some perform regulatory functions – particularly the ones of administrative or economic nature – while others take on the role of a counter-power and scrutinize certain prerogatives of the legislative, executive and judiciary branches.

In Tunisia, the former existed since the seventies while the latter came into existence after the Revolution. Since 2011, many independent structures, bodies and authorities were set up to prevent the State's interference and encroachment.

Some of these bodies are enshrined in Chapter VI of the Constitution of 27 January 2014 which established a new category of independent constitutional bodies:



This new legal and constitutional approach stems from the desire to reduce the power granted to the executive branch and prevent the abuses which marked the history of Tunisia since its independence. The aim of the creation of these institutions is also to create counter-powers that would act in sensitive fields, such as the organization of elections and the oversight of the audiovisual sector. Their establishment is key to the success of the democratic transition that is currently in progress.



**Article 125:** The independent constitutional bodies seek to support democracy. All institutions of the State must facilitate their work. These bodies shall enjoy legal personality as well as financial and administrative independence. These bodies shall be elected by the Assembly of the People's Representatives by qualified majority, and shall submit an annual report to it, with the report of each body being discussed in a special plenary of the Assembly.

The law shall determine the composition of these bodies, representation within them, the procedures for their election, organization and ways of holding them accountable.

In addition to independent constitutional bodies, there are other independent authorities such as the National Authority for the Prevention of Torture,<sup>1</sup> the National Authority for the Protection of Personal Data, the National Authority against Human Trafficking and the Truth and Dignity Commission. Skepticism surrounded these bodies as they faced many challenges.

Many observers and political actors expressed their doubts as to the usefulness of these institutions which led an increasing number of people to question their independence and call for their reform. The authority in charge of transitional justice has clearly been the main target of these attacks. Perhaps the most remarkable questioning was the one articulated by the President of the Republic - Beji Caïd Essebsi – when he declared, in an interview to the newspaper *La Presse* on 16 September 2017, that independent authorities are going beyond their mandate and that they are acting as “a disciple who is trying to rise above his master.”<sup>2</sup>

The issue of the independence of these bodies also created confusion in the Parliament. This translated into a lack of understanding of the links between the Parliament and the independent authorities in terms of their legislative, scrutiny and electoral roles.

During the third parliamentary session, the members of the Authority for Access to Information were elected during a plenary session held on 18 July 2017. This required 15 sittings held by the Election Committee, of which 13 were devoted to the examination of candidate files. This process lasted 6 months (from 26 December 2016 to 20 June 2017) and the call for candidates was subsequently reopened to address the shortage in some specialties.

With regard to ISIE, the question of its independence was raised when action was needed to fill the vacant positions after three members, including its President, Chafik Sarsar, resigned. This crisis raised many issues ranging from the late filling of the vacancies to the role of the “consensus committee” in this task. The crisis was undoubtedly aggravated by the sensitive role that ISIE plays in a context of a political transition.

During the final plenary sessions on 28 and 29 July 2017, the required legal quorum was not met. This prompted the Assembly to convene a controversial extraordinary session in late August 2017. A first plenary session was then scheduled to fill the vacancies and, once again, the requisite quorum was not met. Despite this failure, the Assembly decided to proceed to vote on the very controversial Law on Administrative Reconciliation, without giving a second chance to the election of the ISIE members. This sparked fierce objection from the opposition, who accused the ruling political parties of concluding a political deal. The vacancies were finally filled on 20 September 2017, i.e. during the fourth parliamentary session.

The question of independence was raised several times, more particularly the question of the independence of these bodies vis-à-vis the Parliament. The main challenge encountered during the performance of its legislative duties – which essentially consisted in examining draft bills implementing and organizing independent constitutional bodies – was to identify mechanisms that would hold independent bodies accountable (I). On the other hand, the scrutiny function of the Assembly essentially revolved around the work of a number of independent bodies which were not established by the Constitution, in particular the Truth and Dignity Commission. The scope of the parliamentary scrutiny will be extended to cover independent constitutional bodies, once they would be established (II).

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1 - Memory of Torture: the ground Tunisian flesh

<https://goo.gl/bb1lf9>

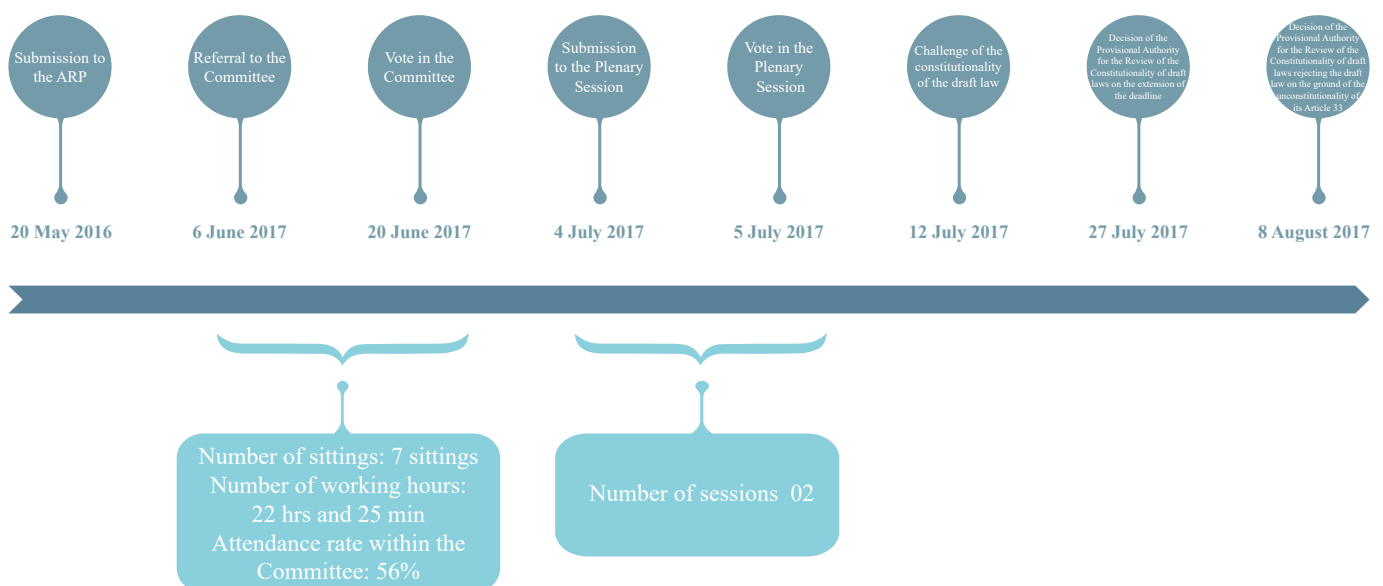
2 - <http://www.lapresse.tn/component/nationals/?task=article&id=135783>

## I. The legislative function

The ARP has a major role to play in relation to the creation of the legal framework of the independent constitutional bodies. Their establishment is key to the implementation of Chapter VI of the Constitution. Apart from ISIE which was set up a few months after the Revolution and which was incorporated in the new Constitution, the establishment of other bodies is subject to the enactment of new laws in order put them in place and regulate them. These bodies include HAICA, the Good Governance and Anti-Corruption Authority and the Human Rights Authority which will replace bodies that were established in accordance with laws that preceded the adoption of the 2014 Constitution.<sup>3</sup>

The Government, represented by the Ministry in charge of Relations with Constitutional Bodies, Civil Society and Human Rights, opted for a draft law providing for common provisions that would apply to all the independent constitutional bodies, as well as five laws that would govern the five bodies mentioned in the Constitution. In this context, three draft laws on independent bodies were submitted to the Assembly in the course of the third parliamentary session. No draft law on HAICA or on the Authority for Sustainable Development and the Rights of Future Generations was submitted to the ARP.

### 1. Draft organic law No. 30/2016 on Common Provisions for Independent Constitutional Bodies



3 - HAICA is the Independent High Authority for Audiovisual Communication set up by virtue of Decree No. 116 dated 2 November 2011, the National Anti-Corruption Authority established by Framework Decree No. 2011/120 dated 14 November 2011 on fighting corruption and the High Authority for Human Rights and Fundamental Freedoms created under Law No. 2008/37 dated 16 June 2008.

The reason underlying the drafting of a law on common provisions for independent bodies lies in the following interpretation of Article 125 of the Constitution: the ARP should review the common provisions before proceeding with the review of the bills related to each body. This was not the case, as the Committee began its review of the common provisions one year after its submission in May 2016 and more particularly after the draft law on the Good Governance and Anti-corruption Authority, which was reviewed by the Committee on the Organization of Administration, was considered. The draft law was discussed during seven sittings which were held over two weeks; two hearing sessions were organized to hear the Minister of Relations with Constitutional Bodies, Civil Society and Human Rights, the Court of Auditors and the association “Solidar”.

## Points of Conflict

- Usefulness of the enactment of a Law on Common Provisions for Independent Constitutional Bodies, as each body is regulated by a separate law: a number of MPs agreed with the approach proposed by the Government while others considered that it would create practical problems in case of conflict between the law on common provisions, on the one hand, and the laws regulating each authority, on the other hand. It was suggested that common provisions could be incorporated into the specific laws regulating the independent bodies. The third proposal was to issue a Code on Independent Constitutional Bodies, whose first chapter would be dedicated to common provisions. The laws governing the bodies would each form part of additional chapters.
- The authority should elect its President among its board members: this proposal was supported by a number of MPs for identical reasons to those brought by the author of the legislative proposal, i.e. that this would make the work of the authority easier. Other MPs insisted that the President of the authority should be elected by the Assembly, in order to enhance his/her legitimacy.
- Receipt of voluntary and unconditional donations, contributions or gifts from foreign bodies and organizations: certain MPs were of the opinion that this may threaten the independence of those bodies. Others considered that foreign donations do not compromise their independence so long as there is transparency and accountability.

It is worth noting that during the Committee’s review, the issue of the independence of the bodies was not taken seriously enough. For instance, the article on the dismissal of the board members of the Authorities was unanimously approved after a slight amendment was made.

## Amendments submitted by MPs and incorporated in the final draft

Some amendments which were submitted at committee level were adopted and incorporated into the draft. However, most of these amendments were rejected in the plenary session and the earlier version of the draft was approved, after additional amendments were made by the Ministry of Relations with Constitutional Bodies, Civil Society and Human Rights:



## Chapter 2 : Independent Constitutional Bodies

- The amendment to the title – “Code of Independent Constitutional Bodies” – and to part of Article 1 was unanimously approved in Committee but rejected in plenary to back up an amendment submitted by the government.
- In Article 19, which deals with the bodies’ resources, the terms “donations”, “contribution” and “gifts” that had been incorporated in the draft were deleted and the initial wording of this provision which was approved.

An amendment submitted by Ghazi Chaouchi, Samia Abbou, Noomane El Euch, Imed Daimi and Salem Labiadh, pursuant to which the Assembly would no longer be entitled to dismiss the board of the authorities, was rejected.

The article on the dismissal of the entire board formed the basis of the challenge that was submitted to the Provisional Authority for the Review of the Constitutionality of Draft Laws. The Provisional Authority later ruled that this provision was unconstitutional.

### Challenge to the constitutionality of the bill

- Below is a list of MPs who challenged the constitutionality of the bill.

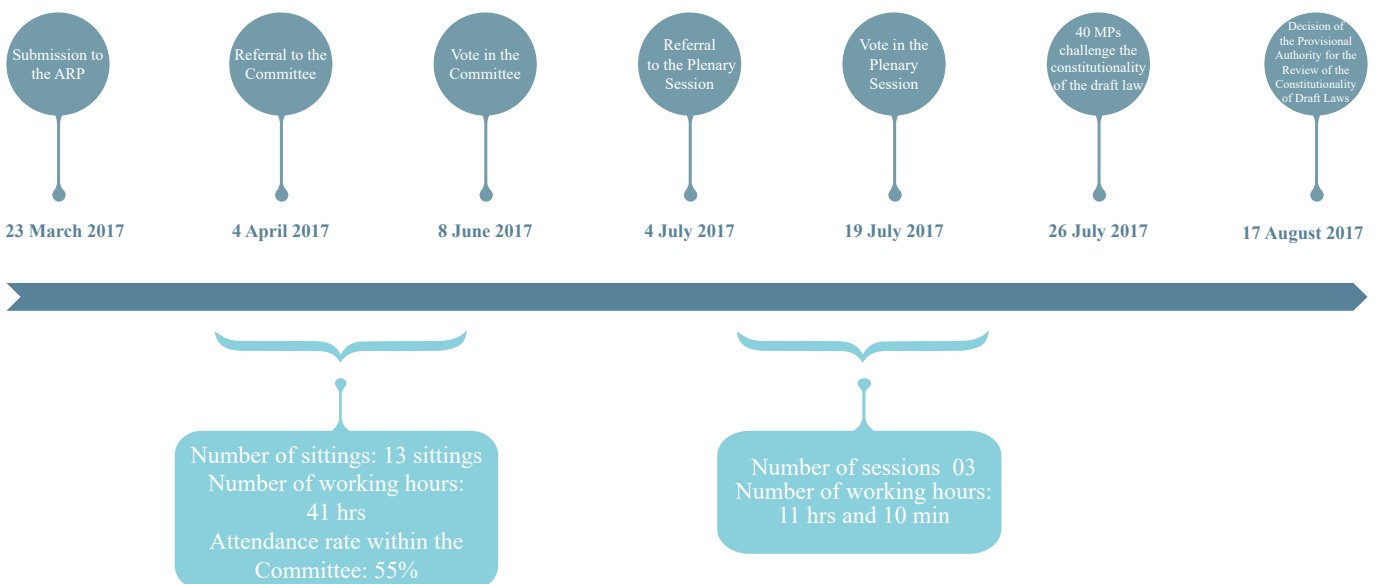
Deputy Number	Deputy Name	Deputy Number	Deputy Name
1.	Samia Abbou	16.	Zied Lakhder
2.	Ghazi Chaouchi	17.	Ibrahim Ben Said
3.	Noomane El Euch	18.	Fathi Chamkhi
4.	Haykel Bellkacem	19.	Sabri Dkhil
5.	Chafik Ayadi	20.	Faycel Tebini
6.	Ammar Amroussia	21.	Adnen Hajji
7.	Tarek Barrak	22.	Imed Daimi
8.	Abdelmoumen Belanes	23.	Mabrouk Hrizi
9.	Ahmed Seddik	24.	Khemais Kssila
10.	Zouhair Maghzaoui	25.	Aymen Aloui
11.	Salem Labiadh	26.	Mbarka Aouania
12.	Rim Thairi	27.	Jilani Hammami
13.	Souad Bayouli	28.	Ridha Dellai
14.	Mourad Hamaidi	29.	Ahmed Khaskhoussi
15.	Abdelaziz Kotti	30.	Nizar Amami

The MPs argued that the bill violates Chapter VI of the Constitution, in particular its Article 125. The following arguments were raised:

- Article 2 provides that independent constitutional bodies should be accountable to the Parliament whereas the Constitution provides that these bodies are independent;
- Article 10 allows the Assembly to waive the immunity of the members of independent constitutional bodies;
- Article 11 would aim at having the Assembly act as a supervisory authority because the Assembly would be entitled to discharge members of the bodies from their functions;
- Article 24 states that the Assembly approves the financial reports of the constitutional bodies, whereas the Constitution states that the Assembly should only discuss the bodies' financial reports; and
- The mechanism provided in Article 33, which allows for the dismissal of the board of the authorities, violates the independence of the constitutional bodies.
- Decision of the Provisional Authority for the Review of the Constitutionality of Draft Laws

The Provisional Authority for the Review of the Constitutionality of Draft Laws ruled that Article 33 of the draft law and any reference thereto in Article 11 and 24 is unconstitutional. Other provisions were rejected on the ground that “dismissal of the board, as provided in Article 33, violates the principle of independence of constitutional bodies and the principle of proportionality between accountability and independence.”

## 2. Draft law No. 38/2017 on the Good Governance and Anti-Corruption Authority



The creation of the Good Governance and Anti-Corruption Authority is not only a constitutional requirement, it is also key to the Government's anti-corruption agenda. This may be the reason why the Government submitted the bill on the Anti-Corruption Authority to the Assembly prior to the submission of that on Common Provisions for Independent Constitutional Bodies, and why it asked for the prompt review of the bill.

The draft law was considerably criticized by the National Anti-Corruption Authority ("INLUCC"). In particular, Mr. Chawki Tabib, its chairman, stated that the bill limits the powers given to the authority pursuant to Decree No. 2011/120 of 2011 and that it is not in line with the draft law that had been prepared by a Committee to which INLUCC members participated.

Unlike other independent constitutional bodies, Article 130 of the Constitution grants both investigative and consultative powers to the Anti-Corruption Authority. However, the wording of this provision is open to interpretation and led to a debate during the review of the bill, in particular on the issue of overlapping prerogatives with the judiciary.

## Points of Conflict

- Pursuant to Articles 19 and 20 of the bill, the President and the members of the Authority are entitled to "carry out searches and seize documents, equipment and moveable assets." Some MPs argued that these provisions are inconsistent with the Constitution, in particular its provisions on rights and freedoms and on the immunity of MPs and judges. Other MPs requested that pre-emptive mechanisms which allow for investigations to be carried out without a judicial warrant be incorporated in the draft, if the emergency of the situation so requires.
- Article 36 on the members' required fields of expertise and their seniority.
- Article 37 which provides that candidates shall not be affiliated to a political party for a period of five years preceding their application.

The draft law was approved in the course of the plenary session held on 19 July 2017. The constitutionality of the bill was subsequently challenged by 40 MPs before the Provisional Authority for the Review of the Constitutionality of Draft Laws.

## Decision of the Provisional Authority for the Review of the Constitutionality of Draft Laws

- Below is a list of MPs who challenged the constitutionality of the bill:

Deputy Number	Deputy Name	Deputy Number	Deputy Name
1.	Ghazi Chaouachi	21.	Mohamed Amine Kahloul
2.	Salem Labiadh	22.	Taoufik Jemli
3.	Mongi Rahoui	23.	Olfa Jouini
4.	Zied Lakhdhar	24.	Mahmoud elKahri
5.	Zouhair Maghzaoui	25.	Tarek Ftiti
6.	Abdelmoumen Belanes	26.	Abdelwaheb Ouerfelli
7.	Aymen Aloui	27.	Souad Zaouli
8.	Samia Abbou	28.	Abdelaziz Kitti
9.	Ahmed Khaskhoussi	29.	Naceur Chouikh
10.	Noomane El Euch	30.	Kamel Harraghi
11.	Ridha Delli	31.	Mbarka Aouania
12.	Nizar Amami	32.	Haykel Belkacem
13.	Ammar Amroussia	33.	Fathi Chamkhi
14.	Souad Bayouli	34.	Sabri Dekhil
15.	Ibrahim Ben Said	35.	Imed Daimi
16.	Jilani Hammami	36.	Lilia Younes Ksibi
17.	Adnane Hajji	37.	Rim Majoub Masmoudi
18.	Ahmed Seddik	38.	Nozha Bayaoui
19.	Chafik Ayadi	39.	Mourad Hamaidi
20.	Tarek Barrak	40.	Ali Bennour

## Challenge to the constitutionality of the bill

MPs argued that the bill violates Articles 125 and 130 of the Constitution. The following arguments were raised:

- Articles 1 and 32 which provided for the creation of an administrative body within the authority violate Article 125 of the Constitution;
- Articles 43 and 51 which take away powers that had been granted to the Authority by the Constitution;
- Article 19 which takes away law enforcement prerogatives from the authority's board and President;
- Article 45 which allows the Assembly to dismiss the President of the Authority or any of its members.

The Provisional Authority for the Review of the Constitutionality of Draft Laws ruled that the bill complies with the Constitution. The Authority found that:

- the Constitution does not prohibit the creation of an administrative body within the Authority;
- the draft law does not provide for an independent administrative body which replaces the authority and exercises its regulatory authority. It rather refers to an executive body which enforces the decisions of the board of the Authority and acts under its supervision;
- in the context of criminal proceedings that may adversely affect fundamental freedoms and rights, judicial supervision is required. It is the reason why the law enforcement officers of the Anti-Corruption Authority work under the supervision of the Public Prosecutor if the circumstances so require; and
- members of the Authority's board can only be dismissed after a reasoned report is prepared by the board and approved by two-thirds of the Authority's board members and two-thirds of the Parliament.

### 3. Draft Organic Law No. 42/2016 on the Human Rights Authority

The bill on the Human Rights Authority was submitted on 17 June 2016 but the Committee on Rights and Freedoms did not review it during the third parliamentary session.

No draft law on either HAICA or the Authority for Sustainable Development and the Rights of Future Generations was submitted to the Assembly until the closing of the third parliamentary session.

## II. The scrutiny function

In parallel to its supervision of governmental actions, the ARP also scrutinizes independent authorities. The constitutional bodies are independent from the executive branch but are accountable to and scrutinized by the Parliament and the judiciary. This section deals with the scrutiny of the Assembly over independent authorities during the previous parliamentary session.

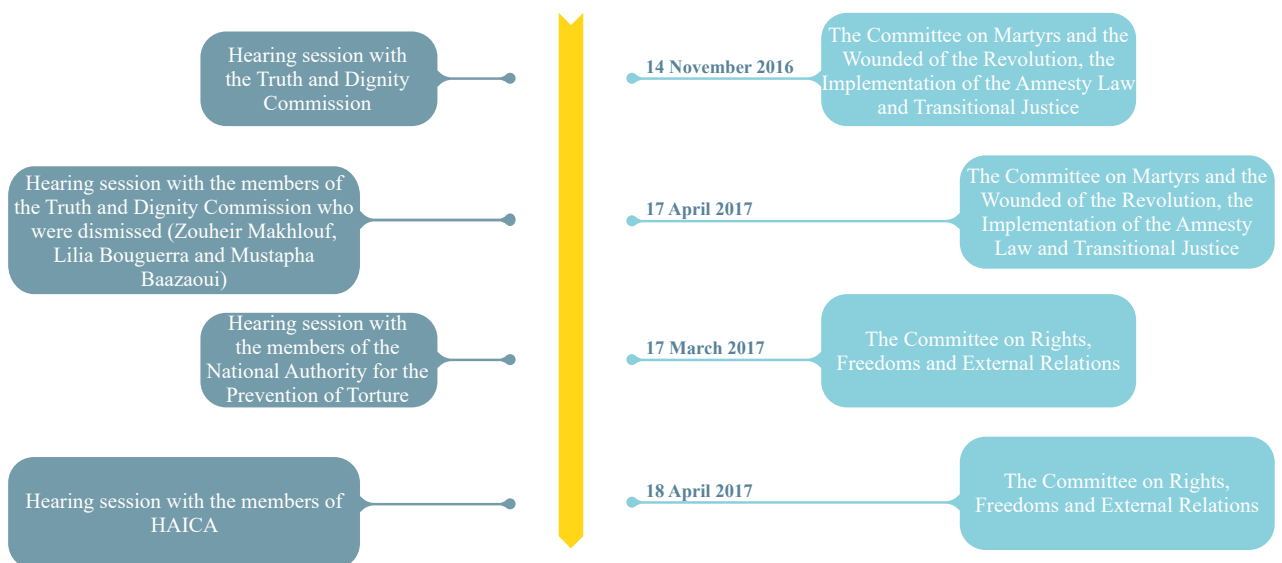
### 1. Scrutiny at plenary level

During the plenary session held on 21 November 2016, MP Soulef Ksantini asked an oral question to Mehdi Ben Gharbia, the Minister of Relations with Constitutional Bodies, Civil Society and Human Rights to inquire about the delay in the creation of the constitutional bodies and the need to fix a clear schedule for their creation.<sup>4</sup>

### 2. Scrutiny at committee level

In addition to committee hearings held with members of the constitutional bodies in the context of the review of the laws governing these bodies, many hearings were scheduled to address the issues that some independent bodies were facing.

The following table sets forth the hearings’ dates and the topics that were covered.



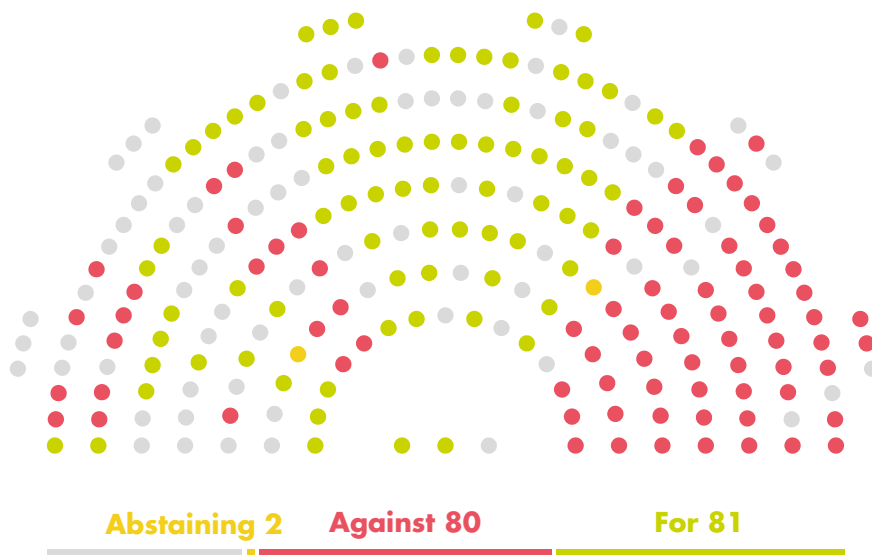
4 - The plenary chronicle of 21 November 2016  
<https://majles.marsad.tn/2014/chroniques/5832cfaccf441219832f9a3c>

### 3. Request for the establishment of an investigative committee on allegations of administrative and financial corruption on the part of the chairwoman of the Truth and Dignity Commission

On 17 January 2017, some MPs proposed to the plenary that a committee be put in place in order to investigate allegations of administrative and financial corruption on the part of the chairwoman of the Truth and Dignity Commission.

#### Required Majority:

81 deputies voted in favor the proposal, 80 voted against it and two abstained. The proposal was thus rejected.



#### Parliamentary blocs:

Ennahdha Movement	1	59	1	8
Nidaa Tounes		48		19
El Horra Movement	14	6		
Popular Front	11	4		
No political affiliation	6	2	5	
Democratic Bloc	8	4		
Free Patriotic Union	5	1	5	
Afek Tounes and the Appeal of Tunisians Abroad	3	3		

## Independent Constitutional Bodies



### 1. ISIE

- Set up and regulated by Organic Law No. 23/2012



### 2. Good Governance and Anti-Corruption Authority

✓ Draft law approved

✗ The Authority was not established and its members were not elected yet



● The Law on Common Provisions for Independent Constitutional Bodies was adopted. However, the Provisional Authority for the Review of the Constitutionality of Draft Laws ruled that its Article 33 was unconstitutional and returned it to the Parliament.



### 3. Human Rights Authority

✓ The Government submitted the draft law on 17 June 2016

✗ The draft law has not yet been discussed

✗ The Authority was not yet established and its members not yet elected



### 4. HAICA

✓ No draft law on HAICA was submitted by the Government

✗ The authority is not established and its members not elected yet



### 5. Authority for Sustainable Development and the Rights of Future Generations

✓ No draft law was yet submitted by the Government

✗ The authority is not established and its members not elected yet





## Summary

Despite the fact that the creation of independent constitutional bodies is a constitutional requirement and that these bodies aim at regulating key issues and fields, the Assembly did not view the creation of these bodies as a legislative priority. The Government did not submit draft laws on HAICA or on the Authority for Sustainable Development and the Rights of Future Generations was submitted. Besides, the ARP did not begin its review of the bill on the Human Rights Authority.

It is worth noting that the enactment of a Law on Common Provisions for Independent Constitutional Bodies was criticized, mainly because of the differences between their fields of action and prerogatives. In particular, this issue was raised in the context of the adoption of the bill on the Good Governance and Anti-Corruption Authority, which incorporated references to a law that had not been adopted yet. Further, the Provisional Authority for the Review of the Constitutionality of Draft Laws ruled that Article 33 of the Law on Common Provisions was unconstitutional. The decision of the Provisional Authority cannot be interpreted in isolation from the political climate and the perception of the independent bodies – in particular, concerns as regards their independence. The threat does not only lie in the delay in the implementation of Chapter VI of the Constitution but also in stripping them away from their independence and from their constitutional prerogatives.

As regards the independent bodies whose creation is provided by the Constitution, but which were not yet established, the Assembly failed to adopt the laws enacting their creation. The Assembly also failed to amend the laws regulating existing bodies.

However, the Assembly exercised some scrutiny over these bodies, particularly over the Truth and Dignity Commission. In addition to holding two hearing sessions with the IVD chairwoman and the members who were dismissed, some MPs proposed the set-up of an investigative committee to inquire on allegations of corruption on the part of Zouheir Makhoul, who was removed from the Truth and Dignity Commission. However, the proposal fell one vote short in the plenary session and was therefore ultimately rejected. It should be noted that the scrutiny exercised over the Truth and Dignity Commission is rather exceptional and that the Assembly's scrutiny over independent bodies is also exceptional and cannot be compared to the scrutiny over the Government.

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# Chapter 3

Fight against  
Corruption

03



The war on corruption was a top priority in the Carthage Agreement that was signed on 13 July 2016. On 24 May 2017, more than a year later, the Prime Minister, Youssef Chahed, declared war on corruption during a brief media statement at the Government Square in La Kasbah. He stated that he stands with the State against corruption and that his government is determined to fight this scourge.<sup>1</sup>

This statement came a day after the arrest of several “businessmen” who were suspected of corruption; however, the Public Prosecutor did not charge them and did not issue any decision to arrest or detain them. On 25 May 2017, the Ministry of Interior issued a press release announcing the decision to carry out house arrests based on allegations of violations that threaten national security. It considered that these measures are provisional and specific and that these proceedings were necessary for the protection of public security and the fight against corruption. The Ministry added that these measures would come to an end at the expiration of the state of emergency.

The first investigating judge of the Permanent Military Court issued a warrant of imprisonment against the businessman Chafik Jarraya on 26 May 2017. This “war on corruption” had a tremendous impact in the Parliament for several reasons. Most importantly, the Tunisian people consider corruption to be their third priority after employment and economic well-being, according to a survey conducted by the International Republican Institute. Indeed, 89% of those questioned said corruption had risen after the revolution.<sup>2</sup>

The positions within the Parliament varied between supporters and opponents to the arrest campaign; some considered it as nothing but a politically motivated smokescreen and others considered it as a positive action reflecting the Government’s actual will to fight corruption.<sup>3</sup>

The issue of the fight against corruption was one of the most important topics of the third parliamentary session, in terms of both legislative and scrutiny activities.

## I. The legislative function

The Parliament’s legislative activities essentially revolved around the set-up of a legal arsenal to fight corruption. This was deemed essential by the President of the Parliament. During a meeting of the Parliament’s bureau on 1 June 2017, the Speaker promised that the war on corruption would be the Parliament’s absolute priority.<sup>4</sup>

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1 - <https://www.leconomistemaghrebin.com/2017/10/30/youssef-chahed-guerre-contre-corruption-nepargnera-personne/>

2 - Center for insights in survey research a project from the International Republican Institute: Public opinion survey of Tunisians, 11-17 August 2017

[http://www.iri.org/sites/default/files/2017-9-26\\_tunisia\\_poll\\_presentation.pdf](http://www.iri.org/sites/default/files/2017-9-26_tunisia_poll_presentation.pdf)

3 - Al Bawsala’s newsletter on the plenary session devoted to a dialogue with the Prime Minister on anti-corruption and the general situation in the country

<https://majles.marsad.tn/2014/chroniques/597097de4f24d036e99d975c>

4 - Mohamed Ennaceur urged that the laws relating to corruption be considered expeditiously and recommended that this review be done before the end of the parliamentary session

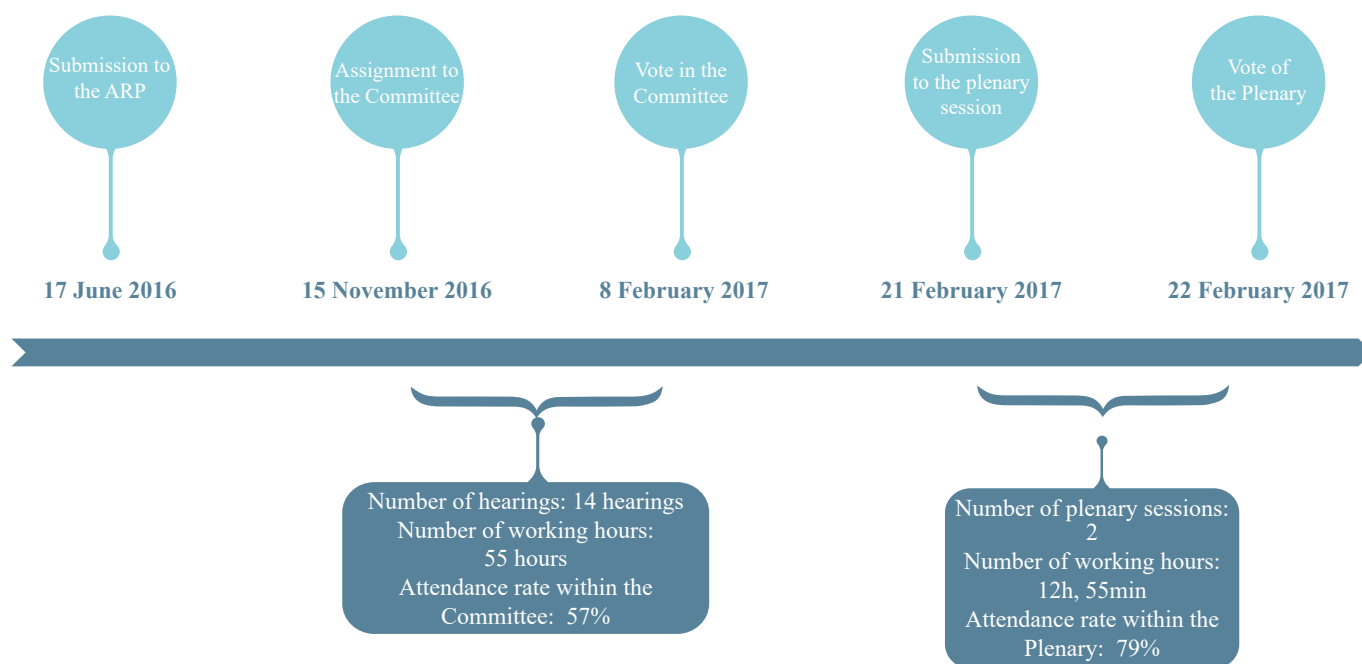
<http://akhbartounes.com/wp-content/uploads/cache/wppipes/urldata/2017-06/13e8a22c59532e3e5a7405227dae906f.html>

## Chapter 3 : Fight against corruption

The following drafts laws were reviewed:

- Draft law No. 41/2016 on the reporting of corruption and the protection of whistleblowers;
- Draft organic law No. 38/2017 on the Good Governance and Anti-Corruption Authority;
- Draft law No. 30/2016 on common provisions for independent constitutional bodies;
- Draft organic law No. 57/2016 on the economic and financial judiciary pole;
- Draft law No. 83/2015 on transparency and the fight against illicit enrichment; and
- Draft law No. 35/2017 on asset declaration.

### 1. Draft law No. 41/2016 on the reporting of corruption and the protection of whistleblowers



### Chapter 3 : Fight against corruption

Below is a list of the hearings that were organized by the Committee on Rights, Freedoms and External Relations.

Government Parties	1	<ul style="list-style-type: none"> <li>• Ministry of Public Service</li> </ul>	Hearing of the Minister of Public Service on 16 November 2016
National Bodies	3	<ul style="list-style-type: none"> <li>• National Instance for Personal Data Protection</li> <li>• National Anti-Corruption Authority</li> <li>• High Committee on Administrative and Financial Control</li> </ul>	<ul style="list-style-type: none"> <li>• Hearing of the National Anti-Corruption Authority and the National Authority for Personal Data Protection on 20 December 2016</li> <li>• Hearing of the High Committee on Administrative and Financial Control on 21 December 2016</li> </ul>
Civil Society	2	<ul style="list-style-type: none"> <li>• iWatch</li> <li>• Al Bawsala</li> </ul>	Hearing of iWatch on 16 November 2016 Hearing of Al Bawsala on 21 December 2016

According to its explanatory document, the purpose of this draft law is to fight corruption; promote transparency and accountability in the public and private sectors; enhance citizens' trust in public structures; and provide for the conditions and procedures for the reporting of corruption by determining the competent authority to receive these reports. It also aims at determining the conditions of protection of whistleblowers and ensures anonymity and compliance with the requirements of personal data protection.

This law also defines the sanctions that apply to any person who deliberately discloses the identity of the whistleblower or who falsely reports corruption.

The added value of this law lies in its definition of corruption: "any act contrary to laws and regulations that harms or would harm the public interest through the abuse of power, authority or position to obtain personal gains." It includes bribery in all its forms, both in the public and private sectors, seizure or misuse of public funds, all aspects of illicit enrichment, breach of trust, misuse of corporate assets, money laundering, conflict of interest, exploitation of information, tax evasion, obstruction to justice and any act that may threaten public health, safety or environment.

Al Bawsala prepared a set of recommendations that were presented on 21 December 2016 during a hearing at the Committee on Rights, Freedoms and External Relations.<sup>5</sup>

The adoption of this law is a positive step towards the fight against corruption, but its entry into force is still pending because of the lack of implementing decrees.

5 - Albawsala's recommendations on Draft Law No. 41/2016 relating to corruption reporting and whistleblowers protection <https://majles.marsad.tn/2014/docs/58822317cf44121f3e63b0dc>

## **2. Draft organic law No. 38/2017 on the Good Governance and Anti-Corruption Authority**

On 27 March 2017, the Draft organic law No. 38/2017 on the creation of the Good Governance and Anti-Corruption Authority was submitted by the Ministry of Relations with Constitutional Bodies, Civil Society and Human Rights. It covers issues of administrative reform, good governance, anti-corruption and monitoring of the management of public funds. This draft law contains 67 articles and was examined by the Commission on the Organization of Administration and Armed Forces Affairs.

For further details on the Authority, see Chapter II, Section I, para. 2.

## **3. Draft organic law No. 30/2016 on common provisions for independent constitutional bodies**

The draft law was submitted to the Parliament by the Ministry of Relations with Constitutional Bodies, Civil Society and Human Rights on 20 May 2016. Its purpose is to regulate the five constitutional bodies listed in Chapter VI of the Constitution and to ensure their independence. The Committee on General Legislation was tasked with its review.

For further details on this draft law, see Chapter II, Section I, para. 1.

## **4. Draft laws on asset declaration and transparency in the public sector**

Several MPs submitted two draft laws in support of the war on corruption:

- draft law No. 83/2015 on transparency and the fight against illicit enrichment; and
- draft law No. 35/2017 on asset declaration.

### **4.1. Draft law No. 83/2015 on transparency and the fight against illicit enrichment**

This draft law was submitted to the Parliament's bureau on 31 December 2015 by 12 MPs from the Social Democratic Group. This draft contains 21 articles, aiming at establishing transparency and integrity, fighting illicit enrichment, protecting public funds, strengthening supervision over persons in charge of their management, and enabling the Court of Auditors to investigate in circumstances where illicit enrichment is suspected.<sup>6</sup>

The Committee on General Legislation did not hold any session to review this bill.

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6 - The law bill link on Albawsala organization's website:  
<https://majles.marsad.tn/2014/lois/56d6c9de12bdaa76dc89cf9b/texte>

MPs who submitted the draft law
Iyed Dahmani
Adnen Hajji
Samia Abbou
Ghazi Chaouachi
Ibrahim Ben Said
Salem Labiadh
Noaman El Euch
Sabri Dkhil
Mabrouk Hrizi
Imed Daimi
Zouhair Maghzaoui
Ridha Dellai

#### 4.2. Draft law No. 35/2017 on asset declaration

On 15 March 2017, 13 MPs from Ennahdha submitted a draft law on assets declaration. This draft law consists of 24 articles and aims at establishing transparency, fighting illicit enrichment and implementing Article 11 of the Constitution. The draft law was referred to the Committee on the Organization of Administration and Armed Forces Affairs, as it deals with issues of administrative reform, good governance, fight against corruption and monitoring of the management of public funds. However, the Committee did not review this draft.



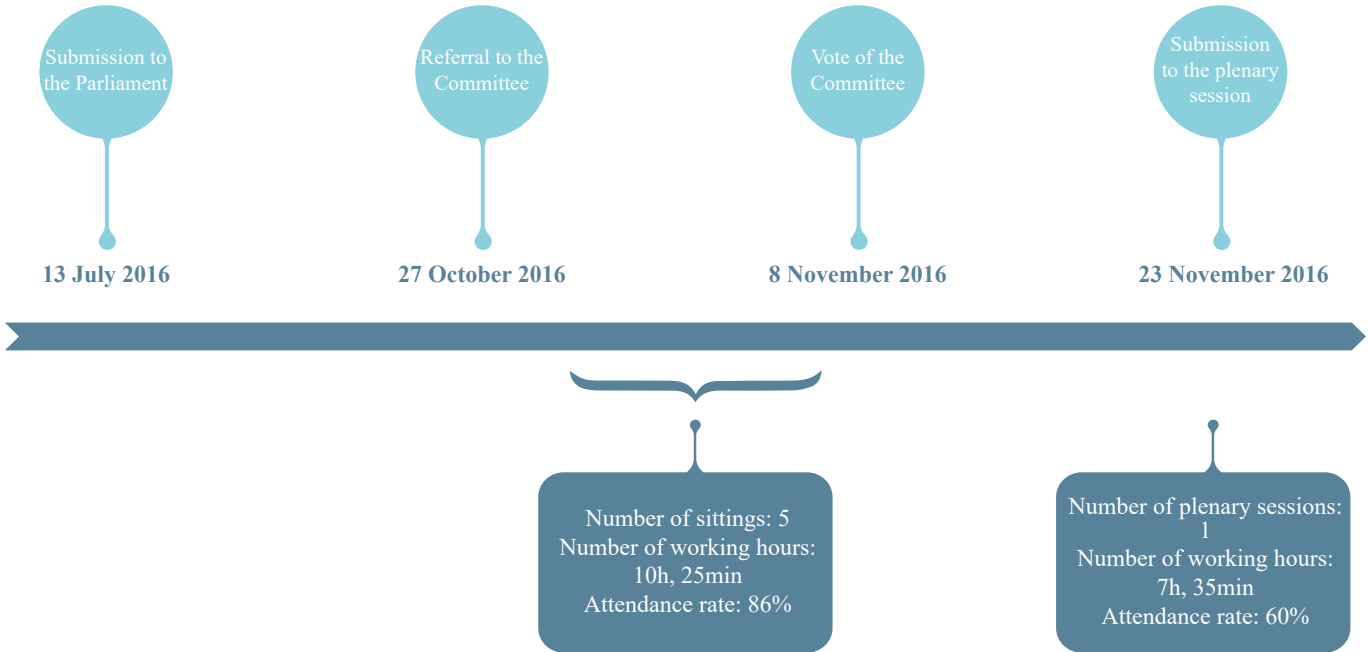
MPs who submitted the draft law
Noureddine Bhiri
Badreddine Abdelkafi
Bechir Khelifi
Bechir Lazzem
Habib Khedher
Emna Ben Hamid
Houssine Yahiaoui
Ramzi Ben Fraj
Soulef Ksentini
Chahida Fraj
Fathi Ayadi
Mahbouba Ben Dhifallah
Yamina Zoghlami

## 5. Draft law No. 57/2016 on the financial and economic judiciary pole

As stated in its explanatory note, the purpose of this draft law is to combat money laundering and economic crimes and to investigate economic and financial crimes. The financial and economic judiciary pole is part of the Court of Appeal of Tunis and investigates cases which involve:

- public funds;
- private funds placed at the disposal of a public or semi-public official;
- customs, taxes and foreign exchange;
- financial markets, banks and financial institutions;
- financing of political parties, associations and elections; and
- commercial and economic activities.

