

# **Draft Constitution of the Republic of Tunisia**

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## **In the Name of God, the Merciful, the Compassionate**

A preliminary draft of the Constitution was issued at the beginning of the second week of last August. Now, we are issuing the draft of the Constitution, the final step prior to issuing the Constitution itself.

The preliminary draft of the Constitution reflected the initial outcomes reached by the six constituent committees. The Joint Commission for Coordination and Drafting studied the outcomes of each of the five committees (excluding the Committee of the Legislative and Executive Powers and the Relationship between Them), reviewed its resolutions and suggestions with respect to these outcomes, and then referred all the work made thereon to the relative committee. After that, each committee looked into the suggestions of the Commission in order to approve or reject them, and concluded by drafting the final work thereof, and submitted the same coupled with reports to the Bureau d'ordre. The Bureau of the Chamber of Deputies shall be entrusted with such work to arrange for presenting it in the plenary session for public discussion of the outcomes of each committee on a separate basis pursuant to the requirements of Article (65) of the statutes, allowing the colleagues to present the propositions thereof. The same final outcomes shall also be adopted in the campaign of national dialogue aimed at receiving the suggestions and opinions of participants. The received suggestions and opinions shall subsequently be submitted to the Joint Commission for Coordination and Drafting to have a look into them when drafting the Constitution. The outcomes of the first committee have already been discussed in public, and the same is expected to be done with the other committees. The Committee of the Legislative and Executive Powers and the Relationship between Them delivered the preliminary improved outcomes thereof to the Commission which looked into them and introduced its notes thereon, except for the sections relating to security and defence. However, the said committee has not looked yet into these notes. That is why we are publishing in this draft the wording or the wording proposed by the committee along with the opinion of the Commission for Coordination and Drafting.

**Habib Khedher**

**General Rapporteur of the Constitution**

## Preamble

In the Name of Allah, the Merciful, the Compassionate

We, the representatives of the Tunisian people, members of the National Constituent Assembly, and electees of the revolution of dignity, freedom and justice:

Taking pride in the struggles of our people; in response to the objectives of the revolution that has crowned a battle for liberalisation from colonisation and tyranny and achieved victory for the free will of the people; out of loyalty towards the martyrs and the sacrifices made by successive generations; with a view to putting an end to injustice, corruption and oppression,

Building on the fundamentals of Islam and its open and moderate objectives, on the sublime human values and on the principles of human rights; inspired by the civilisation of the Tunisian people over the various epochs of history; emanating from their reformist movement based on their Islamic-Arab identity and on universal civilisational accomplishments; adhering to the national accomplishments achieved,

With a view to building a participatory, democratic, republican regime for a civil state that is based on institutions, where power belongs in the hands of the people on the basis of the peaceful alteration of rule through free elections, and on the principle of separation and balance of powers; where the right to govern is based on plurality, administrative impartiality and good governance representing the basis of the political race; and where the system of rule is governed by respect for human rights and freedoms, sovereignty of the law, independence of the judiciary, prevalence of justice and equality in rights and obligations among all citizens, males and females alike, and among all groups and regions,

Recognising the dignified status of mankind; in line with the cultural and civilisational affiliation to the Arab- Islamic *Ummah* on the basis of national unity built on statehood, brotherhood and social solidarity; with a view to attaining the Maghreb unity as a step towards achieving an Arab unity, integrating fully with the Muslim and African peoples, and cooperating with the peoples of the world; achieving victory for the oppressed; recognizing the people's right to self-determination; recognising all rightful movements for liberation, with special emphasis on the Palestinian Liberation Movement,

Supporting the will of the people to be a maker of their own history, while believing in work as a sublime human value, seeking leadership, opting to contribute to civilisation by caring for the environment in such a manner that guarantees a safe sustainable life and better tomorrow for future generations, on the basis of peace, human solidarity and independence of the national decision,

We, in the name of the people, draft the following Constitution.

## **Chapter 1 – General Provisions**

### **Article (1)**

Tunisia is a free, independent and sovereign state. Its religion is Islam, its language is Arabic and its form of government is a republic.

### **Article (2)**

The flag of the Republic of Tunisia, in accordance with the provisions defined by law, is red and bears in its midst a white circle in which is inscribed a five-pointed red star surrounded by a red crescent.

The national anthem of the Republic of Tunisia, in accordance with the provisions defined by law, is *Himat Al-Hima* (Defenders of the Homeland).

The motto of the nation is: Freedom, Dignity, Justice and Order.

### **Article (3)**

All powers shall be vested in the people of Tunisia. The powers shall be exercised via representatives elected by the people by means of free elections and referenda.

### **Article (4)**

The state shall be the patron of religion, the guarantor of freedom of belief and practice of religious rites, the protector of religious sanctuaries and the assurer of the neutrality of houses of worship from partisan propaganda.

### **Article (5)**

All citizens, males and females alike, shall have equal rights and obligations and shall be equal before the law, without discrimination of any kind.

### **Article (6)**

The state shall, to all citizens, guarantee individual and normal rights and shall furnish means to the good livelihood thereof.

### **Article (7)**

The state shall guarantee the protection of the rights of women and shall support the gains thereof.

### **Article (8)**

The state shall protect family structures and maintain the coherence thereof.

**Article (9)**

The state shall guarantee the protection of the rights of children and persons with special needs.

**Article (10)**

The national army is a republican, politically-neutral institution that shall defend the nation and the independence, unity and land thereof. The army shall contribute to all efforts exerted in the areas of relief and development, and shall support the civil authorities in accordance with the provisions stipulated under the Emergency Law.

**Article (11)**

Citizens shall maintain the unity of the nation, defend the sanctity thereof, and comply with the law.

**Article (12)**

National Service shall be obligatory for citizens in accordance with the provisions and terms of the law.

**Article (13)**

Decentralisation shall be the basis of local administrative organisations while maintaining the unity of the state.

**Article (14)**

The public administration shall serve citizens and the public interest, and shall be organized and shall work in accordance with the principles of impartiality and equality, and the rules of transparency, integrity and efficacy.

**Article (15)**

Peace, based on justice, shall be the basis of relations with other countries and peoples. International treaties shall, where no contradiction with the provisions of the present Constitution exists, be respected.

## Chapter 2 – Rights and Freedoms

### Article (16)

The right to life is on the top of the rights that shall not be prejudiced unless provided for by the law.

### Article (17)

The state shall guarantee the physical and moral sanctity of the human self and shall prevent all forms of physical and/or moral torture.

No crime of torture shall be subject to the statute of limitations and no person having ordered or perpetrated such crime shall be exempted from the responsibility.

### Article (18)

The state shall guarantee the sanctity of the right to live a private life, exchange confidential correspondences, enjoy the sanctity of domiciles, and protect personal data.

All citizens shall have the right to choose a place of residence and move freely within the nation, as well as the right to leave the country.

Such freedoms may not be restricted unless under extreme circumstances provided for by law and backed with a judicial order, except in *flagrante delicto*.

### Article (19)

The state shall not revoke the nationality of, extradite, expatriate and/or deny repatriation of any Tunisian citizen.

### Article (20)

A defendant shall be presumed innocent until proven guilty by virtue of a fair trial that offers the accused all the guarantees of defence during all the phases of trial.

### Article (21)

Punishments shall be personal and shall not be executed unless by virtue of a legal provision issued prior to the occurrence of the punishable act, except in the case of a more favourable provision.

### Article (22)

No person may be arrested unless in *flagrante delicto* or by virtue of a judicial order. The person placed under arrest shall immediately be read the rights thereof and shall be

informed of the relevant charges. The person may request the services of a lawyer. The term of arrest shall be defined by law.

**Article (23)**

The state shall protect the right of those deprived of freedom to be treated humanely in a way that preserves their dignity. In execution of a punishment, the state shall take into consideration the interests of the relevant family and shall guarantee the rehabilitation of the detainee and the containment thereof into society.

**Article (24)**

The state shall guarantee the freedom to establish parties, syndicates and associations.

In their formation, the parties, syndicates and associations shall respect the legal procedures without prejudice to the very essence of this freedom.

The statutes and activities of parties, syndicates and associations shall be governed by the provisions of the Constitution and the general principles thereof, and financial transparency.