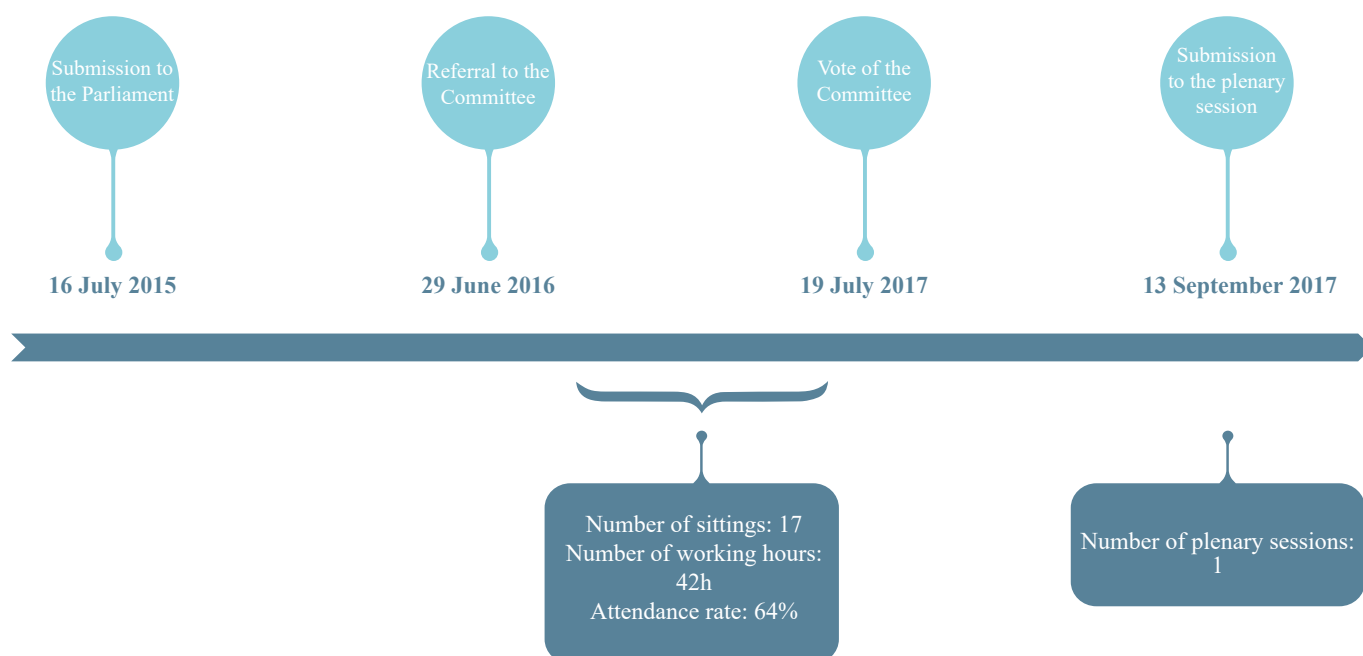
This draft law contains 12 articles which regulate this judiciary structure and determine its powers.



The review of the draft law was undertaken over five sessions of the Committee, which heard:

28 October 2016	The Minister of Justice
1 November 2016	The Chairman of the National Anti-Corruption Authority
1 November 2016	A representative of the Court of Auditors
1 November 2016	The Tunisian Financial Analysis Committee

## 6. Draft law No. 49/2015 on administrative reconciliation



On 26 April 2017, the General Legislation Committee began its review of the draft law on administrative reconciliation, after some amendments were made. With these amendments, the draft law only covers civil servants and persons of equivalent status involved in corruption crimes under Ben Ali, whereas the previous version of the draft also applied to businessmen and persons operating in the private sector.

The purpose of this draft law, as stated in its first article, is to create “an environment that frees entrepreneurial spirit in the administration, that awakens the economy and that enhances confidence in State institutions through national reconciliation.” However, large parts of the society were against this draft law because they viewed it as a promotion of impunity and a way to absolve corrupt officials from their previous crimes. They considered it as unfair and as a betrayal of honest civil servants and citizens who stood against the corrupt system of Ben Ali.

While the first article of the draft law stated that the aim of the law was to unleash the entrepreneurial spirit in the administration and strengthen the economy, the Presidency did not provide figures or statistics on the number of employees who would be covered by the presidential pardon and did not present any study or assessment of the impact of the law on administrative reconciliation on the national economy.

It is worth noting that this draft law is the only legislative initiative which was submitted by the Presidency of the Republic since the 2014 elections. This bill gives civil servants and persons of equivalent status, who committed acts that violate laws and regulations or that might harm the administration, a complete amnesty provided that they did not personally and financially benefit from these same acts. If their ascendants, descendants or other relatives benefitted from them (university scholarship, real estate, for example), charges are dropped.

During the review of the draft law, the General Legislation Committee incorporated an article providing for the creation of a judicial commission which would be composed of judges, and which would be responsible for the review of appeals lodged against decisions granting amnesty. As this commission would issue judicial decisions, it was necessary to submit a request for consultation to the Supreme Judicial Council which, in accordance with both Article 42 of its organic law and Article 114 of the Constitution, shall be consulted on legislative initiatives concerning the judiciary. The Parliament's bureau requested the Supreme Judicial Council's advisory opinion before the submission of the draft law to the plenary session, which was scheduled on 27 July 2017; however, the Supreme Judicial Council requested an extension of its deadline. The Parliament's bureau therefore decided to postpone the submission of the draft law to the plenary session until it received the advisory opinion of the High Supreme Judicial Council. Large parts of civil society subsequently issued a statement calling on the Supreme Judicial Council to stand against every draft law that would betray the spirit of the Constitution, underlining its responsibility to cut ties with old practices characterized by tyranny and corruption.

During a meeting on 11 September 2017, the Parliament's Bureau decided to hold an extraordinary session. Two main topics were on the agenda: the filling of the vacancies within the board of the Independent High Authority for the Elections and the draft law on administrative reconciliation. The review of the draft law in plenary session began on 13 September 2017, following the Parliament's failure to fill the ISIE's vacancies the day before. There was a wave a protest inside the Parliament, and some MPs belonging to opposition groups raised revolutionary slogans. They also repeated an excerpt from the national anthem – "Traitors have no place in Tunisia" – throughout the general debate that preceded the adoption of the bill.

The protests were not confined to the Parliament but also included its external surroundings. The "Manich Msamah" (I Will Not Forgive) campaign organized a protest in front of the Parliament. Slogans calling for the withdrawal of the draft law and accusing the Presidency of the Republic of collusion with corruption were heard. The atmosphere was tense both inside and outside the Parliament and the plenary session lasted the whole day, until late at night. Despite these protests, the draft law was adopted with a comfortable majority of 117 votes, one abstention and nine votes against it. 16 MPs were present when the draft law was put to vote but refused to vote.

On 19 September 2017, 38 MPs challenged the constitutionality of the draft law before the Provisional Authority for the Review of the Constitutionality of Draft Laws, in accordance with Article 18 of the Law regulating the Provisional Authority, which reads as follows: "The Authority shall examine the constitutionality of draft laws which are submitted to it by the President of the Republic, the Head of Government or at least 30 members of Parliament. The request shall be made within seven days as from the date on which the draft law is adopted by the Parliament [...]."

The following legal arguments were raised:

### Procedural issues

- Violation of Article 62 of the Constitution: The Presidency of the Republic submitted the bill on administrative reconciliation. However, the Committee on General Legislation amended the content and the title of the bill in order for to only cover civil servants and persons of equivalent status. It was argued that, in so doing, the Committee encroached on the powers of the Presidency which submitted the draft, while its prerogatives are limited to reviewing and amending articles of draft laws, without touching upon the essence of the bill.
- Violation of Article 114 of the Constitution: It was argued that the mandatory advisory opinion of the Supreme Judicial Council on the draft law was ignored, as the bill was voted in plenary session before the decision of the Council was rendered.

### On the merits

- Violation of the Constitution's Preamble and of its Article 145: The Preamble stresses the need to cut ties with injustice, tyranny and corruption, while the draft law pardons people who abused their power within the administration.
- Violation of Article 148 of the Constitution: The first article of the draft law on administrative reconciliation states that its purpose is to establish national reconciliation. The ninth paragraph of Article 148 of the Constitution provides for the State's obligation to implement a transitional justice system, which rests on a set of principles, namely: revealing the truth, seeking justice, putting mechanisms of compensation and reparation in place, reforming institutions and ensuring that previous acts are not committed again – the overall goal being to achieve reconciliation. However, it was argued that the draft law on administrative reconciliation only provides for amnesty, and therefore violates the concept of transitional justice which is enshrined in the Constitution.
- Violation of Article 10 of the Constitution: This Article provides for the State's obligation with regard to good governance and sound management of public funds. The State shall also implement necessary measures to invest public funds according to the priorities of the national economy. This provision also underlines the State's duty to prevent corruption. It was argued that the draft law violates these constitutional principles and only benefits civil servants and public officials who misused public funds.
- Violation of Article 15 of the Constitution: This Article states that the administration serves the citizens and that it shall comply with the principles of transparency, impartiality, efficiency and accountability. It was argued that the draft law on administrative reconciliation violates these principles in that it fosters impunity of potentially corrupt public officials.

- Violation of Article 20 of the Constitution which deals with the State’s undertaking to comply with international conventions and treaties ratified by the Tunisian state. The State has ratified several anti-corruption treaties, including the United Nations Convention against Corruption, which was signed by Tunisia in 2013.
- Violation of Article 65 of the Constitution which defines the areas of law enforcement. The draft law on administrative reconciliation seeks to pardon civil servants and persons of equivalent status. It was argued that the scope of the law falls within the framework of a general amnesty that should be incorporated in an ordinary law. However, the draft law is an organic law. It was therefore stated that it infringed Article 65 of the Constitution.
- Violation of Article 108 of the Constitution: It was argued that the principles of equality before the law and the principle of double jurisdiction were violated.
- Violation of Articles 110 which prohibits the creation of exceptional courts or the enactment of exceptional procedures that may infringe the principle of due process.

On 19 October 2017, the “Manish Msameh” (I Will Not Forgive) campaign published leaks of the advisory opinion of the Supreme Judicial Council which stated that the law on administrative reconciliation was unconstitutional and violated the Constitution’s Preamble and five of its provisions (Articles 10, 21, 102, 130 and 148). The opinion also found that the bill contradicts the transitional justice process, violates Law No. 53 of 2013 on the set-up and organization of transitional justice and many provisions of the Criminal Code and of the Criminal Procedure Code.

The opinion also stated that the draft law on administrative reconciliation violates the principles of transparency, accountability and integrity and that it is an amnesty law rather than a reconciliation law; reconciliation is the consequence of accountability, which is not provided for in the draft law. One of the members of the Council explained that these leaks do neither reflect the opinion of the Council’s members nor bind the members who were tasked with the drafting of the advisory opinion.

The Provisional Authority for the Review of the Constitutionality of Draft Laws decided to postpone its decision on the constitutionality of the draft law for three days in order to give the appellants an opportunity to provide clarifications on the validity of certain of their signatures (three MPs from the Free Patriotic Union, whose names appeared on the appeal, contested their participation to this appeal).

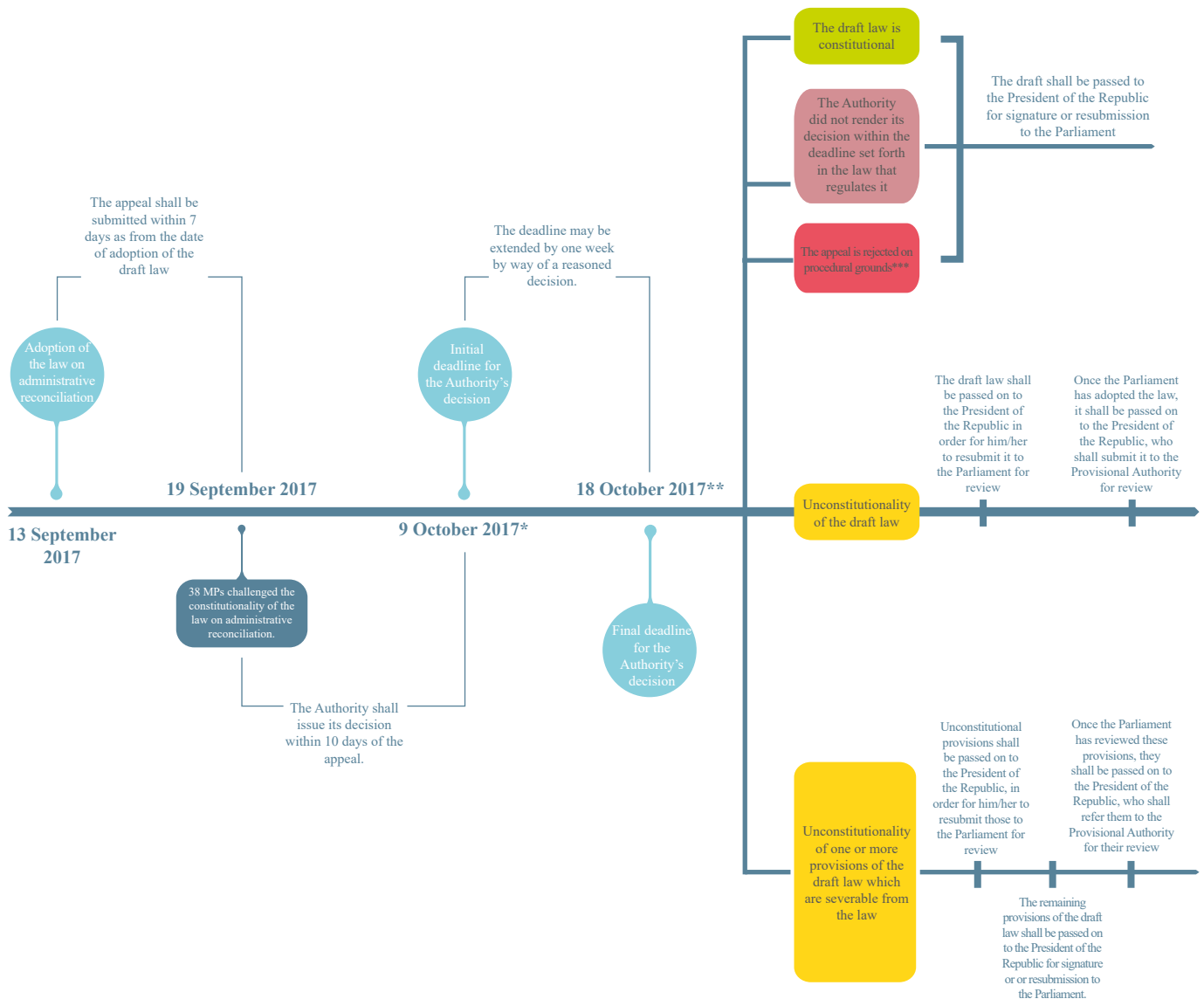
On 28 September 2017, the Provisional Authority issued its decision to extend the deadline of its decision in order to further review the law. Article 21 of the law regulating the Authority states that it shall normally review the appeals within ten days; this deadline may be extended by another week by way of a reasoned decision. In this context, Al Bawsala submitted a request for access to information to the Provisional Authority for the Review of the Constitutionality of Draft Laws, in order to review the minutes of the meetings of the Provisional Authority. Al Bawsala did not receive any response to its request.<sup>7</sup>

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7 - The request for access to information is attached to the annual report.

## Chapter 3 : Fight against corruption

Below is a diagram describing the procedure for the review of the challenge to the constitutionality of the draft law and the deadlines set forth in the law regulating the Provisional Authority.<sup>8</sup>



\* The date of 9 October 2017 was set after setting aside the first three days following the filing of the claim, which were dedicated to the preparation of a response to the appellants. This response shall be sent to the Authority by the President of the Republic, the Prime Minister or 30 MPs.

\*\* Saturday, Sunday and Thursday 21 September 21st (Hijri new year) were excluded for the purposes of the calculation of deadlines.

\*\*\* Formal requirements of the appeal: a reasoned written claim signed by the appellant + the appeal file shall contain the request for review and the supporting documents, as well as a description of its contents, the appellant's capacity and signature. If the claim is submitted by at least 30 MPs, it shall contain their names, surnames and the name of their representative before the Authority.

On 17 October 2017, the Provisional Authority for the Review of the Constitutionality of Draft Laws issued its decision. The Authority decided to refer the draft organic law to the President of the Republic. In fact, there were mixed views among the Authority's members; they did not manage to reach a decision. Out of six members, three were in favor of the law, while the other three were against it. However, Article 21 of the law regulating the Provisional Authority provides that "the Authority renders its decisions by an absolute majority of its members."

## I. The scrutiny function

In order to discharge its scrutiny function, in accordance with Article 96 of the Constitution, the Parliament asks oral and written questions to the Government. It also holds sessions with the Government, as mentioned in Article 147 of the Rules of Procedure, which provides that "the Parliament shall organize a dialogue session with the members of the Government in order to discuss general guidelines, once a month and whenever necessary at the request of either the Bureau or a majority of members of the Parliament."

Below is an overview of the Parliament's scrutiny function on corruption issues.

### 1. The scrutiny function at plenary level

On 20 July 2017, a dialogue session with the Prime Minister, Youssef Chahed, was held. He had the opportunity to present his national plan against corruption which revolved around the set-up of a legal framework suited for the war on corruption, namely:

- a law on the protection of whistleblowers;
- an organic law on the National Good Governance and Anti-Corruption Authority, which would be provided with the required prerogatives – the most important being the ability to investigate suspicions of corruption; to take provisional measures; and to enable the officers of the anti-corruption division of the judicial police, under the supervision of the judiciary, to access the information;
- a law creating a financial pole to deal with financial and economic crimes; and
- a law on asset declaration.

The Prime Minister also highlighted the need for an administrative reform through the support of digitization and compliance with the law of all citizens.<sup>9</sup>

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<sup>9</sup> -Albawsala's newsletter on the dialogue session with the Government on 20 July 2017  
<https://majles.marsad.tn/2014/chroniques/597097de4f24d036e99d975c>



## 2. The scrutiny function at committee level

### Hearings

In accordance with Article 93 of the Rules of Procedure of the Parliament, the Special Committee for Administrative Reform, Good Governance, Anti-Corruption and Scrutiny over the Management of Public Funds is in charge of the review of files and issues related to administrative and financial corruption and restitution of illicit assets. In the context of its scrutiny prerogatives, it held seven hearings listed below.

Date	Person/institution heard	Topic covered
30 January 2017	Minister of Public Service and Governance	Draft strategy for the modernization of the administration and the development of public service
27 February 2017	Minister of Finance	The Carthage Cement Company case
13 March 2017	<ul style="list-style-type: none"> <li>- High Committee on Administrative and Financial Control</li> <li>- General Authority for Financial Control</li> <li>- General Authority for Public Services</li> <li>- General Directorate for Real Estate and State Equipment</li> </ul>	Ways to develop the regulatory system, enhance its effectiveness and establish mechanisms of cooperation with the Parliament
17 April 2017	Minister of Transport	Tunisair Company
24 April 2017	Minister of Social Affairs	Case involving the National Health Insurance Fund
8 May 2017	Representatives of the General Authority for Financial Control	Case relating to the acquisition, by Tunisie Telecom, of shares in the capital of the telecom operator Go Malta

Field visits

On 3 April 2017, the Committee for Administrative Reform, Good Governance, Anti-Corruption and Scrutiny over the Management of Public Funds organized a workshop on the issue of “Governance of public institutions and State enterprises”. Representatives of the Anti-Corruption Authority, of the Government and of the Tunisian General Labor Union attended the event.

It also went on a field visit to the headquarters of the Anti-Corruption and Good Governance Authority on 9 September 2017.

**3. Oral questions**

During the third parliamentary session, 15 oral questions related to corruption were asked. These questions are listed in the table below.

Date	MP	Political affiliation	Governmental Party	Topic
24 November 2016	Nooman Ech	Democratic group	Minister of Equipment	Suspicious of corruption within the Ministry
1 December 2016	Ramzi Khamis	Nidaa Tounes	Minister of Health	Suspicion of corruption in relation to a call for applications for the recruitment of eight officers in the Regional Health Administration in Zaghuan
21 February 2017	Samia Abbou	Democratic group	Minister of Public Service	Waste of public funds in the National Broadcasting Company
28 February 2017	Ibrahim Ben Said	Democratic group	Minister of Transport	- Suspicion of corruption in the taxi industry and the purchase of seven Polo cars that were damaged  - Status of taxi drivers
1 March 2017	Faycel Tebini	Independent	Minister of Agriculture	Outcome of the investigations conducted by the Ministry regarding the suspicion of corruption in the Regional Branch for Agricultural Development in Jendouba (Water and Soil Conservation Department)
1 March 2017	Yamina Zoghلامي	Ennahdha	Minister of Equipment	Criteria for the allocation of social housing

### Chapter 3 : Fight against corruption

1 March 2017	Samia Abbou	Democratic group	Minister of Local Affairs	Appointment of an adviser suspected of corruption to the Ministry
14 March 2017	Imed Daimi	Democratic group	Minister of Finance	The criteria for the sale of confiscated shares of three French companies (Havas, Jet Multimedia and Newrest Catering)
14 March 2017	Samia Abbou	Democratic group	Minister of Finance	Tax evasion and enforcement of law on the protection of whistleblowers
29 March 2017	Salem Labiadh	Democratic group	Minister of Energy	- Reports of corruption in the Tunisian Cement Company involving the head of the Office on Energy, Mines and Renewable Energies - Fight against corruption in the energy sector
4 April 2017	Samia Abbou	Democratic group	Minister of Transport	Corruption in major railway infrastructure projects
16 May 2017	Mongi Harbaoui	Nidaa Tounes	Minister of State Properties and Land Affairs	Suspicious of corruption attributed to the Head of State Litigation and looted funds from the state treasury
23 May 2017	Haykel Belgacem	The Popular Front	Minister of Agriculture	Lack of regulation and marginalization of the fishing sector compared to other sectors and the related suspicions of corruption
15 July 2017	Tarek Ftiti	The Free Patriotic Union	Minister of Health	Situation of a young man, working within the Mechanism 16 (a public recruitment mechanism), who suffered injustice after he revealed suspicions of corruption concerning the delivery of expired milk to a hospital
15 July 2017	Samia Abbou	Democratic group	Minister of Health	Misconduct in hospitals, suspicions of corruption on the part of a doctor, violent assault on a worker allegedly committed by the director of the Regional Hospital in Nabeul

**4. Written questions**

Below is a list of written questions asked by MPs in relation to corruption and the answers of the Ministers.

**6 October 2017**

The Minister of Transport answered the written question of Mr. Ghazi Chaouachi about the suspicion of manipulation of the outcome of a call for applications for the recruitment of drivers and workers in the Sahel Transport Company.<sup>10</sup>

Response: The general inspection on transport received the instruction to carry out an investigation on the recruitment. The Minister also said that the outcome of this investigation would be sent to the MP.

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**4 September 2017**

The Minister of Agriculture, Water Resources and Fishing answered the written question of Mr. Faycel Tebini about the “rampant corruption” affecting subsidized powdered milk.<sup>11</sup>

Response: A committee within the ministry is in charge of assessing the subsidies on powdered milk on a yearly basis and after thorough review of the situation. The report of the Court of Auditors did not mention any suspicion of corruption related to the issue of powdered milk.

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**24 July 2017**

The Minister of Finance answered the written question of Mr. Imed Daimi regarding the acquisition of a canine squad for the Tunisian Customs.<sup>12</sup>

Response: A bid is systematically published when the overall amount of the operation exceeds hundred thousand dinars. The bid is systematically published in newspapers so that it can reach the widest audience. A bid and a consultation were launched regarding the operation mentioned by the MP.

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**19 April 2017**

The Minister of Finance answered the written question of Mr. Imed Daimi regarding the use of expropriated real estate.<sup>13</sup>

Response: A response was provided to the MP in a document listing all the confiscated assets.

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10 - [http://www.arp.tn/site/main/AR/docs/reponses\\_gov/122.pdf](http://www.arp.tn/site/main/AR/docs/reponses_gov/122.pdf)

11 - [http://www.arp.tn/site/main/AR/docs/reponses\\_gov/105](http://www.arp.tn/site/main/AR/docs/reponses_gov/105).

12 - [http://www.arp.tn/site/main/AR/docs/reponses\\_gov/91.pdf](http://www.arp.tn/site/main/AR/docs/reponses_gov/91.pdf)

13 - [http://www.arp.tn/site/main/AR/docs/reponses\\_gov/52.pdf](http://www.arp.tn/site/main/AR/docs/reponses_gov/52.pdf)

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**Chapter 3 : Fight against corruption**

**19 April 2017**

The Minister of Finance replied to the written question of Mr. Imed Daimi regarding the request for the audit report concerning the company “Cactus” which had been expropriated.<sup>14</sup>

Response: The State owns 51 per cent of “Cactus” after it was confiscated by Belhassen Trabelsi. Three experts were designated to carry out the financial evaluation of the company. The evaluation was then sent over to the Court of First Instance of Tunis.

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**21 October 2016**

The Minister of Transport answered the written question of Mr. Bechir Lazzem about the allegations of corruption and the debts of the Tunisian Navigation Company.<sup>15</sup>

Response: The governance system of the Tunisian Navigation Company is based on a participatory approach and is satisfying. The company complies the laws and regulations governing the dismissal of its staff. The company’s efforts to reduce its debts is in line with a clear strategy. debts is in line with a clear strategy.

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**19 April 2017**

The Minister of Justice answered a written question from Mr. Sahbi Ben Fredj on the dispute between a citizen named Sami El Cherif and the union of leasing companies.<sup>16</sup>

Response: The Minister confirmed that the case was still pending before the Court of Appeal of Tunis and that the parties did not settle the case.

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14 - [http://www.arp.tn/site/main/AR/docs/reponses\\_gov/51.pdf](http://www.arp.tn/site/main/AR/docs/reponses_gov/51.pdf)

15 - [http://www.arp.tn/site/main/AR/docs/reponses\\_gov/31.pdf](http://www.arp.tn/site/main/AR/docs/reponses_gov/31.pdf)

16 - [http://www.arp.tn/site/main/AR/docs/reponses\\_gov/49.pdf](http://www.arp.tn/site/main/AR/docs/reponses_gov/49.pdf)

### A Parliament that fights corruption or that encourages it ?



The Speaker of the Parliament, Mohamed Ennaceur, insisted that this "Arsenal" must be adopted before the end of the 3rd parliamentary session.

## Summary

Notwithstanding the fact that the war on corruption was one of the most important issues that has been dealt with by the Parliament during the third parliamentary session, both at the legislative and scrutiny levels, the Parliament's performance was not efficient enough. The Parliament was unable to meet all the objectives set by its Presidency.

As regards the Parliament's legislative activities, the adoption of the law on the reporting of corruption and the protection of whistleblowers, together with the creation of the Economic and Financial Pole within the Court of Appeal of Tunis, can be viewed as very important achievements for the promotion of the principles of good governance, transparency and accountability in the public sector. However, the adoption of the law on administrative reconciliation, a text that grants amnesty to civil servants who committed administrative fraud under the regime of Ben Ali, reinforces the culture of impunity and hijacks both the transitional justice process and the fight against a corruption – a slogan heralded by all the political class but that failed to show tangible results.

Concerning the Parliament's scrutiny, the fight against corruption was the focus of a significant number of oral and written questions and of a three-hour dialogue session with the Government.

To conclude, as regards the fight against corruption, the Parliament failed to take legislative initiatives, although certain MPs submitted draft laws dealing with transparency, the fight against illicit enrichment and asset declaration. However, neither of these draft laws were reviewed and the Parliament only dealt with initiatives emanating from the executive branch.

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# Chapter 4

## Decentralization

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Decentralization is one of the most important changes introduced by the Constitution of January 2014. The fact that an entire chapter is dedicated to this issue is a symbol of its importance. The major shift introduced by the 7th chapter is that local governments are replaced by elected councils and are independent from the Central Government, while unity of the State is preserved.

The constitutional consecration of decentralization compels the State to put the necessary mechanisms in place for its implementation. However, it should be noted that during the 3rd parliamentary session, “the progress in the decentralization process fell short of expectations due to the lack of consistency and visibility with state entities as well as the absence of political will and a clear commitment to this issue. Decentralization is depicted in the prevailing political discourse either as a threat that is likely to weaken the Tunisian State or rather as a trophy that may enable a given political party to tighten its grip on the institutions of the country and on the society.”<sup>1</sup>

In this context, the ARP, in its capacity as legislative body, has a vital role to play in laying the foundations for the decentralization process. However, there are worrying signs such as the delay in filling vacant positions in the board of the Independent High Authority for Elections (“ISIE”) (I), the delay in the adoption of the Law on Local Elections (II) and the slow-paced legislative process regarding the Draft Organic Law No. 2017/48 on Local Authorities (III). All this indicates the Assembly’s weakness and the opacity that surrounds this new reform that aims at redistributing power and wealth in Tunisia.

## **I. Delays in filling vacant positions in ISIE**

ISIE is one of the most important guarantees of a transparent electoral process. It is therefore crucial that all political actors work towards enabling the independence and effective operation of ISIE. However, the ARP faced considerable difficulties in filling the vacancies in the board of ISIE<sup>1</sup> and in the election of a new chairman<sup>2</sup>.

### **1. Delay in the election of ISIE members**

Members of ISIE are elected by way of a vote in secret ballots that requires a majority of two-thirds<sup>3</sup> of the ARP members. A third of the ISIE members must be replaced every two years and each member is elected for a non-renewable six-year term.<sup>4</sup> Pursuant to the Law on the Independent High Authority for Elections, the ARP had to elect three new members no later than January 2016 since the election of the Board of Commissioners by the National Constituent Assembly was held on 8 January 2014, in the course of the plenary session of the legislative assembly. The partial renewal did not take place until the third parliamentary session and was voted during the plenary sessions held on 17 and 18 January 2017. Among the elected members, one member is representing Tunisians living abroad, one is in charge of communication and the last one is representing the lawyers.

1 - Interview held with Dr. Jinan Limam, Public Law Professor at the Faculty of Legal, Political and Social Sciences of Tunis on 22 January 2018, p. 2 (see appendix 2).

2 - It should be noted that the draft law on Local Authorities was approved by the Committee on the Organization of Administration and Armed Forces on 23 February 2017 during the fourth parliamentary session.

3 - Article 6 (§9) of Organic Law No. 2012/32 dated on 20 December 2012 on the Independent High Authority Elections.

4 - Article 6 (§1 and 2) of Organic Law No. 2012/32 dated on 20 December 2012 on the Independent High Authority Elections.

The outcome of the election is presented below:

Category	Member representing Tunisians abroad	Member in charge of communication	Member representing the lawyers
Candidates	<ul style="list-style-type: none"> <li>● Hedi Ben Mokhtar Ben Kraïm: 1 vote</li> <li>● Mohamed Ben Mnsour Krir: 4 votes</li> <li>● Nadia Ben Mouldi Othmani: 2 votes</li> <li>● <b>Nabil Ben Taher Aziz: 146 votes</b></li> <li>● Dhaou Ben Abdelkader Moussa: 3 votes</li> <li>● Adel Ben Habib Dadi: 0 votes</li> <li>● Abdelkarim ben Mustapha Kamel Rezgui: 3 votes</li> <li>● Ezzeddine Ben Hassan Ben Hmida: 0 votes</li> <li>- Rejected ballots: 1</li> <li>- Blank ballots: 7</li> </ul>	<ul style="list-style-type: none"> <li>● Yosra Ben Ammar Sghaier: 6 votes</li> <li>● Lassaad Ben Hedi Ben Ahmed: 1 vote</li> <li>● Yesmine Ben Hamed Gorb: 4 votes</li> <li>● <b>Adel Ben Mohamed Brinsi: 160 votes</b></li> <li>- Rejected ballots: 0</li> <li>- Blank ballots: 4</li> </ul>	<ul style="list-style-type: none"> <li>● Kamel Ben Ahmed Rezgui: 4 votes</li> <li>● <b>Mohamed Tlili Ben Mokhtar: 154 votes</b></li> <li>● Abdeljaoued Ben Mokhter Harazi: 1 vote</li> <li>● Khaled Ben Mabrouk Amri: 2 votes</li> <li>● Youssef Belmakki Abidi: 0 vote</li> <li>● Hatem Ben Bechir Dali: 0 vote</li> <li>● Islem Ben Amara Omrani: 1 vote</li> <li>● Yassine Ben Mohamed Hafi: 1 vote</li> <li>- Rejected ballots: 2</li> <li>- Blank ballots: 2</li> </ul>

Nearly 6 months after the elections, on 9 May 2017, the President and two members of ISIE's board resigned during a press conference which was initially held to present progress being made concerning the preparation of the municipal elections that were scheduled in December 2017. The resignation was submitted to ISIE's council on 18 May 2017. The ARP's speaker issued a decision calling for applications on 1 June 2017.<sup>5</sup> His decision also set the requirements for applications, the applicable procedure and the selection process.

5 - ARP Decision dated 1 June 2017 opening call for candidates to fill the vacancies in the ISIE composition.

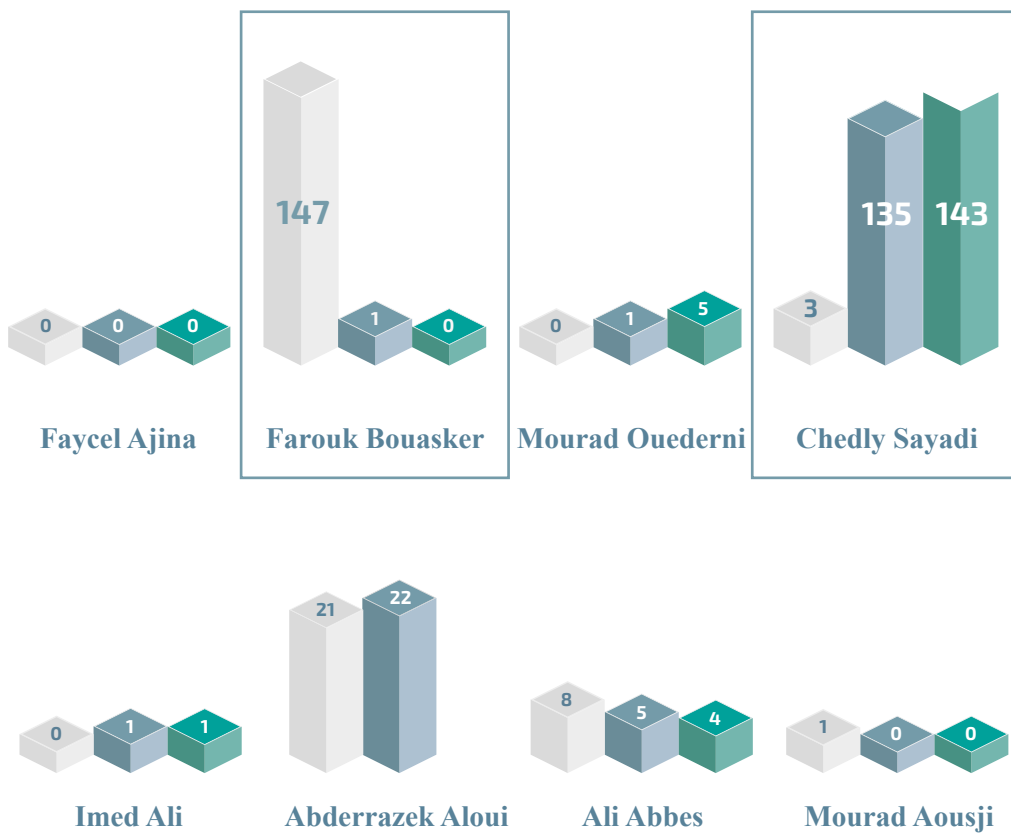
<http://www.legislation.tn/sites/default/files/fraction-journal-officiel/2017/2017A/044/Ta201720504.pdf> .

The link was visited on 10/12/2017.

It is worth noting that the Parliamentary Committee on Interior Regulation, Immunity, Parliamentary and Electoral Laws asked the resigning members to appear at a hearing on 10 May 2017 to explain the reasons for their resignation. During this hearing, ISIE’s President declared that the authority was subject to political pressure.<sup>6</sup>

By the end of the third parliamentary session, on 28 July 2017, the ARP held a plenary session to elect the new members and fill the vacancies in the relevant categories (a judiciary magistrate, an administrative magistrate and a university professor).

**After three failed attempts over 2 days, only one member – a judge – was elected. The outcome of the elections is detailed below.**



6 - For more details on the hearing and the reactions of deputies, please visit the link below:  
<https://majles.marsad.tn/2014/chroniques/591340a8cf4412226ec75367>  
 (The link was visited on 10/12/2017).

It is worth noting that the timetable for the 2017 municipal elections provides that the Presidential Decree calling electors to vote in municipal elections shall be issued 3 months prior to the election day. However, in a newspaper interview, the President of the Republic announced that the Presidential Decree would be issued when all the members of ISIE would be elected. The President of the Republic called upon the ARP to elect the remaining members as soon as possible, in order to avoid any further postponement of elections.<sup>7</sup>

The attempt to elect the two remaining ISIE members during the extraordinary plenary session held on 12 September 2017 failed. The ARP's speaker decided to adjourn the plenary session until the following day, arguing that too many MPs were absent and that the quorum was not met. Instead of organizing a new vote on the following day, the presidency of the Parliament decided to move on to the next item on its agenda: the draft law on administrative reconciliation. As explained in the previous chapter, this bill was approved in a tense context, given the controversy it raised and the fierce opposition that was voiced by opposition parties and civil society organizations.

Members representing the category of administrative judges and university professors were finally elected during the plenary session held on 20 September 2017.

<b>Date:</b>	<b>20/09/2017</b>		
<b>Category:</b>	<b>Administrative judge</b>	<b>University professor</b>	
<b>Round:</b>	<b>1</b>	<b>1</b>	<b>2</b>
<b>Total votes:</b>	<b>163</b>	<b>163</b>	<b>160</b>
<b>Results:</b>	<b>Election of Najla Brahem</b>	<b>No member was elected</b>	<b>Election of Anis Jarboui</b>

7 - Excerpt from the interview held on September 6th 2017 (La Presse) "We also have little power to exercise in this matter. Election date has been set for 17 December 2017 by the Independent High Authority for Elections but this same authority currently has vacancies to be filled. To ensure the normal and legal functioning of ISIE, it should have a president, a matter to be considered by the Assembly of Representatives of the People which is also required to review the draft law on Local Government. For my part, I am required, under the Constitution, to promulgate the decree calling voters to elect. Once all procedural requirements are met within the statutory time lines and that all the controversies in this regard are settled, I will promulgate the Law."

For the full interview with the President of the Republic, follow the link below:

<https://lc.cx/gAnB>

(The link was visited on 18/12/2017).

## 2. Failure to elect the President of ISIE

The call for applications to fill the President's vacancy was open to the nine members of the ISIE Board. To elect the President of ISIE, the vote during the plenary session requires an absolute majority of MPs (50%+1, i.e. 109 MPs). If no candidate obtains the required majority in the first round, a second round is organized and the same majority is required to elect the President among the two candidates who gathered the highest number of votes in the first round.<sup>8</sup>

In this context, an extraordinary plenary session was held on 25 and 26 September 2017. However, the election of the ISIE President failed both in the first and second rounds, which prompted the ARP's speaker to adjourn the session and announce that the ARP's bureau would take appropriate measures.

Date	25/09/2017	26/09/2017
Position	President of ISIE	
Round	1	2
Total votes	157	149
Result	No member was elected	No member was elected

Despite two extraordinary plenary sessions, the ARP failed to elect the President of ISIE before the closing of the third parliamentary session (ordinary and extraordinary). Accordingly, the ISIE was not complete, which revealed the political battle surrounding the elections' authority. This battle led to an institutional instability within ISIE, and made it incapable of conducting and supervising municipal elections.