**Article (25)**

The right to peaceful assembly and demonstration shall be guaranteed. This right shall be practiced according to the procedures provided for by law without prejudice to the very essence of this right.

**Article (26)**

Every citizen is entitled to work. The state shall exert all effort to ensure the availability of work in a suitable and fair environment.

**Article (27)**

The right to establish syndicates, as well as the right to stage strikes, shall be guaranteed provided the life, health and safety of individuals are not in jeopardy.

**Article (28)**

Each person shall have the right to access information without prejudice to national security and/or the rights stipulated under the present Constitution.

**Article (29)**

The state shall guarantee the right of all persons to all stages of education, free of charge.

Education shall be compulsory until the age of no less than sixteen years.

**Article (30)**

Academic freedoms and freedom of scientific research shall be guaranteed.

The state shall furnish all means necessary for the advancement of academic work and scientific research.

**Article (31)**

Health shall be a fundamental right to all persons.

Prevention from diseases and provision of health care shall be guaranteed by the state to all citizens without discrimination.

Free health treatment shall be guaranteed by the state to underprivileged persons.

**Article (32)**

The state shall guarantee the right of every person to social coverage, including social security, as provided for by law.

**Article (33)**

Each person shall have the right to live in a peaceful and balanced environment and shall be entitled to sustainable development.

Protection of environment and wise utilisation of natural resources shall be the responsibility of the state, institutions and people.

**Article (34)**

Every person shall have the right to water.

The state shall protect water resources and rationalise the use thereof and distribute them fairly.

**Article (35)**

All persons shall pay taxes and contribute to public expenditures based on a fair and just tax system.

The state shall develop mechanisms suitable for the extraction of public funds and for the optimal use of such funds as well as mechanisms to fight against corruption and tax evasion.



**Article (36)**

Freedoms of opinion, expression, media and creativity shall be guaranteed.

Freedom of the media and of publication may not be restricted unless by virtue of a law protecting the rights, reputation, safety and health of others.

Such freedoms shall, under no circumstance, be subject to prior censorship.

Intellectual and literary property rights shall be guaranteed.

**Article (37)**

The state shall guarantee the provision of equal opportunities between men and women in the bearing of various responsibilities.

The state shall guarantee the elimination of all forms of violence against women.

**Article (38)**

The right to ownership shall be guaranteed and shall be exercised within the limits of the law.

**Article (39)**

The state shall protect persons with special needs against any form of discrimination.

All persons with special needs are, in accordance with the nature of the disability thereof, entitled to benefit from all measures guaranteeing their full integration into society. The state shall undertake all procedures necessary to achieve this purpose.

**Article (40)**

Children are entitled to dignity, care, rearing, education and health from the parents thereof.

The state shall provide legal, social, physical and moral protection for all children.

**Article (41)**

The state shall guarantee the right to culture for all citizens.

The state shall encourage cultural creativity and support national culture in its diversity and renovation in a way that entrenches the values of tolerance, non-violence, openness towards various cultures and dialogue between civilisations.

The state shall protect the cultural heritage and guarantee the right of future generations thereto.

**Article (42)**

The state shall seek to make available the facilities necessary for the exercise of athletic and physical activities as well as furnish various means of entertainment and tourism.

**Article (43)**

The right to run for elections and candidacy is guaranteed in accordance with the provisions defined by law and without prejudice to the very essence of such right.

### Chapter 3 - Legislative Power

#### Article (44)

The legislative power shall be vested in the people through the representatives thereof in the Chamber of Deputies or by means of referenda.

#### Article (45)

Members of the Chamber of Deputies shall be elected under a system of universal, free, direct and secret elections in accordance with the terms stipulated under the Elections Law.

#### Opinion of the Joint Commission for Coordination and Drafting:

Amended version: Members of the Chamber of Deputies shall be elected under a system of universal, free, direct and secret elections in accordance with the Elections Law.

#### Article (46)

Any Tunisian citizen no younger than eighteen years of age and meeting the terms stipulated under the Elections Law shall be deemed eligible to vote.

#### Opinion of the Joint Commission for Coordination and Drafting:

To changing the Arabic word “*thamania*” to “*thamani*” (eighteen in English).

#### Article (47)

Any person born to a Tunisian father or a Tunisian mother, no younger than twenty three years of age on the day of nomination, and not in any way denied the right to run for elections is entitled to run for membership of the Chamber of Deputies.

#### Opinion of the Joint Commission for Coordination and Drafting:

Amended version: Any person holding the Tunisian nationality for more than five years and no younger than twenty three years of age on the day of nomination, provided that he is not denied, in any way stipulated by law, the right to run for elections is entitled to run for membership of the Chamber of Deputies.

#### Article (48)

Elections of the Chamber of Deputies shall, for a five-year period, be held during the last sixty days of the term of mandate thereof.

In the event of failure to hold the elections as a result of war or an imminent danger, the mandates of the Chamber shall, by a law, be extended.

Opinion of the Joint Commission for Coordination and Drafting:

Amended version: The Chamber of Deputies shall be elected for a five-year period during the last sixty days of the term of mandate thereof.

In the event of failure to hold the elections as a result of war or an imminent danger, the mandates of the Chamber shall, by a law, be extended.

**Article (49)**

The headquarters of the Chamber of Deputies shall be located in Tunis and the suburbs thereof. In the event of exceptional circumstances, the Chamber may hold the sessions thereof in any other place on Tunisian land.

**Article (50)**

All members of the Chamber of Deputies shall, prior to assuming the functions thereof, swear in the following oath:

“I do solemnly swear that I will work diligently to serve the nation, that I will abide by the provisions of the Constitution, and that I will bear full allegiance to Tunisia”.

Opinion of the Joint Commission for Coordination and Drafting:

To consider the possibility of changing the preposition “prior to” to “upon”.

**Article (51)**

Each representative of the Chamber of Deputies shall be deemed a representative of all people of the nation.

The state shall, for each representative of the Chamber, furnish the human and physical resources necessary for the representative to carry out the functions thereof adequately.

Opinion of the Joint Commission for Coordination and Drafting:

To change the word “representative” to “member” in the first paragraph.

To consider moving the second paragraph to Article (28).

**Article (52)**

The Chamber of Deputies shall, within the framework of the State Budget, enjoy independency at the administrative and financial levels.

The Chamber of Deputies shall make its statute and ratify it by an absolute majority of the members of the Chamber.

**Article (53)**

No member of the Chamber of Deputies may be prosecuted at a civil or criminal level, arrested or tried for opinions or proposals suggested and/or for the work performed thereby in connection with the performance of the functions thereof.

Opinion of the Joint Commission for Coordination and Drafting:

To change the adverb “in connection with” to “because of”.

**Article (54)**

No member of the Chamber of Deputies may, during the term of office thereof, be prosecuted or arrested for any crime or misdemeanour unless the member no longer enjoys immunity.

In the event of *flagrante delicto*, the member may be arrested and the Chamber of Deputies shall be notified promptly on the proviso that the member be released if the Chamber so requests. During its recess, the Chamber of Deputies is replaced by its Bureau.

Opinion of the Joint Commission for Coordination and Drafting:

Amended version: If the member hangs on to his immunity, he may not be prosecuted or arrested, during the term of office thereof, unless the Chamber has lifted the immunity thereof. In the event of *flagrante delicto*, the member may be arrested and the Chamber of Deputies shall be notified promptly on the proviso that the member be released if the Bureau of the Chamber so requests.

**Article (55)**

**First Wording:**

Organic and normal draft laws shall be presented by no less than ten members of the Chamber of Deputies or by the government. The government shall have jurisdiction over the presentation of draft laws related to the ratification of treaties and of the Finance Act ratified by the Chamber by no later than 31 December of every year. In the event of failure to ratify the Finance Act by the due date, the Prime Minister shall enter the provisions thereof into force in instalments renewable on a quarterly basis.

The Bureau of the Chamber of Deputies shall define the priority of cognisance over draft laws.

The members of the Chamber shall exercise the full powers thereof in the introduction of amendments to the draft laws without prejudice to the financial budgets of the state set under the Finance Act.

One-tenth of the electorates registered on the election rosters may present to the Chamber of Deputies a draft law divided into chapters.

One-sixth of the electorates registered on the election rosters may present a draft law divided into chapters and request that such be proposed for referendum.

The draft law shall be presented to the Chair of the Chamber of Deputies who shall in turn present such to the Constitutional Court.

If the Constitutional Court approves the draft law, the Chair of the Chamber of Deputies shall, as the case may be, submit the law to the Chamber or refer the law to the President of the Republic with a view to calling for a referendum.

The Chamber of Deputies may not introduce any amendment to the draft law. The law shall be voted on in accordance with the majority of votes required to be cast for the subject matter thereof. The draft law shall have an absolute priority of cognisance over other draft laws presented by the government or members of the Chamber of Deputies.

If the Constitutional Court establishes the unconstitutionality of the draft law, the Chair of the Chamber of Deputies shall return the law to the proposing entity. No amended version of the draft law may be resubmitted unless the necessary number of signatures is once again established.

Normal laws shall not be subject to deliberation during the plenary session of the Chamber of Deputies unless after the elapse of a fifteen-day period as from the date of being studied by the competent parliamentary committee.

Such period shall be extended to twenty days with respect to organic laws.

### **Second Wording:**

The President of the Republic, as well as no less than five percent (5%) of the members of the Chamber of Deputies, shall have the right to initiate draft laws and submit such to the Chamber.

Any draft law submitted by the President shall have priority.

The present rules shall apply to all amendments introduced to draft laws.

Opinion of the Joint Commission for Coordination and Drafting:

**To divide this article as follows:**

**Article**

Legislative initiative shall be practiced by no less than five percent (5%) of the members of the Chamber of Deputies or by the government. The government shall have jurisdiction over the presentation of draft laws related to the ratification of treaties and of the finance draft laws. Any draft law submitted by the government shall have priority.

Recommendation: To consider the possibility of vesting the power of legislative initiative in the President of the Republic as being a controversial point.

**Article**

The proposed laws or amendments presented by the members of the Chamber shall not be admitted in the event that the ratification thereof may cause prejudice to the financial budgets of the state.

**Article**

One-tenth of the electorates registered on the election rosters may present to the Chamber of Deputies a draft law.

One-sixth of the electorates registered on the election rosters may present a draft law and request that such be proposed for referendum.

The draft law shall be presented to the Chair of the Chamber of Deputies who shall in turn present such to the Constitutional Court.

If the Constitutional Court approves the draft law, the Chair of the Chamber of Deputies shall, as the case may be, submit the law to the Chamber or refer the law to the President of the Republic with a view to calling for a referendum.

The Chamber of Deputies may not introduce any amendment to the draft law. The law shall be voted on in accordance with the majority of votes required to be cast for the subject matter thereof.

If the Constitutional Court establishes the unconstitutionality of the draft law, the Chair of the Chamber of Deputies shall return the law to the proposing entity. No amended version of the draft law may be resubmitted unless the necessary number of signatures is once again established.

Recommendation: The committee may discuss controls for popular initiatives, such as consideration of the financial budgets of the state. The committee may also refer the draft

law proposers to the different authorities to see whether it is better to give such the priority of cognisance or not, or fix a deadline for presenting it in the plenary session and refer it to the law for regulating the details of requisites.

**The last paragraph may be moved to Article (64) or approved of as a separate article to be inserted after Article (64).**

## **Article (56)**

### **First Wording**

The Chamber of Deputies may, for a specific period of time and for a specific purpose, authorise the **Prime Minister to issue decrees** in the field of law and submit such for ratification by the Chamber upon the elapse of the specified period of time.

Ten members of the Chamber of Deputies may submit the matter to the Constitutional Court if found that the period of time or the purpose prejudice the principle of separation of powers.

### **Second Wording**

The Chamber of Deputies may, for a specific period of time and for a specific purpose, authorise the **President of the Republic to issue decrees** in the field of law, **with the exception of Chapter I of the Constitution**, and submit such for ratification by the Chamber upon the elapse of the specified period of time.

Ten members of the Chamber of Deputies may submit the matter to the Constitutional Court if found that the period of time or the purpose prejudice the principle of separation of powers.

### Opinion of the Joint Commission for Coordination and Drafting:

Recommendation: To delete this

## **Article (57)**

The Chamber of Deputies shall, by an absolute majority of the members thereof, ratify organic laws and shall, by an absolute majority of the attending members, ratify normal laws on the proviso that such majority is no less than one-third of the members of the Chamber.

No draft organic law shall be presented to the Chamber of Deputies for deliberation unless upon the elapse of a fifteen-day period as from the date of referral to the competent parliamentary committee.



Opinion of the Joint Commission for Coordination and Drafting:

This article should be deleted as the first paragraph therein is included in Article (40) and the second paragraph is included in the last paragraph of Article (31) after the review thereof.

**Article (58)**

**First Wording**

The Chamber of Deputies shall ratify the draft laws of the budget in accordance with the terms stipulated under the organic Budget Law.

The ratification process of the budget shall occur by no later than 31 December. If the due date elapses and the Chamber has not come to a resolution, the draft laws of the budget may, **by virtue of an order**, be enforced in instalments renewable on a quarterly basis.

**Second Wording**

The Chamber of Deputies shall ratify the draft laws of the budget in accordance with the terms stipulated under the organic Budget Law.

The ratification process of the budget shall occur by no later than 31 December. If the due date elapses and the Chamber has not come to a resolution, the draft laws of the budget may, **by virtue of a presidential decree**, be enforced in instalments renewable on a quarterly basis.

Opinion of the Joint Commission for Coordination and Drafting:

Amended version:

The law shall authorise state resources and expenditures in accordance with the terms stipulated under the organic Budget Law.

The Chamber of Deputies shall ratify the draft laws of the budget and the closure thereof in accordance with the terms stipulated under the organic Budget Law.

The ratification process of the draft law of budget shall occur by no later than 31 December. If such process does not take place within the specified term, the draft law may, **by virtue of an order**, be enforced in instalments renewable on a quarterly basis.

Recommendation: To add in Article (64) for the normal laws: Budget Law and Budget Closure Law.

**Article (59)**

The Chamber of Deputies shall hold an ordinary session, each year, starting as from the month of October and ending during the month of July, provided that the first session of the mandate of the Chamber starts during the fifteen-day period following the announcement of the final results of the elections.

In the event that the beginning of the first session of the mandate of the Chamber of Deputies coincides with the recess thereof, a session shall be opened for a fifteen-day period.

The Chamber of Deputies shall, during the period of recess thereof, hold an extraordinary session upon the request of the President of the Republic, the Prime Minister or one-third of the members with a view to looking into a specific agenda.

Opinion of the Joint Commission for Coordination and Drafting:

Amended version:

The Chamber of Deputies shall hold an ordinary session, each year, starting as from the month of October and ending during the month of July, provided that the first session of the mandate of the Chamber starts during the fifteen-day period following the announcement of the final results of the elections upon an invitation from the Chair of the previous Chamber.

In the event that the beginning of the first session of the mandate of the Chamber of Deputies coincides with the recess thereof, an extraordinary session shall be opened for a fifteen-day period.

The Chamber of Deputies shall, during the period of recess thereof, hold an extraordinary session upon the request of the President of the Republic, the Prime Minister or one-third of the members with a view to looking into a specific agenda.

**Article (60)**

The process of voting in the Chamber of Deputies shall be done in person and may not be delegated.

The Chamber of Deputies shall, from amongst the members thereof, elect a Chair as well as elect standing committees to work uninterruptedly even during the period of recess of the Chamber.

The Chamber may establish special fact-finding committees independent from all authorities that should help such committees in undertaking the tasks thereof.

Opinion of the Joint Commission for Coordination and Drafting:

Putting the first paragraph in a separate article:

The process of voting in the Chamber of Deputies shall be done in person and may not be delegated.

Amending the wording of the second and third paragraphs to form a new article as follows:

The Chamber of Deputies shall, in the first session thereof, elect a Chair from amongst the members thereof.

The Chamber of Deputies may establish committees, including interim fact-finding committees that all authorities should help in undertaking the tasks thereof.

## **Article (61)**

### **First Wording**

In the event of the dissolution of the Chamber of Deputies or the impossibility of holding the sessions thereof, the **Prime Minister** may issue **decrees** to be submitted for ratification by the Chamber during the subsequent ordinary session thereof.