## II. Delay in approving the draft law on Local and Regional Elections

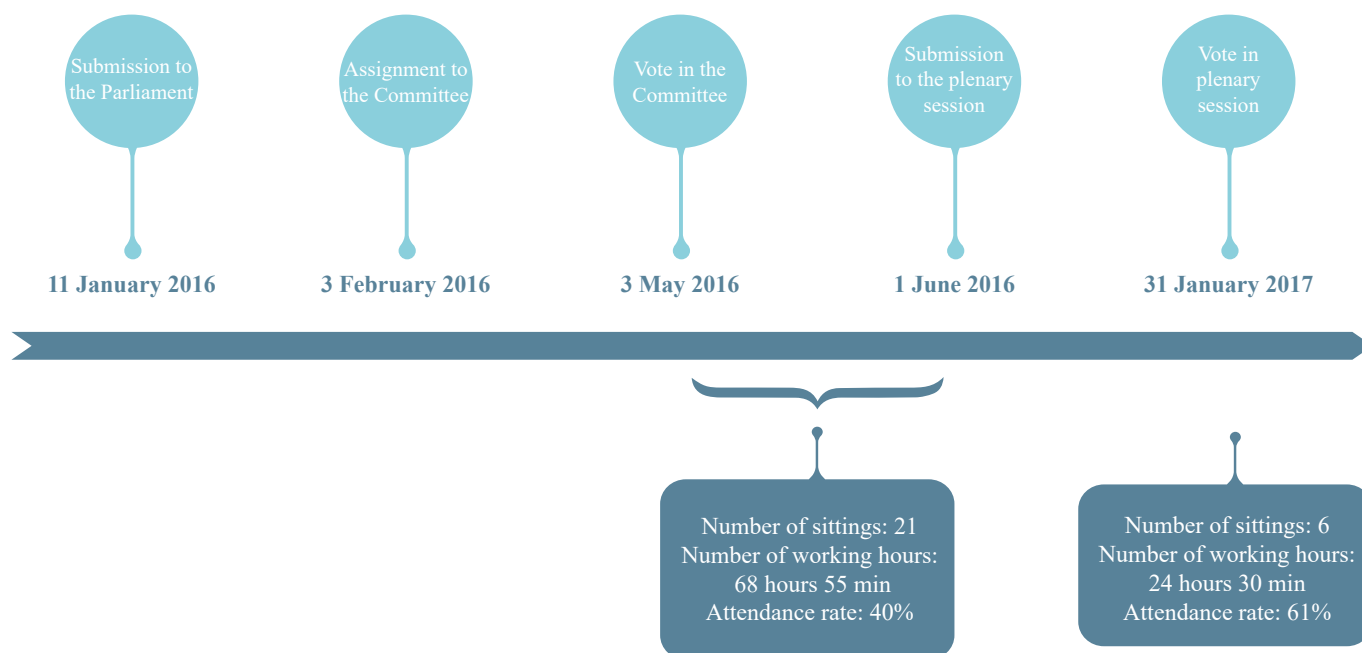
The Organic Law No. 2014/16 dated 26 May 2014 provides the legal framework for the conduct of elections and referendums. However, the government was required to submit a draft law to amend and extend the scope of the existing law so as to include regional and municipal elections.

<sup>8</sup> - Article 6 (last para.) of Organic Law No. 2012/32 of 20 December 2012 on the Independent High Authority for Elections.

## Chapter 4 : Decentralization

The draft law was submitted to the ARP on 11 January 2016,<sup>9</sup> but the legislative process was lengthy and the draft law was only approved on 31 January 2017,<sup>10</sup> one year after its submission.

The work undertaken by the Assembly is described below.



The new law on municipal and regional elections contains provisions on, inter alia, procedural requirements such as “requirements for eligibility”,<sup>11</sup> appeal procedures against decisions on applications, the number of members in municipal and regional councils<sup>13</sup> and the choice of an electoral system which is different from the one used for the elections that were held since the Revolution. The new system that is applicable to municipal elections provides for the vote for lists in one round, distribution of seats proportionately according to the highest numbers of votes obtained by the lists in the electoral districts.

The financing and monitoring of the electoral campaign is one of the most sensitive and complex issues which attracted much attention and led to intense discussions both within the committee and during the plenary sessions.

9 - Draft organic law No. 2016-1 dated 14 February 2017, amending and completing organic law n° 2014- 16 dated 26 May 2014 relating to the elections and referendums. For more details on this law, visit

<https://majles.marsad.tn/2014/lois/569fb23612bdaa42423b4d56>.

10 - It is worth noting that the draft law was referred to the Committee for review from 23 February 2016 to 3 May 2016 and was later submitted to the plenary session on 1 June 2016 and was adopted on 31 January 2017.

11 - Articles 49 bis, 49 (c), 49 (d), 49 (e) of the draft organic law No. 2016-1.

12 - From Article 49 (p) through Article 21 of the draft organic law No. 2016-1.

13 - Article 117 bis of the draft organic law No. 2016-1.

In this regard, the new Article 78 of the Law on elections and referendums amends the system of public funding – more precisely the pre-campaign funding – which was used since the Revolution. The new system consists of a grant, in the form of a compensation for the costs that were incurred, after the election results are announced.<sup>14</sup> Certain criteria need to be met, such as the obligation to gather at least 3% of votes in the constituency. This amendment was proposed by the Government to ensure sound management of public funds, particularly in light of the findings of the Court of Auditors that noted that most of the grants that were given in the previously-held elections were never reimbursed to the State. In this regard, a Governmental Decree on the electoral financing for the municipal elections was issued.<sup>15</sup> It sets out the method used to calculate the public grant for each list, which is based on the number of voters in the electoral district and the cost of living.<sup>16</sup> It also provides for a maximum amount of private funds that can be offered and a limit on election spending in general.<sup>18</sup>

ISIE plays a central role in this regard, as it is in charge of monitoring the funding of electoral campaigns in collaboration with the Central Bank and the Ministry of Finance.<sup>19</sup>

Many points of conflict led to delays in the adoption of the law. The main points of conflict are listed below.

- **Electoral threshold:** There were diverging views within the Committee on the calculation method on the basis of which the municipal seats would be allocated. Some called for the need to set a minimum threshold (there was a disagreement as to whether the threshold should be set to 2% or 3% of the valid votes) while other deputies refused to include a reference to a threshold. The issue was not settled at Committee level and the final version of the draft law that was referred to plenary session did not provide for any threshold. An electoral threshold of 3% was ultimately incorporated in the law during the plenary session. 127 MPs voted in favor of this threshold, 34 voted against and 2 abstained.

14 - The grant is divided into two parts: the first allotment is awarded prior to elections while the second allotment is granted after the results are announced.

15 - Governmental Decree No. 2017/1041 dated 19 September 2017 setting forth the limit on election spending, private funding and public grant as well as the conditions and procedure for its allotment.

16 - Article 3 of the draft organic law No. 2016-1.

17 - Private funds cannot exceed (both in cash and in kind) 3 times the amount of the public grant which was awarded to reimburse the electoral expenses.

18 - The limit on election spending amounts to 5 times the public grant allotted to reimburse election expenses.

19 - Articles 90-100 of draft organic law No. 2016-1 dated 14 February 2017, amending organic law n° 2014-16 dated 26 May 2014 relating to the elections and referendums.



- **Vote of military and security officials:** The review of the draft law took more than six months due to a disagreement between the parliamentary blocs on this issue. During the parliamentary debate, some insisted on the need not to politicize the security and military institutions in accordance with the principle of neutrality. Others disagreed and stated that military and security officials should be granted the right to vote. Another part of the MPs proposed a middle-way: the right to vote of security and military agents would be preserved but postponed to the next municipal elections. At plenary level, the draft law was adopted and these agents' right to vote was finally recognized but only for municipal and regional elections (144 deputies voted in favor, 14 against and 3 abstained).<sup>20</sup> However, this right is subject to various legal<sup>21</sup> and procedural<sup>22</sup> restrictions.

To ensure the implementation of the provisions of the Law on elections and referendums the context of municipal elections, the legal framework regulating the various procedural and organizational aspects of elections was completed. Alongside the abovementioned Governmental Decree on electoral financing, the decrees listed below were also issued:

- Governmental Decree No. 2017/1033 dated 19 September 2017 determining the number of municipal councils;<sup>24</sup>
- Presidential Decree No. 2017/254 dated 19 December 2017 calling electors to vote in the 2018 Municipal Elections. Under this presidential decree, Tunisian electors were called to vote for the members of municipal councils on 6 May 2018 while the military and security personnel voted on 29 April 2018.<sup>25</sup>
- The electoral calendar for the municipal elections outlines the key upcoming activities that are scheduled and that range from voter registration to the deadline for the announcement of preliminary results (9 May 2018).<sup>26</sup>

20 - For more details on the voting process, visit

<https://majles.marsad.tn/2014/lois/569fb23612bdaa42423b4d56>

21 - Article 6 bis para 2: "Any military or security agent who participates in the activities set out in [Article 6 para 1] by decision of the disciplinary board. In addition, security and military personnel are not eligible to run for municipal and regional elections."

22 - Military and security agents do not exercise their right to vote on the same polling day as other voters (Article 103 bis). Voters' lists comprising their names should not be posted at the entrance of polling stations or centers (Article 127 bis).

23 - Governmental Decree No. 2017/1041 dated 19 September 2017.

24 - The Decree is available via the link below:

<http://www.legislation.tn/sites/default/files/fraction-journal-officiel/2017/2017A/075/Ta201710333.pdf> (The link was visited on 05/01/2018).

25 - The Decree is available via the link below:

<http://www.legislation.tn/sites/default/files/fraction-journal-officiel/2017/2017A/101/Ta201702543.pdf> (The link was visited on 05/01/2018).

26 - For full information about the calendar, visit the link below:

<https://lc.cx/gdSb> (The link was visited on 05/01/2018).

The long delay in the adoption of the organic law amending the Law on elections and referendums, the failure to fill the vacant positions within ISIE, and the fact that ISIE is tasked with setting the date of the elections and undertaking various operations related to the conduct of the elections,<sup>27</sup> led to the postponement of the elections on several occasions upon the request of many major political parties.<sup>28</sup>

The implementation of the decentralization process was therefore delayed as a result of the postponement of the municipal elections and the late adoption of the Law on local authorities.

### III. The late adoption of the law on local authorities

The decentralization process certainly varies from one country to another. Regional and administrative bodies may be set up in different ways and can mirror a centralized decision-making structure or a decentralized approach that seeks to distribute authority and create autonomous entities in a unitary State. These two forms are based on two different and even conflicting philosophies. However, it is possible to combine centralized and decentralized structures in varying degrees, depending on the specificities of each country. In a centralized state, the authority and decision-making lies with the central government; deconcentrated bodies which do not enjoy legal personality or autonomy represent it at regional level. Conversely, decentralization aims at creating legal entities which have administrative and financial autonomy and which have prerogatives that allow them to manage local affairs.

In the Tunisian Constitution of 2014, an important step has been taken: a separate chapter (Chapter VII) is dedicated to local governance. By contrast, the Constitution of 1956 stated, in its Article 71, that: “municipal councils, regional councils and the structures that are designated as local authorities by law, manage affairs according to the terms set by law”. This led to the creation of local structures represented by municipalities and regional councils, which worked under the authority of the central government in accordance with the provisions of Organic Law No. 75/33 of 14 May 1975 on municipalities and Organic Law No. 89/11 of 4 February 1989 on regional councils.

The implementation of administrative decentralization in Tunisia is the result of the substantial change that impacted the relationship between the center and periphery. There has been a shift from the domination of central authorities over local authorities to a greater autonomy that has been granted to local governments within the framework of the State’s unity. This shift will likely not be confined to the institutional level, but will have a direct impact on citizens through the ways in which local affairs and services are managed. The adoption of the draft law on local authorities is a necessary step towards the implementation of Chapter VII of the Constitution pertaining to local power.

Despite the importance of decentralization, “progress in the decentralization process fell short of expectation due to the lack of consistency and visibility of state organs and the lack of political will and of a clear commitment to this issue. Decentralization is depicted in the prevailing political discourse either as a threat that is likely to weaken the Tunisian State or rather as a trophy that may enable a given political party to tighten its grip on State organs and on society through municipalities.”<sup>29</sup>

Despite the government’s pledge to submit the draft law in February 2017, the draft organic law on local authorities was submitted on 5 May 2017.

27 - Article 3 of Organic Law No. 2012/23 dated 20 December 2012 on the Independent High Authority for Elections amended and completed by Organic Law No. 2012/44 dated 1 November 2012 and Organic Law No. 52/2013 dated 28 December 2013.

28 - Political parties called for the postponement of municipal elections: <http://goo.gl/Dhb7J9>

29 - Interview with Dr. Jinan Limam, Public Law Professor at the Faculty of Legal, Political and Social Sciences of Tunis on 22 January 2018, p. 2 (see appendix 2).

The draft law contains 363 articles which are divided into two chapters. The first part deals with the common provisions that govern three levels of local authorities: municipalities, regions and districts (Book 1), while part two deals with the provisions that are specific to each category of local authorities (Book 2).

The draft law involves on the one hand principles of independence and free administration and, on the other hand, requirements of efficiency and of compliance with the rule of law. It includes the fundamental principles and the central foundations on the basis of which local authorities manage local affairs. This law seeks to strike a balance between the principles of independence and free administration, and the requirements of efficiency and good governance. Major disagreements among deputies within the Committee on the Organization of Administration and Armed Forces arose over this matter.

### **Principle of free administration**

The principle of free administration is the backbone<sup>30</sup> of the draft law on local authorities and is one of the constitutional safeguards for the independence of local authorities. Article 132 of the Constitution (Chapter VII on local power) provides that “local authorities enjoy legal personality as well as financial and administrative independence. They shall manage local interests in accordance with the principle of free administration.”

This principle grants autonomy to each local authority for the purposes of the management of its local affairs as they see fit. This principle applies to the various administrative processes carried out by local government, such as the freedom to determine its strategic priorities, take administrative decisions, manage its assets and staff, have the legal capacity to enter into contracts and the power to make expenditures.

### **Local authority jurisdiction**

Jurisdiction means the authority vested, by operation of the law, in a person or entity to take specific decisions or actions. It pertains to the legal scope which determines what is allowed and what is prohibited by law.

The powers vested in local authorities under the Code of Local Authorities are significant because these local councils serve as a key mechanism (along with resources) through which the principle of free administration<sup>31</sup> is implemented. In order to establish a balance between this principle and the unity of the state, local powers can be classified in three categories: autonomous powers that belong to local authorities exclusively; concurrent powers that are split between the local authorities and the central government; and powers delegated from the central government to the different levels of local government.<sup>32</sup>

It is worth noting that in addition to its statutory power, which can be used to achieve local development, municipal authorities also enjoy delegated and concurrent powers based on the principle of subsidiarity, which is considered as a modern mechanism used in decentralized systems. This principle lies in the division of powers and resources. The party which introduced the legislative initiative insisted on three criteria for determining the competent local authority in accordance with the principle of subsidiarity: the closest, the most efficient, and the most effective local authority.

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30 - The principle of free administration in the draft law on local authorities is referred to as the primary principle on which local authorities are based, strengthening its importance.

31 - The section on local authority powers immediately follows section two on free administration.

32 - For more information on the distribution of powers among the various categories of local authorities, see:

- Municipalities: Articles 223-232; and
- Regions: Articles 288-292.

As regards concurrent powers, a proposal objecting to any concurrent power shared between various local authorities was submitted. This proposal underlined the inconsistency with the Constitution which stipulates in Article 134 that “local authorities enjoy autonomous powers, powers shared with the central government and powers delegated to them from central government.” Mokhtar Hammami, who introduced the legislative proposal, pointed out that a reference to concurrent powers does not necessarily imply that it must be provided by the Constitution because it is related to cooperation between different levels of local government, which is already a fact. Article 12 was amended to include shared powers among local authorities and with the central government.<sup>33</sup>

As regards the scope of these autonomous local powers, Article 13 of the draft law provides that the governor can exceptionally exercise what is known as the power to take action in the following cases:

- the complacency or incapability of a local council to exercise one of its powers;
- the necessary nature of the jurisdiction;
- the presence of an imminent and serious harm;
- after a warning to the local authority is issued.

This article gave rise to a tense debate at committee level. Some deputies considered that it is likely to violate the principle of free administration, particularly in the absence of judicial safeguards governing any intervention from the governor. Other deputies proposed to replace the term “complacency” with “abstention” because, to their mind, it was a more precise legal term. In this regard, a number of civil society organizations (Al Bawsala together with other NGOs) submitted a proposal pursuant to which if local authorities were failing to perform their duties, the governor would have to seize the administrative judge in order to take action on the issue.

The chairman of the Committee pointed out that under Article 13, although local authorities have new prerogatives, the central government can still intervene and exercise these prerogatives in lieu of the local authority. The objective is to act in the citizens’ best interest and to implement the principle of institutional continuity, which does not conflict with the principles of autonomy. In particular, Article 21 of the draft law provides that local authorities may seize the Supreme Administrative Court to settle any dispute that may arise in the case of a conflict of jurisdiction between the local authority and the central government (MPs did not vote on this article because of a strong disagreement).<sup>34</sup>

### **Resources and property of local authorities**

In order to ensure that local authorities carry out their various duties and responsibilities, they shall be provided with adequate resources. Therefore, the draft law on local authorities includes another chapter dedicated to the property of local authorities, which is traditionally divided into public and private property.<sup>35</sup>

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33 - For further details, see the article of Marsad Majles issued on 18 September 2017:

<https://majles.marsad.tn/2014/chroniques/59c8cf484f24d069e41df2dc>.

34 - For more details regarding discussions at Committee level, see

<https://majles.marsad.tn/2014/chroniques/59c8cf484f24d069e41df2dc>

35 - Articles 60-65 of the draft law on local authorities.

It also includes a fourth chapter pertaining to the financial system of local authorities.<sup>36</sup> Financial resources are divided in resources from internal assets and resources allocated by the State.<sup>37</sup> The High Authority for Local Finance will be set up to consider all the issues related to local finance and ways of supporting, modernizing and managing it in accordance with the rules of good governance. This chapter also sets out the procedures that apply throughout the various stages of the budgeting process (preparation, adoption, implementation and closing of the budget).

One of the most important points pertains to the resources that are allocated by the State. The allocation of resources relies on the principle of solidarity among the various local authorities thanks to mechanisms of balance and regulation and in order to avoid any discrepancies between them.

### **Participatory democracy and open governance**

In line with Article 139 of the Constitution,<sup>38</sup> a set of procedures, together with means to ensure broad citizen participation in all matters of local concern, were incorporated in the draft law, given that “the local level is a more appropriate and effective framework in which the participation of citizens, male and female, can be institutionalized for the management of local affairs.”<sup>39</sup>

This draft law stresses the need to involve citizens and civil society in development programs in terms of preparation, implementation and assessment<sup>40</sup> as well as the need for different levels of local authorities to maintain registers to document the feedback of the local population.<sup>41</sup> Besides, it is very important that local municipal councils publish reports on their various activities.<sup>42</sup>

The draft law pertaining to the Code of Local Authorities provides that meetings with community members shall be held to provide clarifications before any decision related to specific issues is taken<sup>43</sup> or provided that a reasoned request from 10% of the community members is made. Moreover, the head of the local government can call for a referendum, which can also be called upon request from one third of the members of the local councils or one tenth of the residents<sup>44</sup> of the region at stake.<sup>45</sup>

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36 - Articles 121-188 of the draft law on local authorities.

37 - Resources are allotted by the State on the basis of the principle of solidarity among the various local authorities through the mechanisms of balance and regulation.

38 - Article 139 provides that: “Local authorities shall adopt the mechanisms of participatory democracy and the principle of open governance to ensure the broadest participation of citizens and of civil society in the preparation of development programs and land-use planning, and follow up on their implementation, in conformity with the law.”

39 - Interview with Dr. Jinan Limam (p. 3).

40 - Article 28 of the draft law on local authorities.

41 - Article 29 of the draft law on local authorities.

42 - Articles 29 and 32 of the draft law on local authorities.

43 - These issues cover the review of local taxes, the signature of cooperation and partnership agreements, the establishment of public facilities, the signature of cooperation agreements with central authorities, the delegation of tasks to other local authorities and the use of public property (Article 33 of the draft law on local authorities).

44 - In the first two cases, it is not possible to hold a referendum unless two-thirds of the members of the local councils approve the referendum.

45 - In this case, the majority of the council members must approve the organization of a referendum.

Overall and despite some flaws,<sup>46</sup> the draft law enshrines the principle of participatory democracy at the local level. However, while the articles were being discussed in the committee, disagreements over terminology<sup>47</sup> and content emerge and the vote was adjourned.<sup>48</sup>

### **Supervision of local authorities**

The control of the legality of the local authorities' decisions<sup>49</sup> is carried out a posteriori. It is one of the most important changes brought by the Constitution of 27 January 2014. This is a shift from the old system which was well-established and which relied on a control of local authorities made by the central government. This control is exercised over the merits of the local authority's decisions (including decisions of a financial nature). The central government also exercises ex-post control over the implementation of the local authority's decisions.

The central government will initially check the extent to which the local authority decisions are taken in compliance with and observance of the legal rules through administrative and financial judiciary control. This constitutional consecration is reflected in articles 263-265 of the Code on Local Authorities which provide that municipal regulations must be enforceable upon their publication in the Official Journal of the local authority and once posted in the municipal premises.

Decisions must be submitted to the governorate within 10 days as from their issuance. The Regional Treasurer should be notified of all decisions with financial implications. The Governor may then, at his own initiative or at the request of any person concerned, appeal the municipal decisions before the Administrative Court of First Instance which has territorial jurisdiction. The Governor's appeal does not suspend such decisions.<sup>50</sup>

In our opinion, it is certainly necessary to control a posteriori the legality of municipal regulations to ensure the efficiency and independence of the municipal work. However, there is no reason for the governor and the Regional Treasurer to be mandatorily notified of each decision taken. Therefore, to effectively depart from the old system, the mandatory notification of the Governor or the Regional Treasurer should be removed. This would not hinder their right to lodge an appeal before the Administrative Tribunal.

As from the submission of the draft law to the Committee on the Organization of Administration and Armed Forces on 13 June 2017, there were fifty sittings which lasted nearly 144 hours; a delay of 51 hours and 1 minute; and a total attendance rate of 43%.

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46 - For instance, the last version of the draft law (the draft version of May 2017) does not provide for mandatory public hearings to be held on a regular basis, although this can be done under a list of conditions.

47 - For example, using the term citizen or inhabitant.

48 - See the articles of Marsad Majles issued on 26 September 2017:

<https://majles.marsad.tn/2014/chroniques/59ca7f094f24d069e41df2e3>

49 - Article 138 of the Constitution states that "local authorities are subject to ex-post verification, as regards the legality of their actions."

50 - The Governor may request the competent administrative judge to suspend the enforcement of an administrative decision.



Since its submission to the Assembly, the draft law went through two major stages:

- 1 The first stage (from 13 June to 14 July 2017) included a number of hearings of various official and non-official stakeholders, and discussions on the draft law on local authorities. A first discussion of the legislative initiative on the draft organic law No. 48 on local authorities was held on 13 June 2017 with the Minister of Local Affairs and of the Environment, which had submitted the proposal. The Minister and his delegation presented the drafting process and the methodology of the draft law that had been prepared by the Ministry, as well as the various complications and obstacles hindering the work of local authorities.<sup>51</sup> The Committee also solicited the views and proposals of a number of civil society components.<sup>52</sup>

In this context, we wish to recognize the excellent work performed by a number of organizations whose submissions and recommendations served as a starting point and as a driving force for the members of the Committee on the Organization of Administration and Armed Forces during its review of the draft law. In addition, a suggestion was made to hear members of the Constituent Committee of the local and regional public bodies but no hearing was scheduled.

- 2 The second stage, which started on 14 September 2017, consisted of a review of the draft law, on an article-by-article basis, and their vote. During the third (ordinary and extraordinary) parliamentary session, the Committee held 13 sittings during which hearings were conducted and the draft law was reviewed article-by-article, with a 50% attendance rate. The pace was slow given the importance of the draft law and its impact. This was mainly due to:
  - the referral of the draft law, by the President of the ARP, to the Committee on the Organization of Administration and Armed Forces 25 days after its submission by the Ministry of Local Affairs and the Environment;<sup>54</sup>
  - the fact that the Committee in charge of reviewing the draft law did not hold sittings on a regular basis and suspended its work on several occasions;<sup>55</sup> and
  - the weekly and daily work pattern of the Committee which was disproportionate in light of the major significance of this draft law on the Code on Local Authorities.

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51 - For more details, see the articles of Marsad Majles issued on 13 June 2017:

<https://majles.marsad.tn/2014/chroniques/594ce664cf4412226ec75608>

52 - For more details, see the chronicles of Marsad Majles issued on 20 June 2017:

<https://majles.marsad.tn/2014/chroniques/594995decf4412226ec755d5>

53 - Such as the coalition of organizations comprising Al Bawsala, ATIDE, Kolna Tounes (We Are All Tunisians), The Tunisian Association for Local Governance, Democracy Reporting International, and Solidar Tunisia.

54 - What is meant by the Committee's work during the ordinary parliamentary session is the period which runs between the referral of the draft law (13 June 2017) to the last sitting held before the Assembly opened its fourth ordinary session (5 October 2017). This means that the extraordinary session and the period leading up to the opening of the fourth session is also included.

55 - Sundays are not included.

## Summary

The slow pace and the frequent interruptions reflect the low importance that was given to the draft law in the Parliament. In fact, despite the efforts invested by some MPs, the Assembly did not give the appropriate attention to the draft law, which was definitely not a priority during the third session.

The heightened political tension during the discussion of the articles of the draft law was an obstacle to the ARP's commitment to approve the law on local authorities no later than on 31 December 2017. To avoid these delays, Al Bawsala proposed to divide the draft law into parts and assign each part to a relevant committee for review. Had this proposal been implemented, the delays would have been drastically reduced and it would have been a more effective way of managing the ARP's time.<sup>56</sup>

In this context, it is our opinion that the implementation of the decentralization process has been impaired by the failure of the ARP to perform its legislative functions in an efficient manner. This reflects a lack of political will. This shortcoming is certainly a consequence of the political tensions which arose during the process aiming at filling the vacant positions in ISIE and when the Law on municipal and regional elections was discussed. This shortcoming also results from the inefficiency of ARP's legislative process. The main concern does not revolve around how to approve the draft law expeditiously, in its entirety, but rather how to put aside political tensions when the law is being reviewed.

We also think that it is important to enact other laws on decentralization, in particular the law on deconcentration, which should be adopted as soon as possible, so as to ensure a complete implementation of local governance. Putting in place solid foundations for a successful decentralization would gradually advance development and improve proximity services and facilities on the basis of equality and non-discrimination. This could boost the citizens' confidence in State institutions at both national and local levels.

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56 - For further details regarding the review of the draft law on local authorities by Al Bawsala, see <https://www.albawsala.com/pub/59a6e3bb4f24d06e58f35806>.



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# Chapter 5

The Judiciary

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## Chapter 5 : The Judiciary

The State's power is divided into three main branches i.e. the legislative, the executive and the judiciary branches. The latter enjoys complete financial and administrative autonomy, and renders sovereign decisions that are free from any interference from the other two branches.

The judiciary is solely entitled to settle disputes and to administer justice through the different levels of courts. Most importantly, the Supreme Judicial Council and the Constitutional Court were established to ensure that the Constitution is properly implemented and that the laws adopted by the ARP are enforced.

Title V of the Constitution of 2014 is devoted to the judiciary. Its Article 102 defines the judiciary as an “independent authority which ensures the administration of justice, the supremacy of the Constitution, the sovereignty of the law, and the protection of rights and freedoms”. Enhancing the legislative framework and the different components of the Judiciary branch is therefore both a priority and a duty, in order to satisfy the requirements set forth in the Constitution. As a result, most of the amendments that were made to the legal framework of the judiciary were related to its structure and its courts.

Title V consists of two large sections, the first of which deals with judicial, financial and administrative justice, and the second section deals with the Constitutional Court. Although important steps were taken to reform the judicial system by way of the set-up of the Supreme Judicial Council – one of the cornerstones of the judiciary system – the reform of the Court of Auditors<sup>1</sup> and the creation of the Constitutional Court remained on hold, despite the fact that there was a vote on the Constitutional Court's budgetary provisions in plenary session during the discussion on the budget law for 2017.<sup>2</sup>

It is worth noting that the reform of the judiciary system was considered an overriding priority in the post-revolution era, in order to restore the confidence between the citizens and the judicial system. The successive governments have proposed draft laws that set forth the strategic vision in the field of justice reform.<sup>3</sup>

The ARP's review of the draft laws pertaining to the judiciary is set forth below, as well as the ARP's scrutiny role over the judiciary.

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1 - <https://majles.marsad.tn/2014/lois/577083e8cf441234909a8268/texte>

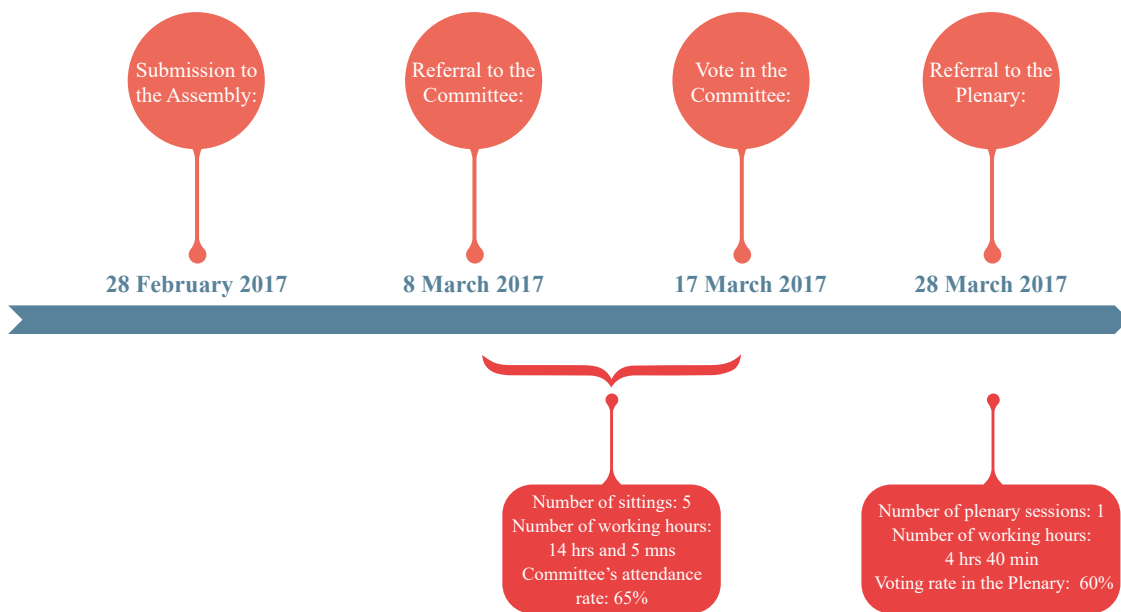
2 - <https://majles.marsad.tn/2014/vote/5853ea28cf44121f3e63af01>

3 - [http://formation.e-justice.tn/fileadmin/medias/pdf/Documents\\_reforme\\_de\\_la\\_justice/Vision\\_strategique\\_reforme\\_de\\_la\\_justice\\_\\_ARABE.pdf](http://formation.e-justice.tn/fileadmin/medias/pdf/Documents_reforme_de_la_justice/Vision_strategique_reforme_de_la_justice__ARABE.pdf)

## I. The legislative function

### 1. Draft laws adopted in plenary session

#### 1.1. Draft Organic Law No. 27/2017 amending Law No. 34/2016 dated 28 April 2016 on the Supreme Judicial Council



According to the explanatory note,<sup>4</sup> the draft law aims to allow the Supreme Judicial Council to kick-start its activities, which were on hold since the announcement of the outcome of the election of its members. Indeed, article 73 of the organic law on the Supreme Judicial Council<sup>5</sup> stipulates that the President of the Provisional Instance for the Supervision of Judicial Justice shall convene the members for the Council's first sitting within one month as from the date on which the election results are received. The final results of the election of the Supreme Judicial Council were proclaimed on 14 November 2016. However, the President of the Provisional Instance for the Supervision of Judicial Justice, who is also the First President of the Court of Cassation, failed to convene the meeting of the elected council. On top of that, he retired and left his position, which hampered the organization of the Council's first meeting.

In fact, in accordance with Article 73 of the organic law on the Supreme Judicial Council, the President of the Provisional Instance for the Supervision of Judicial Justice is solely responsible for convening the Council. This Article does not deal with the situation in which the President of the Provisional Instance retires. This has therefore disrupted the operations of the judicial system. The draft law proposes that the Speaker of the Parliament, who represents the legislative branch which, in turn, represents the people, convenes the first meeting of the Supreme Judicial Council. This procedure was set in place in order to overcome this hurdle and to enshrine the role of the ARP, in its capacity as elected representative of the people.

4 - [http://www.e-justice.tn/fileadmin/fichiers\\_site\\_arabe/actualites/C\\_09-03-2015.pdf](http://www.e-justice.tn/fileadmin/fichiers_site_arabe/actualites/C_09-03-2015.pdf)

5 - <http://www.legislation.tn/sites/default/files/fraction-journal-officiel/2016/2016A/035/Ta2016341.pdf>

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**Chapter 5 : The Judiciary**

In addition, it is worth noting that Article 36<sup>6</sup> of the draft law provides for the quorum required for the Council's meetings to be held, which consists of two-thirds of the members. If the quorum is not met, the article provides that a second meeting is held with one-half of the members. With a view to granting more flexibility and fluidity to the Council's operations, the draft law provided that meetings of the Council could be held in the presence of one-third of the members instead of one-half, one hour after the scheduled time of the meeting.

During his hearing on 8 March 2017,<sup>7</sup> the Minister of Justice asserted that the bill is by no means a way to interfere with the judiciary, but that it rather seeks to settle the ongoing dispute between the different judicial structures as regards the outcome of the elections, following the appointments to the Supreme Judicial Council made by the Head of the Government. Furthermore, the Minister argued that there were numerous breaches in the process of filling the vacancies of the Council, especially that of the General-Public Prosecutor at the Court of Cassation.

The President of the Association of Tunisian Judges voiced her opposition to this draft law: she considered that it weakens the independence and the authority of the judiciary and violates Article 109 of the Constitution which prohibits any interference in the work of the judicial branch. She also considered that the executive branch contributed to the disruption of the activities of the Supreme Judicial Council due to the Prime Minister's refusal to sign the nominations. On the other hand, the Union of Tunisian Judges considered that this legislative initiative does not interfere with the judicial branch, and stated that there were no issue at all should the Parliament's speaker convene the first meeting of the Supreme Judicial Council.

MPs were divided on the issue of whether the legislative initiative on the Supreme Judicial Council should be approved. The representatives of the Popular Front and Afek Tounes parties viewed this initiative as an interference with the judiciary, particularly in light of the executive branch's failure to nominate judges and to sign their nominations. In contrast, another part of the Afek Tounes and Ennahdha blocs considered that the dissent among the judicial structures which were competing for the Supreme Judicial Council's membership had reached its peak, which therefore blocked the Council's meetings. They stated that the solution lies in the intervention of the legislative branch because it is in charge of organizing the authorities.<sup>8</sup>

The amendment to the law on the Supreme Judicial Council was eventually adopted on 28 March 2017. 120 MPs voted in favor, 2 against and 12 abstained.

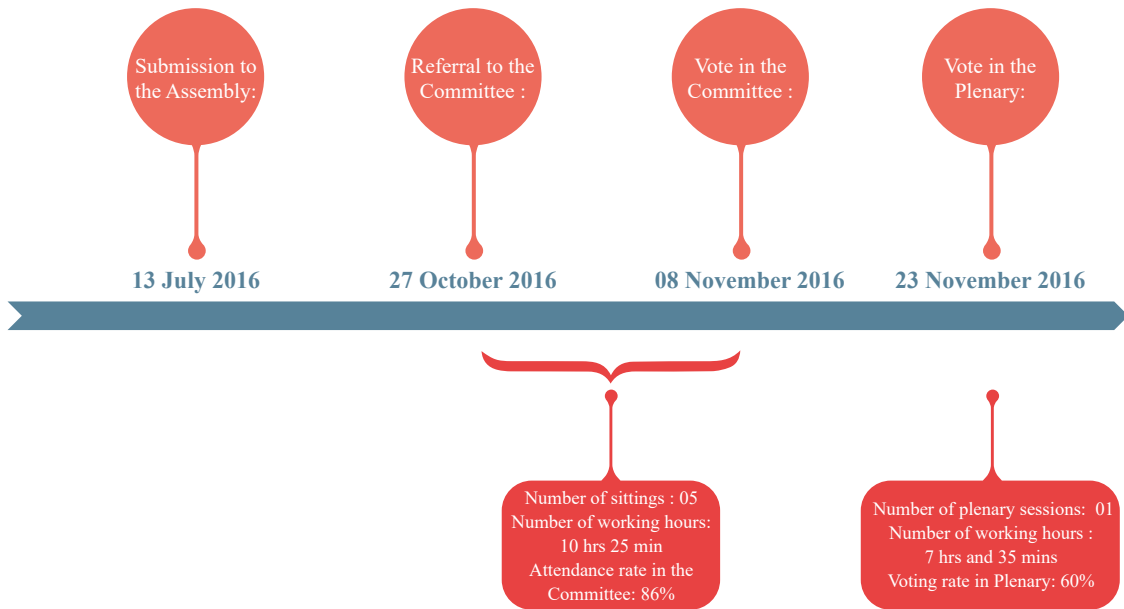
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6 - *ibid*

7 - <https://majles.marsad.tn/2014/chroniques/58c05ad6cf44127108c81701>

8 - <https://majles.marsad.tn/2014/chroniques/58c69f75cf4412305e91f7f9>

**1.2. Draft Organic Law No. 57/2016 on the Financial and Economic Judiciary Pole**



The hearings involved parties and schedules indicated as following:

HEARING DATE	PARTICIPANTS	TOPIC OF THE HEARING
28 October 2016	Minister of Justice	Draft Law No. 2016/57 pertaining to the Financial and Economic Judiciary Pole
1 November 2016	Anti-Corruption Authority Vice-president of the Court of Auditors President of the Tunisian financial analysis committee at the Central Bank	Draft Law No. 2016/57 pertaining to the Financial and Economic Judiciary Pole

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## Chapter 5 : The Judiciary

According to the explanatory note annexed to the draft law,<sup>9</sup> the law aims to enshrine constitutional principles, in particular Title 10 pertaining to the good management of public funds and the consolidation of the values of transparency, accountability and integrity as well as the adherence to the requirements of the United Nations Convention against Corruption, ratified by Tunisia in 2008. The draft law also seeks to fight money laundering and economic crimes, as well as enhance investigation of economic and financial crimes.

It is worth noting that in 2012, the Ministry of Justice established a Financial Judiciary Pole, specializing in the investigation of crimes of financial and administrative corruption. 1197 financial corruption cases were filed with the Pole, only 460 of which are under review according to the statement made by the Minister of Justice during the plenary session that was devoted to this draft law.

This draft law is viewed as a response to the rampant corruption in the country and to the sophisticated methods that are used to avoid prosecution by the State. The complexity of the cases calls for special methods to combat these crimes. Some of these methods include – but are not limited to – asking for the help of technical assistants who have expertise in financial matters.

During the vote, on 23 November 2016, the Minister of Justice made clear that the draft law does not define the crimes related to financial corruption, but is rather procedural in nature in that it identifies the fields of competence of the pole for cases that require specific expertise. In its answer to the MPs' questions, the Minister mentioned that his Ministry is preparing the decrees and the documents that are necessary for the implementation of the Financial and Economic Judiciary Pole.

A question was raised regarding the fact that the Public Prosecutor is the only authority that is entitled to refer cases to the Pole. The Minister of Justice pointed out, in his reply, that the referral procedure is in line with the Code of Criminal Procedure, which provides the General Prosecutor with the criteria for initiating and carrying out prosecutions. The General Prosecutor has the discretion to decide the appropriate follow-up to the complaints and information he receives. He may also decide, at his discretion, under Article 30 of the Code of Criminal Procedure, to discontinue investigations.

The characteristic of the Financial and Economic Judiciary Pole is the specialized assistants' corps, which is fully dedicated to the audit of arduous cases that require technical expertise in relation to financial crimes. The intervention of the specialized technical assistants will accelerate the review of the cases pending training of the experts of the judiciary who would have to sit several exams which will span over several months.

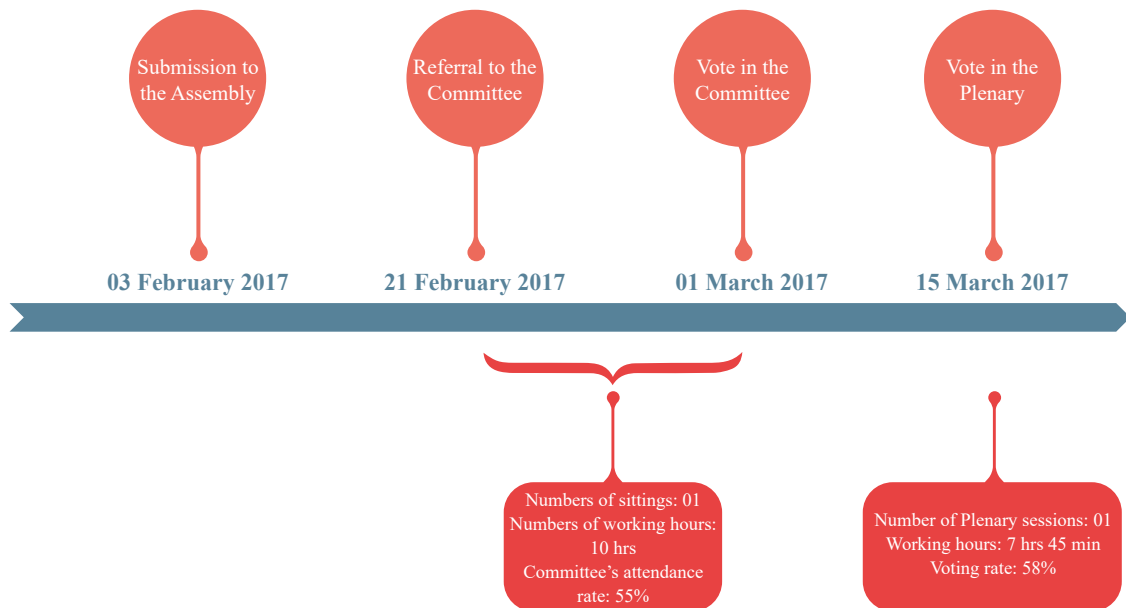
The Financial and Economic Judiciary Pole investigates cases in the following areas:

- public funds;
- private funds made available to a public officer or suspicions arising from his position;
- customs, taxation and foreign exchange;
- financial markets, banks and financial institutions;
- financing of political parties, organizations and elections; and
- commercial and economic activities.