### **Second Wording**

The **President of the Republic** may, during the period of recess of the Chamber of Deputies, issue **decrees** to be submitted for ratification by the Chamber during the subsequent ordinary session thereof.

The President of the Republic may also issue decrees in the event of the dissolution of the Chamber or the impossibility of holding the sessions thereof.

### Opinion of the Joint Commission for Coordination and Drafting:

Amended version:

In the event of the dissolution of the Chamber of Deputies, the impossibility of holding the sessions thereof or during the period of recess thereof, the **Prime Minister** may issue **decrees** to be submitted for ratification by the Chamber during the subsequent ordinary session thereof.

N.B.: In the event it is agreed to entrust this power to the President of the Republic, changes shall be made without touching the remaining text.

## **Article (62)**

The President of the Republic shall ratify all treaties and may permit the publication thereof.

Treaties related to the borders of the country, to international organisation and to the financial obligations of the country as well as treaties containing provisions of legislative nature or related to the status of individuals may not be ratified unless approved by the Chamber of Deputies.

Treaties shall not be deemed enforced unless upon the ratification thereof.

Treaties ratified by the President of the Republic and approved by the Chamber of Deputies shall be deemed more powerful than laws.

The Constitutional Court shall ensure that treaties are in conformity with the Constitution and that laws are in conformity with treaties.

Opinion of the Joint Commission for Coordination and Drafting:

To delete the last paragraph as it is contained in the Judiciary Chapter.

To amend the wording as follows:

“The President of the Republic shall ratify all treaties, except for those entrusted to the Prime Minister or its parties.

The ratification process shall be preceded by the approval of the Chamber of Deputies in the event that treaties relate to the international organisation, to the borders of the country, to the financial obligations of the country or to the status of individuals. Such treaties shall be published and shall be deemed more powerful than laws.

Treaties shall not be deemed enforced unless upon the ratification thereof, while considering the principle of reciprocity.”

N.B.: In the event it is agreed to entrust this power to the Prime Minister, changes shall be made without touching the remaining text.

**Article (63)**

The Chair of the Chamber of Deputies shall notify the President of the Republic of any draft law ratified by the Chamber and shall refer the law to the President for sealing. The text of the ratified draft law as well as any pertinent documents shall be attached to the notification sent to the President.

Opinion of the Joint Commission for Coordination and Drafting:

Amended version: The Chair of the Chamber of Deputies shall notify the President of the Republic of any ratified draft law and shall refer the law, along with any pertinent documents, to the President for sealing.

## **Article (64)**

The Chamber of Deputies shall, with the majority of attending members, vote on normal draft laws and on the statute of the Chamber on the proviso that the majority of votes is no less than one-third of the members. The Chamber of Deputies shall, with the majority of members, also vote on organic draft laws.

Provisions related to the following aspects shall be deemed organic laws:

- Ratification of treaties, with the exception of treaties entrusted to the President of the Republic.
- Organisation of justice and the judiciary.
- Organisation of the media, press and publications.
- Organisation and funding of parties, associations, organisations and professional bodies.
- Organisation of the national army, with the exception of any special, fundamental organisational matter issued by virtue of a presidential decree.
- Organisation of the internal security forces, with the exception of any special, fundamental organisational matter issued by virtue of an order.
- Election systems.
- Freedoms, human rights, the right to employment and the right to form syndicates.
- Personal affairs.
- Fundamental duties of citizens.
- The local government.

Provisions related to the following aspects shall be deemed normal laws:

- Application of the Constitution.
- Classification of public institutions and enterprises.
- Nationality and obligations.
- Procedures taken before various types of courts.
- Containment of felonies and misdemeanours and the punishments applicable thereto, in addition to criminal offences if necessitating a freedom-depriving punishment.
- Legislative amnesty.
- Regulation of the payment basis, the percentage and the procedures for extraction thereof, unless authority to such end is given to the Prime Minister by virtue of financial or collection laws.
- The system of issuance of the currency.
- Loans and financial obligations of the state.
- Basic guarantees given to civil and military employees.
- Organisation of the ratification of international treaties.

The law shall specify the fundamental principles of the following:

- The system of ownership and in kind rights.
- Education, scientific research and culture.
- Public health, the environment, land and urban planning and energy.
- The Labour Law and social security.

Opinion of the Joint Commission for Coordination and Drafting:

The last paragraph of Article (55) stating:

Normal laws shall not be subject to deliberation during the plenary session of the Chamber of Deputies unless after the elapse of a fifteen-day period as from the date of being studied by the competent parliamentary committee.

Such period shall be extended to twenty days with respect to organic laws.

Proposition: To reorder and amend the contents of Article (64) as follows:

First Article:

Provisions related to the following aspects shall be deemed laws:

- √ Ratification of treaties.
- √ Organisation of justice and the judiciary.
- √ Organisation of the media, press and publications.
- √ Organisation and funding of parties, associations, organisations and professional bodies.
- √ Organisation of the national army.
- √ Organisation of the internal security forces and customs department.
- √ Election systems.
- √ Freedoms and human rights.
- √ Personal affairs.
- √ Fundamental duties of citizens.
- √ The local government.
- √ Organisation of constitutional agencies.
- √ Classification of public institutions and enterprises, as well as provisions regulating sales thereof.
- √ Nationality.
- √ Obligations.
- √ Procedures taken before various types of courts.
- √ Containment of felonies and misdemeanours and the punishments applicable thereto, in addition to criminal offences if necessitating a freedom-depriving punishment.
- √ Amnesty.
- √ Regulation of the payment basis, the percentage and the procedures for extraction thereof, unless authority to such end is given to the Prime Minister by virtue of financial or collection laws.

- √ The system of issuance of the currency.
- √ Loans and financial obligations of the state.
- √ Basic guarantees given to civil and military employees.
- √ Organisation of the ratification of international treaties (This clause may be included in the International Law and Constitution and not the law).
- √ Laws of finance and laws of budget and the closure thereof, as well as the ratification of development plans.
- √ The fundamental principles of the system of ownership, in kind rights, education, scientific research, culture, public health, the environment, land and urban planning and energy, as well as the Labour Law and social security.

The clauses not mentioned in this Article may be governed by the general dispositional power.

Second Article:

Laws described as organic laws in the Constitution and laws related to the following aspects shall be deemed organic laws:

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Third Article:

The Chamber of Deputies shall, by an absolute majority of the members thereof, ratify organic laws and shall, by the majority of the attending members, ratify normal laws on the proviso that such majority is no less than one-third of the members of the Chamber.

### **Article (65)**

Articles not included in the area of law shall be governed by the general dispositional power. Provisions pertinent to such articles may be revised by virtue of an order based on the opinion of the Constitutional Court.

The **Prime Minister** may take exception to the approval of any draft law or any amendment constituting an intervention in the general dispositional power.

The **President of the Republic** shall present the matter to the Constitutional Court for settlement in a period no longer than ten days as from the date of having been notified thereof.

### Opinion of the Joint Commission for Coordination and Drafting:

Amended version which is to be moved to form a paragraph in the first article of the divided Article (64) above, as follows:

The clauses not mentioned in this Article may be governed by the general dispositional power.

**Article (66)**

The law shall authorise state resources and expenditures in accordance with the terms stipulated under the organic Budget Law.

Opinion of the Joint Commission for Coordination and Drafting:

To be moved to form the first paragraph in the amended Article (58).



## Chapter 4 – Executive Power

### President of the Republic

#### Article (66)

The President of the Republic shall be elected, by the people directly and for a five-year period renewable only once during the last sixty-day period of the term of presidency thereof, by means of general, free, direct and secret elections. The election process shall be by an absolute majority of valid votes.

In the event of failure to achieve this during the first round, a second round shall be organised on the second Sunday following the ballot day. No candidates other than the two having won the highest number of votes during the first round may, in accordance with the terms stipulated under the Elections Law, run for elections.

In the event of failure to hold the elections on the set date as a result of the prevalence of a state of war or the existence of an imminent danger, the term of presidency shall, by virtue of a law ratified by the Chamber of Deputies, be extended until the time at which the elections can be held.

Limitation of the term of presidency to two successive or separate terms shall not be subject to any constitutional amendment.

#### Opinion of the Joint Commission for Coordination and Drafting:

To delete the phrase "... renewable only once..."

To change the phrase "... on the second Sunday following the ballot day..." to "... within a fifteen-day period following the ballot day..."

To change the last paragraph to be as follows: "No person may hold the office of presidency for more than two successive or separate terms."

#### Article (67)

Running for Presidency of the Republic shall be a right entitled to every male and female elector **who bear only the Tunisian nationality by birth and no other**, and who embrace Islam.

The candidate shall, on the day of submission of candidacy, be no less than forty years of age and no more than seventy five and shall enjoy all civil and political rights.

The candidate shall be presented by a number of members of the Chamber of Deputies **or** heads of municipal councils elected in accordance with the terms and manner specified by the Elections Law.

Candidacies shall be recorded in a special record at the Supreme Independent Electoral Authority.

Opinion of the Joint Commission for Coordination and Drafting:

To put “female” before “male” in the first paragraph.

To add “regional and” before “municipal”.

To delete the last paragraph.

**Article (68)**

The President of the Republic shall be the Head of State and shall represent the unity, secure the independence and continuity, and respect the Constitution, treaties and human rights thereof.

The President of the Republic shall, when exercising the mandates thereof, enjoy judicial immunity. He also enjoys such judicial immunity after the presidential term for all acts executed as part of the office.

**The President of the Republic may not combine between the post thereof and any other party leadership responsibility.**

Opinion of the Joint Commission for Coordination and Drafting:

To change “treaties and human rights” to “the law and ratified treaties”.

To change “judicial immunity” to “immunity against criminal prosecution”

To delete “judicial”.

Proposition: To delete “He also enjoys... executed as part of the office.”

**Article (69)**

The elected President of the Republic shall, before the Chamber of Deputies, swear in the following oath:

“I do solemnly swear to maintain the independence of the nation and the safety of its territories, to respect its Constitution and legislation and to safeguard fully its interests”.

**Article (70)**

The official seat of the Presidency of the Republic shall be Tunis and the suburbs thereof. In the event of exceptional circumstances, the headquarters may be transferred to any other location on Tunisian land.

### **Article (71)**

The President of the Republic shall have the following mandates:

- Represent the country.
- Appoint the Grand Mufti of Tunisia.
- Be the Commander-in-Chief of the armed forces **and internal security forces**.
- Declare war and establish peace, upon the approval of a majority of three-fifths of the members of the Chamber of Deputies as well as send troops abroad, upon the approval of the Chair of the Chamber of Deputies and the Prime Minister provided that the Chamber shall convene with a view to making a decision on the matter within a period of no more than sixty days.
- Declare the state of emergency in accordance with the conditions set forth in Article (73).
- Appoint and exempt individuals with respect to senior military **and security** positions and public institutions affiliated to the Ministry of Defence, after taking the opinion of the competent parliamentary committee. In the event that no opinion is given within a twenty-day period, this shall be deemed implicit acceptance thereof. Senior positions shall be regulated by virtue of a law.
- Appoint the Head of the Intelligence Agency, upon taking the opinion ~~of the majority of the members~~ of the competent parliamentary committee.
- Appoint individuals to the senior positions of the Presidency of the Republic and the institutions affiliated thereto.
- Dissolve the Chamber of Deputies as per the conditions stipulated under the Constitution.
- Award decorations.

### Opinion of the Joint Commission for Coordination and Drafting:

To delete “Represent the country” and put "The President of the Republic is the head representative of the Republic of Tunisia" before "The President of the Republic shall have the following mandates".

To change “Grand Mufti of Tunisia” to “Grand Mufti of the Republic”.

There is a dominant opinion in the Commission which considers that security is not among the powers of the President of the Republic while there is a different opinion which considers that the current wording should be kept as it is. However, approving any of the two opinions will affect the whole text.

### **Article (72)**

**First Wording:**

The President of the Republic and the Prime Minister shall, in consultation and agreement with each other, lay down the foreign policy of the state.

The President of the Republic shall, upon the proposal of the government, accredit diplomatic representatives abroad and accredit the diplomatic representatives of foreign countries.

**Second Wording:**

The President of the Republic shall lay down the foreign policy of the state and adopt ambassadors abroad, after taking **(the opinion\*)** of the majority of members of the competent parliamentary committee. The President shall also appoint the senior officials of the Ministry of Foreign Affairs and the institutions affiliated thereto, as well as appoint the diplomatic missions and consulates to foreign countries and regional and international organisations, upon the recommendation of the Ministry of Foreign Affairs. Moreover, the President shall approve the accreditation of representatives of foreign countries and regional and international organisations to Tunisia.

Opinion of the Joint Commission for Coordination and Drafting:

There is a dominant opinion in the Commission in favour of the first wording wherein the phrase “after taking the opinion of the majority of the members of the competent parliamentary committee” can be inserted.

**Article (73)**

In the event of an imminent danger threatening the entity, security and independence of the homeland in such a manner preventing the normal operation of the entities of the state, the President of the Republic may undertake any procedures necessitated by the prevailing circumstances, after consultation with the Prime Minister, the Constitutional Court and the Chair of the Chamber of Deputies. The President shall, to that effect, address the nation.

The procedures shall aim to secure the reoperation of the general constitutional authorities as soon as possible. The Constitutional Court shall, with respect to such procedures, be consulted. The Chamber of Deputies shall be deemed in a state of continuous convention throughout such period and after the elapse of a thirty-day period as from the implementation of the procedures. The Chair of the Chamber of Deputies or thirty of the members thereof are entitled to resort to the Constitutional Court with a view to verifying whether the circumstances specified in Paragraph (1) of the present Article still exist. The Court shall issue the decision thereof publicly within a period no later than fifteen days. The Constitutional Court shall pledge to verify, on its own accord, the continuity of the circumstances upon the elapse of a sixty-day period as from taking the decision and at every time thereafter.

In such event, the President of the Republic may not dissolve the Chamber of Deputies and may not bring a motion of censure against the government.

The procedures cease to bear effect upon the termination of the reasons causing the existence thereof. The President of the Republic shall, to that effect, address the nation.

#### **Article (74)**

The President of the Republic may, directly or upon a request made by the government, submit to a public referendum **(any draft law on rights, freedoms)\*** or general authorities and/or any draft law on the authorisation of the ratification of international treaties, **(provided such treaties are not in contradiction with the Constitution based on the opinion of the Constitutional Court)\***.

If the result of the referendum is the ratification of the draft law, the President of the Republic shall seal and publish the law within a period exceeding no more than fifteen days as from the date of announcement of the results.

The President of the Republic shall submit, for a public referendum, any treaty that may result in the introduction of amendments to the Constitution, after the approval of the Chamber of Deputies, in accordance with the provisions and terms stipulated under the Constitution.

The Elections Law shall specify the means of conducting referenda and announcing the results thereof.

#### Opinion of the Joint Commission for Coordination and Drafting:

To delete the word “public” in the first and third paragraphs.

There is a prevalent opinion which considers that the first paragraph should be deleted, and the paragraph should be re-ordered as follows:

“The President of the Republic shall submit, for a public referendum, any treaty that may result in the introduction of amendments to the Constitution, after the approval of the Chamber of Deputies, in accordance with the provisions and terms stipulated under the Constitution.

If the result of the referendum is the ratification of the draft law, the President of the Republic shall seal and publish the law within a period exceeding no more than fifteen days as from the date of announcement of the results.

The Elections Law shall specify the means of conducting referenda and announcing the results thereof.”

#### **Article (75)**

The President of the Republic shall ratify international treaties. Ratified treaties shall be deemed more powerful than laws.

The President of the Republic shall have the right to exercise special pardon or commutation of punishments.

Opinion of the Joint Commission for Coordination and Drafting:

To separate the two paragraphs: The first paragraph can be moved to Article (62), and the second paragraph can be moved to Article (71), and delete the phrase “commutation of punishments”.

**Article (76)**

The President of the Republic may address the Chamber of Deputies and the Council of Ministers directly or through a statement addressed thereto.

Opinion of the Joint Commission for Coordination and Drafting:

Recommendation: To delete this Article.