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9 - <https://majles.marsad.tn/2014/docs/57a1ce96cf44126c17c5e198>

### 1.3. Draft Organic Law No. 19/2017 approving the accession of the Republic of Tunisia to the International Convention on the Service abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, signed at the Hague Conference on Private International Law on 15 November 1965



According to the explanatory note, this draft law aims to allow Tunisia to accede the Hague Convention on the Service abroad of Judicial and Extrajudicial Documents, within a reasonable period. Pursuant to this convention, each contracting State shall designate a Central Authority which acts as an intermediate and receives requests for services and sends them to the concerned parties, with a view to improving and rendering cross-border service easier, instead of relying on postal services.

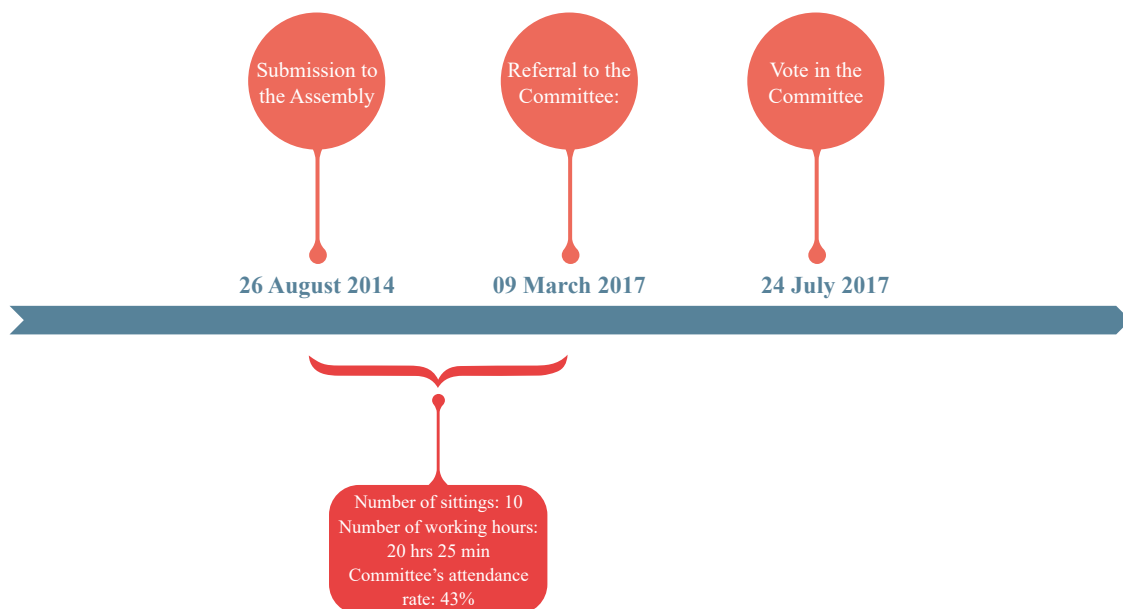


## Chapter 5 : The Judiciary

The General Legislation Committee's report<sup>10</sup> considered that the service of documents is of paramount importance in cases filed against defendants residing abroad, whether they are Tunisian nationals or foreigners. On the other hand, serving documents to a litigant guarantees the right to justice and the right of defense, as contemplated in Article 108 of the Constitution.

The draft law was unanimously adopted in the plenary session held on 15 March 2017, with 138 votes in its favor.<sup>11</sup>

### 2. Draft law No. 58/2014 on the bailiffs (reviewed in Committee)



The draft law's purpose is to address the breaches of the law of 1995 which governs Judicial Officers and which neither grasps the true nature of this profession nor provides for its legal framework.<sup>12</sup> Besides, there is no structure dedicated to continuous training and there is a conflicting overlap between the rights and duties of the judicial officers. The most important point that is incorporated in this draft law is the judicial officer's right to request immediate assistance from security forces, if prevented from carrying out his/her duties.

In March 2017, the General Legislation Committee began its review of the draft law and then postponed its review in order to consider other draft laws, such as draft laws on administrative reconciliation and on the repression of attacks against armed forces.

The General Legislation Committee adopted the draft law on 24 July 2017 and did not refer it to a plenary session during the third parliamentary session.

10 - <https://majles.marsad.tn/2014/docs/58c7c089cf4412305e91f807>

11 - <https://majles.marsad.tn/2014/lois/58a2ef59cf441237ac61ee7d/votes>

12 - [https://docs.google.com/viewerng/viewer?url=https://majles.marsad.tn/2014/uploads/documents/58-2014\\_1.pdf](https://docs.google.com/viewerng/viewer?url=https://majles.marsad.tn/2014/uploads/documents/58-2014_1.pdf)

### 3. Draft organic laws that were not discussed

Draft law No. 38/2016 provides for the jurisdiction, structure and procedures of the Court of Auditors. This draft law is considered as a key element in the achievement of the reform of the judiciary. In light of the current role of the Court of Auditors in the investigation and fight against corruption, it was a key objective both for the Parliament and for the Government. Yet, the draft law on the Court of Auditors was not put on the General Legislation Committee's agenda, despite the appointment of an ad hoc committee, in charge of reviewing the draft law, which had been submitted to the Assembly on 16 June 2016.<sup>13</sup>

Relying on constitutional references, in particular Article 117 of the Constitution, the wording "Chamber of Auditors" was replaced by "Court of Auditors". In accordance with the principles of transparency and accountability, the draft law also sought to grant financial and administrative independence to the Court of Auditors, so as to ensure its proper functioning.

The draft law identifies issues that fall within the exclusive competence of the Court of Auditors, including the following:

- the conformity of the financial statements of private accountants;
- assisting the legislative and executive branches in monitoring the implementation of the finance laws and in closing budgets and submitting the Court's final observations on the monitoring of public funds; and
- supervising concession holders and companies in charge of the implementation of public projects or managing public utilities within the framework of a public-private partnership.

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13 - <https://majles.marsad.tn/2014/lois/577083e8cf441234909a8268>

## II. The scrutiny function

The ARP exercised its scrutiny function by way of its answers to written and oral questions.

### 1. Oral questions

DATE	MP	BLOC	ISSUE
28 March 2017	Ridha ZGHONDI	Nidaa Tounes	The Ministry's representative role in the settlement of disputes between litigants in courts.
23 May 2017	Mohamed HAMDI	No political affiliation	Latest developments regarding a legal case pertaining to the loss of a donor's kidney in a hospital
23 November 2016	Ibtissem JBEBLI	Nidaa Tounes	Decision to relocate the Ministry of Justice from Avenue Bab Bnet to new premises located in Cité El Khadhra
24 January 2017	Sleh BARGAOUI	Al Horra	Set-up of the Constitutional Court
	Rim THAIRI	No political affiliation	Reasons for the release of a Belgium national and suspension of its sentence of one year and six months

### 2. Written questions

Two written questions were submitted to the Minister of Justice. They were asked by:

- Faisal Atbini, a deputy with no political affiliation, asked a question on the need to comply with Articles 24 and 25 of Decree No. 79 (2011) governing the lawyers' profession and preventing tax advisors from carrying out their duties.<sup>14</sup>
- Samia Abbou, a member of the Democratic Bloc, enquired why the Ministry responsible for the monitoring of tax advisors and for the parallel justice system that applies to tax matters.<sup>15</sup>

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14 - The Minister's reply: [http://arp.tn/site/main/AR/docs/reponses\\_gov/120.pdf](http://arp.tn/site/main/AR/docs/reponses_gov/120.pdf)

15 - The Minister's reply: [http://arp.tn/site/main/AR/docs/reponses\\_gov/121.pdf](http://arp.tn/site/main/AR/docs/reponses_gov/121.pdf)

## The Constitutional Court



Parliamentary blocs submitted their candidates' lists in June 2017, and the Electoral Committee started screening the lists.

The organic law organizing the Constitutional Court was adopted in November 2015

Its establishment was initially postponed because of the delay in the establishment of the Supreme Judicial Council, which was elected in October 2016 and started its activities in April 2017.

It is composed of 12 members appointed by the ARP (4); the Supreme Judicial Council (4); and the President of the Republic (4)

It was supposed to be established within a maximum timeframe of one year as from the legislative elections (Transitional provisions of the Constitution)

The nomination of the members of the Constitutional Court depends on the agreement of the parliamentary blocs, and its establishment requires a real political will



More than two years behind the constitutional deadlines!

## Summary

The laws adopted by the Assembly demonstrate the executive and the legislative branches' attempt at reshaping the structure of the judiciary. It appears that the most significant steps that were taken relate to: the draft law on the Supreme Judicial Council; the adoption of the budgets of the structures of the judicial authority; and the draft law approving the accession of the Republic of Tunisia to the International Convention on the Service abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, signed at the Hague conference on Private International Law on 15 November 1965 and that is meant to facilitate judicial work.

Notwithstanding the efforts that were made by the Assembly, progress made remains slow and doesn't keep up with the pace of reform that would have been necessary to implement the provisions of the Constitution. It follows that the enforcement of Article 117 of the Constitution on the Court of Auditors, together with Article 110 of the Constitution on the competence, composition, organization and procedures applicable to military courts – as well as the statute of military judges – should be the Assembly's top priority.

Moreover, in accordance with its scrutinizing role, the ARP should monitor the work of the special committee of the Ministry of Justice which is tasked with amending the Criminal Code and the Code of Criminal Procedure. The Parliament should also call on the executive branch to speed up the submission of the draft laws amending those codes to the Assembly, in light of the importance of these issues and because of its involvement in the reform of the judiciary system and in ensuring the right to access to justice and the protection of fundamental freedoms.

The Assembly also needs to expedite the appointment of the four members of the Constitutional Court, which is a necessary step towards the establishment of this Court, in accordance with Article 10 of organic law No. 50 (2015) on the Constitutional Court. This Article provides that the Constitutional Court's members shall be appointed "respectively" by the ARP, the Supreme Judicial Council and the President of the Republic. Despite the adoption of the organic law regulating the Constitutional Court, its establishment – which is key to the achievement of the democratic transition – is more than three years behind the schedule set forth in the Constitution and ultimately depends on the election of four of the Court's members by the Assembly.

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# Chapter 6

Public Finance

06



**Article 10** of the Tunisian Constitution reads as follows:



“Paying taxes and public contributions is an obligation in accordance with a fair and equitable system.

The State shall put in place the mechanisms that are necessary to ensure the collection of taxes and combatting tax evasion and fraud.

The State shall strive to ensure the proper use of public funds and shall take necessary measures for their use in accordance with national economic priorities. It shall act to prevent corruption and anything that might undermine national sovereignty.”

Further, **Article 66** of the Constitution provides that the finance law is adopted in accordance with the conditions set forth in the organic budget law. This provision reads as follows:



“The law determines the State’s resources and its expenses in conformity with the provisions set out in the organic budget law. The Assembly of the Representatives of the People shall adopt draft finance laws and the balancing of the budget in accordance with the terms of the organic budget law.”

In light of the above, the Constitution has put special emphasis on the finance law, which gives the opportunity to both the legislative and the executive branches to discuss the Government’s orientations. Article 62 of the Constitution also provides that draft finance laws are submitted by the Head of the Government. The Constitution further defines the conditions surrounding the review of the finance laws and the timelines for their submission and adoption by the Parliament. It has also laid down the legal framework arranging their approval essentially embodied in the Organic Budget Law.

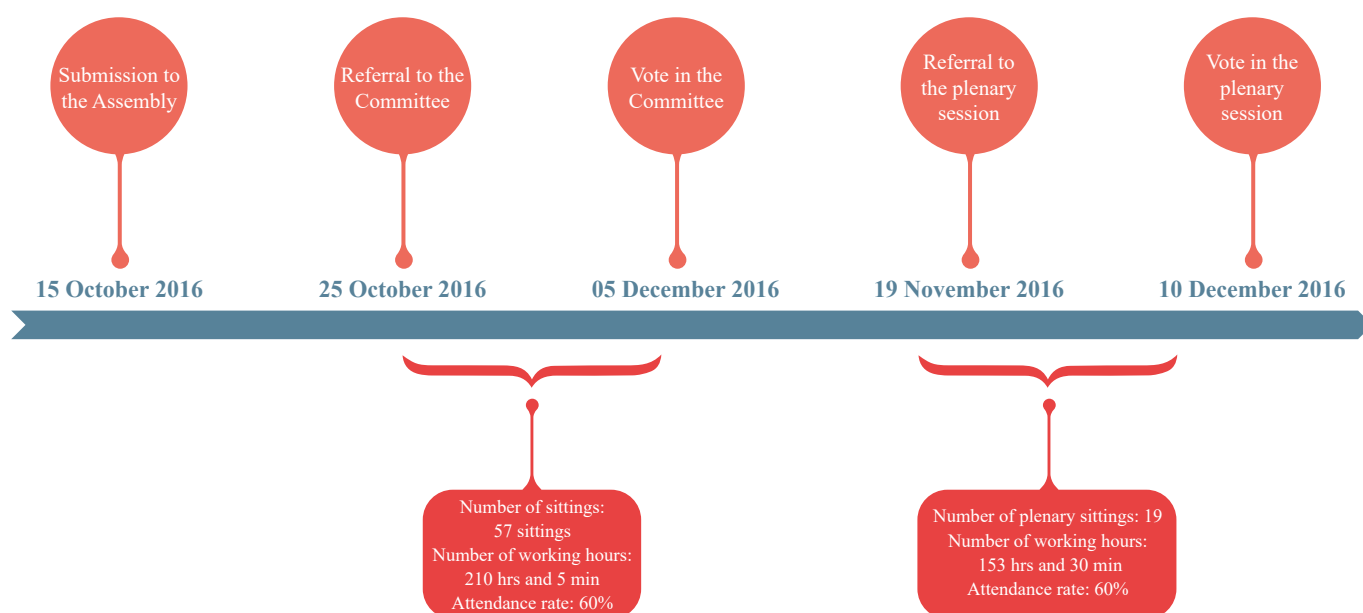
This Chapter provides an overview of the Parliament’s legislative and scrutinizing functions with respect to finance and taxation laws.



## I. The legislative function

### 1. Laws adopted in plenary

#### 1.1. Draft finance law No. 71/2016 for 2017



This draft finance law was the first to be submitted by the Government headed by Youssef Chahed, following the vote of confidence in August 2016. In accordance with Article 66 of the Constitution, the Government shall submit the draft finance law by the 15th of October of each year.

#### The draft finance law consists of 3 parts:

- **the general State budget** which consists of a report on the current year's budget implementation, based on the previous year's achievements, the predictions for the new budget and the financial estimates for each section of the budget (resources and expenditures, running costs, development expenditures...);
- **a structure-based budget** which provides estimates of resources and expenditures allocated for each public structure such as ministries (including the Presidency of the Government and its affiliated structures); constitutional bodies; the Parliament; and the Presidency of the Republic. It also includes the budget implementation of the previous year and the expected implementation for the upcoming one; and
- **the provisions of the finance law** which incorporate fiscal regulations on direct and indirect taxation, customs duties and registration fees, in addition to procedures such as funding lines, exemptions or explanatory notes of previously established procedures.

Even though the draft law includes financial and economic data that are meant to explain the State's financial situation and to list the projects that were completed during the past year, the Parliament and the Ministry of Finance did not publish all the abovementioned documents; only the provisions of the finance law were made public. This can be considered as an impediment to the scrutiny of the Parliament, given the fact that the Assembly is ultimately voting on the financial and fiscal policies for the year to come, based on a set of hypotheses formulated by the Government (growth rate, investment ratio, etc). The Parliament is also responsible for the cost-effectiveness of the measures it has approved, be it by means of fiscal income or non-fiscal income, and for the loans it has approved in order to finance part of the budget or public projects.<sup>1</sup>

The discussions on the draft law were rather tense, as it included provisions that were criticized by several parties, notably the Tunisian General Labor Union; the Tunisian Union for Industry, Trade and Handicrafts; and representative bodies of several liberal professions (lawyers, doctors, pharmacists) who all rejected the draft law for various reasons.

The National Commission for Lawyers objected to the tax stamp levied on their documents, considering it as a way to tax work rather than income. It further noted that the articles studied by the Parliament were completely different from what the lawyers had suggested to the Government. The Order of Physicians refused to fill in the tax identification number on invoices and medical prescriptions that should be transmitted to the fiscal services as accounting documents; it stated that this would violate their obligation of professional secrecy. As for pharmacists, they refused to apply value added tax to medication which have no local equivalent. They noted that the Government had proposed an exemption of this tax and that this proposal had been approved at the Assembly. Hence, they requested that the Government determines a list of medication that would be exempt from VAT, by means of a regulatory text of the Minister of Health, and stated that this would allow for an accurate determination of the scope of the exemption. This is all the more true since the medicine that is sold is mostly generic, so that the list of medicine that are exempt from VAT could be easily drawn up.

The draft finance law for 2017 not only triggered the objection of liberal professionals, but was also opposed by the Tunisian General Labor Union, which pointed out to the discrepancy between the agreed salary increase and the amount budgeted for salaries.<sup>2</sup> The Union stated that it would not accept that the salaried workers be the only ones to bear the consequences of the policy of austerity proposed by the Government.

It is also worth noting that there is an apparent contradiction between the salary increases and the State's commitments towards the International Monetary Fund, especially in light of the Government's policy to control wages, which was initiated in 2013.<sup>3</sup> Yet, this did not prevent the Government from releasing the agreement on wage increases concluded with the Tunisian General Labor Union in 2015. Therefore, the MPs called on the Government to comply with the agreement concluded with the Tunisia Labor Union in order to avoid stirring social tensions and, in particular, the general strike that was scheduled on 8 December 2016, two days prior to the deadline for the adoption of the finance law. The strike was cancelled after the article on the income tax scale had been amended in plenary session.

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1 - See the percentage of the approved draft projects pertaining to loans and State financial pledges compared to the percentage of draft projects adopted during the Third ordinary session

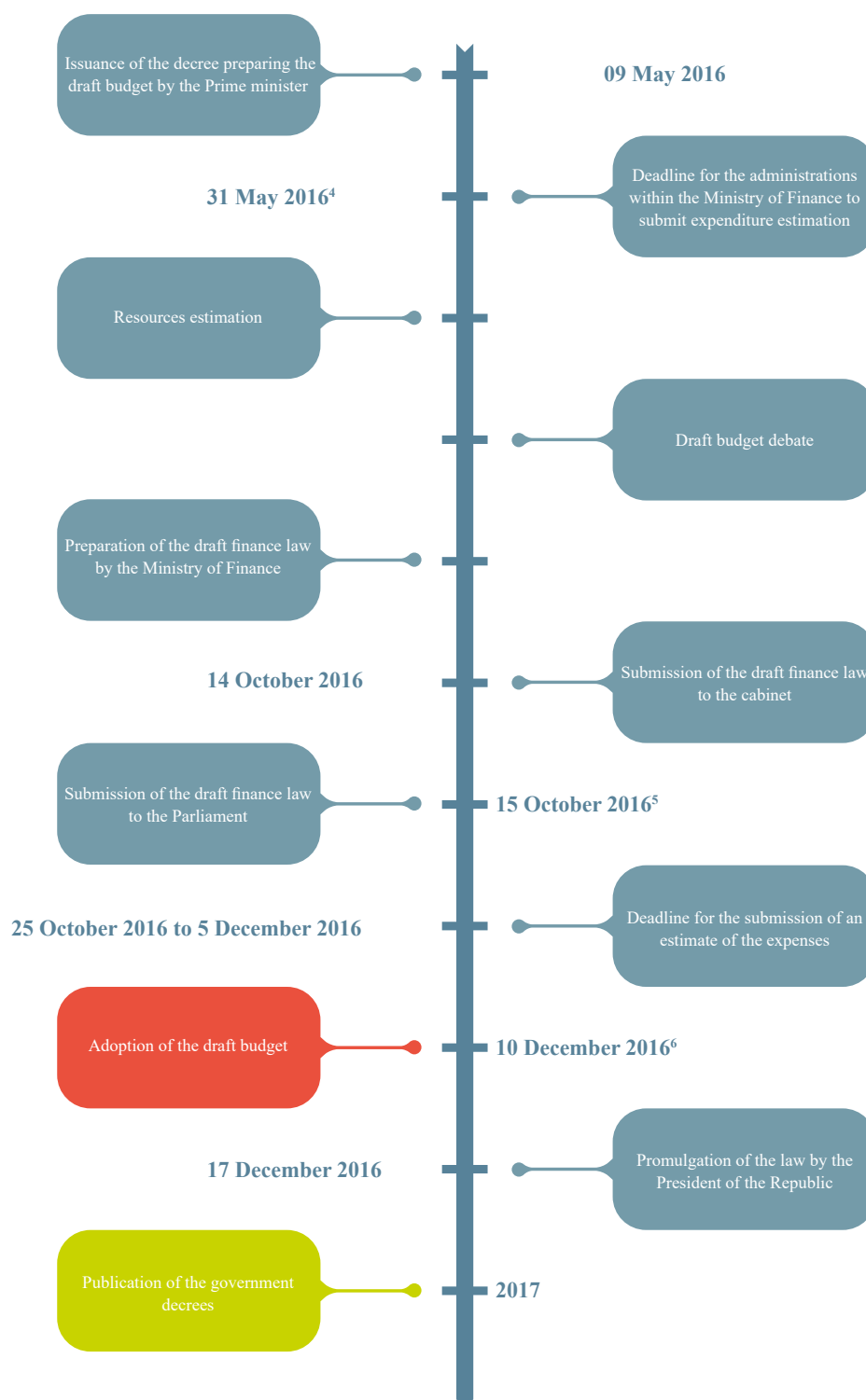
2 - Hearing of the Tunisian General Labor Union representatives on 1st of November 2016:

<https://majles.marsad.tn/2014/fr/chroniques/5818baecef441219832f987b>

3 - Chart illustrating the most important decisions taken by the successive governments under the wage bill control program /1339998069366349/<https://www.facebook.com/AIBawsala/photos/a.458257467540418.105738.394269643939201?type=3&theater?>

## Chapter 6 : Public Finance

Furthermore, during the committee discussions on the budget of the States' institutions, a number of members of Government and authorities stated – either explicitly or implicitly – their objection to the budgets allocated to them instead of defending their budgets as would have been theoretically expected of them.



1 - Deadline provided in the organic draft law of 13 May 2004.

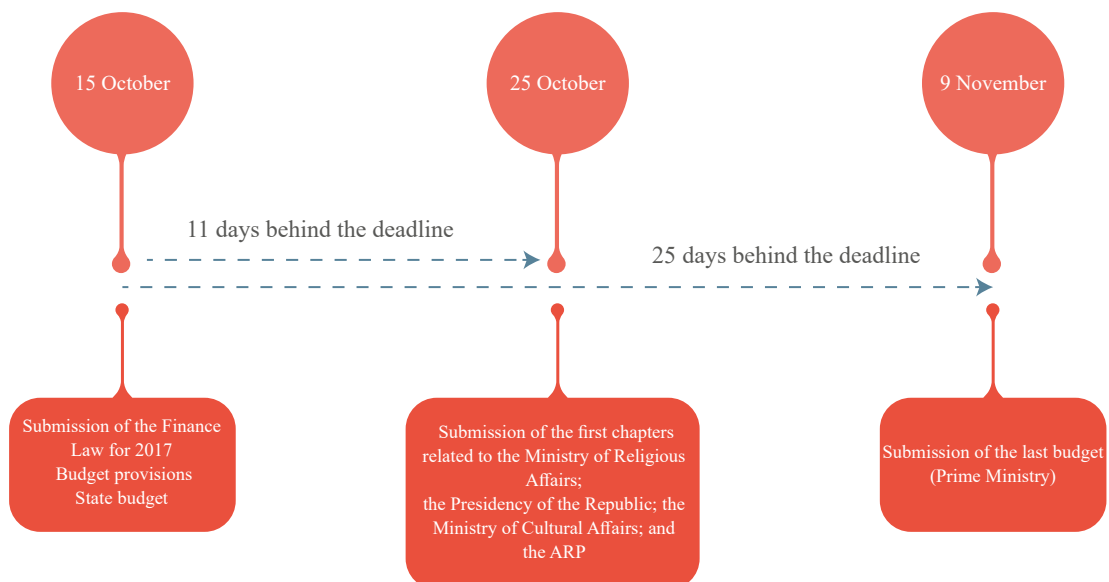
2 - As provided in the Constitution.

3 - [pas de texte de la FN dans le rapport en arabe]

During the review of the draft, several chapters were controversial, in particular:

- the chapter on income taxation for natural persons;
- the tax stamp applicable to lawyers;
- the request for the lifting of bank secrecy by the tax administration without the need for a judicial permission; and
- the refusal to remove the VAT exemption on medication that have no local equivalent.

In its recommendations on the finance law, Al Bawsala emphasized that the chapters which provide for the budget of the Ministries shall be submitted together with the draft law. In this regard, it is worth noting that the Ministry of Finance submitted the draft law on 15 October 2016, while the chapters related to each Ministry's budget were submitted later on. Moreover, the Bureau of the Parliament set a tight deadline – one week – for the review of all of the chapters, especially for the committees that were tasked with reviewing more than one chapter. As a result of this deadline, the process was practically unrealistic.



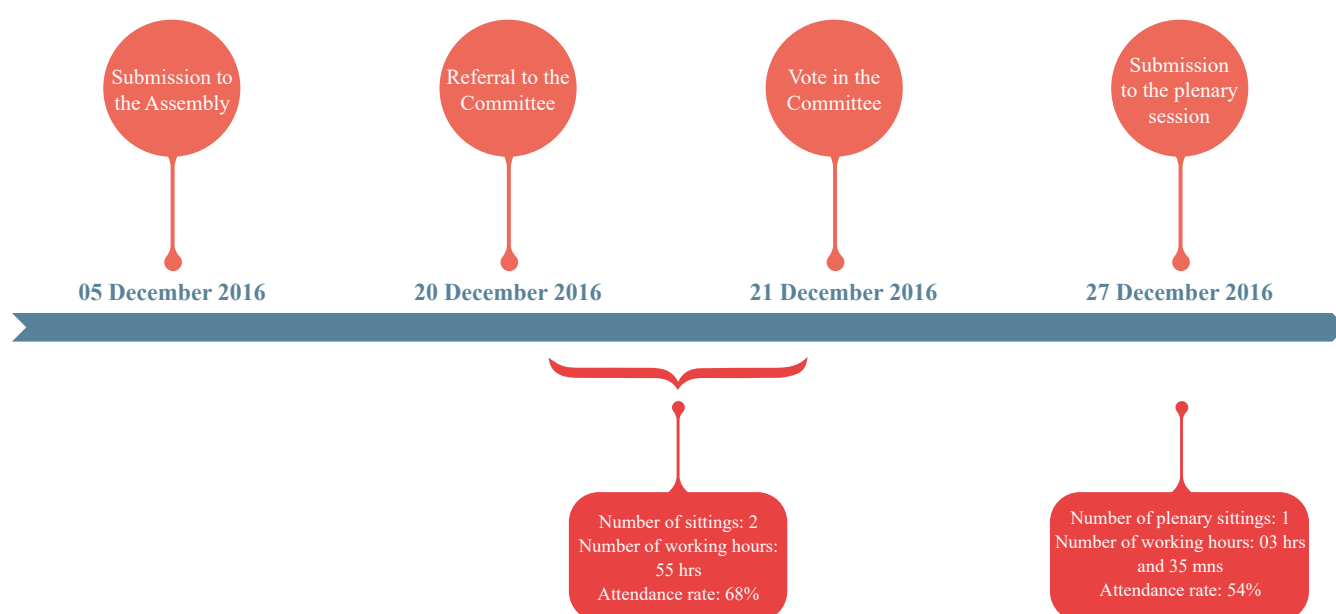
We may therefore conclude that the avoidance of a discussion on the budgets and the focus on the Government's performance underlines two important issues:

- MPs do not have full knowledge of the budgets and of the details of the resources and expenditures. This is probably due to the government's non-compliance with the legal deadlines for the submission of the budgets to the committees. ;
- MPs did not use the mechanisms of accountability that are provided in the Rules of Procedure of the Parliament; they could have held debate sessions with the Government, which is an opportunity to raise issues related to the Government's "poor" performance.

It is also worth noting that the finance law for 2017 was not submitted to the plenary session for debate in its entirety. The first plenary session (on the budget law) was held before the finance committee completed its review of the general provisions and before other committees completed the review of the budget chapters.

It should also be noted that during the discussions on the budget law for 2017, the Parliament used the 2016 complementary budget law for the estimation of the budget of a number of ministries but used the results of the implementation of last year's budget for others.

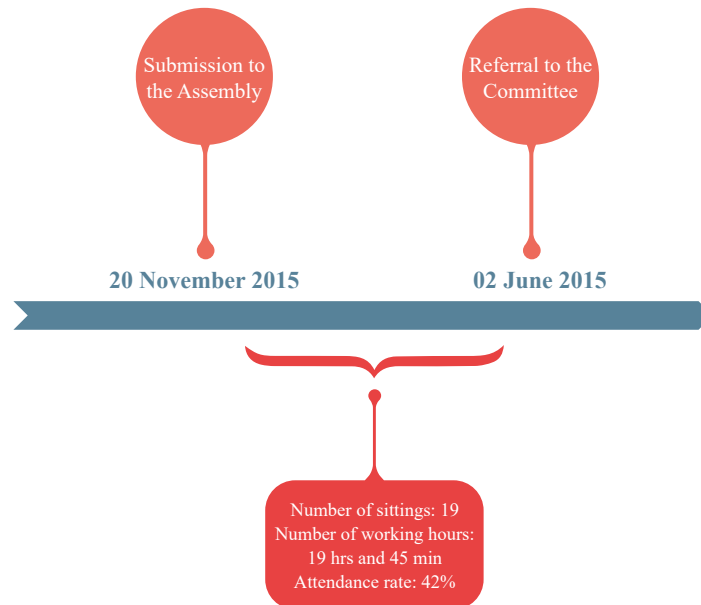
## 1.2. Draft supplementary finance law No. 80/2016 for 2016



After the Government submitted the draft finance law for 2017 on 15 October 2016, the Assembly immediately started discussing it and ratified it before the review of the complementary finance law for 2016, which was submitted on 5 December 2016 and was discussed in committee on 20-21 December 2016 and later in plenary session on 27 December 2016. Articles 1 to 8 of the finance law for 2016, as well as the additional two chapters on the enactment of the investment law from January 2017 to April 2017, were amended. Besides, the deadline of January 2017 was set for the application of the VAT system to medication.

The draft finance law for 2017 was discussed and ratified without taking into account the figures of the implementation of the 2016 budget or an assessment of its effects. This approach would inevitably lead to repeating the same mistakes and using flawed indices and hypotheses. Thus, similar issues to that which were faced in the implementation of the finance law for 2016 would arise, more particularly as regards government expenditures and the Government's ability to complete targeted projects and reforms.

## 2. Laws being considered in the Committees: draft organic law No. 71/2015 amending the organic budget law



The draft organic budget law was submitted by the Habib Essid government, and was one of the issues that was discussed during his vote of confidence, held on 4 February 2015. He presented the draft organic law as a way to “adopt the reforms needed to enhance good governance and transparency.”<sup>7</sup> The Government’s program included several structural reforms both in the social and economic fields. However, the budgetary reform needed to put an end to the excessive deficit of public funds and to comply with international standards and best practices was not implemented. Broadly speaking, the organic draft law aims at modernizing current public budgeting mechanisms – which no longer meet the requirements of an effective management of public funds – nor provide oversight mechanisms to help MPs monitor the execution of the budget.

The importance of the draft law stems from the major impact of its adoption, especially in terms of:

- clarity of the programs and missions included in the budget to get a better understanding of its content; and
- reinforcement of the function of the Assembly, during the preparation of the finance law, its discussion in the Committee, and after its adoption by way of a thorough control of the implementation of the budget.

7 - Deliberations of the ARP p 374 et seq. on 4 February 2015:

[http://www.arp.tn/site/servlet/Fichier?code\\_obj=88910&code\\_exp=1&langue=1](http://www.arp.tn/site/servlet/Fichier?code_obj=88910&code_exp=1&langue=1)

Moreover, the bill can be a key means to promote the financial independence of the constitutional institutions, especially the Parliament,<sup>8</sup> the Supreme Judicial Council and the independent constitutional bodies – the Constitutional Court in particular. A group of MPs belonging to different groups submitted a bill on the financial and administrative independence of the Parliament, in order to allow it to play its important legislative, representative and monitoring roles, as provided in the Constitution.

Despite the significance of this draft law for the set-up of a new budgetary structure – that would replace the current organic budget law that dates back to the 1960s<sup>9</sup> – the Finance Committee had merely started discussing it during the third ordinary session. The committee held 7 sittings, over 12 hours and 35 minutes; the attendance rate did not exceed 48%.

The Finance Committee held 4 hearing sessions with the Ministry of Finance; the Court of Auditors; the National Anti-Corruption Authority; and Al Bawsala. The Ministry of Finance explained that this law aims at implementing an goal-oriented management of the budget, enhancing transparency and good governance tools and reinforcing the accountability of public institutions. The Court of Auditors and the National Anti-Corruption Authority mentioned that it was difficult to perform their work pending adoption of this law, which is intended to safeguard their financial independence. Representatives of Al Bawsala asserted that this draft law would be of great importance, provided that: (i) the necessary amendments are made in order to reinforce the financial independence provided in the law; and (ii) the finance law does not depend on political choices which were made beforehand. The organization also underlined the need to harmonize the draft law with the contents of the draft Code on Local Authorities.

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8 - You can see the content of the Draft law and the different debates via this link:  
[1960A/Ja01360.pdf/http://www.legislation.tn/sites/default/files/journal-officiel/1960](http://www.legislation.tn/sites/default/files/journal-officiel/19601960A/Ja01360.pdf)

9 - Link to the Budget Organic Law:  
[1960A/Ja01360.pdf/http://www.legislation.tn/sites/default/files/journal-officiel/1960](http://www.legislation.tn/sites/default/files/journal-officiel/19601960A/Ja01360.pdf/http://www.legislation.tn/sites/default/files/journal-officiel/1960)

Party heard	Major observations and notes
<p>Initiator: Ministry of Finance</p>	<p>Mr. Mohamed Fadhel Abdelkafi, Minister of Finance, presented the different objectives of the Law, namely: implementation a goal-oriented budget management; compliance with international standards and adherence to internationally recognized practices; enhancement of flexibility and simplification of procedures; compliance with the constitutional provisions; reinforcement of the transparency and of the tools of good governance; provision of principles for proper debt management; and promotion of regional development.</p> <p>He also stressed the role of this legal text for the enhancement of transparency and good governance tools, and the monitoring of budget management, with a view to achieving defined goals and reaching desired indicators.</p>
<p>Court of Auditors</p>	<p>The Court of Auditors raised the issues that it faces in relation to the auditing of the management of public funds. It requested that the draft law provides for the submission of the finance law within a reasonable timeframe in order for it to be properly reviewed.</p> <p>The Court of Auditors also mentioned the restriction on its material resources, particularly its premises and requested financial independence from the executive branch.</p>
<p>National Anti-Corruption Authority</p>	<p>The Authority mentioned its financial difficulties and the lack of funding that is required for the performance of its work.</p> <p>The representatives also mentioned the poor political will to fight corruption, which is evidenced by the lack of funds allocated to the Authority, as well as the Financial and Economic Judiciary Pole and the Court of Auditors.</p>



Al Bawsala	<p>Al Bawsala presented its observations on the draft law along with several recommendations.<sup>10</sup> The recommendations focused on:</p> <ol style="list-style-type: none"> <li>1 the enhancement of the independence of the institutions referred to in the Constitution such as the Assembly, the Supreme Judicial Council, the Constitutional Court and the independent constitutional bodies. Al Bawsala suggested that they be removed from Article 18, to stress their financial independence;</li> <li>2 the necessity that the finance law does not depend on political choices that were made beforehand. This draft law reflects the State's general policy and the pledges and commitments mentioned in the development plans;</li> <li>3 the need to harmonize the draft law with the draft Code on Local Authorities, which grants funds from the State's budget. Besides, the creation of the High Council of Local Authorities which is contemplated in Chapter on Local Governance of the Constitution is not mentioned in the draft organic budget law. Further, in its proposal of amendment of Article 35, Al Bawsala stated the need to consult the High Council of Local Authorities, in order to assist the Council in balancing local resources with local burdens. The organization also proposed that a new article on the role of the High Council of Local Authorities be added in the draft finance law and in the complementary law.</li> </ol> <p>Al Bawsala further reminded the need to guarantee the right to access to information and ensure that all reports and information mentioned in Article 44 are published on the website of the Ministry of Finance. Al Bawsala also emphasized that it is not necessary for the Assembly to report the amendments brought to the draft Finance law to the executive branch, after it has been adopted (article 47).</p>
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10 - Link to the amendments' table presented by Al Bawsala  
<http://www.albawsala.com/uploads/documents/recommendations%20lob.pdf>

Members of the Finance Committee also mentioned several other points which have not been voted yet, such as the issue of a gender-based budget,<sup>11</sup> which led to an intense debate and generated controversial opinions among the members. According to many MPs, this concept is vague and is an ideological reference. Other members questioned the usefulness of a gender-based approach, considering that the Constitution provided for equality between men and women and that equality is an overarching principle.

The draft law could have contributed to the reform of public finance in order to lower the budget deficit; achieve better financial results, based on clear targets and programs; and, more importantly, break with the current budgetary structure based on resources and expenses. However, this law was not adopted. Similarly to the previous parliamentary session, the organic budget law was not part of the Assembly's priorities during the third parliamentary session: the Committee only started reviewing it two years after its submission.

It appears that the legislative branch was not eager to adopt this law, despite the fact that (i) it is key to ensure that the principles of efficiency and good governance are implemented ;and (ii) it would have provided the legislative branch with a much needed financial independence.

## II. The scrutiny function

As per the Assembly's scrutiny function over public finance, some MPs asked oral and written questions to the Ministers.

### 1. Oral questions

Very few oral questions dealt with public finance. Only two questions were asked to the Minister of Finance by Lamia Zribi and Fadhel Abdelkafi. Further, Haikel Belkacem from the Popular Front asked a question on the set-up of a fiscal police; Leila Oueslati from Ennahdha asked a question on the customs' restructuring plans.

### 2. Written questions

Marwan Felfal from Al-Horra (Machrou Tounes) and Imed Daimi from the Democratic group, asked two questions to the Minister of Finance, respectively on the situation of the Banque Franco-Tunisienne,<sup>12</sup> and on the outcome of an audit report on the company "Cactus" which had been confiscated.<sup>13</sup>

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11 - Article 17 of the organic budget law: «The Program officer shall ensure adopting a gender-based approach to determine the goals and the indicators.»

12 - Content of the oral question and response of the Minister :

[https://majles.marsad.tn/2014/controle\\_gouvernemental/59b01e4e4f24d06e676d3798](https://majles.marsad.tn/2014/controle_gouvernemental/59b01e4e4f24d06e676d3798)

13 - Content of the oral question and response of the Minister :

[https://majles.marsad.tn/2014/controle\\_gouvernemental/59ad768f4f24d06e676d3794](https://majles.marsad.tn/2014/controle_gouvernemental/59ad768f4f24d06e676d3794)

## Summary

During the debate on the budget for 2017, there were several political crises between the Government and several components of the society, notably liberal professionals such as doctors and lawyers, who objected to several taxation provisions included in the government plan; and the Tunisian General Labor Union, which requested that the Government honor its promise of increasing salaries.

These crises are mainly due to the conflicting undertakings given to various local and international actors by the successive Governments. Additionally, in view of the limited time allocated to the debate on the budget, the MPs did not have the opportunity to discuss the budgetary provisions and the chapters of the draft finance law.

These issues stem from the failure to implement a new legal framework for public finance, namely the organic budget law of 1967, which was amended in 2004.

However, many called for the reform of the organic budget law, both domestically and internationally. This reform would not only aim to implement a goal-oriented budgeting but, more importantly, would provide financial independence to the constitutional bodies, the Assembly and the Supreme Judicial Council. Despite this, it appears that the Assembly did not view reform of public finance as an urgent issue.

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# Chapter 7

Investment

07



The post-revolution phase of democratic transition in Tunisia coincided with a strong economic crisis, a decrease in the citizens' purchasing power and a decline in domestic and foreign investment. All these circumstances led to a significant decrease in growth.

The focus of the first government led by Youssef Chahed was on the economy. During the vote of confidence of his government on 26 August 2016,<sup>1</sup> he provided important data in relation to the economic crisis, namely:

- investment, particularly in the inland regions, declined in the last five years since the Revolution;
- production of phosphate decreased by 60%;
- growth decreased by 1.25%;
- Wages increased to reach 13.7 billion dinars, while production and productivity simultaneously decreased; and
- tourism revenues have decreased.

This situation led to a State budget deficit and resulted in a policy of indebtedness which increased the national debt to 62% of the GDP.

In this context, during this plenary session, the Prime Minister declared a state of “economic emergency”. He stressed that the return to normal growth rates, the recovery of production and the promotion of investment shall be the priorities of the Government in addition to the need to win the war on terror. To achieve these goals, the Prime Minister called on the Parliament to ratify the draft investment law and the five-year plan in preparation for the Tunisia 20-20 Investment Forum and announced his intention to refer a draft law on extraordinary provisions to the Parliament in order to accelerate the completion of “major projects”.

In light of the economic situation, a political momentum was required to promote growth. The Parliament's role was therefore key to accelerating the investment momentum. MPs considered several draft laws, the most important of which were:

- a draft law on the review of tax benefits;<sup>2</sup>
- a draft law on the development plan 2016-2020;<sup>3</sup>
- a draft law on international agricultural property;<sup>4</sup>
- a draft law on the change of agricultural land use;<sup>5</sup> and
- a draft law on exceptional provisions to accelerate the completion of “major projects.”<sup>6</sup>

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1 - Link to the plenary session held on August 26th, 2016:

<https://www.youtube.com/watch?v=euLyPb2MEPw>

2 - <https://majles.marsad.tn/2014/lois/573ef47512bdaa10c3358649/texte>

3 - <https://majles.marsad.tn/2014/lois/573eed6212bdaa10c335863c/texte>

4 - <https://majles.marsad.tn/2014/lois/58fcfcf8cf4412226ec752e5/texte>

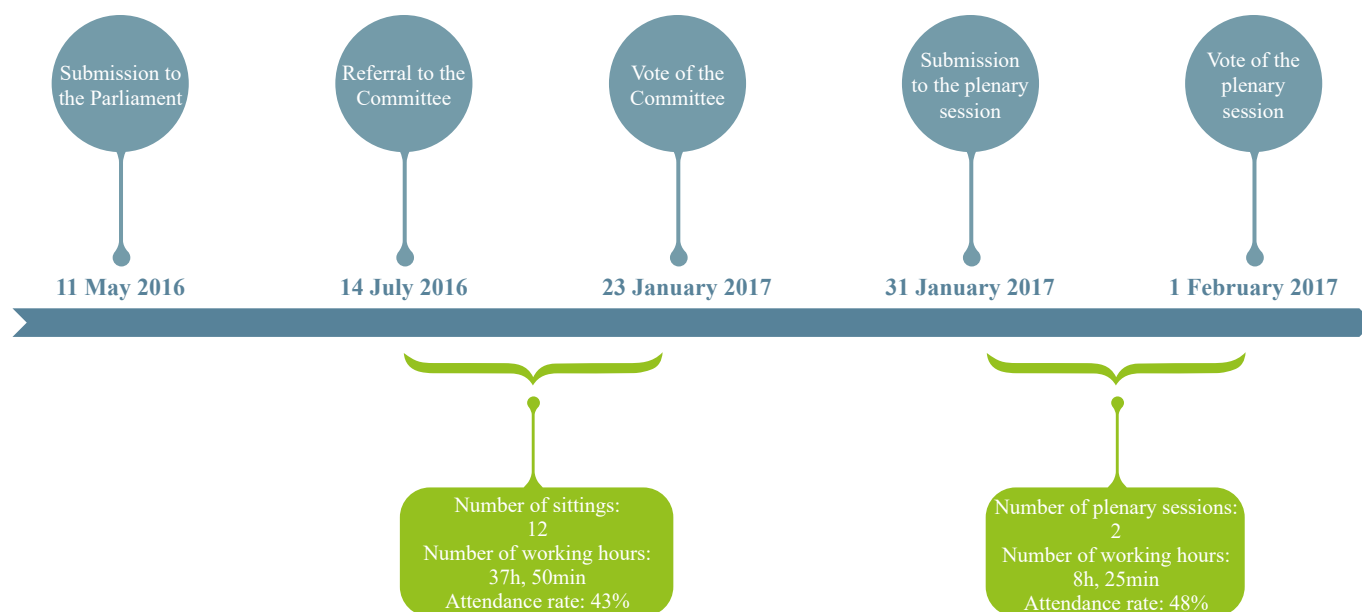
5 - <https://majles.marsad.tn/2014/lois/58a31a8fcf441237ac61ee82/texte>

6 - <https://majles.marsad.tn/2014/lois/57cd9f35cf44123b7174acec/texte>

## I. The legislative function

### 1. Draft laws adopted in plenary session

#### 1.1. Draft law No. 25/2016 on the review of tax benefits



The Committee postponed the review of this draft law because the review of the investment law – the latter was adopted prior to the former – was more urgent. The purpose of the draft law was to rationalize tax incentives, in the framework of the investment law which grants several financial benefits.

In the course of the Committee's review of the draft law, discussions focused on the need to implement a new vision for the granting of tax benefits related to investments.<sup>7</sup> MPs were of the opinion that the draft law does not address the issues of the current tax benefits system in Tunisia. MPs also highlighted the absence of an overall strategy to foster investment, such as the fight against corruption, customs and administration reform, digitization of transactions and simplification of procedures. MPs thus decided to grant tax benefits to four key areas for investment:

- investments in the agricultural sector;
- investments in regional development;
- investments in supporting sectors; and
- investments made by young people.

7 - Two links to the bulletin of discussion of various articles of the draft law:

<https://majles.marsad.tn/2014/chroniques/5877e7e4cf44121f3e63b06f>

<https://majles.marsad.tn/2014/chroniques/5877e7e4cf44121f3e63b06f>

**Investments in the agricultural sector**

- Tax exemption on profits of companies working in the agricultural sector for 10 years;
- Corporate tax rate set at 10%; and
- Tax exemption for companies working in the agricultural sector, which reinvest their profits in the original capital or raise their capital; in this context, the provisions on minimum taxation do not apply.

**Investments in regional development**

- 5-year tax exemption on profits of companies operating in regional development areas (first group) and 10-year tax exemption on profits of companies operating in the second group of regional development areas<sup>8</sup> ; and
- Corporate tax rate set at 10%.

**Investments in supporting sectors**

- This category of investments is mentioned in Article 70 of the Code of Personal Income Tax and Corporate Tax and encompasses investments made by institutions specializing in child care, elderly care, education, vocational training, entertainment, cultural production, recreation and health and hospital institutions;
- Corporate tax rate set at 10%.

**Investments made by young people**

- A number of benefits have been granted to institutions established and led by young people (aged around 30 years old) to make access to funding easier.

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8 - Regional development areas were divided into two groups based on the development index.



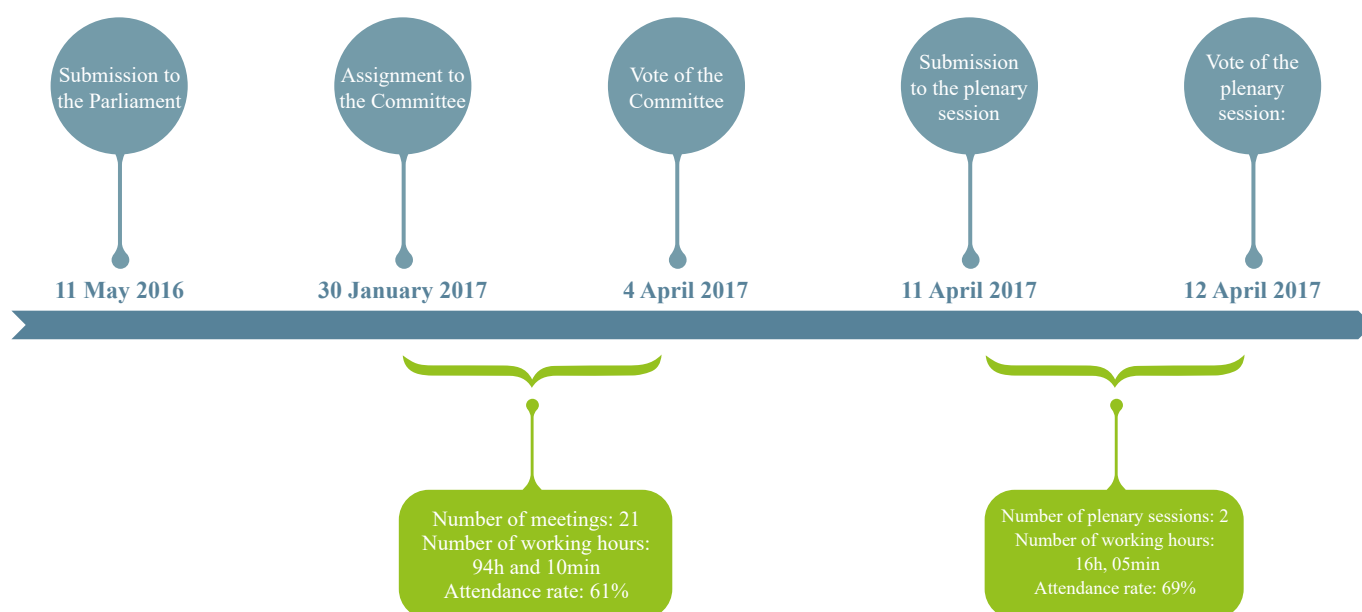
In addition to these incentives, the members of the Finance and Planning Committee granted the same advantages to investments which were renewed or extended. As a consequence, these provisions do not only apply to new investment projects. However, they removed the benefits that were granted to reinvested profits of companies that exclusively export goods and services.

During the review of the draft law, the Government extended the tax exemption deadline to 31 December 2019 instead of 31 December 2018. As a consequence, companies making investments prior to the extended tax exemption deadline benefit from these tax advantages.

Lamia Zribi, who was Minister of Finance at the time, submitted an amendment which provided that the enjoyment of tax benefits is conditional upon reinvestments outside of the company.

The draft law was finally voted; 101 MPs were in favor of the law and one MP objected.

## 1.2. Draft law No. 24/2016 on the ratification of the Development Plan (2016-2020)



The draft law was submitted to the Parliament on 11 May 2016. Although the draft law was referred to the Committee on Finance, Planning and Development, other parliamentary committees took part in the review of the draft and heard the ministers which were involved in the preparation of the Plan. The Industry, Energy, Natural Resources, Infrastructure and Environment Committee heard the Minister of Environment, the Minister of Equipment, the Minister of Industry and the Minister of Energy and Mines.

Table 1: Hearings within the Committees in relation to the draft Development Plan 2016-2020

Date	Committee	Person heard
8 February 2017	Committee on Industry, Energy, Natural Resources, Infrastructure and Environment	Minister of Industry and Trade
	Committee on Agriculture, Food Security, Trade and Related Services	- Minister of Agriculture, Water Resources and Fisheries - Minister of Industry and Trade
9 February 2017	Committee on Industry, Energy, Natural Resources, Infrastructure and Environment	- Minister of Local Affairs and Environment - Minister of Communication Technology and Digital Economy
	Committee on Agriculture, Food Security, Trade and Related Services	Minister of Equipment, Housing and Urban Planning
10 February 2017	Committee on Industry, Energy, Natural Resources, Infrastructure and Environment	- Minister of Local Affairs and Environment - Minister of Communication Technology and Digital Economy
13 February 2017	Committee on Agriculture, Food Security, Trade and Related Services	Minister of Tourism and Handicraft

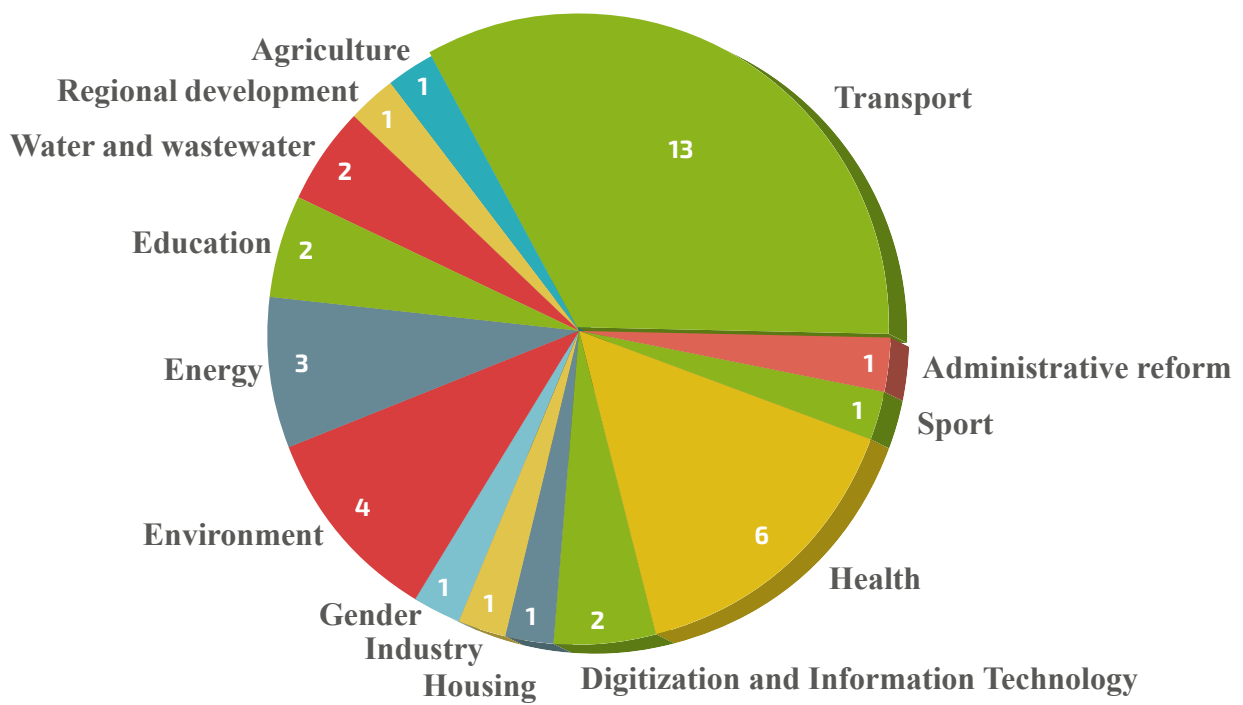
16 February 2017	Committee on Agriculture, Food Security, Trade and Related Services	Minister of Transport
	Committee on Health and Social Affairs	- Minister of Social Affairs - Minister for Women, Family and Childhood Affairs
	Committee on Youth, Cultural Affairs, Education and Scientific Research	Minister of Vocational Training and Employment
20 February 2017	Committee on Health and Social Affairs	Minister of Health
23 February 2017	Committee on the Regulation of Administration and Armed Forces Affairs	Minister of the Interior
2 March 2017	Committee on Youth and Cultural Affairs, Education and Scientific Research	- Minister of Higher Education and Scientific Research - Minister of Cultural Affairs

The Finance, Planning and Development Committee, which was tasked with the review of this draft law, also heard several organizations, in particular the Tunisian Confederation of Industry, Trade and Handicrafts, the Confederation of Tunisian Citizen Enterprises (CONNECT), the Tunisian Union of Agriculture and Fishing and the Tunisian Social Organization (SOLIDAR).

These organizations provided several notes and questions about the feasibility of this Plan and the extent to which it can be implemented by the administration and the institutions. Many of these organizations insisted on the lack of concreteness of several indicators; the most important of these indicators being the inclusion of a targeted growth rate of 5.5% in 2020.

During the discussion of the draft development plan, many MPs questioned the relevance of its ratification and the potential adverse consequences should it not be adopted, especially since several projects had already been presented during the Tunisia 2020 Forum, which had been held four months earlier, and had received funding in the form of loans.

#### Projects presented at the Investment Forum in accordance with the Development Plan 2016-2020



**Total: 41**

The plenary session was held on 11 April 2017 to ratify the five-year plan. Fadhel Abdelkafi, the Minister of Development and Investment at that time, announced that the Ministry changed several indicators in order to obtain a potential growth rate of 3.5% in 2020.

The Minister also admitted that the methodology followed during the preparation of the plan had not been adequate. The plan also took into account the requests of different regions. This led to the adoption of a

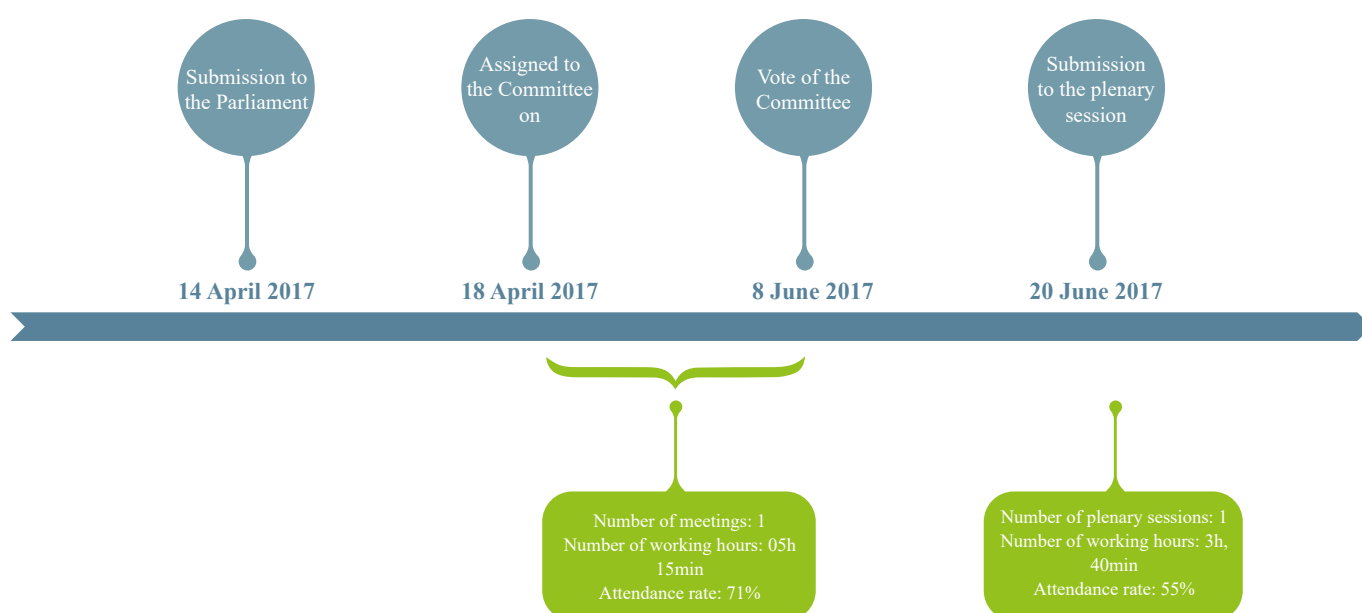
large number of projects which cost 65 billion dinars, but only 45 billion dinars were provided. He stressed that 70% of the funds of this Plan were allocated to development projects in inland regions.

68 MPs of various parliamentary groups intervened to criticize the draft plan of development and questioned its usefulness. Still, the draft law was finally adopted with 111 votes in its favor, 42 votes against and 4 abstentions.

## 2. Draft laws submitted by MPs

There are three ways through which a bill can be submitted to the Parliament. The bill can be submitted either by the executive branch, represented by the Presidency of the Government or the Presidency of the Republic, or by the legislative branch, in which case a minimum of 10 MPs shall submit it. However, in accordance with Article 62 of the Constitution, bills emanating from the executive branch have priority over those submitted by MPs. Articles 135, 136 and 137 of the Rules of procedure of the Parliament describe the process by which bills are submitted and withdrawn. The Parliament's Bureau shall assign them to the adequate committee for its review within fifteen days of their submission. In case of rejection, the bill cannot be re-introduced for a period of three months as from the date on which the bill had been rejected. The party which submitted the draft is entitled to withdraw it, unless it had been submitted to the Plenary. Withdrawal of a draft law shall be justified.

### 2.1. Draft law No. 45/2017 amending Law No. 21 of 13 February 1995 on international agricultural real estate



This bill was submitted by 10 MPs from the Ennahdha, Nidaa Tounes, Popular Front and Afek Tounes groups on 14 April 2017 and adopted in plenary on 20 June 2017.

MP	Parliamentary group
Mohamed Abdellaoui Sofien Toubal Abir Abdelli Mohamed Ramzi Khamis Mohamed Neceur Jbira	Nidaa Tounes
Meherzia Labidi Naoufel Jammali	Ennahdha
Mbarka Aouania Mongi Rahoui	Popular Front
Nozha Bayaoui	Afek Tounes

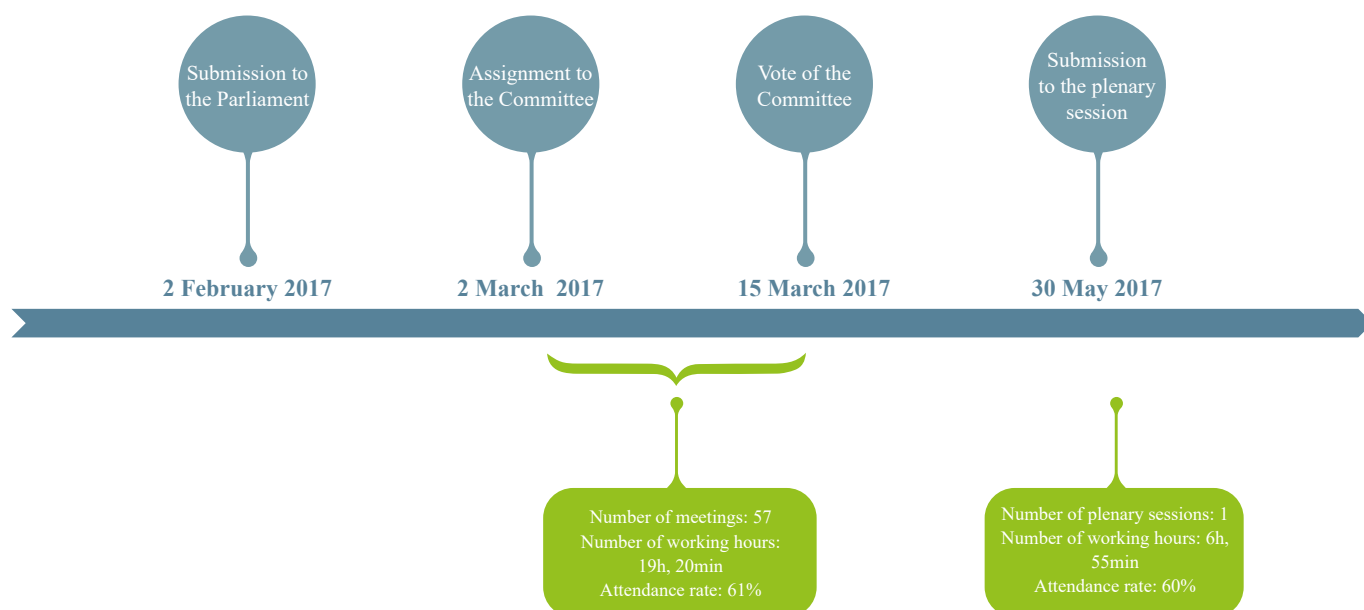
The aim of the law is to reform the status of the former cooperatives and address the issue of the transfer of agricultural property owned by these cooperatives. The purpose of this draft law was to facilitate the use of State-owned agricultural lands, in particular in view of the situation that arose in Jemna, where the Association for the Protection of the Oasis exploited State-owned land and invested the profits to create development projects in the region. However, these projects lacked any legal framework and the Government refused to provide them with one.<sup>9</sup> This experience gave rise to a general debate on the possibility to replicate this example in other territories and allow private initiatives to be carried out; and how to make them succeed and manage their revenues in compliance with laws and regulations.

Many MPs, such as Naoufel Jammali from Ennahdha and Abdennaceur Chouikh from Nidaa Tounes, considered this as positive initiative as it aims to liberate and to smooth the use of many similar lands. Many MPs also considered that such a step is important for the purpose of rationalizing investment in these lands, while others, such as Sameh Bouhaouel from the Free group of Machrouu Tounes and Hela Hammi from Ennahdha, warned against the risk of dispersal of ownership of State-owned lands and stressed that the general and comprehensive nature of the law must be complied with.

A single article was amended: a list of private health insurance companies was included within a government order. The whole bill was voted with 110 votes in its favor and 8 votes against.

9 - <https://www.babnet.net/cadredetail-132178.asp>

## 2.2. Draft law No. 22/2017 amending Law No. 47/2013 enacting exceptional provisions for procedures for the change of use of agricultural lands (state-owned land forest estate) and the development and urbanization of lands situated outside of the areas covered by the development plans and assigned to the implementation of the specific program for social housing and the creation of industrial zones<sup>10</sup>



The draft law was submitted by 12 MPs from Ennahdha.

### ■ List of MPs who submitted the draft law

MP	Parliamentary group
Noureddine Bhiri Badreddine Abdelkafi Bechir Lazzem Habib Khedher Imen Ben Mohamed Dalila Babba Ramzi Ben Fraj Samir Dilou Safia Khalfi Mahbouba Ben Dhifallah Mahmoud Gouiaa Naoufel Jammali	Ennahdha

10 - <https://majles.marsad.tn/2014/lois/58a31a8fcf441237ac61ee82/texte>

The Committee on Industry, Energy, Natural Resources, Infrastructure and the Environment reviewed the draft. However, there was a dispute between the abovementioned Committee and the Committee on Agriculture, Food Security, Trade and Related Services which objected to the review of the Committee on Industry and stated that the draft law fell within its competence.

<p><b>The jurisdiction of the Committee on Agriculture, Food Security, Trade and Related Services covers draft laws, bills and issues related to:</b></p>	<p><b>The jurisdiction of the Committee on Industry, Energy, Natural Resources, Infrastructure and the Environment covers draft laws, bills and issues related to:</b></p>
<ul style="list-style-type: none"> <li>● agriculture, fishing and food security;</li> <li>● water and forests;</li> <li>● traditional industries;</li> <li>● trade and prices;</li> <li>● transport and communications;</li> <li>● tourism; and</li> <li>● food processing industries.</li> </ul>	<ul style="list-style-type: none"> <li>● industry, energy and mines;</li> <li>● natural resources;</li> <li>● equipment and housing;</li> <li>● land development;</li> <li>● new technology; and</li> <li>● the environment.</li> </ul>





### Article 88 of the Rules of Procedure of the Parliament

Each committee is responsible for the review of draft laws or bills and any other matter that fall within its jurisdiction.

It also examines the questions that the plenary assembly decides to submit to it.



### Article 90 of the Rules of Procedure of the Parliament

Any committee may, after informing the Parliament's Bureau, ask one of the other committees for its opinion on the aspects that relate to its jurisdiction, in order to take it into consideration during its deliberations. The Bureau sets the deadline for the latter committee to fulfill its tasks.

Only one report emanating from the committee to which the draft law/bill had been initially submitted, which shall include the information provided to it by other committees, shall be submitted to the plenary session.

The Agriculture Committee subsequently submitted its advisory opinion on the bill and referred it to the Industry Committee.

The draft law aims to extend the scope of the exceptional provisions governing the procedures for the change of the use of agricultural and forest lands in order to create industrial areas and implement a specific program for social housing. The need for an extension of the exceptional provisions is due to several reasons – mainly the delay in the issuance of the related governmental decrees, which led to the failure to finalize the creation of 81 industrial zones.

#### The bill covers several issues, the most important of which are:

- the extension of the lands covered by these provisions, in order to cover all areas of 50 hectares and below; and
- the retroactivity of the law from 1 November 2016 in order to avoid a gap between the expiry of the previous legal provisions and the entry into force of the provisions of the bill.

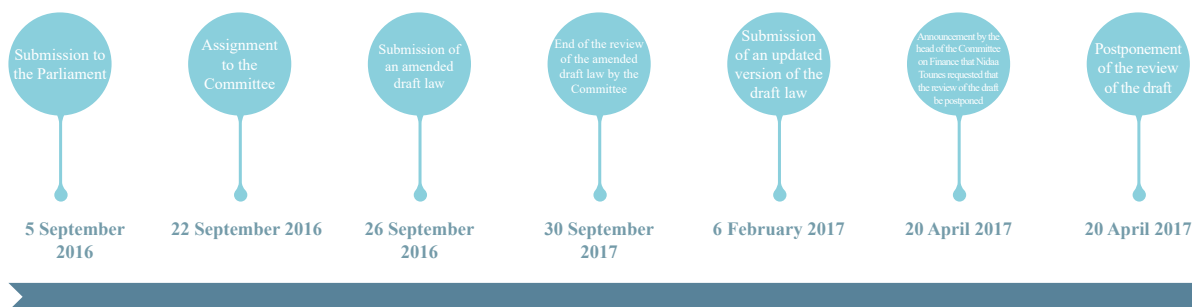
On 30 May 2017, during the discussion in the plenary session, many MPs, such as Chaker Ayadi from Nidaa Tounes and Imed Daimi from the Democratic group, discussed the impact of the extension of the exceptional provisions. They considered these provisions as an “exception to exceptions” which paves the way for bribery. They called for a fundamental change in the law and for a simplification of procedures while ensuring transparency in order to avoid all forms of abuse. On the other hand, MPs from Ennahdha, like Ajmi Lourimi and Jamila Ksiksi, said that the bill has important economic and social dimensions and will contribute to the creation of an industrial structure and provide new job opportunities.

Before the vote on the bill, five MPs raised a point of order to criticize what they called the “double standards” policy adopted by the Parliament’s Bureau and “its review of the bills submitted by some parliamentary groups while others are set aside”. In this context, Mongi Harbaoui from Nidaa Tounes and Sahbi Atig from Ennahdha stressed that the committees are responsible for prioritizing legislative initiatives and that the Parliament’s Bureau has nothing to do with this matter.

The bill was voted on 30 May 2017, with 86 votes in its favor and 48 votes against. This bill was the first legislative initiative emanating from MPs that was ratified by the Parliament during the third parliamentary session.

### 3. Draft laws which were not adopted

#### 3.1. Draft law No. 66/2016 on exceptional provisions for the acceleration of major projects



Number of meetings: 7  
 Number of working hours: 26h, 35min  
 Attendance rate: 60%

The draft law is part of the Government's commitment to promote investment through an appropriate structural and legal framework. This legislative initiative was announced by Prime Minister Youssef Chahed at the plenary session that was devoted to the vote of confidence of his government.

The draft law was submitted to the Parliament on 5 September 2016. The Finance Committee began its review on 22 September 2016 and several points of conflict were raised. The most important issue pertained to whether the draft only concerned major public projects or if it also encompassed private projects.

The Government submitted three copies of the bill. An amended bill was submitted on 26 September 2016. The Committee reviewed it until 30 September 2016 and a third version of the draft was submitted on 6 February 2017. However, the amended version of the bill was not reviewed: Mongi Rahoui, the chairman of the Finance Committee, said during a meeting on 20 April 2017 that the request from the Nidaa Tounes group to postpone the review of the bill had been granted.

During the general meeting dedicated to the vote of confidence to the new government members,<sup>11</sup> the head of the Government reiterated his request that the adoption of the bill be expedited. Still, nothing happened and none of the parliamentary groups requested that the bill be reviewed.

### **3.2. Draft bills on loans**

During the third parliamentary session, 27 draft bills related to loan agreements were referred to the Finance Committee. 24 of them were adopted, despite the fact that a majority of MPs, during the plenary sessions, stressed the need to create wealth and reduce debt, especially since debts exceeded 25% of the State's resources.

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11 - Summary of the speech of Prime Minister Youssef Chahed in the plenary session devoted to the cabinet reshuffle on 9 November 2017:

<https://www.facebook.com/AlBawsala/photos/a.458257467540418.105738.394269643939201/1646175848748568/?type=3&theater>

Draft bill	Date of filing	Date of adoption	Amount of the loan
Draft bill No. 67/2016 approving the loan agreement concluded in Tunis on 21 July 2016 between the Tunisian Government and the Kuwait Fund for Arab Economic Development to contribute to the financing of the project on “Rehabilitation and Development of Drinking Water Systems in the Republic of Tunisia”	21 September 2016	25 November 2016	22 million KWD
Draft bill No. 68/2016 approving the financial cooperation agreement for 2014 between the Tunisian Government and the Government of the Federal Republic of Germany, concluded in Tunis on 22 July 2016	21 September 2016	14 March 2017	119 Million Euros
Draft bill No. 79/2016 approving the loan agreement concluded on 8 November 2016 between the Republic of Tunisia and the African Development Bank for the financing of the Integrated Regional Development Support Program	1 December 2016	8 December 2016	180 Million Euros
Draft bill No. 03/2017 approving the agreement on the State’s guarantee for the supplemental loan concluded on 30 November 2016 between the National Sanitation Utility and the International Bank for Reconstruction and Development for the contribution to the financing of the Northern Tunis Project	25 January 2017	29 March 2017	16 200 000 Euros
Draft bill No. 02/2017 approving the loan agreement signed on 28 November 2017 between the Tunisian Government and the French Development Agency to finance the project related to the adaptation of rural areas to climate change	23 January 2017	29 March 2017	50 Million Euros

## Chapter 7 : Investment

Draft bill	Date of filing	Date of adoption	Amount of the loan
Draft bill No. 04/2017 approving the loan agreement signed on 30 November 2016 between the Tunisian Government and the African Development Bank to contribute to the financing of the rural drinking water supply program (phase II)	26 January 2017	29 March 2017	123 700 000 Euros
Draft bill No. 05/2017 approving the loan agreement and its supplement signed respectively on 16 October 2017 and 27 October 2017 between the Ministry of Finance and the Dutch Bank ABN-AMRO to finance the acquisition of two navy ships for the Ministry of National Defense	28 January 2017	15 March 2017	376 64 605 Euros
Draft bill No. 06/2017 approving the guarantee on first demand of 28 November 2016 between the Tunisian Government and the French Development Agency concerning the loan granted to the Tunisian Chemical Group to finance the environmental rehabilitation program	26 January 2017	14 March 2017	45 Million Euros
Draft bill No. 07/2017 approving the guarantee on first demand of 28 November 2016 between the Tunisian Government and the French Development Agency regarding the loan granted to the National Sanitation Utility to finance the first installment of the pollution reduction program in the Mediterranean	28 January 2017	19 April 2017	60 Million Euros
Draft bill No. 08/2017 approving a memorandum of understanding for Tunisian-Italian cooperation for 2014-2016 between the Tunisian and the Italian Governments and the exchange of memoranda on an additional loan to finance the balance of payments support program	1 February 2017	25 April 2017	50 Million Dinars

Draft bill	Date of filing	Date of adoption	Amount of the loan
Draft bill No. 10/2017 approving the guarantee on first demand of 29 November 2016 between the Tunisian Government and the European Investment Bank concerning the loan granted to the National Sanitation Utility for the financing of the program for the reduction of pollution in the Mediterranean	3 February 2017	19 April 2017	69 600 000 Euros
Draft bill No. 12/2017 approving the guarantee on first demand of 29 November 2016 between the Tunisian Government and the European Investment Bank concerning the loan granted to the Tunisian Electricity and Gas Company for the financing of the electricity transmission project	3 February 2017	12 April 2017	46 500 000 Euros
Draft bill No. 13/2017 approving the loan agreement signed on 29 November 2016 between the Tunisian Government and the German Reconstruction Credit Institute to finance the project for the establishment of a desalination plant in Zarat, Gabes	3 February 2017	19 April 2017	82 Million Euros
Draft bill No. 16/2017 approving the return to the State of the bond issued by the Central Bank of Tunisia to the international financial market, on the American financial market, together with the guarantee of the US Agency for International Development, which is the subject-matter of agreements concluded between the Central Bank of Tunisia and several foreign financial institutions	3 February 2017	25 April 2017	500 Million Dollars
Draft bill No. 17/2017 approving a financing contract concluded on 29 November 2016 between the Tunisian Government and the European Investment Bank to contribute to the financing of the «Bizerte Bridge»	3 February 2017	25 April 2017	23 Million Euros

## Chapter 7 : Investment

Draft bill	Date of filing	Date of adoption	Amount of the loan
Draft bill No. 18/2017 approving the guarantee contract concluded on 29 November 2016 between the Tunisian Government and the European Bank for Reconstruction and Development regarding the loan granted to the Tunisian Electricity and Gas Company to contribute to the financing of the project concerning the transport of electricity	3 February 2017	12 April 2017	46 500 000 Euros
Draft bill No. 26/2017 approving the Financial Cooperation Agreement for 2015 between the Tunisian Government and the Government of the Federal Republic of Germany	28 February 2017	25 April 2017	194.95 Million Dinars
Draft bill No. 29/2017 approving the guarantee agreement concluded on 13 February 2017 between the Tunisian Government and a group of foreign banks relating to the loan granted to the Tunisian Electricity and Gas Company to finance the project for the construction of a power plant with two gas turbines in Bouchama	2 March 2017	29 March 2017	99 444 122.061 Euros
Draft bill No. 43/2017 approving the loan agreement concluded on 26 January 2017 between the Republic of Tunisia and the International Fund for Agricultural Development to finance the project for the development of agricultural systems for local development in the governorate of Siliana	6 April 2017	-----	21 600 000 Euros

Draft bill	Date of filing	Date of adoption	Amount of the loan
Draft organic law No. 49/2017 approving the exchange of memoranda between the Tunisian Government and the Government of the Federal Republic of Germany concerning financial and technical cooperation and the guarantee agreement concluded on 29 November 2016 concerning the loan executed between the Tunisian Electricity and Gas Company and the German Reconstruction Credit Institute (KfW) for the financing of the photovoltaic plant project in Tozeur 1	5 May 2017	13 June 2017	11 500 000 Euros
Draft law No. 51/2017 approving the loan agreement signed on 18 April 2017 between the Tunisian Government and the Arab Fund for Economic and Social Development for the financing of the construction of bridges on classified roads	24 May 2017	13 June 2017	20 Million KWD
Draft law No. 53/2017 approving the loan agreement of 22 April 2017 between the Republic of Tunisia and the International Bank for Reconstruction and Development for the financing of the integrated management project in under-developed regions	24 May 2017	20 June 2017	93 100 000 Euros
Draft law No. 59/2017 approving the loan agreement of 13 June 2017 between the Republic of Tunisia and the International Bank for Reconstruction and Development for the financing of the investment climate and entrepreneurship program	7 July 2017	24 July 2017	457.2 Million Euros
Draft law No. 60/2017 approving the memorandum of understanding and the loan agreement concluded on 27 April 2017 between the Tunisian Government and the European Union	7 July 2017	27 July 2017	500 Million Euros



## II- The supervisory function

With regard to the supervisory function of the Parliament in relation to the issue of investment, the MPs addressed many verbal and written questions to several ministers.

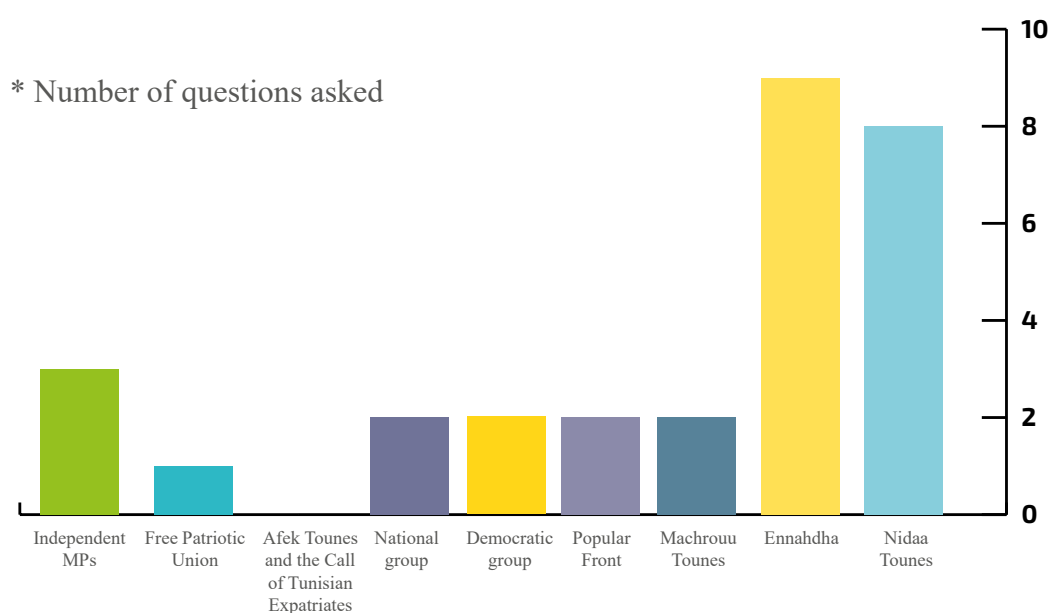
### 1. Oral questions

Several oral questions were asked to the Minister of Finance, the Minister of Industry and the Minister of Equipment during the plenary session.

Some MPs also discussed the effectiveness of the law on tax benefits which was adopted during the third parliamentary session.

Minister	Number of oral questions
Minister of Finance	21
Minister of Industry	1
Minister of Equipment	7

In the below graph, the oral questions asked to Ministers are divided between parliamentary groups.



## 2. Written questions

Several written questions were asked to the Ministers. Below is a table listing these questions.

MP	Group	Minister	Question's topic
Sahbi Ben Fraj	Free group	Minister of Finance	Appointment of the Managing Directors of both the Bank of Tunisia and the Emirates (BTE) and the Tunisian Libyan Bank (BTL)
Samia Abbou	Democratic group	Minister of Development and Investment	Consultations and studies carried out for the benefit of the Ministry and public establishments and institutions under the supervision of the Ministry
Mohamed Fadhel Ben Omrane	Nidaa Tounes	Minister of Finance and Minister of Development and Investment	The situation of the Tunisian Company for the Insurance of Foreign Trade and the General Insurance Authority
Faycel Tebini	Independent	Minister of Tourism	Request for a list of grants awarded to the Tunisian State during the period from January 2011 to July 2017
Imed Daimi	Democratic group		The "Lella Mariem" project in Zarzis

## 3. Supervisory role within the Committees

In addition to the oral and written questions, the MPs held a number of committee meetings that aimed at supervising the Government's performance.

On 21 February 2017, the Finance Committee heard the Minister of Development and Investment, Fadhel Abdelkafi, who had been freshly appointed at that time.<sup>12</sup> The hearing dealt with the government orders related to the investment law which had been adopted and which was about to be published by the Minister. The debate revolved around the content of these orders, in particular the fact that the Minister had decided to change the method of calculation of the index of development, which would now be based on regions instead of governorates, as agreed with former Minister Yassine Brahim during the review of the investment law in the Finance Committee on 15 July 2016.<sup>13</sup>

12 - Link to the report of the meeting:

<https://majles.marsad.tn/2014/chroniques/58ac63d9cf44124d43b31f46>

13 - Link to the report of the meeting:

<https://majles.marsad.tn/2014/chroniques/5788b1a4cf441234909a8384>

The calculation of the development index is important because this index is used to classify regions and governorates and award them financial grants for their investments. During the review of the investment law, the former minister Yassine Brahim agreed with the MPs that the calculation of the development index would be based on governorates instead of regions; this ensured that many governorates would receive financial grants. However, after his appointment on 20 August 2016, the new minister, Fadhel Abdelkafi, decided to change the method of calculation of the development index and decided that it would be based on regions. This new method of calculation was incorporated in the government orders related to the investment law.<sup>14</sup>

During the discussion in the Finance Committee on 21 February 2017, the MPs stressed that it was critical that the agreement concluded with the former Minister be enforced in order to ensure the continuity of the State. The Minister of Development and Investment, however, pointed out that the change of the method of calculation was due to several reasons, in particular the weakness of the State's financial capabilities. He stated that it was not possible to give financial grants to all the governorates that have a weak development index.<sup>15</sup>

## Summary

The Parliament gave priority to the issue of investment by way of the adoption of two draft laws that had been submitted by MPs. These two bills were the only initiatives which were adopted in the plenary session; this underlines the importance of the legislative role in finding solutions to promote investment.