**Article (77)**

The President of the Republic shall (**necessarily**)\*, in issues over which the said has cognisance, preside over the Council of Ministers, and preside over it, upon the request of the Prime Minister, on other issues.

Opinion of the Joint Commission for Coordination and Drafting:

To change the phrase “over which the said has cognisance” to “falling within the powers of the said”.

To delete the word “necessarily”.

To change the wording as follows:

“The President of the Republic shall, in issues falling within the powers of the said or upon the request of the Prime Minister, preside over the Council of Ministers.”

**Article (78)**

**First Wording:**

The President of the Republic shall duly seal laws within a period no more than fifteen days as from receipt thereof from the Chair of the Chamber of Deputies. The President

may, once having received the text of a law, return the law to the Chamber for a second reading.

If the Chamber of Deputies ratifies the law in accordance with the first ratification draft, the President of the Republic shall seal the law.

**Second Wording:**

The President of the Republic shall duly seal laws including, inter alia, treaties, and issue such in the Official Gazette of the Republic of Tunisia within a period no later than fifteen days as from the date of receipt thereof from the Chair of the Chamber of Deputies.

The President of the Republic is entitled, during the period designated for the act of sealing, to return a draft law to the Chamber of Deputies for a second reading. If the law is ratified by an absolute majority of the members of the Chamber, with respect to normal laws, and by a majority of two-thirds of the members, with respect to organic laws, the law shall be passed and published within a period of no more than fifteen days as from the date of receipt by the President of the Republic.

In the event that the law is entrusted to the Constitutional Court, the law shall be published in a relevant manner and shall be in conformity with the Constitution or the law shall be returned to the Chamber of Deputies for a second reading.

Opinion of the Joint Commission for Coordination and Drafting:

The second wording is given preponderance over the first.

To add “along with justification” after “to return a draft law” in the second paragraph.

To delete “including, inter alia, treaties...”

**Article (79)**

Discussions of draft laws shall be undertaken by the Council of Ministers. Decrees of dispositional nature shall be countersigned by the relevant minister.

**Article (80)**

**First Wording:**

The Prime Minister shall assign senior civil positions.

Senior civil positions shall be regulated by virtue of a law.

**Second Wording:**

The President of the Republic shall, upon the proposition of the Prime Minister, assign senior civil positions after taking the opinion of the competent parliamentary committees. If the opinion of the committees fails to be delivered within a period no later than twenty days as from the date the file is received by the Chamber of Deputies, the opinion shall be deemed to be that of implicit acceptance.

Civil senior positions shall be regulated by virtue of a law.

Opinion of the Joint Commission for Coordination and Drafting:

The first wording is given preponderance over the second.

**Article (81)**

The President of the Republic shall, in the event of a temporary inability to perform the tasks thereof, delegate the relevant authorities to the Prime Minister.

The President of the Republic shall inform the Chair of the Chamber of Deputies of the temporary delegation of authority.

**Article (82)**

Upon the permanent vacancy of the office of the President of the Republic as a result of the demise, resignation or absolute disability thereof, or for any other reason, the Constitutional Court shall hold a prompt meeting and acknowledge the permanent vacancy of the office by an absolute majority of the members thereof. The Court shall, by virtue of a statement, notify the Chair of the Chamber of Deputies who shall, on a temporary basis, immediately undertake the tasks of presidency for a duration of no less than forty five days and no more than ninety days.

**Article (83)**

In the event of a permanent vacancy of the office of the President of the Republic, the person undertaking the tasks of presidency shall be sworn in before the Chamber of Deputies and, whenever necessary, before the bureau of the Chamber.

The person undertaking the tasks of the President of the Republic, on a temporary basis, may not run for presidency even in the event of submitting the resignation thereof.

**Article (84)**

The person undertaking the tasks of the President of the Republic, during the temporary or permanent vacancy of the office, shall exercise presidential tasks without being entitled to amend the Constitution, resort to a referendum, dismiss the government, dissolve the Chamber of Deputies, and/or take any of the exceptional measures stipulated under Article (73) of the Constitution.



A new President for the Republic shall, during the interim presidential period, be elected directly by the people for a five-year term.

Opinion of the Joint Commission for Coordination and Drafting:

To change “without being entitled to amend” to “without being entitled to propose an amendment to”.

To delete “dismiss the government”.

To delete “directly by the people”.

To change “a five-year term” to “a full presidential term”.

**Article (85)**

Upon the initiation of one-third of the members of the Chamber of Deputies, the Chamber may accuse the President of the Republic of high treason. A decision in such regard shall not be issued unless approved by two-thirds of the members of the Chamber. In such event, the President of the Republic shall be referred to the Constitutional Court for sentencing. High treason shall involve the following:

- Flagrant abuse of power, intentional breach of the Constitution or intentional abandonment of office, by virtue of which the entity of the state and the sound functioning of the constitutional institutions thereof are threatened.
- Bribery, financial corruption and favouring the interests of foreign parties above the higher interests of the nation.

In the event of condemnation, the Constitutional Court may not render its sentence except by way of ousting.

No President sentenced with ouster is entitled to run for Presidency once again.

Opinion of the Joint Commission for Coordination and Drafting:

Some of the above-mentioned acts are crimes entailing punishment, so it should be noted that ousting may not absolve the accused from necessary prosecution.

## The Government

### Article (86)

The Prime Minister shall regulate the general policy of the state and shall ensure the execution thereof (**with the exception of matters entrusted to the President of the Republic**)\*. The Prime Minister shall also preside over the Council of Ministers except in the cases specified under Article (77), exercise the general dispositional power, govern the administration and issue dispositional and individual decrees signed thereby upon discussing the matter with the Council of Ministers and notifying the President of the Republic. The Prime Minister shall conclude international agreements of technical nature.

The government shall ensure the enforcement of laws. The Prime Minister may delegate some of the authorities thereof to ministers.

The Prime Minister alone shall, in addition to the aforementioned, have the following terms of reference:

- 1) Introduce changes to and dissolve ministries and bureaus of the state over which the said has cognisance, as well as regulate the terms of reference and authorities thereof upon discussing the matter with the Council of Ministers and notifying the President of the Republic.
- 2) Establish, dissolve and introduce changes to public institutions, public entities and administrative departments as well as regulate the terms of reference and authorities thereof upon discussing the matter with the Council of Ministers and notifying the President of the Republic.
- 3) Endorse any dispositional decisions issued by ministers.

#### Opinion of the Joint Commission for Coordination and Drafting:

To delete the phrase “over which the said has cognisance” from item No. (1).

To delete the phrase “with the exception of matters entrusted to the President of the Republic” and “except in the cases specified under Article (77)” from the first paragraph.

### Article (87)

The government shall be composed of a Prime Minister, ministers and state clerks appointed by the President of the Republic...

**First proposition: (To add) ... upon the proposition of the Prime Minister and in conformity therewith on the sectors over which the President of the Republic has cognisance.**

**Second proposition: (To add) ... and the President of the Republic shall solely appoint the ministers of sectors over which the said has cognisance.**

The President of the Republic shall entrust the candidate of the electoral party or coalition having won the most number of seats in the Chamber of Deputies with the task of forming the government within a one-month period extendable only once.

If the specified period of time elapses without the formation of the government or in the event of failure to receive the vote of trust of the Chamber of Deputies, the President of the Republic shall consult with the parties, coalitions and blocks within the Chamber with a view to entrusting the person most capable of constituting a government within a period of no more than one month.

If a three-month period elapses from the date of the legislative elections and the members of the Chamber of Deputies fail to agree on the formation of the government, the President of the Republic may dissolve the Chamber and call for new legislative elections to be held.

Opinion of the Joint Commission for Coordination and Drafting:

It is sufficient to say "The government shall be composed of a Prime Minister, ministers and state clerks" in the first paragraph and delete the rest.

To change "extendable" to "renewable" at the end of the second paragraph.

To change "constituting" to "forming" in the third paragraph.

To change "three-month" to "four-month".

To change "legislative elections" to "first entrustment" in the fourth paragraph.

To change "the formation of the government" to "granting trust to the government".

To add a last paragraph as follows: "When the government wins the trust of the Chamber of Deputies, the President of the Republic shall nominate the Prime Minister and members of the government".