On the other hand, the delay in the adoption of the 2016-2020 development plan and the fact that the law on "economic emergency" was not reviewed during the third parliamentary session raise multiple questions, in particular, the Parliament's will to contribute to the promotion of investment and the extent to which the Government and its majority in the Parliament are in line on investment policies.

This is all the more true since Youssef Chahed insisted on the need to adopt this law in order to accelerate the completion of major projects.

In addition, as a result of the adoption of 24 loan agreements, the debt ratio increased to 63.7% and the budgetary deficit increased to 5.4% of the GDP in 2017.

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14 - Text of the Investment Law:

<http://www.legislation.tn/sites/default/files/fraction-journal>

15 - Hearing of the Minister of Development and Investment regarding the government orders related to the Investment Law on 21 February 2017:

<https://majles.marsad.tn/2014/fr/chroniques/58ac63d9cf44124d43b31f46>

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# Chapter 8

## Social Security and Essential Services

08



Social issues are at the core of the Carthage Agreement which incorporates a pledge to “take extensive and comprehensive measures to recover fiscal debts and the debts of the social funds”. The document also called for the “set-up of a plan to achieve the synergy between education and vocational training”, “the mainstreaming of pre-school education” and “the implementation of positive discrimination in education”.<sup>1</sup>

In order to translate these principles into practice, the Parliament had to review and vote laws that would address social issues, such as the reform of the social funds, the promotion of health, the improvement of education and of other vital sectors.

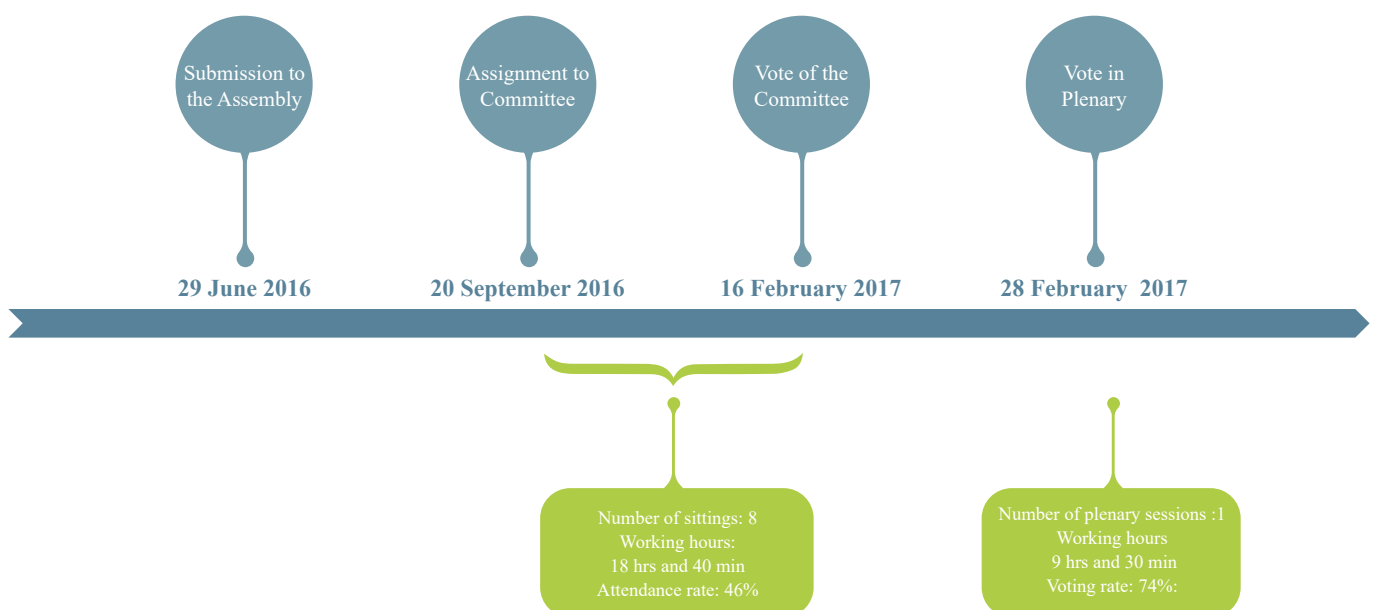
The Government stated that it had involved the Tunisian General Labor Union in the preparation of the draft bills related to social issues, but the Labor Union denied this statement, and stated that the Government had not implemented a participatory approach – despite the fact that the Union signed the Carthage Agreement.

The Labor Union announced that it has strong reservations on the social package that had been prepared by the Government.

## I. The legislative function

### 1. Draft laws which were adopted

#### 1.1. Draft Law No. 49/2016 on specific dispositions related to the recognition of the right to access to initial vocational training<sup>2</sup>



1 - <https://www.babnet.net/cadredetail-128240.asp>

2 - <https://majles.marsad.tn/2014/lois/578f917bcf441205fde3afb8>

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**Chapter 8 : Social Security and Essential Services**

Pursuant to its explanatory note,<sup>3</sup> this draft law aims to recognize a right to vocational training, whose implementation is guaranteed by the State, in order to reduce the number of school dropouts. The Minister of Vocational Training and Employment explained during the hearing at the Committee of Youth, Culture and Education that the draft law is in line with the recognition of the economic and social rights that are referred to in Articles 39 and 40 of the Constitution. The Minister also explained that this procedure is applicable to those who have dropped out of school under the age of 15, and that it aims mainly to:

- counter school drop-out;
- develop a clear strategy to integrate the early school leavers;
- establish an institutional framework to reintegrate dropouts; and
- provide psychosocial mentoring to these youngsters.

The representatives of the Union for Industry, Trade and Handicrafts called for the recognition of the vocational training system instead of viewing it as an equivalent to academic failure, and stressed the need to link learning and training.

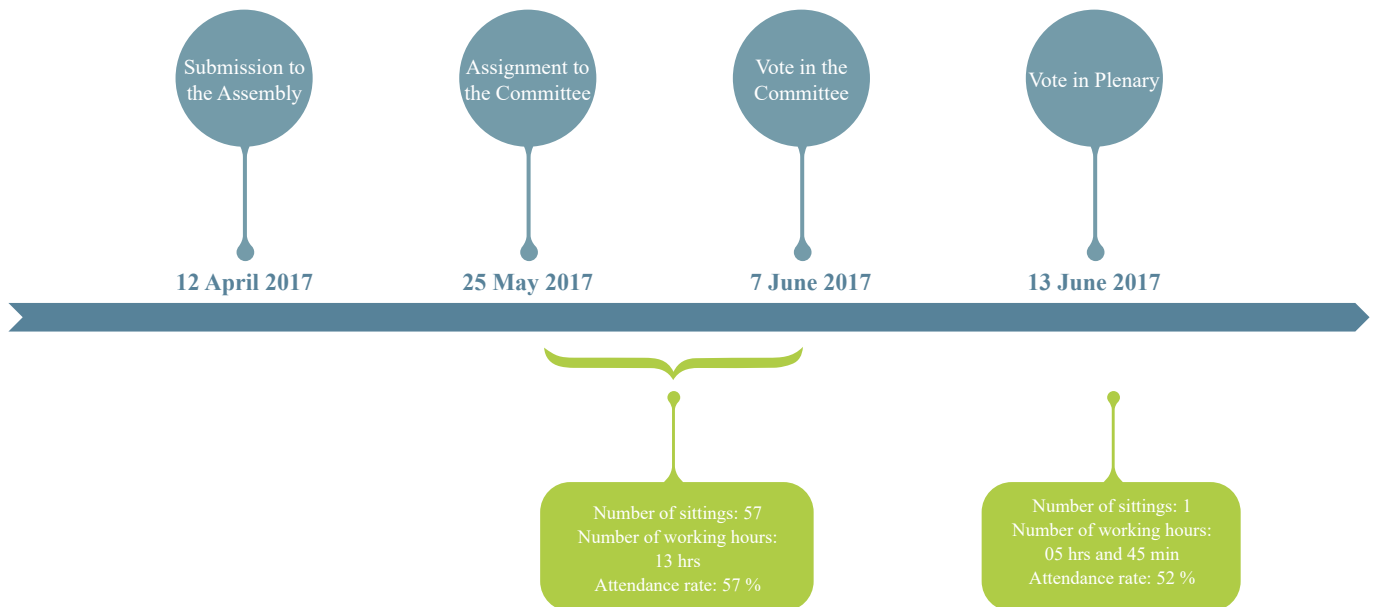
During the discussion of the draft law, the MPs discussed the following points:

- **Article 2:** This article provides early school leavers with the possibility to either join the preparatory stage of vocational training for youth under the age of 16, or to join vocational training for those aged between 16 and 18 years. During the discussion, the head of the Committee, Tarek Barraq mentioned the increase in the rate of early school leavers in the 13–14 age segment (i.e. students in their early years of basic education) who lack linguistic and many other skills. This required adding a paragraph stating that school leavers under the age of 16 should be provided with the opportunity to acquire basic skills in the course of their enrollment in vocational training.
- **Article 3:** The MPs discussed the issue of fines imposed on legal guardians who fail to enroll their children in the vocational training centers, upon their dropping out of school. The Committee's advisor called for the increase of the fine from 200 to 2000 dinars, which caused many MPs to object. These MPs stated that this would be a costly fine that legal guardians would not be able to afford - especially since school leavers usually come from poor families. MPs also pointed out to the need to inform legal guardians, by way of a written document, stating that their children should integrate into professional life.

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3 - <https://majles.marsad.tn/2014/docs/57975dc0cf441203a53cfd6>

## 1.2. Draft organic law No. 46/2017 on exceptional provisions for retirement before the legal retirement age in public service



Pursuant to its explanatory note,<sup>4</sup> the draft law aims at reducing the inflated number of employees in the public service sector (639,000 public servants) in a way that redistributes the staff and that reduces the wage payroll (which amounted to 14% of the GDP).

During the hearing session at the Committee on the organization of the administration, the Minister in charge of Major Reforms noted that this draft bill does not contradict the draft bill that raises the retirement age, nor does it covers private sector employees. He also confirmed that the request for retirement before the legal retirement age is submitted to the supervising ministry and then to the Chief of Government.

The Minister in charge of the relations with the Parliament explained, during a plenary session devoted to the vote of this draft bill, that about 7,000 employees would be able to retire, therefore saving a hundred million dinars. He also explained that the early retirement would take place on two phases: (i) the approval of the Department; and (ii) the approval of a committee affiliated to the Prime Ministry, to prevent the retirement of skilled staff working in the Tunisian administration.

The representatives of the Tunisian General Labor Union stated that the slow reform of the administration is not due to the large number of employees but to the Government's reluctance to relocate them to different departments. The Union also stated that the early retirement procedure would also lead to the retirement of skilled individuals.<sup>5</sup> They also flagged that the Government did neither consult the Union during the preparation of this bill, nor for the purpose of the reform of the public sector in general. The representatives of the Workers' Union also pointed out that the ultimate decision, when it comes to early retirement, should be that of the supervising Ministry and not that of the newly-formed Committee within the administration

4 - <https://majles.marsad.tn/2014/docs/5919a42acf4412226ec753b2>

5 - <https://majles.marsad.tn/2014/lois/5919a19dcf4412226ec753b0/chroniques>

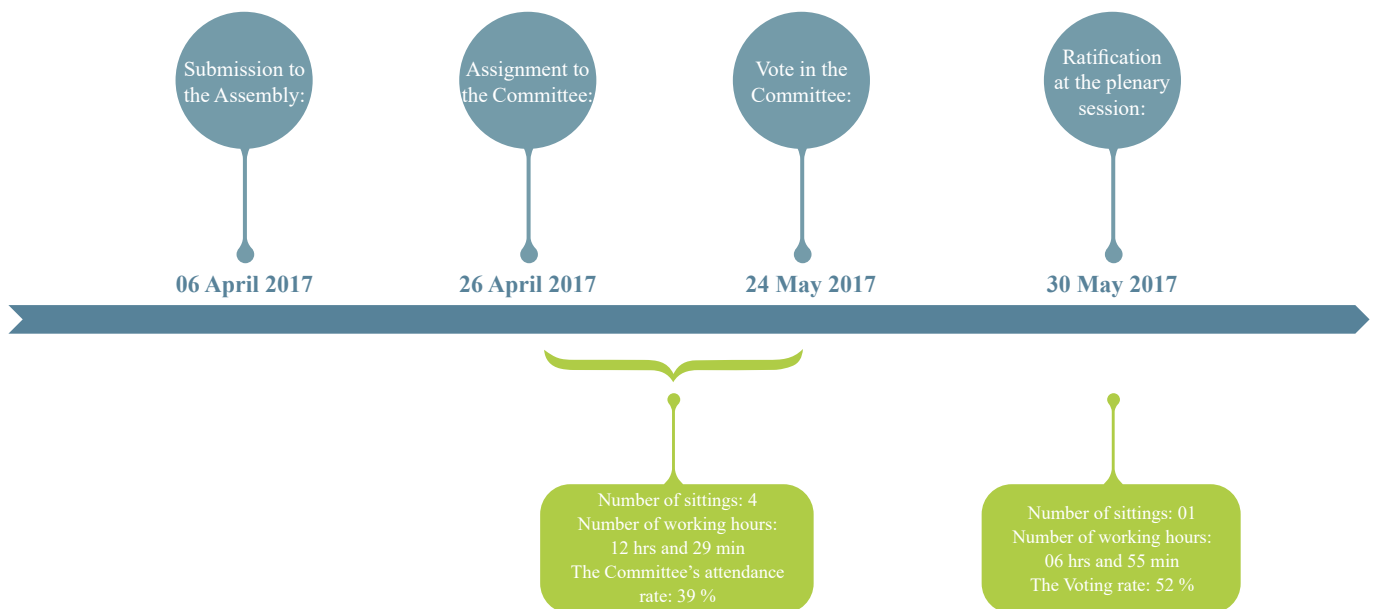


## Chapter 8 : Social Security and Essential Services

of the Head of the Government.<sup>6</sup> The Workers' Union also called for the parliamentary committee to take the time necessary to adequately review the bill before voting it.

The draft bill was eventually voted on 13 June 2017 with 82 votes in its favor, 32 votes against and 19 abstentions. MPs who voted against the bill belonged to the Popular Front and the Al-Horra Movement.

### 1.3. Draft law No. 41/2017 amending Law No. 2004-71 of 2 August 2004 on the establishment of a health insurance system



Pursuant to the draft law's explanatory note, it aims at removing the provisions of Article 16 of the Law on the establishment of a Health Insurance System (CNAM) for 2014 and replacing it with other provisions, which would facilitate the transfer of social security contributions to the National Fund for Health Insurance; accelerate the transfer procedures; and ensure that the fund meets its commitments towards its affiliates. Article 16 provides for several procedures to be determined by way of agreement between the Social Funds and the National Fund for Health Insurance so that subscriptions and contributions are transferred to the National Fund for Health Insurance. Nonetheless, due to the financial crisis, the funds were unable to collect subscriptions or transfer the affiliates' contributions in a timely fashion. This raised the deficit of the National Fund for Health Insurance and blocked the reimbursements.

During a Ministerial council held on 8 July 2016, a procedure for the transfer of the necessary funds to the National Fund of Health Insurance, directly from the budget of the Government, was adopted. The Minister of Social Affairs explained that, in order to guarantee the liquidity of the Health Insurance Fund,

6 - <https://majles.marsad.tn/2014/chroniques/59141c5fcf4412226ec75369>

a temporary procedure providing for the simultaneous transfer of the subscriptions of the affiliates of the National Pension and Social Security Fund (CNSS) to the National Fund for Health Insurance (CNAM) and the disbursement of pensions had been adopted.

The Minister of Social Affairs underlined the need to expedite the restructuring of the funds and the reform of the health insurance system. He also undertook to launch the reforms by the end of May 2017, and to prepare a draft law reforming social funds.

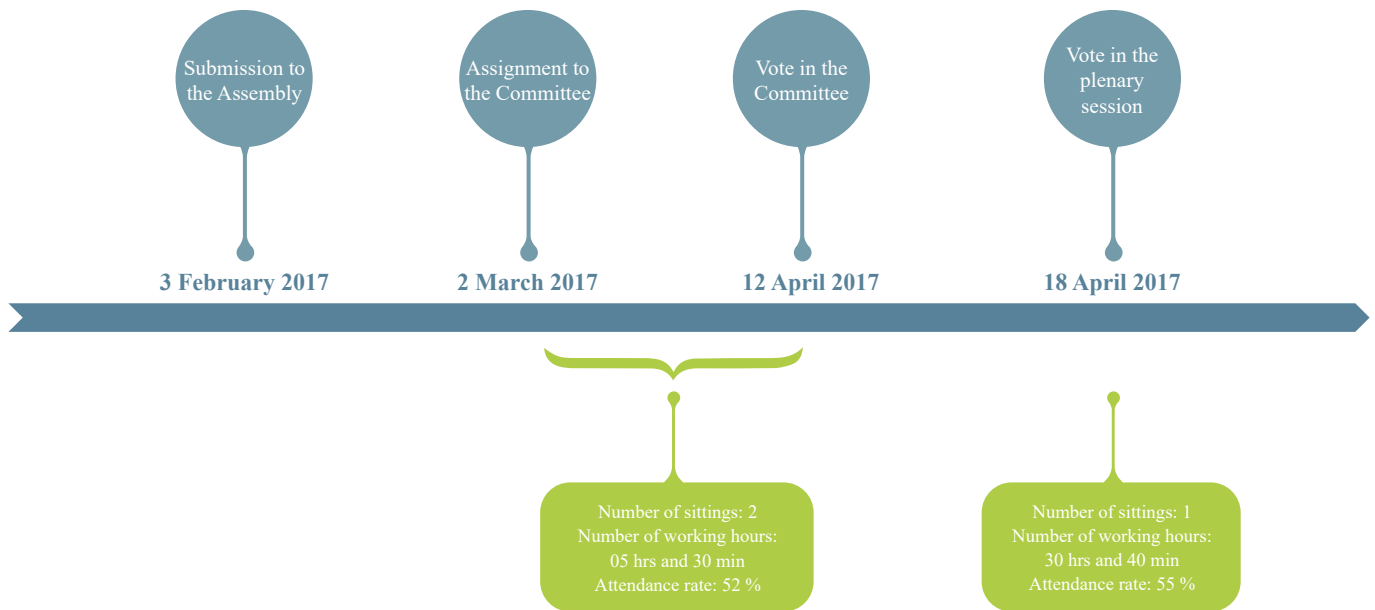
Below is an overview of the financial pressures burdening the social funds:

- Debt of the social fund: 2,336 million dinars on 21 April 2017;
- contributions of the public sector to the National Fund for Health Insurance amount to 918 million dinars;
- expected public sector contributions: 852 million dinars; and
- health services providers of the private sector: 66 million dinars.

Below are some of the data presented by the Minister of Social Affairs during his hearing at the Committee on Health and Social Affairs:

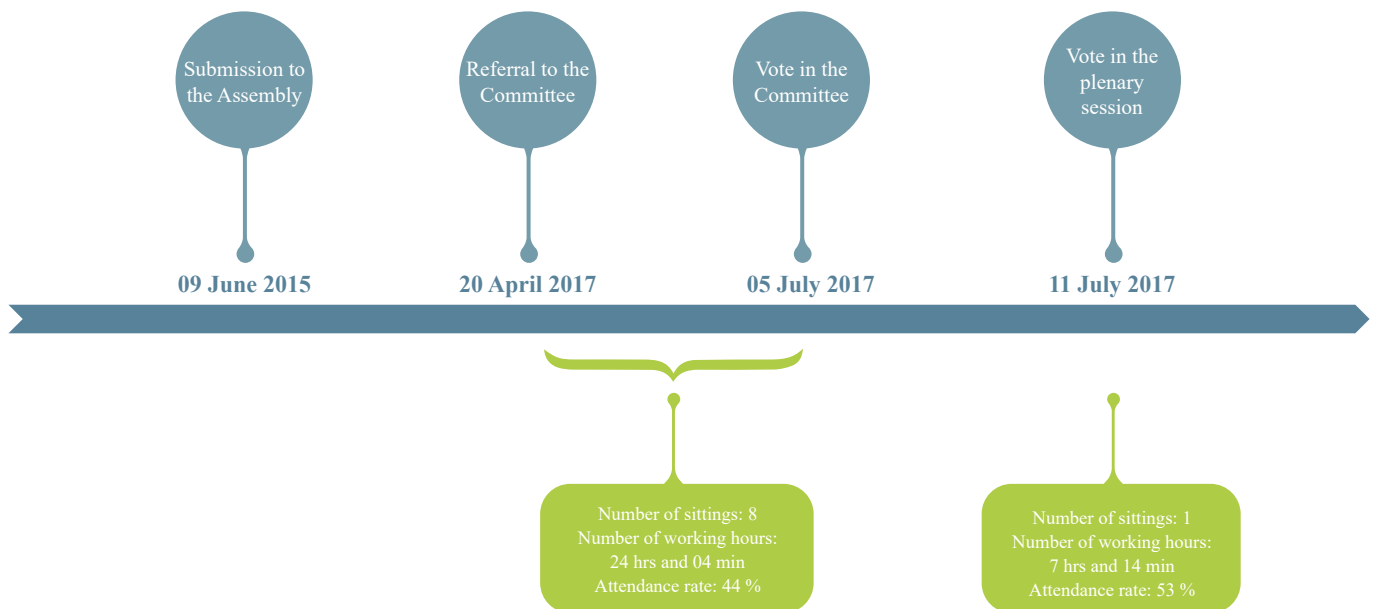
- Deficit of the National Health Insurance Fund: 216 million dinars; and
- Deficit of the National Social Security Fund: 241 million dinars, including 201 million dinars for salaries.

#### 1.4. Draft law No. 15/2017 amending Law No. 2008-19 of 25 February 2008 on higher education



The draft law aims to amend the Law on Higher Education, so as to include a new training qualification offered by the Tunis Business School (“TBS”). During his hearing session, the director explained that there are two academic systems in Tunisia, namely the LMD system and the private systems which are in line with international standards (engineering, architecture, medicine, dentistry and veterinary medicine). The Tunisian Business School replicates the anglophone educational system, and is the only public institute of its kind in the Maghreb. There are 653 students enrolled at the Institute from the first year to the fourth year where students are awarded a Bachelor’s degree in Business Administration, in line with the norms of the American education system. 112 students graduated from the institute in 2015, but have not yet obtained their diplomas because the TBS diploma is not recognized by the State. According to the Arab Institute of Managers, TBS graduates receive grants through exchange programs with the United States, the European Union, Turkey, Japan and Korea.

### 1.5. Draft Law No. 43/2015 on the creation of the National Council for Social Dialogue and providing for its powers and operating procedures



The National Council for Social Dialogue is a body that provides its opinion on professional relations and that essentially aims at establishing social dialogue in order to reduce pressures between employers and employees and to foster a healthy environment within economic actors (companies, etc.). The Council may obtain all information, studies and documents that relevant to the issues that it covers, and that are prepared by the administrative departments, institutes and specialized public structures.

The council enjoys administrative and financial autonomy and its budget is part of that of the Ministry of Social Affairs. It is subject to the public offerings system and to the Code of Accounting Rules.

According to its explanatory note,<sup>7</sup> the draft law aims at implementing the basis of the social contract, concluded on 14 January 2013 that involves governments, employers and trade unions in order to promote a culture of dialogue.

The Minister of Social Affairs and the Secretary-General of the Tunisian General Labor Union was by the Committee on 14 June 2017. There were some points of contention as regards Article 8 of the draft law which provides for the composition of the Council for Labour Relations, which includes representatives of workers' and employers' organizations.

The Minister of Social Affairs considered that the rule of representativeness does not exclude any trade unions but eases the work of the National Council for Social Dialogue. The International Labor Organization ("ILO") concluded that if trade unions do not reach a consensus, the trade union that has the

7 - <https://majles.marsad.tn/2014/docs/562501d312bdaa18aca525a9>

## Chapter 8 : Social Security and Essential Services

largest representation gets the largest number of seats. This would create a dynamic of competition among trade unions who will compete in order to secure the workers' rights. The number of 600,000 adherents was adopted as an indicator of the most representative trade unions.

The Tunisian General Labor Union had reservations on this article and considered that the representativeness of the trade unions could legitimize the fact that strong trade unions speak in the name of all workers. The Union also referred to quantitative criteria based on the organization's influence, the number of its adherents, its sectoral and geographical outreach, as well as qualitative criteria such as the observance of the universal values of human rights, democracy, financial transparency, governance, independence, frequency of conferences and the impact on the social environment.

The Union also considered that allowing the Government to provide for proportional representation in government decrees would weaken the principles of social justice and could undermine three years of work with the ILO.<sup>8</sup>

The possibility to extend the parties involved in the National Council for Social Dialogue, and include the National Union of Tunisian Farmers, was also discussed. An amendment to Article 8, which was incorporated in the final draft, reads as follows: "The plenary session is composed of an equal number of government delegates and delegates of the most representative workers' organizations and delegates of the most representative employers' organizations in the agricultural and non-agricultural sectors."<sup>9</sup>

Moreover, the number of members of the Council's plenary session was raised to nine members instead of six.

### 2. Draft law that have not been adopted yet

#### Draft law No. 59/2016 on nurseries and kindergartens



8 - <https://majles.marsad.tn/2014/lois/55d4695512bdaa20aa5b4504/chroniques>

9 - <https://majles.marsad.tn/2014/lois/55d4695512bdaa20aa5b4504/texte>

During the review of the draft law, the following parties participated in hearing sessions:

29 December 2016	Director General of Social Security and Director General of the Pasteur Institute of Tunis Minister of Women Affairs and Family and Children
4 January 2017	Monia Kari: Lawyer and legal expert Head of the National Chamber of Kindergartens Head of the vocational complex for nurseries and kindergartens
25 January 2017	Director of the Administration of Academic Medicine Tunisian Association for the Defense of Children's Rights Association of Parliamentarians for the Family Tunisian Scouts Tunisian Association of the Child Protection Officers Tunisia Union of Social Solidarity
26 January 2017	Tunisian Organization for the Education and the Family Tunisian Association for Children's Rights Tunisian Association of Children Inspectors
31 March 2017	Minister of Women Affairs and Family and Children
5 April 2017	Minister of Women Affairs and Family and Children

According to its explanatory note,<sup>10</sup> the draft law aims at ensuring the child's integration into society and his adaptation to the surrounding environment, thanks to institutions that provide education, care and protection. The draft law also seeks to provide structures that would supervise the kindergartens, and to address the problem of illegal kindergartens that host children without submitting terms of reference and which do not guarantee that the owners and workers would behave adequately. The draft law also aims at imposing deterrent penalties on anyone who commits violence on children in nurseries and kindergartens, including children with disabilities. Civil society actors expressed different opinions on the draft law and the numerous issues related to the rights of children.

10 - <https://majles.marsad.tn/2014/docs/57a1d365cf44126c17c5e19c>

## Chapter 8 : Social Security and Essential Services

The associations who participated in the committee hearings flagged some of the shortcomings of this draft law:

- the draft law does not ensure equality between the regions in terms of childcare and children enrollment in nurseries and kindergartens;
- the draft law does not incorporate any provision that prohibits the exploitation of children for partisan and political purposes;
- the draft law does not provide for obligations for real estate developers to allocate spaces to kindergartens;
- The possibility for foreign nationals to create kindergartens, which may impact the pedagogical support of the children,
- The necessity of rooting the child in his Arabo-Islamic identity, based on Articles 6 and 39 of the Tunisian Constitution; and
- Enacting hard sanctions on those who contravene the pedagogical curricula adopted by the Ministry for Children.

Upon discussing the draft law in the Committee, several amendments were proposed, notably:

- setting the age of children who join nurseries from two months to three years;
- adding that children must be rooted in the Arab-Islamic identity and ensure their openness to other cultures;
- providing that a person shall enjoy legal capacity to set-up a nursery or a kindergarten, and that a person who has been convicted of a crime of an offence, by way of a final decision, is prevented from setting up such spaces;
- including a pledge of the State to establish public nurseries and kindergartens;
- incorporating a provision on the inspection of the nurseries and kindergartens by competent administrative authorities, in order to ensure that they comply with the applicable laws and regulations; and
- ensuring that children with disabilities are accommodated in nurseries and kindergartens and providing them with the appropriate equipment as well as training the educators on a regular basis.

It seems that the review of the draft law was interrupted after two issues were raised. The first issue concerned Article 3 of the draft law, which states that children shall be rooted in their Arab and Islamic identity. Some MPs stated that this provision could be construed so as to provide an intellectual and ideological framework to the children, alien to Tunisian culture and society. Others considered that adhering to the Arab Islamic identity while being open to other cultures is a constitutional principle that represents no danger for the children.

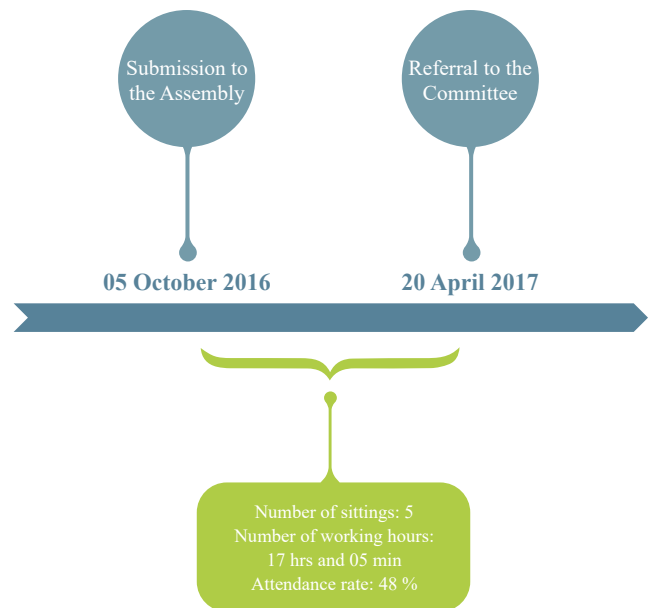
The second issue stems from the compliance of the draft law with Article 65 of the Constitution. The President of the Committee on Health and Social Affairs explained that the draft law provides for the basic principles of property, rights and education, which are stated in Article 65 of the Constitution.

After the review within the Committee, the draft was referred to the plenary session on 17 April 2017. Following the general debate, the meeting was adjourned pending agreement on the proposed amendments. Since then, the MPs failed to agree on the amendments.

**3. Draft laws pending before the committees**

**Draft law No. 70/2016 on structural measures to support employment opportunities and integration of young people in the labor market**

Date	Hearing
04 January 2017	MPs who submitted the draft law
20 April 2017	Minister of Higher Education and Scientific Research
26 April 2017	Minister of Education
11 May 2017	Minister of Vocational Training





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## Chapter 8 : Social Security and Essential Services

During the hearing session, the MPs who submitted the draft law stressed that the text aims to encourage the development of the culture of work at an early age and to offer professional trainings in public and private institutions or in legally-recognized associations or other organizations to students, for at least twenty days during school or university holidays. The institutions that sponsor these internships are awarded the title of “training institution”. The underlying objective is to equip students with a range of skills, knowledge and competencies. The Minister of Higher Education and Scientific Research expressed reservations on the procedures for the implementation of this initiative; in particular, in light of the fact that the Ministry is preparing a draft governmental order – the Charter of Training and Apprenticeship – which provides for the same procedures to those set forth in this draft law.<sup>11</sup>

This draft law is still being reviewed by the Committee.

## II. The scrutiny function

### 1. Oral questions

Social issues prevailed in most of the questions asked by the MPs. There was a total of 51 oral questions on social issues, i.e. 29% of all the questions that were asked. This indicates that social issues were key for the MPs. Their questions essentially focused on the essential services, in particular, health, education and access to drinking water.<sup>12</sup>

### 2. Written questions

Four written questions on social issues were asked during the third parliamentary session:

- a written question asked by Faisal Tebini to the Minister of Social Affairs concerning the case of persons who were not eligible to subsidies in the delegation of Nadhour;<sup>13</sup>
- a written question asked by Saleh Bargaoui to the Minister of Women, Family, Youth, Children about the solutions provided by the ministry in order to solve the problems faced by the village of SOS children in Siliana;
- a written question asked by Ghazi Chaouachi to the Minister of Higher Education and Scientific Research on the general approach for the implementation of the reforms of the Higher Education and Scientific Research and the Ministry’s relations with doctoral students and PhD holders; and
- a written question from Saleh Bargaoui to the Minister of Agriculture, Water Resources and Fisheries about the supply of drinking water in the regions of Sfina and Brama.

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11 - <https://majles.marsad.tn/2014/lois/58061f9ccf4412147d442573/chroniques>

12 - For more details please check the Chapter on The ARP’s Work process (the section on Assessment of the oral questions)

13 - [http://www.arp.tn/site/main/AR/docs/reponses\\_gov/104.pdf](http://www.arp.tn/site/main/AR/docs/reponses_gov/104.pdf)

**3. Hearings within committees**

In the context of very serious problems in the education sector, especially regarding the recruitment of substitute teachers and the failure to insert doctoral students into the labor market, the Committee on Youth, Education and Culture held hearings with young students and newly graduated students.

Below is a list of the hearing sessions that were held.

Date	Participant
6 April 2017	The Tunisian Association of PhD holders and PhD students
13 April 2017	Coordination of doctoral students
19 May 2017	Doctoral students who obtained their degree prior to the implementation of the LMD system Representatives of the National coordination of substitute institutors.
14 June 2017	Scientific Associations of the Network of Higher Institutes of Technological Institutes and Technology teachers

## Summary

Throughout the third parliamentary session, the Assembly adopted draft laws on social issues with a view to implementing the Social Contract signed between the Tunisian General Labor Union, the Government and the Employers Organization. The Parliament tried to comply with this contract and to satisfy all the parties involved. To this end, it implemented a reform strategy to improve the status of the working class and to solve very serious social problems, particularly those related to social funds.

The Parliament also paid special attention to the essential services, particularly in the health and education sectors, and adopted draft laws for their reform.

While the reforms seemed to be in line with the principles enshrined in the Carthage Agreement, some of them failed to gain consensus among the social actors, in particular the Tunisian General Labor Union. The review of several draft laws was suspended in the plenary session or at the committee level. Again, this reflects the lack of clearly-established priorities in the legislative work and the weakness of the legislative body.

Furthermore, the Parliament lacked initiative. One could have expected that MPs submit draft laws that would help improving the citizens' lives, by providing them with the necessary health and education services as well as drinking water, and by finding effective solutions for substitute teachers and newly graduated students. However, the representatives of the People merely listened to protestors and intervened within the framework of Article 118 of the Rules of Procedure of the Parliament (interventions that come at the end of plenary sessions where MPs are free to speak about any topic), but those interventions do not bind the Government or any other party.

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# Chapter 9

Natural resources

09





**Article 13 of the Constitution :** «[n]atural resources belong to the people of Tunisia, the state exercises sovereignty over them in the name of the people. Investment contracts related to these resources shall be presented to the competent committee in the Assembly of the Representatives of the People. The agreements that are concluded shall be submitted to the Assembly for approval».

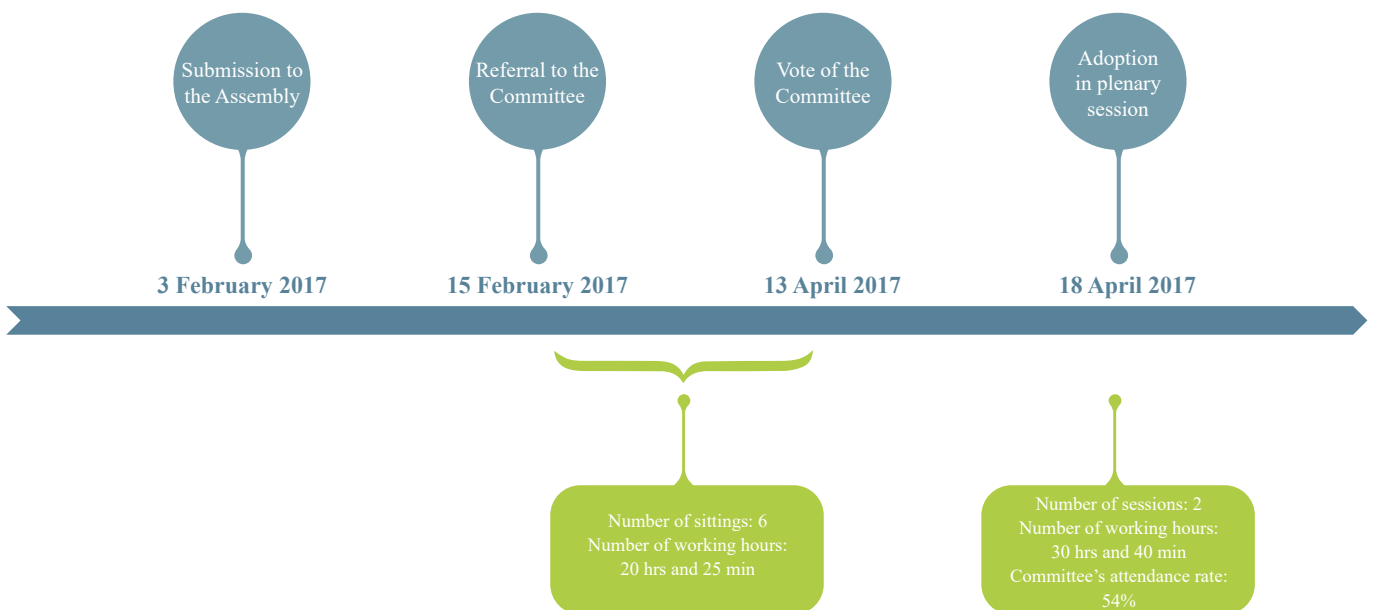
It follows from the above that all agreement pertaining to natural resources shall be submitted to the legislative body for ratification and are no longer subject to the approval of the executive. In the aftermath of the ratification of the Constitution of the Second Republic, it became essential and obvious to amend the legislative framework regarding natural resources and make it compliant with the constitution.

However, the revision of the Hydrocarbons Code and of the Mining Code did not proceed as expected. The ARP continued to work in the same manner as the National Constituent Assembly, which means that the Minister of Energy negotiated the terms of the contracts, signed the agreements with the investors. It is only after these two steps that these documents were submitted to the parliament in the form of a draft law, which was due to be considered at the relevant committee and then transmitted to the plenary session for approval or rejection.

## I. The legislative function

### ■ Draft laws adopted in plenary sessions

#### 1. Draft Law n° 11/2017 concerning the amendment of several provisions of the Hydrocarbons Code



Four years after the adoption of the Constitution, it was necessary to revise the hydrocarbons Code in order for it to comply with the provisions of the Constitution given the fact that agreements related to hydrocarbons were not approved by the ARP but by the ministry of energy.

These special agreements concluded between the Departmental Ministry and the investor required two permits: the exploration permit and the exploitation concession.

The exploration permit is usually granted to the investor before studies were carried out, such as seismic surveys, the aim of which is to guarantee the prospects of finding oil and gas, are performed.

- Exploration permit: granted for a maximum period of two years, which can be extended by another year. The permit holder has the priority to convert it into a prospecting permit if it fulfills its commitments.
- Prospection permit: granted by way of a special agreement to be ratified by decree. It automatically allows for the granting of a concession permit in case of discoveries.
- Concession: granted for a maximum of thirty years for the exploitation of hydrocarbons.

Following a proposal made by 13 deputies to amend the Hydrocarbons Code, the latter was amended during the previous parliamentary session in order to comply with Article 13 of the Constitution. The draft amendment was discussed during five sittings within the ad hoc committee, required eighteen hours of work and continued up until October 2016.

Despite the Minister's statement that the proposal was drafted in partnership with the various structures of the Ministry<sup>1</sup> and expressing its approval of it, the proposal was withdrawn and replaced by a new draft proposed by the Ministry of Energy and submitted on 3 February 2017.

The Ministry was in favor of the draft law and explained that the decrease in the production of hydrocarbons in Tunisia was due to the suspension of exploration and of prospection permits since the adoption of the Constitution which resulted in the Hydrocarbons Code being unconstitutional. The Ministry suspended the approval of any agreements that fell within the ambit of the Hydrocarbons Code prior to it being amended in order to comply with Article 13 of the Constitution.

However, some deputies were of the opinion that the aforementioned reasons were of little importance and that the suspension of the issuance of permits on the ground of the unconstitutionality of the Hydrocarbons Code did not make sense.

It should be noted that popular pressure around natural resources was rising at that time, especially after the launching of the «Winou El Petrol» campaign (where has the petroleum gone), which criticized the

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1 - Link to the bulletin of the Hearing session of the Minister of Energy:  
<https://majles.marsad.tn/2014/chroniques/5811e54acf441219832f981e>

lack of transparency in the exploitation of hydrocarbons and gave rise to suspicions of corruption and mismanagement of public funds on the part of executives and officials working in the energy sector.

**This law introduced 3 important amendments:**

- Inclusion of the exploration phase into the special agreement, i.e. the agreement concluded between the Ministry of Energy and the operator, which includes exploration, prospection and exploitation permits. These permits are obtained by the operator one phase after the other and are subject to different terms and pertain to different types of works. The Ministry of Energy submitted this amendment which grants a priority to the exploitation permit holder for the granting of the prospection permit. In the course of the discussion of the draft law in the Energy Committee, the paragraph dealing with this issue was amended (Article 10.9, paragraph 1 (new) of the Hydrocarbons Code), so that the exploration holder holds the exclusive right to convert its permit into a prospection permit.
- A provision according to which special conventions ought to be ratified by law, i.e. require the approval of the ARP (article 19.5). This article still provides that extensions of exploration, prospection, exploitation permits are granted by virtue of a decision made by the Minister in charge of hydrocarbons.
- The introduction of percentage ratios related to sharing in the production under the special Conventions: these percentages used to be discussed after the award of the exploration permit and the prospection permit and during the conversion of the prospection permit into an exploration permit. This amendment allows for the negotiation of these percentage ratios before the prospection permit is granted.

The Committee on Industry heard many experts who took a negative stand on the draft law.<sup>2</sup> With regard to:

- **First Amendment:** Experts objected to the inclusion of the exploration phase of the special agreement as it reduces, according to them, the probability that another investor offering a better convention to the Tunisian State would be found. They also considered that it is not necessary to sign a special agreement before the start of the exploration phase and before the investor undertakes any exploration work.
- **Second Amendment:** Experts were positive about this amendment, but they considered that it would be necessary to clarify that granting permits must be subject to the Parliament's approval and scrutiny. Experts also considered that this amendment which authorizes the ARP to ratify agreements is not compatible with Article 13 of the Constitution. They also stressed the need that all permits submitted under the special agreement obtain the ARP's approval.
- **Third Amendment:** Experts stated that this amendment was not logical, since determining the ratios of sharing in production cannot precede the exploration phase. How can these

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2 - Link to the publication of the hearing of experts in the field of hydrocarbons on draft law number 2017/11 on the revision of some provisions of the hydrocarbons Code:

<https://majles.marsad.tn/2014/chroniques/58b6c7c7cf44123acf08fd8b>



percentages be determined without knowing the exact amount of oil available for production? In this case, experts stressed that a similar agreement would undermine the Tunisian share of production and its ability to negotiate with the investor.

The Minister responded<sup>3</sup> that the Tunisian State does not have a large supply of hydrocarbons and that the inclusion of the exploration phase and the allocation of the production ratios in a special agreement aims at reassuring the investor, as it provides it with reasonable and logical guarantees. As for entrusting the Hydrocarbons' Ministry with the granting of the permits, instead of the ARP, the Ministry considered this as a necessary step to speed up the entry into force of these permits. The Ministry added that if the ratification of these permits had to be voted by the ARP, this would hinder the investment effort.

During the Committee's work, no decision was made on the allocation of the production shares to be incorporated in special agreements. In the model special agreement,<sup>4</sup> no determination was made as to the minimum and maximum rates of production that could be offered both to the State and to the investor. Through rejecting and deleting Article 22 (new), the draft law was finally adopted during the plenary session held on 18 April 2017, with 106 votes in favor and 16 votes against.<sup>5</sup>

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3 - Link to the bulletin:

<https://majles.marsad.tn/2014/chroniques/58dcd1e9cf44125540f0c81d>

4 - The model special agreement is a sample of all special agreements pertaining to hydrocarbons that the State concludes with the investors. The Ministry submitted it with the Draft law in order to ratify a draft in which the minimum and the maximum rates of the production shares, as well as other terms, would be incorporated. The deputies decided to reject the agreement and instead decided that they would receive each special agreement and discuss their respective terms separately.

5 - The voting results:

[2017A/042/Ta201719904.pdf](http://www.legislation.tn/sites/default/files/fraction-journal-officiel/2017/2017A/042/Ta201719904.pdf)<http://www.legislation.tn/sites/default/files/fraction-journal-officiel/2017>

However, 33 deputies challenged the constitutionality of the draft law in front of the Provisional Court:

Deputy	Parliamentary bloc
Samia Hamouda Abbou Salem Labiedh Ghazi Chawachi Nooman Elleuch Ridha Dallai Sabri Dkhil Imad Daimi Mabrouk Lehrizi Zouhair Maghzaouii	The Democratic bloc
Adnan Lhajji Faisal Tebini	No political affiliation
Tarek Fetiti Dorra Yakoubi Olfa Jouini Tawfiq Jebli Mahmoud Elqahri Mohamed Amin Kahloul	Free Patriotic Union ULP
Ammar Amroussia Abdel Momen Belaanes Shafik Ayadi Ahmed Seddik Monji Rahaoui Kamel Hragui Noureddine Mrabti Souad Baiouli Jilani Hammami Haikel Belkacem Mbarka Ouainia Brahmi Hemed Khaskhoussi Nizar Amami Mourad Hmaidi	Popular Front

The main points of the deputies' challenge to the constitutionality of the law are as follows:

- The unconstitutionality of the “exclusive right” granted to the holder of the exploration permit to transform his permit into a search permit
- The unconstitutionality of the withdrawal of the executive branch as regards the management of hydrocarbons and the fact that the permits that are granted are not submitted to the ARP for approval.

The Provisional Authority of Control of Constitutionality of Draft Laws ruled that the draft law was constitutional and stated that « **the people's sovereignty over natural resources is exercised through the control of deputies over all agreements pertaining to natural resources and all their steps, allowing representatives of the people to have a good overview of the state of exploitation of natural resources of the country**”

The committee also asserted in its decision No. 03/2017, issued on 23 May 2017, that the exclusive right granted to the holder of the exploration permit to convert it into a prospecting permit is constitutional, so long as the permit holder fulfills its obligations, as provided in the special agreement which was concluded.

The ratification of the amended law on the hydrocarbons code coincided with the outbreak of protests in the South of Tunisia, notably the Al-Kamour crisis. The chart below illustrates the most important events in the country related to the culmination of the crisis in Al Kamour.



## 2. Law pertaining to the approval of special agreements for exploration and inspection permits

After the amendment to the Hydrocarbons Code had been approved, several draft laws related to the approval of special agreements concerning permits for prospection and exploration were submitted.

### 2.1. Law N° 56/2017 on the approval of the agreement (and its annexes) regarding the hydrocarbons permit known as «Nafzawa permit»

6 - An article on the visit of Youssef CHAHED to Tataouine: [goo.gl/L6yhVdcontent\\_copy](http://goo.gl/L6yhVdcontent_copy)

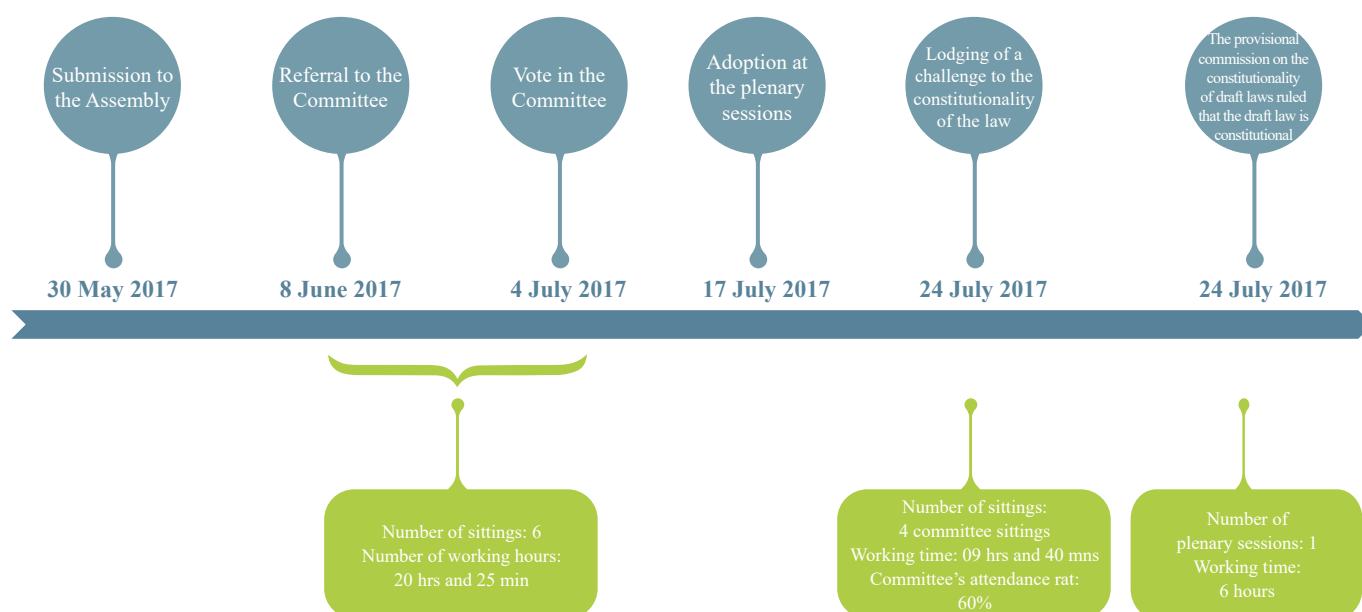
7 - A link to the Plenary bulletin <https://majles.marsad.tn/2014/chroniques/592c05b0cf4412226ec7545a>

8 - A link to the bulletin of the Meeting of the Security and Defense Committee to assess the field visit : <https://majles.marsad.tn/2014/chroniques/593e66bccf4412226ec75514>

9 - France 24 article on the agreement signed by the governmental delegation with mediation of the TGLU [goo.gl/z9QLm](http://goo.gl/z9QLm)

## Chapter 9 : Natural resources

The agreement was signed between YNG Energy Limited and the Tunisian Company of Petroleum Activities. This agreement provides for several drilling works, namely, seismic processing, drilling of two exploration wells and other works included in the agreement.<sup>10</sup>



The law pertaining to the special agreements for exploration was submitted to the Assembly's Bureau on 30 May 2017. It was then referred to the Committee on Industry, Energy, Natural Resources, Infrastructure and the Environment on 8 June 2017. The draft was discussed in the committee throughout four sessions until 4 July 2017; the draft law was referred to the plenary session of the Assembly on 17 July 2017 and was finally voted with 108 votes in favor, 10 votes against and 12 abstentions.<sup>11</sup>

10 - Agreement and annexes pertaining to the permit of hydrocarbons prospecting known as 'Nefzawa' permit shorten=?2017072000601\_\_072-2017-jort-2017-08-60-du-24-

<http://www.legislation.tn/detailtexte/Loi-num-2017>

11 - Vote results : <https://majles.marsad.tn/2014/vote/59db8b2a4f24d033576c722c>

On 24 July, a group of deputies led by Samia Abbou lodged a claim to challenge the constitutionality of the law. The deputies listed below were part of the group:

Deputy	Parliamentary bloc
Samia Abbou Ibrahim Ben Said Noman Leuch Salem Labiedh Zouahir Maghzaoui Imad Daimi Ghazi Chawachi Hmed Khasskhoussi Ridha Dallai	The Democratic bloc
Mahmoud Lqahri Mohamed Amin Kahloul Olfa Jouini Noureddine Mrabti Tarek Fetiti Dorra Yakoubi Olfa Jouini Tawfik jebli Kamel Hragui	Free Patriotic Union ULP
Abdel Momen Belaanes Souad Lbaiouli Zied Lakhdhar Aymen Aloui Ammar Amroussia Tarek Barraq Mongi Rahaoui Jilani Hammami Chafik Ayadi Mbarka Ouainia Nizar Amami Mourad Hmaidi	The Popular Front
Abdelaziz Kotti Abdelwaheb Ouerfelli Faicel Tebini	No political affiliation

The deputies who lodged the challenge considered that a sole article of this law breaches several constitutional articles (10, 12, 13 and 15) and article 34 of the Hydrocarbons Code. Several legal issues were raised:

- Breach of the constitutional principles related to the impartiality of the administration and its commitment to transparency, integrity, efficiency and accountability rules, as well as the State's duty to ensure good management of public funds and to prevent corruption and everything that may violate national sovereignty, as provided in Articles 10 and 15 of the Constitution.
- Breach of Articles 10 and 12 of the Constitution and article 34 of the Hydrocarbons because of non-compliance of the agreement with the aforementioned articles.
- Breach of Articles 12 and 13 of the Constitution because of the exclusion of legislative scrutiny over the natural resources (petroleum and gas) and the attribution of large powers to the Minister of Energy in this regard.

**■ The draft law on the agreement granting prospection permits and its annexes breaches the principle of good management of natural resources as it excludes the legislative authority from the approval of the concession in case commercially exploitable discoveries are made**

In its reply, the Government indicated that the challenge lodged by the deputies lacked solid legal basis that the draft law was in breach of Article 1 of the Constitution. It also asserted that the procedures preceding the approval of the draft law were compliant, since the Government provided the specialized committee with the required documents, information and clarifications related to the agreement and its annexes.

As for the conflict of interest related to the fact that the names of the members of the team who was entrusted with opening bids were not made public, the government replied that the composition of the working team was determined by Decree No. 713 (2000) and that the list does not include any personnel from the Tunisian General Energy Administration or from the Company of Petroleum Activities. As a consequence, the team in charge of the opening of the bids is not part of the Hydrocarbons advisory commission, and is only in charge of the submission of the report on the bids that were received and does not take part in any decisions in that regard.

As for the impossibility to enter into a contract with the company that obtained the prospection permit because the company did not exist at the time of bids' submission, the government replied that the offer had been submitted by a parent company that created a branch with headquarters in Tunis, at the request of the government and in accordance with article 12 of the hydrocarbons code. The aim is to create additional jobs and to facilitate interaction with the bidding company. As regards the guarantees that are offered for the completion of works, that is the parent company's responsibility, in accordance with the agreement's terms, a letter of guarantee is attached to the authenticated official permit application.

Moreover, concerning the allegation that the draft law violates Articles 12 and 13 of the Constitution, the Government replied that, contrary to the arguments raised in the challenge, the project enshrines the principle of good governance of national natural resources as it includes the terms providing for the transfer of the prospection permit into a concession and it also defines, within the agreement and its appendices, the conditions in which an extension of the permit may be granted and its renewal.

The government also responded to the appellants' arguments regarding the exclusion of the ARP from the control of natural resources. It stated that the legislative authority's control is not omitted but rather concerns the terms of the agreement. It further noted that the parliament has the full authority to approve or reject the agreement and to scrutinize the government's work in the field of hydrocarbons as it can pose written and oral questions about each agreement, however this scrutiny does not cover technical issues.

- The specialized committee of the People's Assembly is under an obligation, when considering the investment contracts related to natural resources and the agreements concluded in this regard, to scrutinize the extent to which the administration has observed these principles. Nothing in the case file that has been lodged by the deputies proves that the energy committee did not make sufficient efforts to review all the elements of the agreement.
- Violation of Article 10 of the Constitution: the authority denied the fact that the contracting company escaped tunisian tax system given that the contracting company created a subsidiary in Tunisia as a result of which it shall be submitted with the Tunisian legal framework including the rules on tax collection and on the fight against corruption.
- Regarding the issue of the exclusion of the People's Assembly from the scrutiny role over the agreement: the agreement, as amended by the addendum of 21 June 2017, clearly referred to the amendment to the Hydrocarbons Code in accordance with Law N° 14 (2017) dated 30 May. As a result, the agreement and its annexes are subject to the ARP's scrutiny.

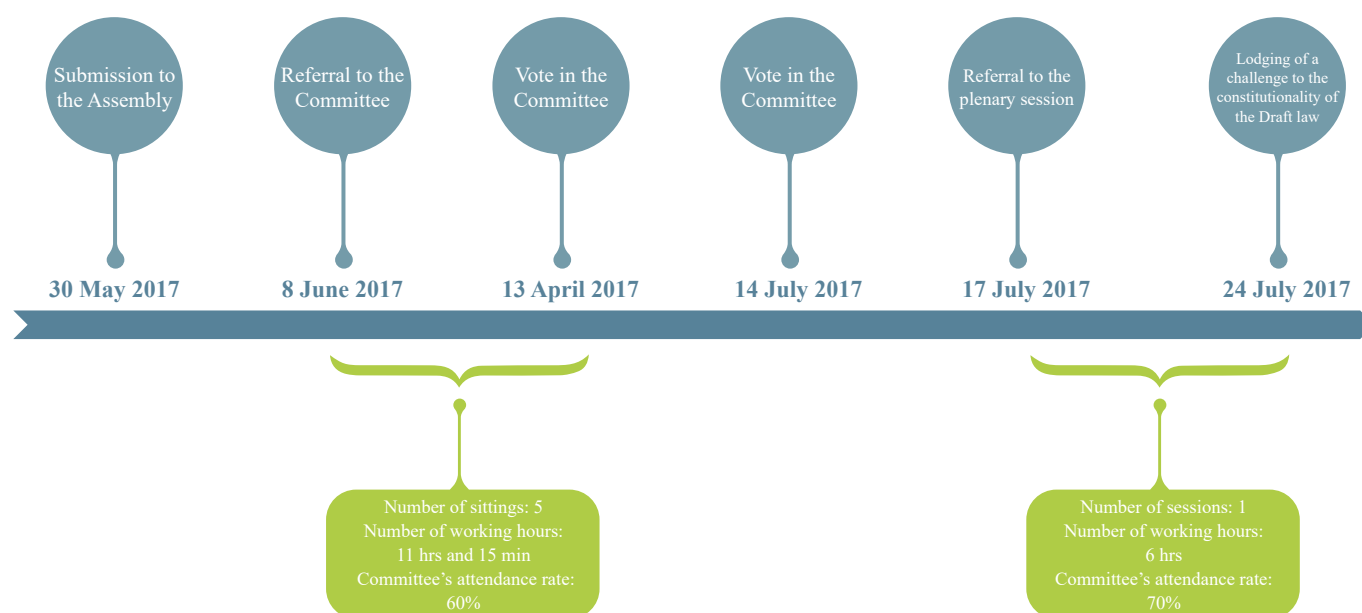
The Provisional Authority of Constitutionality of Draft Laws ruled that the draft law regarding the approval of the Agreement on the exploration permit and its annexes (known as the "Nefzawa permit") is constitutional in its decision N° 05/2017 issued on 17 August 2017.<sup>12</sup>

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12 - Decision of The Provisional Authority of Constitutionality of Draft Laws N° 05/2017 on 17 August 2017 on the draft law N° 56/2017 regarding the approval of the Agreement on the exploration permit and its annexes (known as the "Nefzawa permit"): 172-qbmkeljTDR/PAGERchercheMulticriteresResult-  
[http://www.iort.gov.tn/WD120AWP/WD120Awp.exe/CTX\\_7988at/SYNC\\_-4861186](http://www.iort.gov.tn/WD120AWP/WD120Awp.exe/CTX_7988at/SYNC_-4861186)



## 2.2. Draft Law No. 57/2017 on the approval of the agreement, together with its annexes, concerning the Hydrocarbons exploration permit known as the “Douiret” permit



The Provisional Authority of Constitutionality of Draft Laws declares the challenge admissible in terms of form and rules that the draft law is constitutional.

The draft law, consisting of a sole article which was submitted to the Assembly on 30 May 2017, was referred to the Committee on Industry, Energy, Natural Resources, Infrastructure and the Environment on 8 June 2017 and was discussed until 14 July 2017.

The committee held 4 sessions to discuss the draft law and the terms of the agreement and also heard the Minister of Energy and Mines in the course of the first session. During the discussion, the deputies discussed the details of the agreement that had been signed and the works to be undertaken within the meaning of the exploration permit as well as those planned in case the exploration permit is converted into a prospecting permit.

The terms of this agreement are as follows:

- Exploration permit
  - Validity: Two years
  - Works to be undertaken: geological and geophysical studies to be performed, old seismic data to be processed, 200 Km<sup>2</sup> 3D seismic survey to be performed.
- In case of conversion into a prospecting permit
  - Validity: 5 years
  - Works to be undertaken: drilling of a prospecting well
- Renewal: 4 years for each term
  - Works to be undertaken: drilling of a prospecting well

The draft law was later referred to the plenary session on 17 July 2017, and was approved with 112 votes in favor, 9 against, and 12 abstentions.<sup>13</sup>

On 24 July 2017, a group of deputies, led by Samia Abbou, lodged a challenge to the constitutionality of this draft law.

**The deputies listed below were part of the group:**

Deputy	Parliamentary bloc
Samia Abbou Ghazi Chawachi Noman Leuch Ridha Dallai Imad Daimi Zouhaier Maghzaoui Ibrahim Ben Said Hmed Khasskhoussi Salem Labied	The Democratic bloc
Mohamed Amin Kahloul Tarek Fetiti Mahmoud Lqahri Tawfik jebli Noureddine Mrabti Olfa Jouini Kamel Hragui	Free Patriotic Union ULP

13 - The voting results can be found here:

<https://majles.marsad.tn/2014/vote/59dba15f4f24d033576c7232>

Souad Lbaiouli Cheffi Tarek Barraq Jilani Hammami Chafik Ayadi Nizar Amami Mourad Hmaidi Ammar Amroussia Mongi Rahaoui Abdel Momen Belaanes Mbarka Ouainia Zied Lakhdhar Aymen Aloui	The Popular Front
Faicel Tebini Abdelaziz Kotti Abdelwaheb Ouerfelli	No political affiliation

The appellants considered that the draft law violated several articles of the Constitution, notably articles 1, 10, 12, 13 and 15. The legal arguments listed below were raised:

- The invalidity of the drafting of the agreement in French which ought to be submitted to the Assembly for ratification.
- The invalidity of the procedures preceding the approval of the project, since the Energy Committee only reviewed the convention and its explanatory note and failed to review the hydrocarbons advisory commission's reports.
- The unconstitutionality of the exclusion of the ARP from the approval process of the annexes concerning the conversion of the exploration permit into a prospection permit and the renewal and extension of the permit.
- The Exclusion of the Assembly from the approval of the concession in case of commercially-exploitable discoveries.
- Lack of a provision providing for a requirement to submit all supplements and amendments to the agreement to the Assembly's plenary session pursuant to the principle of congruent forms, on the basis of the decision of the Provisional Authority on the Constitutionality of draft laws in its decision No. 03/2017 concerning the draft law N° 41/2017 pertaining to the amendment of the Hydrocarbons Code.

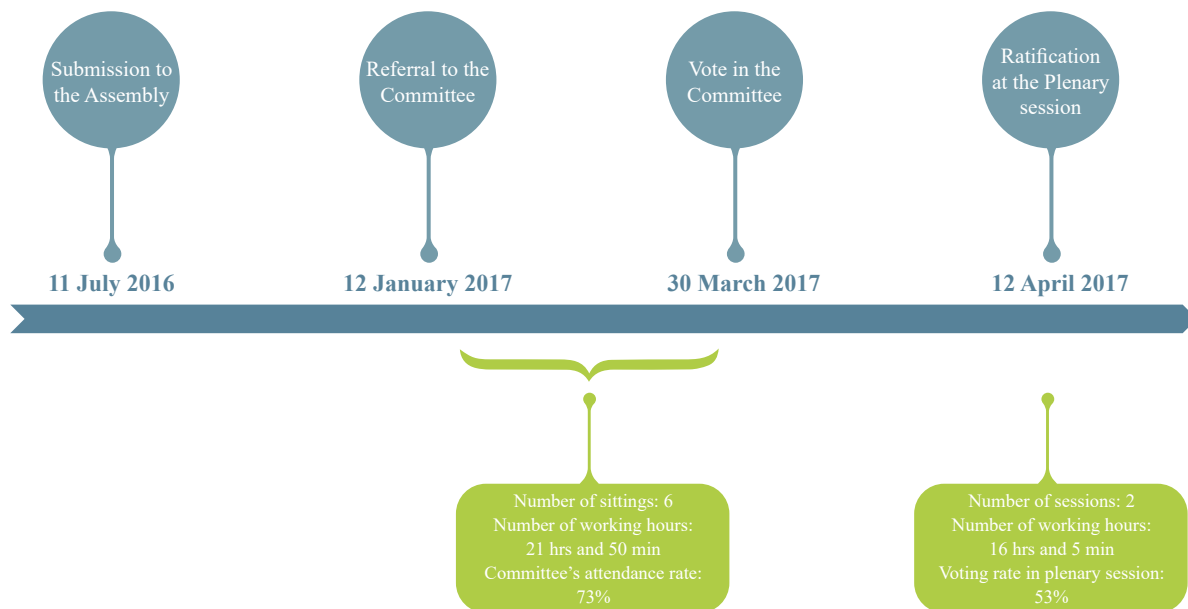
The Government stated that the appeal was ill-founded and raised the following arguments:

- The drafting of the agreement in a foreign language does not undermine the status of the national language nor is it prejudicial to it, as this Convention falls within the scope of the State's commercial and economic transactions

- The draft law did not infringe the procedures establishing the principles of transparency, integrity and accountability, insofar as the specialized committee was provided with all data and clarifications on the agreement and its annexes, including financial, economic and technical aspects as well as the maps.
- Due respect was given for the abovementioned constitutional principles, either by way of provisions setting forth the conditions for the conversion of the prospection permit into a concession and the terms pursuant to which the permits may be extended and renewed in the agreement and its annexes, or through the scrutiny carried out by the legislative authority on the nature of the obligations, which is also provided for in the agreement. In addition to the legislative scrutiny carried out by the ARP as regards the activities of the government in the field of hydrocarbons, it can also request reports and ask written and oral questions regarding each agreement.

In its decision N° 6/2017 issued on 17 August 2017, the Provisional Authority of Constitutionality of Draft Laws declared the challenge/request admissible and ruled that the draft law N° 75/2017 on the approval of the agreement, together with its annexes, concerning the exploration permit, known as “Douiret” permit, complied with the Constitution.<sup>14</sup>

### 3. Draft law N° 50/2016 on the reduction of tax collected on the export of scrap through exceptional export provisions until end 2017



14 - The Decision of the Commission on the constitutionality of draft laws No. 6/2017 dated 17 August 2017 concerning the approval of the convention and appendices to the hydrocarbons permit known as the ‘Douiret’ permit.

[http://www.iort.gov.tn/WD120AWP/WD120Awp.exe/CTX\\_1900-17-xeuErmFLiR/PAGERchercheMulticriteresResultat/SYNC\\_185112486](http://www.iort.gov.tn/WD120AWP/WD120Awp.exe/CTX_1900-17-xeuErmFLiR/PAGERchercheMulticriteresResultat/SYNC_185112486)

The draft law was submitted to the Assembly on 11 July 2016. However, due to parliamentary recess over the months of August and September, the discussion of the draft law was postponed.

This draft law, as the title of the first version that had been submitted indicates, contains temporary provisions allowing for the export of iron waste during the year 2016. Indeed, the Committee on industry began its review of this draft in January 2017, upon consultation with the Ministry of Industry for the purpose of changing the draft law's title and inserting a reference to the year 2017 so as to enable the beneficiaries of this law to export scrap over an entire year instead of a few months.

During the hearing session of the Minister of Industry on 12 January 2017, the Minister mentioned the following points:

- The legal framework governing the iron waste sector does not provide for the freedom of export and import. The restrictions to export result from an opinion that iron waste is a national wealth that must be preserved and remanufactured at the domestic level.
- Remanufacturing requires several phases: after the scrap is collected, the Tunisian Iron and Steel Company purchases and re-manufactures the scrap iron, then distributes it on the domestic market.
- The Steel Company faces financial and technical difficulties (a technical breakdown occurred in the furnace), which makes it difficult for the Company to re-manufacture all of the available iron waste (steel stocks of 250 thousand tons).
- There is an accumulation of iron waste in scrap collection centers, especially those located in the center and South which failed to sell their stock to the Company due to expensive transport fees estimated at 40 dinars per ton.
- The steel company is facing financial difficulties, which were aggravated after the decline in its re-manufacturing activity which, in turn, led to an increase of the indebtedness related to the scrap purchase. Although the company was granted treasury loans in the amount of 14.5 million dinars in 2015 and a 39-million-dinar loan from the Islamic Development Bank to meet its funding needs, its debts amounted to 9.15 million dinars in March 2016.
- Numerous complaints from the collectors and from the National Chamber of Collection and Recycle of Old Metals, who called on the Ministry to find solutions, especially to address non-payments, prevents the company from fulfilling its commitments towards suppliers and people working in this sector.

During the hearing session of the National Chamber of Collection and Recycling of Old Metals, the representatives reiterated the aforementioned issues and noted that the workers are considering protesting and going on a strike if the situation continues. They also insisted on the need to grant scrap collectors the right to export their collections, especially since the Steel Company does not buy all types of iron waste that are available, as it does not use furnaces that melt all types of iron.

The representatives of the Steel Company Union confirmed that the company did not disrupt the work of any scrap collectors and that they are exerting pressure for the law to be adopted in order for them to gain huge profits thanks to the export of the stocks that the company has been collecting while the ratification of the draft law. The Union representatives also asserted that the Company did not discriminate between suppliers. They also stated that this bill will contribute to the Company's financial recovery.

In the context of the overall discussion of this draft law, deputies expressed several opinions, the most significant being that the draft law falls within the framework of a governmental plan to privatize public companies, and that the review of the draft law coincided with a call for bids to sell around 40% of the company's shares. Deputies asked questions, such as: «Why would collectors be allowed to export the stocks they have collected?»; and «Why would the draft law not exclusively restrict the exportation of iron waste by the Steel Company?». Other deputies pointed out that this draft law would result in the Steel Company making remarkable profits and solving its financial difficulties.

During the Committee's deliberations, the Minister noted that the authorization granted to the steel company to export 100 thousand tons of iron waste, will allow it to obtain financial resources in the amount of up to 40 million dinars. Moreover, the exceptional license to export 100 thousand tons of waste granted to scrap collectors will exempt the Steel Company of purchasing scrap iron for a period of at least 8 months, which will enable it to save about 20 million dinars of its financial resources. The Minister also stressed that the permit for exportation cannot be granted exclusively to the Steel Company, and noted that any infringement is a violation of the law.

The constitutionality of the draft law was challenged, but the Provisional Authority upheld the constitutionality of the draft law.

Deputy	Parliamentary bloc
Ali Belakhoua Nouredine Mrabti Olfa Jouini Tarek Fetiti Mohamed Amin Kahloul Tawfik jebli Kamel Hragui	Free Patriotic Union ULP
Saleh Bargaoui Leila Chetaoui Kamel Harrabi Mohamed Troudi Souheil Alouini Houda Selim Khaoula Ben Aicha Sahbi Ben Fraj Ibrahim Nacif Abderraouf El May	Al Horra-Macrou Tounes

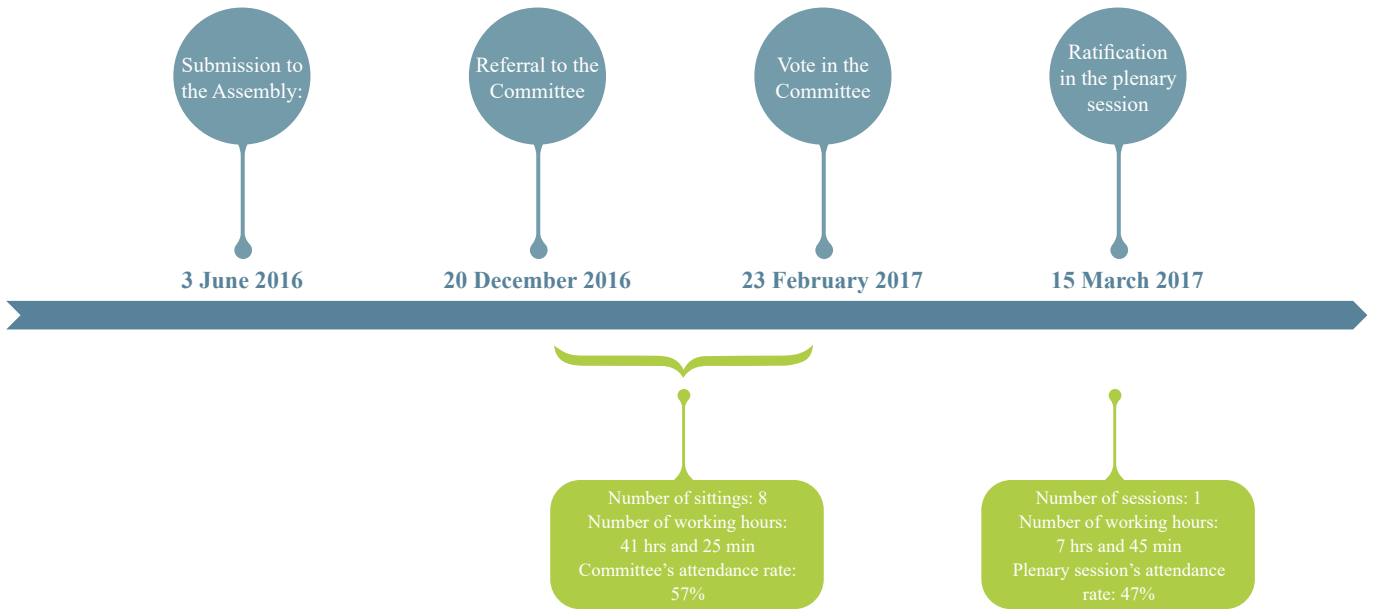
Mbarka Ouainia Brahmi Mongi Rahaoui Haikel Belgacem Jilani Hammami Aymen Aloui Abdel Momen Belaanes Mourad Hmaidi	The Popular Front
Imad Daimi Ghazi Chawachi Salem Labiedh Faicel Tebini Mabrouk Herizi	The Democratic bloc

### The Deputies' challenges

- Infringement of Article 65 of the Constitution, pursuant to which the legislative authority has exclusive competence for “regulation of taxation rules, percentages and procedures for collection thereof”. The deputies argued that the draft law does not comply with this provision, because of the temporary and exceptional nature of the rights that are granted and because it applicable only to certain beneficiaries.
- Infringement of Article 21 of the Constitution which guarantees equality: since the draft law only applies to the Tunisian Steel Company and the collectors, it would be discriminatory against other actors, including industrial companies producing iron waste.
- Infringement of Chapter 10 of the Constitution, which provides for the duty of good management of public funds: the deputies argued that the reduction of the taxes collected on the exports of iron will lead to a decrease in the State’s revenues and are not justified.
- Infringement of Chapter 13 of the Constitution, which states that natural resources belong to the Tunisian people: it was argued that iron waste can be considered as a natural wealth which therefore justifies restricting their export

### ■ Draft laws voted in the Committee

#### Draft law on the creation of the National Water Drilling Company



In light of the legal status of the Water Prospecting Agency, which was established pursuant to Law No. 46 (1969), related to the Finance Law of 1970, which stipulates that the Agency is an administrative public institution and that it therefore cannot directly borrow loans and take part in the drilling of deep wells, sponsored by international organizations. A lack of flexibility in management that resulted in the agency facing difficulties in conducting its activities in a competitive field of water prospecting.

Against this background, draft law No. 34/2016 provides for the closure of this agency that was set up in accordance with Law 46/1969 and the creation of a public institution, that would not be administrative in nature, and that enjoys legal personality and financial independence, to undertake water prospecting and the drilling of deep wells.

In this respect, members of the Committee on agriculture, food security, trade and trade-related services heard the Ministry of Agriculture, Resources and Fisheries and the the Ministry of Public Function and Good Governance.<sup>15</sup> The National Chamber of Independent Geologists and the President of the Union of Water Analysis Experts and the President of the National Chamber of Water Drilling Companies<sup>16</sup> also participated in this hearing session.

15 - Link to the meeting's bulletin: <https://majles.marsad.tn/2014/chroniques/5894b2f5cf441237ac61edd6>

16 - Link to the meeting's bulletin: <https://majles.marsad.tn/2014/chroniques/588866ddcf44121f3e63b0fc>



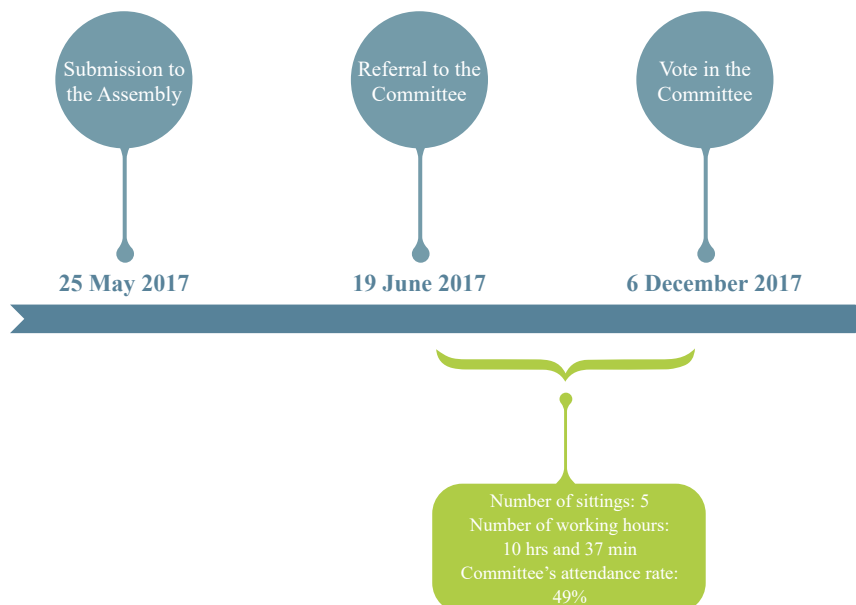
After a series of hearing sessions with experts, the deputies considered that the creation of this agency would be a major achievement, given the role it would play in training staff and technicians as well as in regulating the market. The draft law was eventually adopted within the Committee, without any amendments being made to it.

After the adjournment of the plenary session and the consultation between the blocs, several deputies proposed to send the draft law back to the Committee for further review but also because there were discussions over the possibility to formalize the change of nature of the National Water Drilling Company through a government decree rather than through a law. During the debate, Mabrouk Lahrizi from the Democratic bloc flagged that this is not a legal issue but a political one, and that the Administrative Court has been consulted previously on a similar subject and that it authorized the creation of a new category of enterprises by way of a law. He considered that this draft law was endangered, and that it is of great importance to the inhabitants of the mountainous areas, where it is impossible for private companies to drill for water.

The Assembly voted on the submission of the draft law back to the Committee (91 votes in favor, 11 against and 3 abstentions).<sup>17</sup>

### ■ Draft laws reviewed by the Committee

#### Draft Law No. 54/2017 on the amendment to Article 15 of the Forestry Code



17 - Voting results can be found here: <https://majles.marsad.tn/2014/vote/59b2c1804f24d0311313c013>

This proposal was submitted by 14 deputies representing all the parliamentary blocs. It mainly provides for: «is added to the first paragraph of Article 15: public projects included in the approved development plans need to start in a delay that does not go beyond 5 years after their adoption in the development plan”.

Deputy	Parliamentary bloc
Noureddine Bhiri Badreddine Abdelkefi Habib Khedher Radhia Ettoumi Mohamed Zrig	Ennahdha Movement
Abderraouf Cherif Hssouna Nasfi	Al Horra Machrou Tounes
Karim Helali Hajer Bechikh Ahmed	Afek Tounes & Call of Expatriate Tunisians
Shafiq Ayadi	Popular front
Mostafa ben Ahmed	National Bloc
Sabri Dkhil	Democratic bloc
Mohamed Lhadi Gadich	Nida Tounes
Mohamed Amin Kahloul	Free patriotic Union

The first version of the article states that «A change of the use [of the land] contemplated in the aforementioned Article 14 for the benefit of the State's private property, shall only take place for the following purposes:

- Forests ;
- Expanding municipal areas;
- Expanding residential communities of a Municipal Council;
- Setting up tourism development projects.

The deputies who launched this initiative were of the opinion that the preparation and approval of development plans takes five years, in practice, which causes the delay in changing the use of lands and disrupts the setup of public projects as a consequence.

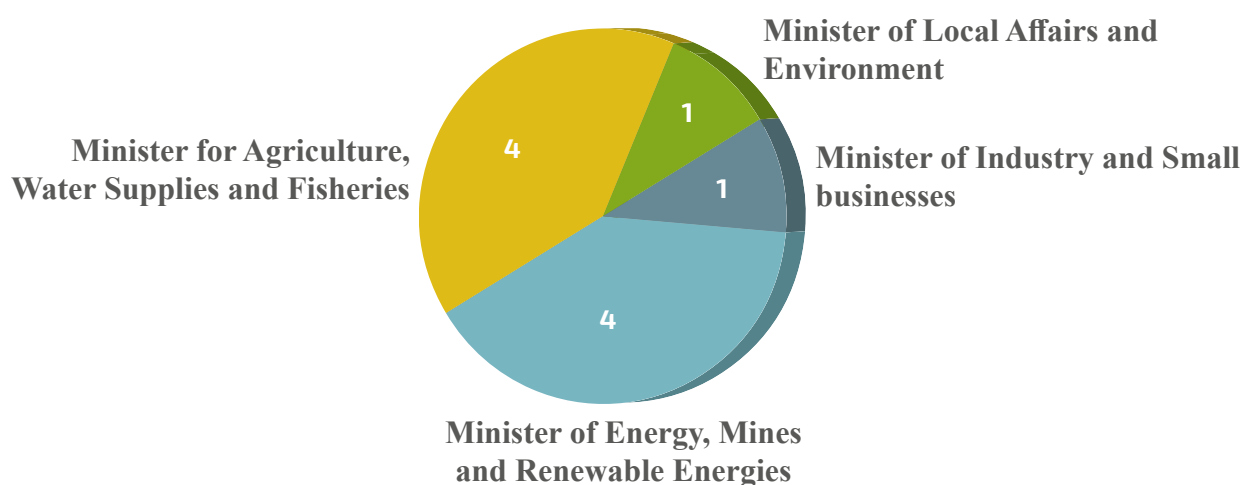
The project proponent took part in a discussion session on this draft law, yet no action was taken.

## II- The scrutiny role

With respect to the ARP's scrutiny role related to the natural resources in Tunisia, the deputies asked several oral and written questions to the ministers. The deputies also paid a field visit to the city of Al-Kamour, following the outbreak of the social crisis. The different scrutinizing mechanisms adopted by Assembly are detailed below:

### 1. Oral questions

During the plenary sessions, several oral questions were asked to the ministers listed below concerning natural resources:



## 2. Written questions

Deputies	Parliamentary bloc	Ministry	Subject
Salah Bargaoui	Al Horra-Machrou Tounes	Energy, mines and renewable energies Agriculture and Water resources and Fisheries	-Situation of the existing mines in the delegation of Kerib <sup>18</sup> - Disruption of drinking water supply in different delegations of the Siliana governorate <sup>19</sup> - Connecting Essfina and Ibarrama areas with potable water <sup>20</sup>
Sahbi Benfraj		Agriculture and Water resources and Fisheries	Protection of natural resources <sup>21</sup>

## Summary

As from the entry into force of Article 13 of the Constitution, the ARP acquired the exclusive right to ratify agreements concerning the management and exploitation of natural resources. This was initially a demand from the civil society which notably gave rise to a series of campaigns such as the «Winou El Petrol» campaign and to a wave of protests and demonstrations such as the ones that arose in Tataouine.