**Article (88)**

The members of the government shall be sworn in before the President of the Republic.

The government shall be held accountable before the Chamber of Deputies.

**Article (89)**

Membership of the government and of the Chamber of Deputies may not be combined.

Any member of the Chamber of Deputies who is a member of the government shall be replaced in accordance with the provisions of the Elections Law.

The Prime Minister and the members of the government may not be employed in any other profession regardless of the nature thereof.

Opinion of the Joint Commission for Coordination and Drafting:

To change “Any member ... the Elections Law” to “The Elections Law shall regulate the manner of filling the vacancy in the Chamber”.

**Article (90)**

In the event of a request submitted by the Chamber of Deputies, the members of the government shall be obliged to attend.

Every member of the Chamber of Deputies may pose oral and written questions to the government (**and/or may present briefings thereto**)\*.

A session shall be devoted periodically with a view to holding discussions between the Chamber of Deputies and the members of the government.

Opinion of the Joint Commission for Coordination and Drafting:

To delete “and/or may present briefings thereto... members of the government”.

**Article (91)**

Votes may be taken on a motion of censure brought against the government after at least one-third of the members of the Chamber of Deputies make a justified request to the Chair of the Chamber. The voting process shall not take place except after the elapse of a fifteen-day period as from the date that the request was presented to the Chairmanship of the Chamber.

Withdrawal of the vote of confidence given to the government shall be conditional upon the approval of an absolute majority of the members of the Chamber of Deputies...

**First proposition: (To add) ... and upon the presentation of a candidate alternative to the Prime Minister and who shall receive a vote of confidence during the same voting process. The President of the Republic shall entrust the candidate with the task of forming the government.**

**Second proposition: (To add) ... and present an alternative government.**

In the event that the specified majority is not attained, the motion of censure may not be reintroduced against the government except after the elapse of a six-month period.

**(The Chamber of Deputies shall not bring more than two motions of censure against the government during the same term of mandate.)\***

The Chamber of Deputies may withdraw the vote of confidence given to any of the ministers after at least one-third of the members of the Chamber of Deputies make a justified request to the Chair of the Chamber. Withdrawal of the vote of confidence shall be by an absolute majority of votes.

Opinion of the Joint Commission for Coordination and Drafting:

The first proposition is given preponderance over the second.

To change “The Chamber of Deputies shall not bring more than two motions of censure against the government during the same term of mandate” to “The Chamber of Deputies shall not withdraw the vote of confidence given to the government more than twice during the same term of mandate”.

To move the second paragraph to form the penultimate one.

To change “ministers” to “member of the government”.

#### **Article (92)**

The Prime Minister may request, from the Chamber of Deputies, that a vote of confidence be given for the government to continue the activities thereof. Voting shall be by a majority of the members of the Chamber.

In the event of failure to receive a vote of confidence and the failure of the Chamber of Deputies to agree on a candidate alternative within a one-month period, ...

**First proposition: (To add) ... the President of the Republic shall dissolve the Chamber and call for holding legislative elections.**

**Second proposition: (To add) ... the President of the Republic may propose, in no more than three successive trials, a candidate to the Prime Ministership. If neither of the proposed candidates receives the confidence of the Chamber of Deputies within a thirty-day period, the President of the Republic shall dissolve the Chamber and call for holding legislative elections.**

**Third proposition: (To add) ... the President of the Republic may dissolve the parliament within a period not exceeding twenty days as from the date that the parliament refused to grant the vote of confidence to the government, and the said may call for holding legislative elections.**

Opinion of the Joint Commission for Coordination and Drafting:

**To amend the wording to be as follows:**

If the government requests a vote of confidence as a result of the Chamber of Deputies voting on a draft law presented thereby, down votes against the law shall be deemed a withdrawal of the vote of confidence given to the government and the government shall be obliged to resign.

**Article (93)**

If the Prime Minister is unable to perform the duties thereof on a temporary basis, the said shall delegate the relevant authorities to one of the ministers.

If, for any reason, the post of Prime Minister is permanently vacant, the President of the Republic shall appoint the candidate of the electoral party or coalition having won the most number of seats in the Chamber of Deputies to undertake the tasks of Prime Ministership after receiving the vote of confidence of the Chamber in accordance with the provisions stipulated in Article (87).

Opinion of the Joint Commission for Coordination and Drafting:

To change “appoint” to “nominate”.

**Article (94)**

Any disputes arising with respect to the terms of reference of the President of the Republic and the Prime Minister shall be submitted to the Constitutional Court. The Court shall resolve the dispute by virtue of decisions taken by the majority of the members thereof based on a request presented thereto by the keenest of the parties or on its own accord (and every interested party)\* in the event of a negative conflict.

Opinion of the Joint Commission for Coordination and Drafting:

To delete “by virtue of decision taken by the majority of the members thereof” and “or on its own accord (and every interested party)\* in the event of a negative conflict”.

**Defence and Security**

**Article (95)**

The Defence and Internal Security agencies shall be governed by the following principles:

- **The security agencies shall be governed by the Executive Authority.**
- **The state alone shall form the armed forces and internal security forces. No armed organisations or agencies that are not under the flag of the national army or internal security shall be formed except under a law.**

- **The security agencies shall administer and train the personnel thereof...**

First proposition: (To add) ... **in accordance with the law.**

Second proposition: (To add) ... **in accordance with the Constitution, law and treaties.**

- **No member of the security agencies may follow orders of clear illegal nature.**
- **No member of the internal security agencies may be judicially prosecuted for the work performed thereby in connection with the performance of the tasks decided and assigned by the leadership of the concerned agency thereto...**
- First proposition: (To add) ... **unless the orders given thereto are of a clear illegal nature.**
- Second proposition: (To add) ... **unless the orders given thereto violate the physical sanctity of citizens, overthrow the democratic regime or electoral legality.**
- **The security agencies shall stay completely neutral.**
- **A parliamentary committee shall be responsible for monitoring the observance and application of these principles.**

Opinion of the Joint Commission for Coordination and Drafting:

#### **Article (96)**

The national army is an armed military force formed and organised, at the structural and regulatory levels, in accordance with the law. It is politically-neutral and shall defend the nation and the independence, unity and land thereof. The army shall contribute to the efforts exerted in the areas of relief and development, and shall support the civil authorities in accordance with the provisions stipulated under the Emergency Law.

#### **Article (97)**

Military people shall enjoy the constitutional rights accredited to all citizens, except for those in conflict with the values and principles on which the neutrality of the military institution are based, particularly the political and syndicate rights.

#### **Article (98)**

National Service shall be obligatory for citizens in accordance with the provisions and terms of the law.

#### **Article (99)**

The internal security forces shall be entrusted, under the control of the Executive Authority and in accordance with the law, with the tasks of keeping order, maintaining public security, protecting the sanctity and safety of the people, protecting public and private property, and fighting crime and investigating therein while observing complete neutrality.

## **Chapter 5 – Judicial Power**

### **Article (100)**

The judiciary is an independent authority that ensures the prevalence of justice, the supremacy of the Constitution, the sovereignty of the law and the protection of rights and freedoms. Judges are independent. No power shall be exercised over the rulings thereof other than the power of the Constitution and law.

### **Article (101)**

**A judge shall be competent, impartial and fair. Any shortcomings by any judge in the performance of the duties thereof shall be grounds for questioning.**

## **First Title: Judiciary, and Administrative and Financial Judiciary**

### **Article (102)**

Judges shall be appointed by virtue of a decree issued by the President of the Republic based on the opinion of the Supreme Judicial Council.

### **Article (103)**

No judge may be transferred, without the consent thereof, and no judge may be dismissed except in such cases and in accordance with the guarantees provided for by the law and by virtue of a justified decision by the Supreme Judicial Council.

No judge may be suspended, deposed or subjected to a disciplinary punishment unless by virtue of a justified decision issued by the Supreme Judicial Council and in accordance with the guarantees provided for by the law.

### **Article (104)**

The right to litigation and the right to defence shall be guaranteed.

Parties to litigation shall be deemed equal before the judiciary.



Two-level litigation shall be guaranteed by the law. Underprivileged persons shall have access to the judiciary.

Every individual shall have the right to a fair trial.

Court sessions shall be public unless otherwise deemed necessary by law. Announcement of judgments shall be made in public.