However, the various interpretations of this article lead to a clear conflict between the executive authority, represented by the Ministry of Energy, and a group of deputies asking for a consultation and ratification of the different phases of the agreements by the ARP.

This conflict was notably illustrated by the challenges to the constitutionality of the law amending the Hydrocarbons Code and the Nafzawa and Douiret agreements. The challenges were lodged by deputies who believed that the current version of the ratification of the agreements did not comply with Article 13 of the Constitution.

Despite the importance that the Constitution grants to natural resources and to their good governance, the Assembly's work in this area focused on petroleum resources and did not cover any other resources.

18 - The Minister's response: [http://www.arp.tn/site/main/AR/docs/reponses\\_gov/69.pdf](http://www.arp.tn/site/main/AR/docs/reponses_gov/69.pdf)

19 - The Minister's response: [http://www.arp.tn/site/main/AR/docs/reponses\\_gov/103.pdf](http://www.arp.tn/site/main/AR/docs/reponses_gov/103.pdf)

20 - The Minister's response: [http://www.arp.tn/site/main/AR/docs/reponses\\_gov/36.pdf](http://www.arp.tn/site/main/AR/docs/reponses_gov/36.pdf)

21 - The Minister's response: [http://www.arp.tn/site/main/AR/docs/reponses\\_gov/72.pdf](http://www.arp.tn/site/main/AR/docs/reponses_gov/72.pdf)

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# Chapter 10

The Assembly's work  
process

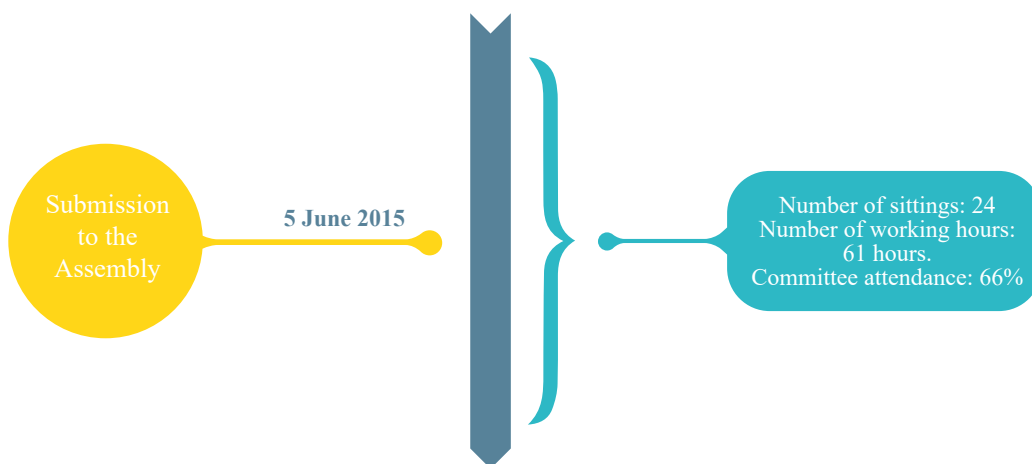
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The ARP's activities are governed by its rules of procedure, which regulate its various structures including the plenary session, the committees and the ARP's bureau. It also regulates its modus operandi and the various roles it plays: the legislative, the scrutiny and the representative functions.

However, the ARP has not always complied with its own rules and has, for example, very often resorted to illegal procedures and mechanisms when discussing major draft laws. Problems of transparency also still prevail as committee meetings are, frequently held with no previous announcements for instance.

## I. The Assembly's financial and administrative independence



On 5 June 2015, a group of deputies submitted a draft law providing for the financial and administrative independence of the ARP.<sup>1</sup> The discussion of the draft law lasted 61 hours, throughout 24 sittings, most of which were held during the first and second parliamentary sessions.

During the third session, in light of the divergence of views on the legal basis of the contemplated principle of financial and administrative independence, the Parliamentary Academy organized its second sitting on 20 February 2017, to discuss this legislative initiative in the presence of several legal experts, so as to tackle and solve the issue and take into account differing points of view.

The legal expert, Kamel Ben Masoud, explained that independence is a constitutional principle. As a consequence, financial independence of the ARP can be assimilated to the principles that constrain public administration such as neutrality, continuity of the service, equality between men and women, competence etc. This means, according to the expert, that independence cannot be organized by way of a law, because Article 65 of the Constitution clearly defines what can take the form of law - independence of the ARP is not included in this list.

Some deputies stated that it is unreasonable that the independent constitutional bodies enjoy financial and administrative independence, while the legislative authority doesn't. Hager Ben Cheikh Ahmed of "Afek Tounes" said that the financial and administrative independence of the Parliament can only be achieved by way of amendment of the Organic Budget Law. With regards to the parliamentary administration, Kamel Ben Masoud called for the enactment of a public organic law, on the basis of which the important principles of the parliamentary public function would be drawn. Article 16 of the draft law on financial and

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1 - <https://majles.marsad.tn/2014/lois/55759a0612bdaa7a6c45609f>

administrative independence of the People's Assembly reads as follows:<sup>2</sup>

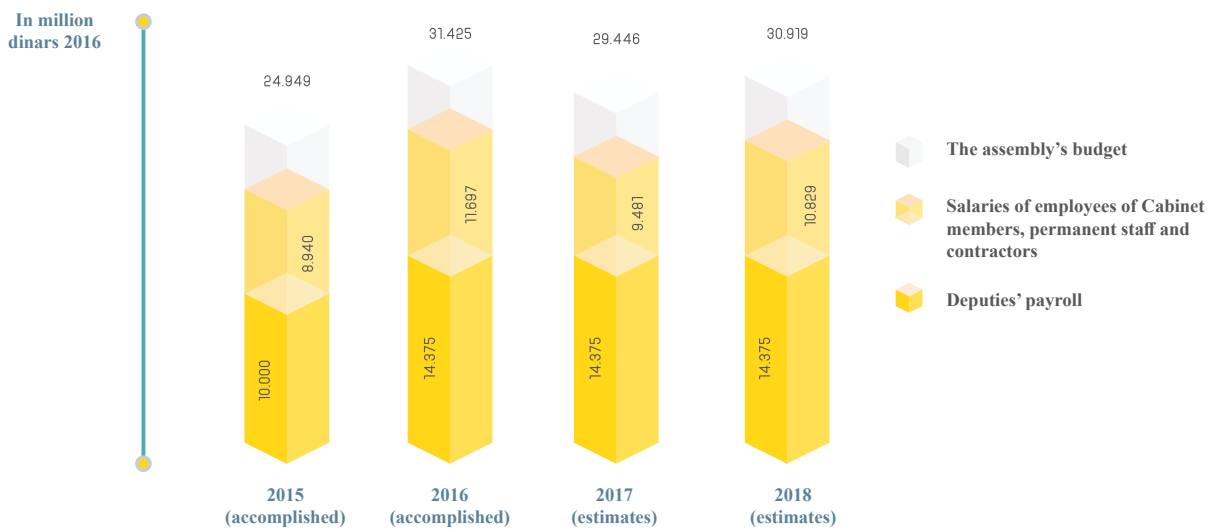
*Parliamentary public function shall be regulated by law, in accordance with the specificities of the parliamentary administration and in accordance with the requirements of its work. The Assembly sets forth the specific rules related to the pensions and social protection system and the prevention of work accidents and diseases that are applicable to the Assembly employees.*

*The ARP's bureau provides for the salary scale, the organization in administrative departments, the assignment of management positions and other rules concerning the implementation of the provisions of the General Organic law on the Parliamentary Public Function.*

*Hierarchically high parliamentary positions and their assignment and dismissal are determined by virtue of a law.*

In light of the above, our conclusion is that there is, in theory, an agreement on the need to ensure the financial and administrative independence of the People's Assembly, although in practice, some experts believe that the principle cannot be incorporated in a draft law and should instead be included in the rules of procedure.

**2018 Evolution of the budget dedicated to the Assembly's salaries**



Distribution of the Assembly's Human resources under Financial Law for the year 2018

The following is the evolution of the wage budget of the People's Assembly during the three parliamentary sessions:

- Deputies: 217
- Cabinet members: 10
- Permanent staff: 464
- Contractors: 10

2 - Draft organic law N° 42/2015 on the independence of the ARP and its work process rules/  
<https://majles.marsad.tn/2014/lois/57ece9e0cf4412179f4942da>



## II. Amendment of the rules of procedure

On 15 June 2017, the Committee on The Rules of Procedure ended the study of the draft amendment on the revision of the Rules of Procedure of the People's Assembly, the discussion of which had begun on 13 April 2017.

The Committee had received 5 drafts to the rules of procedure from the parliamentary blocs. These drafts were gathered in one proposal. The details of the proposals are as follows:

- Proposed Law No. 2016/00<sup>3</sup>
- Proposed Law No. 2016/37<sup>4</sup>
- Proposed Law No. 2016/46<sup>5</sup>
- Proposed Law No. 2016/47<sup>6</sup>
- Proposed Law No. 2016/48<sup>7</sup>

During the vote on the articles, the Committee rejected several amendments to the initial version of the rules of procedure of the People's Assembly, while other amendments were adopted:

- Rejection of Article 26 (new) of the rules of procedure concerning the the means by which attendance is recorded within the Assembly, which provides that the deputy must sign the attendance sheet at the beginning of the committee's meeting and sign the attendance sheet half an hour before the end of the meeting. It also provided for the deduction of 100 dinars to be discounted from the deputy's allowance, and grants the ARP's bureau the right to do so automatically.
- Rejection of the draft amendment on Article 85 which aimed at regulating "consensus committees". This draft amendment provided that "consensus committees can be held" on conflicting articles in the presence of the heads of the parliamentary blocs, before the report is approved in the committee and before the bill is transferred to the plenary session.
- Ratification of article 87 on the integration of certain special committees within the standing committees (integration of the Committee on affairs concerning Tunisians who live abroad within the Committee on Foreign Relations / Integration of the Women's Committee within the Health and Social Affairs' Committee). The rules governing the special committees in the current rules of procedure of the ARP still stand. Article 87, as amended, provides for the creation of a new committee, the Committee on Criminal, Commercial Rights, which will deal with issues related to criminal law, trade law, competition and prices. Consequently, the property and rights in rem will no longer be examined by of the General Legislation Committee. Article 8, as amended, further provides for the separation of rights, freedoms and foreign affairs, thus bringing the number of standing committees to eleven, as opposed to nine committees that ar provided for in the current version of the rules of procedure.

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3 - <https://majles.marsad.tn/2014/lois/57ece333cf4412179f4942d6>

4 - <https://majles.marsad.tn/2014/lois/57ece43dcf4412179f4942d7>

5 - <https://majles.marsad.tn/2014/lois/57ece627cf4412179f4942d8>

6 - <https://majles.marsad.tn/2014/lois/57ece789cf4412179f4942d9>

7 - <https://majles.marsad.tn/2014/lois/57ece789cf4412179f4942d9>

- Creation of a new section related to the Code of Conduct and Ethics of Parliament within the rules of procedure. This section was included in a draft law submitted by deputy Riadh Jaidaan from the Afek Tounes bloc, which incorporated a number of rules – the most important of these rules concerning the obligation to declare assets. The members that were present at the Committee unanimously adopted this proposal. The draft law was submitted to the plenary session on 26 July 2017, immediately after the ratification of the law on violence against women. The discussion took place during two sessions and the vote on the draft law was postponed until a «consensus» was reached.<sup>8</sup>

### III. Committees of inquiry

#### 1. The legal framework of the committees of inquiry

Article 59 of the Constitution states that: “the Assembly of the Representatives of the People may form committees of enquiry, and all authorities shall assist such committees of inquiry in undertaking their tasks”. Moreover, Article 97 of the Assembly’s Rules of Procedure provides that a quarter of the ARP members can form a committee of inquiry, the creation of which shall be voted at the plenary session by a majority of members who are present, provided that such a majority represents no less than one-third of the members of the Assembly.

Article 98 sets forth the right of opposition to the submission of a request to form and chair a committee of inquiry, without the need to submit this request to the plenary session and without the approval of the Assembly’s Bureau.

A draft law on the formation of parliamentary committees of inquiry was submitted to the Committee on the Rules of Procedure, Immunity, Parliamentary and Electoral Laws on 16 July 2016, in order for it to be studied and discussed on 3 January 2017.

Simultaneously, the Committee studied a draft law on the organization of parliamentary committees. As a consequence, it decided to join the two proposals which were overlapping and completed its review of these draft laws on February 2017. The two proposed laws were submitted to the plenary session, on 15 March 2017. Their review was postponed immediately after the general debate and there was no vote on the articles.

#### 2. Committees of Inquiry discussed in the Plenary

In the course of the ARP’s third parliamentary session, the formation of three parliamentary investigation committees were discussed. Two were ratified. These committees of inquiry are listed below:

- A committee of inquiry on the networks recruiting and sending young Tunisian to combat zones: Accepted by the plenary
- A committee of inquiry which was tasked with investigating suspicions of administrative and financial corruption around the Head of the Truth and Dignity Commission,: Rejected by the plenary
- A committee of inquiry which was tasked with the investigation of the circumstances that surrounded the events that took place in Tataouine.: Accepted by the plenary

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8 - <https://majles.marsad.tn/2014/lois/57ece9e0cf4412179f4942da/chroniques>

### ■ The Committee of Inquiry on the networks recruiting and sending young Tunisians to combat zones

The creation of this committee was voted in the course of a plenary session that was held on 31 January 2017 at the request of more than 100 deputies, who had submitted a signed petition to that effect in mid January 2017.

The result of the vote was as follows:

In favour: 132 / Against: 1 / Abstentions: 1<sup>9</sup>

The Committee held nine sittings, including 4 hearings, as follows:

Date	Hearing participants
21 April 2017	Minister of Interior Affairs
17 May 2017	Minister of Justice
19 May 2017	Tunisian Commission on Financial analyses
20 July 2017	Minister of Religious Affairs

Even though the creation of the Committee was voted with a comfortable majority, and despite the eagerness of the parties advocating for its creation, in light of the gravity of the recruitment of youngsters sent to combat zones by several networks, the committee's work lacked a clear methodology. Five meetings were dedicated to the discussion of the working method and the persons to be heard in the hearing sessions.

The dismissal of the President of the committee, Leila Chattaoui from the Nida Tounes bloc, caused a problem in terms of committee composition. It raised questions on the way the rule of proportional representation was applied with respect to the composition of the committees of inquiry, and whether the original chair of the committee should stay or be replaced by another deputy belonging to the same bloc.

On 10 July 2017, Hala Omran was appointed as new Chairperson of the Committee. Moreover, Sahbi Ben Fraj of Al-horra Machrou Tounes relinquished his position as rapporteur assistant to the former President Leila Chattaoui.

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9 - <https://majles.marsad.tn/2014/vote/5890a3f1cf441246ac61eaf6>

### ■ **The parliamentary committee of inquiry investigating suspicions of administrative and financial corruption on the part of the Chairperson of the Truth and Dignity Commission**

At the plenary session which was dedicated to the discussion of the Finance Law for the year 2017, when the draft budget of The Truth and Dignity Commission was discussed, deputies called for the formation of an Inquiry Committee to investigate suspicions of financial corruption from the Chairperson of the Commission. During the session held on 17 January 2017, the creation of the aforementioned committee was voted. However, the number of votes i.e. 81 votes in favor of the creation of the committee, out of a total of 163 votes, prevented the committee's formation. For the committee to be formed, there needed to be a majority of votes, that is 82 votes.<sup>10</sup>

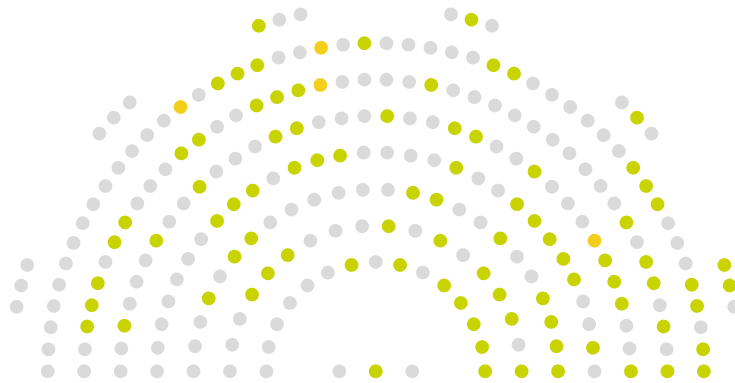
### ■ **The commission of inquiry investigating the events that took place in Tataouine**

Following the outbreak of popular protests in the region of Tataouine, and the death of a young man, Anouar Skrafi, some deputies advocated, several times, for the formation of a committee of inquiry to investigate the circumstances surrounding these events, in particular after the field visit of the Security and Defense Committee to Tataouine on 29 May 2017 and the report which was drafted after the field visit and which was, however, not approved during the third ordinary session. There were also different accounts related to the legitimacy of events and of the protestors' and about the circumstances surrounding the death of Anouar Skrafi.

In the course of a plenary session held on July 11th, 2017, the set-up of a committee of inquiry in order to investigate the Tataouine events was unanimously approved by 87 deputies.

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10 - <https://majles.marsad.tn/2014/vote/587e4eebcf44121f3e63b08a>



87 in favor 0 against 4 abstained

Required majority > 73

Parliamentary blocs:

Ennahda Movement		40	0	1	28
Nidaa Tounes Movement		16	0	0	42
Al Horra Bloc		10	0	1	12
Popular Front		9	0	0	6
Democratic Bloc		4	0	0	8
Free Patriotic Union		4	0	0	8
Afek Tounes and the Call of Expatriate Tunisians		1	0	0	9
No political affiliation		0	0	0	10
National Bloc		3	0	2	3

## IV. The MP's representative function

### 1. The representative function domestically

This mechanism enables the deputies to move around the regions nationwide, listen to the citizens' concerns and monitor their living conditions, in order for them to endorse their representative role to the best of their Article 43 of the Assembly's rules of procedure provides for the organization of a week-long regional event once per month, in which deputies have the opportunity to interact with the citizens of these regions. However, the ARP did not comply with the timeframe provided in the rules of procedure. The first regional event was organized from 26 to 30 December 2016 and the second event was held from 2 to 5 May 2017. The last regional event was held from 26 to 30 June 2017.

On the other hand, the Assembly did not ensure the publication of documents and reports related to the week of regions after they were organized. Moreover, there are no available figures or data on the regions to which the deputies paid a visit and on the shortcomings and problems that were raised by the citizens. Thus, the lack of information does not ensure that the deputies achieved their role in voicing the citizens' concerns to the relevant authorities, and that there is a follow-up in order to solve these problems encountered and the current issues.

As a consequence, Al Bawsala recommends that:

- the frequency of organization of regional events, as provided in the rules of procedure, is complied with.
- an agenda for the regional event is prepared for each deputy and is posted on the ARP's website a week before the event, in order to allow the citizens in the distant areas to join the event and to exchange views with the deputies.
- a report on the work of each deputy during the regional event is prepared and is published on the deputy's page on the Assembly's website.

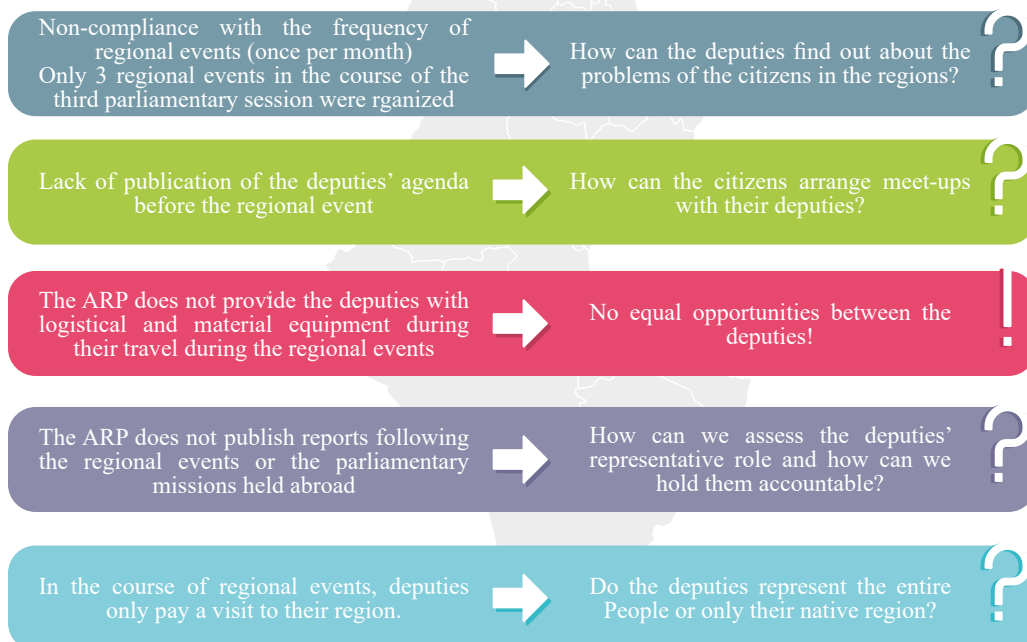
Al Bawsala tried to monitor the work of several deputies during the regional events and travelled with them to the Greater Tunis area and to Beja. The organization also relied on local observers who participate in the municipal observatory project in the regions.

**Al Bawsala's team accompanied 4 deputies, namely:**

- Najib Torjman from Al-Horra Machrou Tounes, representative of the District of Manouba,
- Hala Lhammi from Ennahdha movement bloc, representative of the District of Ben Arous,
- Sami Fatanassi from Ennahdha movement bloc, representative of the District of Beja,
- Hssan Lamari from Nida Tounes bloc, representative of the District of Ariana.

### The representative performance:

#### Poor organization and lack of transparency



## 2. Parliamentary missions

In theory, each deputy's representative role is not confined to the local level, but goes beyond the national borders and encompasses the international scene. This is illustrated by the parliamentary missions provided for in Article 163, which provides for the appointment of ARP representatives in both national and international institutions and councils, while making sure that members coming from different blocs are involved, in order to reflect the respective size of these blocs.

However, in practice, information on the mechanism of international representation and the way MPs are selected for these missions are scarce. No report or document can be traced as regards the activities of the deputies within the commissions as dictated in the rules of procedure. Nor were there any announcements on such activities in the plenary session. The rules of procedure state that the Assembly's speaker «shall [...] inform the plenary [session?] of any approved assignment and share the information with the concerned bodies that are not part of the Assembly.»

## V. The “Consensus Committee”: until when?

From a parliamentary session to another, deputies resorted more and more at the “consensus committee” to allegedly smooth the legislative process and sought to establish it as a parliamentary tradition - a mechanism and a “tradition” which is not provided for in the rules of procedure.

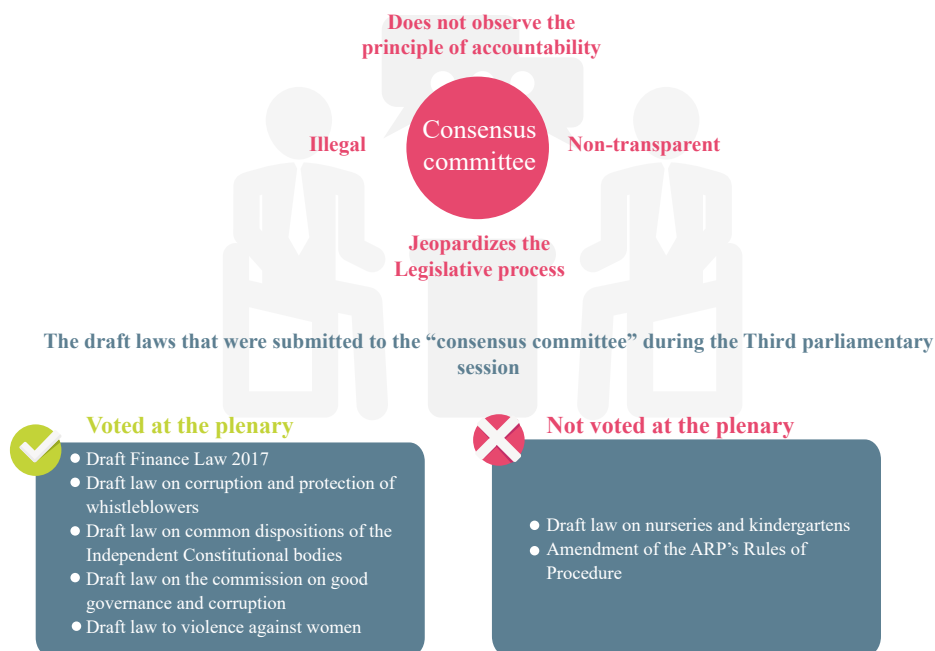
The consensus committee is a meeting, organized by the Bureau of the committee in charge of a draft law that will be discussed at the plenary session, in the course of which draft amendments submitted by the various blocs are reviewed in the presence of a representative of each bloc.

The consensus discussions used to take place behind closed doors without allowing any external party to attend the meeting. Yet, some civil society actors and journalists took recently the initiative to take a look at what goes on in those meetings; they are sometimes granted access to these unannounced meetings, but this remains at the discretion of the president of the committee.

Despite our repeated demands to stop resorting to this unconstitutional mechanism or to give it at least a legal framework, the project of amendment discussed during the review of the parliament's rule of procedure was buried.

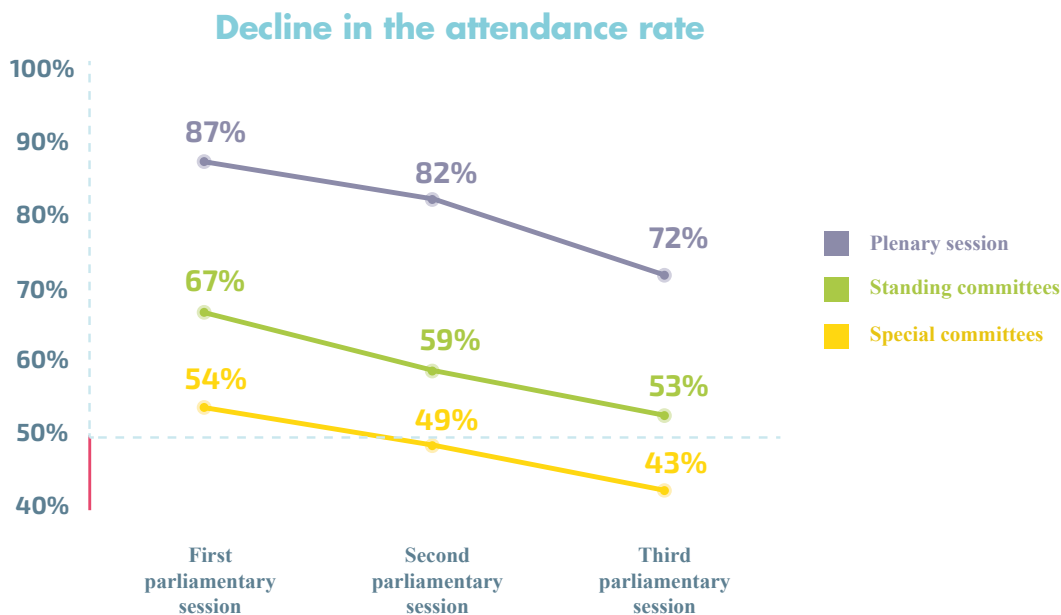
### The “Consensus Committee”

#### A parallel Assembly?



## VI. The assessment of the deputies' work

From the beginning of the Assembly's activities at its first session to the third parliamentary session, the overall rate of deputies' attendance in the committee and plenary sessions has strongly decreased. As explained in the chart below, the attendance rate dropped from 87% at the first parliamentary session to 82% during the second session and fell at 72% during the third parliamentary session.<sup>11</sup>



11 - <https://majles.marsad.tn/2014/assemblee/classement>



## VII. The efficiency of the scrutiny function

The legislative authority is tasked with scrutinizing the executive branch, in order to achieve a balance between the different branches and ensure continuous monitoring of the government, the latter deriving its power from the Parliament. The Constitution provides for a number of mechanisms that are designed to ensure that the scrutiny role is achieved. Article 96 states that «every Assembly member has the right to submit written or oral questions to the Government in accordance with the Assembly's internal rules of procedure.»

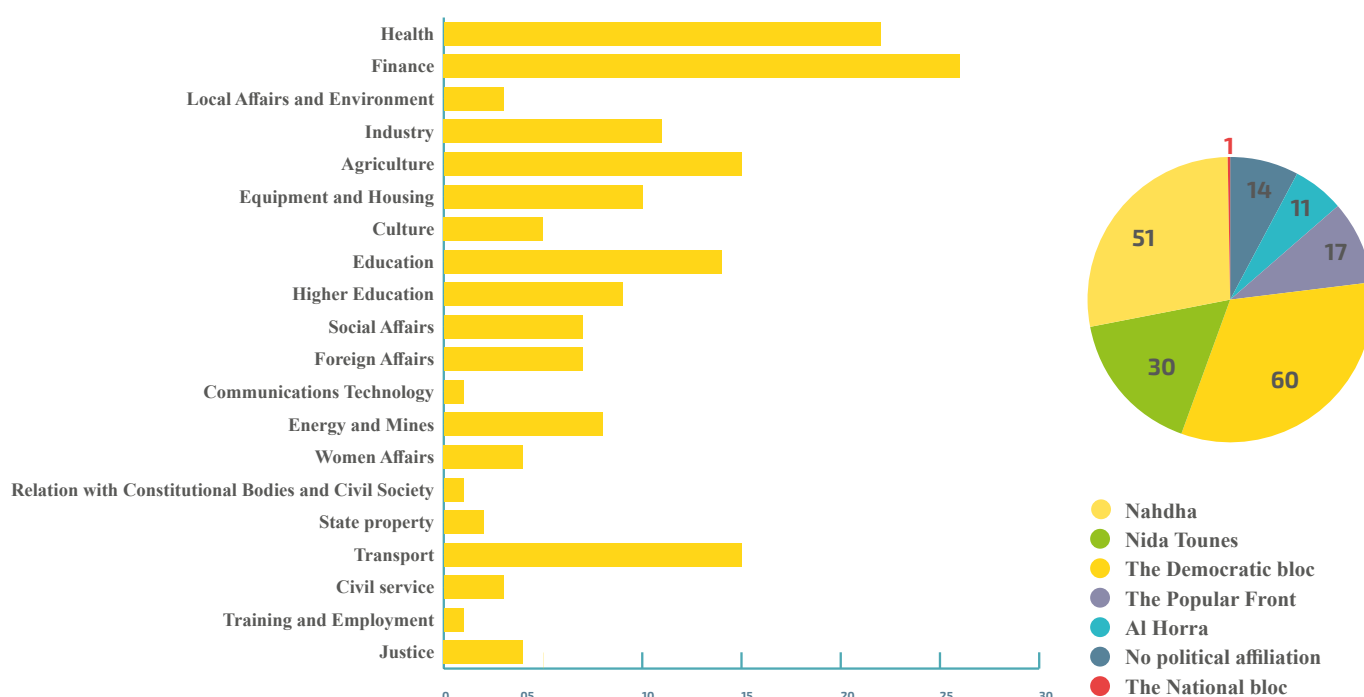
The Assembly's internal rules of procedure also determine how oral and written questions may be submitted in Articles 145 and 146.

Article 9 of the rules of procedure also sets forth other measures to scrutinize the government, including discussion meetings with government members. Article 147 stipulates that «every member of the People's Assembly shall submit to the Government written or oral questions in accordance with the Assembly's rules of procedure.»

### 1. Oral questions

During the third parliamentary session, 195 oral questions were submitted to 19 Ministers. Most questions were directed to the Ministry of Finance (26 questions), followed by the Ministry of Health (22 questions), while the lowest rates of oral questions were addressed to the Ministry of Relations with Constitutional Bodies, Civil Society and Human Rights as well as to the Ministry of vocational training and employment, that were asked a sole question each.

The Democratic bloc was one of the most scrutinizing blocs towards the government: it asked 60 oral questions. It is immediately followed by the Ennahdha bloc, as shown in the Chart below.



The most recurrent questions are those on social issues. 51 questions related to the social theme were submitted to several ministers (Minister of Culture, Minister of Industry, Minister of Health, etc.), followed by 36 questions relating to investment, 21 questions related to natural Resources and 13 questions related to the fight against corruption, and associated topics such as the judiciary (10 questions) and rights and freedoms (8 questions).

The People's Assembly adopted a new plan of action, which consists of organizing public meetings with a supervisory nature outside the committees' working hours. The plenary meeting held on 20 May 2017 was the first meeting which was organized to that effect; 44 deputies attended it.<sup>12</sup> Another session was held on 22 July 2017 in the presence of 33 deputies.<sup>13</sup> This is contrary to the provisions of Article 109 of the internal rules of procedure, which provides that the plenary session shall be held half an hour later with at least 73 attending deputies.<sup>14</sup>

## 2. Dialogue sessions with the Government

The dialogue sessions with the Government fall within the framework of the Assembly's scrutinizing role as stipulated in Article 147 of the Assembly's Rules of Procedure:



“The Assembly organizes a dialogue session with Government members, within its scrutinizing role of the Government, in compliance with Article 147 of the Assembly's internal rules of procedure.”

However, the People's Assembly did not comply with the frequency of these meetings. It organized only two dialogue sessions, that were held as follows:

- The first session was held on 23 December 23rd 2016<sup>15</sup>. The Ministers of Interior Affairs and of Foreign Affairs were invited to a dialogue session concerning the assassination of Engineer Mohamed Zouari;
- A second session was held on 20 July 2017<sup>16</sup> and was dedicated to the fight against corruption and the overall situation in the country.

12 - <https://majles.marsad.tn/2014/presence/591deebecf4412226ec753dc>

13 - <https://majles.marsad.tn/2014/presence/5971a4974f24d036e99d9767>

14 - If a quorum is not available for the plenary meeting, it shall be held at least one half an hour after the initial starting time with attendance of at least one third of the members.

15 - <https://majles.marsad.tn/2014/chroniques/585cf563cf44121f3e63af8c>

16 - <https://majles.marsad.tn/2014/chroniques/597097de4f24d036e99d975c>

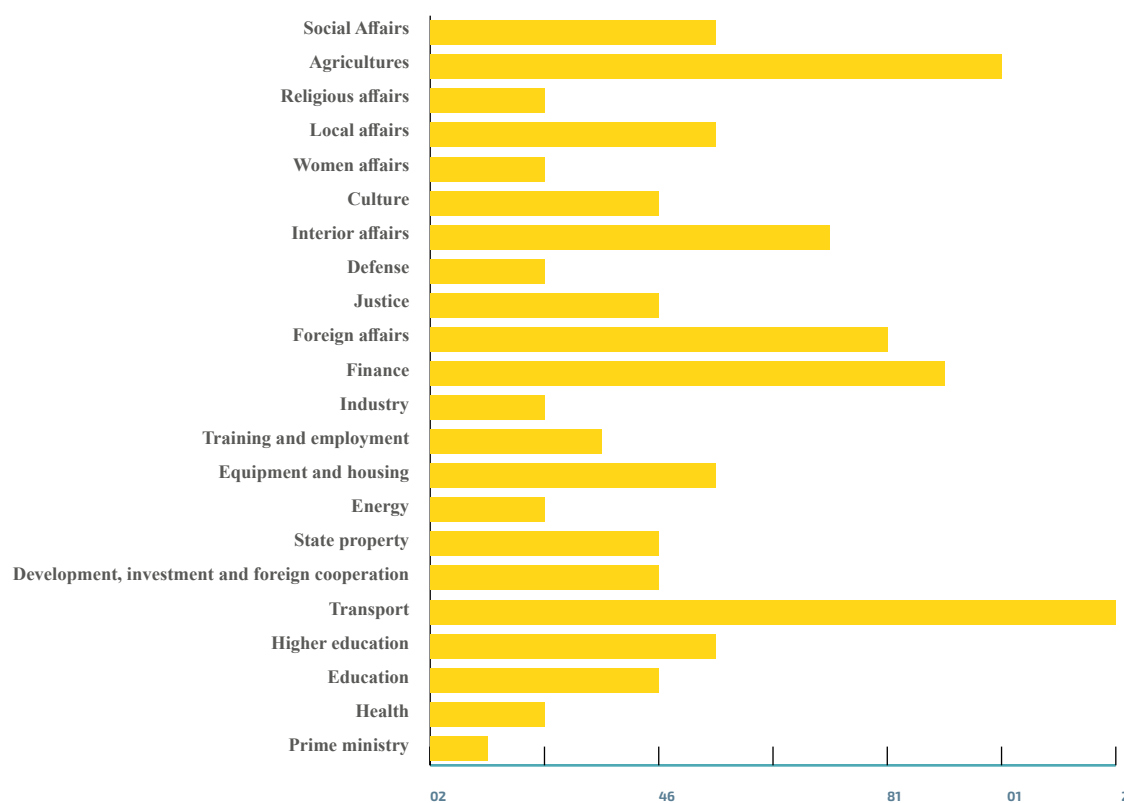
### 3. Written questions

Article 145 of the internal rules of procedure provides that:



“Each member or more may submit concise written questions to the Government members through the Assembly’s Speaker. The Assembly’s Bureau shall transmit the written question to the Government, not later than eight days as of the question’s receipt. The Bureau may designate one of its members to take up this task.”

During the third parliamentary session, 98 oral questions were asked and are detailed as follows:



The deputies' deployed certain efforts to fulfill their oversight function during the plenary sessions, but in the absence of a follow-up work or further inquiry from the parliament or from MPs, the scrutiny work remains incomplete. Based on this observation, one can say that the oral questions and the dialogue sessions are an end in themselves more than an actual tool.

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# Conclusion



The third parliamentary session and the outcome of the deputies' activities were hindered by a lack of clear legislative priorities as regards the Assembly's agenda. This lack of a clear direction is evidenced by the discussions around numerous draft laws throughout several parliamentary sessions and the subsequent postponement of their consideration in order to study other draft laws, in response to extra-parliamentary events and factors. For example, when a minor married her rapist, the discussion of the draft law on the Elimination of Violence Against Women was sped up; similarly, the arrest of two young men for possession of illegal drugs led to expediting the discussion of the draft law amending 1992 law on Narcotics<sup>1</sup>, and the murder of a security officer near Bir al-Hfai led to the draft law on the Repression of Attacks Against Armed Forces being put back on the agenda. These changes to the legislative work that was carried out sheds light on the ARP's subordination to the external events and pressures which had a direct impact on its legislative priorities and ultimately shaped its agenda.

In addition to the foregoing, the outcomes of the Assembly's legislative activities were contradictory in some cases. For example, on the one hand, the ARP sought to play a leading role in fighting corruption and economic crimes and enacted laws that strengthened legislation in these fields, such as the law on the Economic and Financial Pole as well as the law pertaining to the Protection of whistleblowers and the law on Anti-Corruption Commission. On the other hand, the ARP also ratified the Administrative Reconciliation law, which establishes impunity.

It appears that, the ARP's role was limited to inciting the government to submit draft laws to the legislative branch. This is clearly evidenced by the very low number of draft laws that were submitted by the deputies and that were then adopted during the third parliamentary session; only two bills coming from MPs were indeed adopted, the first was on public agrarian property,<sup>2</sup> and the second pertained to the change of the use of agrarian lands.<sup>3</sup> This leads us to conclude that the ARP failed to pay the necessary attention to the legislative initiatives submitted by the deputies, and instead studied the draft laws submitted by the Ministries, the head of the Government and the Presidency of the Republic, therefore complying with the legislative priorities of the government.

As for the Assembly's supervisory performance, essentially embodied in written and oral questions and the sessions of dialogue with the government, Al Bawsala noted the lack of compliance with the rules of procedure concerning the periodicity and occurrence of the discussion sessions, which are due to be held once per month according to the parliament's bylaws.<sup>4</sup>

The ARP also decided to organize oral questions in the course of plenary sessions that were held on Saturdays. Yet, the attendance rate in those sittings was very low: the attendees were almost only those deputies who had submitted the questions beforehand. This is a clear breach of the rules of procedure which provide that plenary sessions shall be held half an hour after the starting time, provided at least one third of [the Assembly's] members are present.<sup>5</sup>

1 - <http://www.legislation.tn/sites/default/files/journal-officiel/1992/1992A/Ja03392.pdf>

2 - <https://majles.marsad.tn/2014/lois/58fcfcf8cf4412226ec752e5/text>

3 - <https://majles.marsad.tn/2014/lois/58a31a8fcf441237ac61ee82/texte>

4 - See the paragraph on the Assembly work process

5 - See the paragraph on the Assembly work process

With regard to the representative role of deputies both locally and internationally, it is worth noting that the ARP did not publish the activities that were carried out by the deputies outside of the Assembly, neither did it provide them with the financial and logistical resources that would have allowed them to travel to different regions and to carry out their representative role to the best of their ability.

On the occasion of the publication of its annual report, Al Bawsala reiterates a number of recommendations that it has been formulating since the first parliamentary session. These recommendations underline the need to:

- Identify clear legislative priorities and put in place the authorities and institutions set forth in the Constitution in order to enhance the democratic transition, with the objective of improving the quality of life and guaranteeing the rights and freedoms of the Tunisian people;
- Set up transparency mechanisms and notably publish the meetings' minutes and the attendance lists on a regular basis; as well as implementing appropriate measures in order to reduce absenteeism which jeopardizes the legislative work.
- Implement the financial and administrative independence of the ARP to enable it to carry out its legislative; supervisory and representative functions - consecrated by the 2014 Constitution - to the best of its ability;
- Address the issue concerning the systematic use of the «consensus committee» when debating draft laws submitted before the plenary session, either by including these illegal committees in the rules of procedure and hence granting them into a legal structure; or by discarding them completely; so as not to empty the committees and the plenary session of their substance;
- Organize the committees' work with a genuine participatory approach and ensure that committees are public; in line with the right of every citizen to be provided with information on the work process of the ARP and of its affiliated structures;



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