#### **Article (105)**

Courts shall be classified by virtue of an organic law. No exceptional courts or exceptional procedures that may prejudice the principles of fair trial may be established or adopted.

Military judiciary is of a specialised nature. An organic law shall regulate terms of reference, structure and organisation of the Military judiciary as well as the procedures applicable before it.

#### **Article (106)**

Any interference in the judiciary shall be deemed a crime punishable by law.

#### **Article (107)**

Sentences shall be issued and executed in the name of the people. Failing to execute, or impeding the execution of, a sentence without legal grounds is not permissible.

### **Supreme Judicial Council**

#### **Article (108)**

The Supreme Judicial Council shall ensure the prevalence of justice and respect for the independence of the judiciary, propose reforms and express opinion with respect to draft laws related to the judiciary, and decide on the professional conduct of judges and on disciplinary measures.

#### **Article (109)**

The Supreme Judicial Council shall be composed of a general session, the Judiciary Council, the Administrative Judicial Council and the Financial Judicial Council.

#### **Article (110)**

Half of each of these councils shall be composed of elected judges and appointed judges while the other half shall be composed of other individuals.

The Supreme Judicial Council shall elect the Head of the Council from amongst the member judges thereof.

**Article (111)**

The Supreme Judicial Council shall enjoy administrative and financial independence and self-management, and shall prepare and discuss the budget thereof before the competent committee at the Chamber of Deputies.

**Article (112)**

An organic law shall regulate the terms of reference, structure and organisation of the Supreme Judicial Council as well as the procedures applicable before it.

**The Judiciary**

**Article (113)**

The judiciary shall include the Court of Cassation, headquartered in the capital, courts of first instance and appellate courts.

**Article (114)**

The Public Prosecution shall be a part and parcel of the judiciary.

Guarantees given to the judiciary include, inter alia, council judges and public prosecution judges.

Members of the Public Prosecution shall exercise the mandates thereof in accordance with the legal guarantees and procedures.

**Administrative Judiciary**

**Article (115)**

The administrative judiciary shall have jurisdiction to look into any abuse of power by the administration as well as look into any administrative disputes. The administrative judiciary shall, in accordance with the law, exercise consultative functions.

The administrative judiciary shall be composed of the Supreme Administrative Court, administrative courts of first instance and administrative courts of appeal.

The Supreme Administrative Court shall prepare a general annual report to be submitted to the Chair of the Chamber of Deputies, the President of the Republic and the Prime Minister.

The organisation, terms of reference and procedures of the administrative judiciary as well as the statute of the judges thereof shall be governed by an organic law.

### **Financial Judiciary**

#### **Article (116)**

The Financial Judiciary shall be composed of the Court of Audit with its different bodies.

The Financial Judiciary shall supervise the wise spending of public funds in accordance with the principles of Sharia, effectiveness and transparency.

The Financial Judiciary shall decide on the accounts of public auditors.

The Financial Judiciary shall evaluate the ways of disposition and prevent any errors related thereto.

The Financial Judiciary shall assist the legislative and executive powers in supervising the enforcement and sealing of financial laws.

The Court of Audit shall prepare a general annual report as well as special reports, when necessary, that shall be submitted to the Chamber of Deputies, the President of the Republic and the Prime Minister. The reports shall be published for the public.

The organisation, terms of reference and procedures of the Court of Audit as well as the statute of the judges thereof shall be governed by an organic law.

### **Second Title: Constitutional Court**

#### **Article (117)**

The Constitutional Court shall have jurisdiction over monitoring the constitutionality of:

- (a) Draft laws submitted to it by the President of the Republic prior to the signature thereof. It is mandatory to submit drafts related to the amendment of the Constitution, draft organic laws, and drafts related to the ratification of international treaties. Submission of other draft laws by the President of the Republic, the Chair of the Chamber of Deputies, Primes Minister or one-fifth of the members of the Chamber of Deputies shall be optional.
- (b) Laws automatically submitted to it by courts or upon the request of a litigant with respect to a dispute presented before the court in accordance with the procedures regulated by law.
- (c) The statutes of the Chamber of Deputies necessarily presented before it by the Chair of the Chamber.

The Constitutional Court shall also have cognisance over:

- (d) Studying cases related to the vacancy of the office of the President of the Republic, and the state of emergency and exceptional circumstances.
- (e) Disputes arising with respect to the terms of reference of the Legislative and Executive powers, and disputes arising with respect to the terms of reference of the President of the Republic and the Prime Minister, provided that such disputes be referred to the Court by the keenest of the parties.
- (f) Any charges brought against the President of the Republic with respect to violation of the Constitution and high treason.
- (g) Individuals may, after all other means of appeal have been exhausted, file a direct appeal before the Constitutional Court against prevailing provisions which the Constitutional Court has not previously looked into if such provisions are in violation of the rights and freedoms prescribed under the Constitution.

### **Article (118)**

The Constitutional Court shall be composed of twelve members having no less than twenty years of high legal expertise.

The President of the Republic shall nominate four members, the Prime Minister shall nominate four members, the Chair of the Chamber of Deputies shall nominate eight members and the Supreme Judicial Council shall nominate eight members.

Adopting one half from each nominating party, the Chamber of Deputies shall, from amongst the nominated members, elect twelve members by a two-third majority. The mandate of the elected members shall be for a one-term period lasting for nine years.

In the event that the required majority is not reached, the remaining candidates shall, with the same majority required, stand for election again. In the event of failure to reach quorum, other members shall be nominated and the election process shall be repeated following the same method.

One-third of the members of the Constitutional Court shall be renewed every three-year period. Any vacancies in the hierarchy of the Court shall be filled by virtue of the means adopted during appointment.

The members of the Constitutional Court shall, from amongst the members, elect a President and a Vice President of the Court.

### **Article (119)**

The members of the Constitutional Court are judges subject to the provisions set in Articles (1) and (2) of the Chapter on Judicial Power.

### **Article (120)**

Combining membership in the Constitutional Court and undertaking any other job or task shall be prohibited.

**Article (121)**

Any draft law on violation of the provisions of the Constitution shall be referred to the Chamber of Deputies for a second look and for amendment in accordance with the decision issued by the Constitutional Court. The President of the Republic shall, prior to sealing the draft law and within a one-month period, resend the law to the Constitutional Court to study the extent of conformity of the amendment made with the decision issued by the Court.

**Article (122)**

Cognisance of the Constitutional Court shall be limited to any appeals filed and decided on within a three-month period renewable by virtue of a justified decision issued by the Court.

**Article (123)**

If the Constitutional Court decides on the unconstitutionality of the law, the law shall, within the limits specified by the Court, no longer be applied.

**Article (124)**

The Court shall take the decisions thereof by majority and the President of the Court shall, in the event of parity, have a casting vote. Decisions issued by the Constitutional Court shall be justified and binding upon all authorities. The decisions shall be published in the Official Gazette of the Republic of Tunisia.

**Article (125)**

An organic law shall govern the organisation of the Constitutional Court and the procedures followed thereby as well as the guarantees enjoyed by the members thereof.

**Chapter 6 – Constitutional Authorities**

**Article (126)**

The constitutional authorities are independent authorities that aim to promote democracy and achieve the goals of the revolution. They shall enjoy a legal personality as well as financial and administrative independence. These authorities shall be elected by the Chamber of Deputies, shall submit an annual report thereto, and shall be held accountable before the Chamber. All organs of the state shall facilitate the work thereof.

The composition and organisation of these authorities shall be governed by an organic law.

### **Electoral Authority**

#### **Article (127)**

The Electoral Authority shall be entrusted with the management and organisation of national, regional and local elections as well as referenda. The Authority shall also oversee the elections and referenda during all phases, ensure the soundness, integrity and transparency of the election process, and announce the results thereof.

The Authority shall enjoy general dispositional power in the domain of the jurisdictions thereof.

The Authority shall be composed of nine independent, impartial and competent members to be elected for one, non-renewable six-year period. One-third of the members shall be replaced biennially.

### **Media Authority**

#### **Article (128)**

The Media Authority shall oversee the organisation, modulation and development of the media sector and shall guarantee the freedom of expression and of the media and the right to access information. The Authority shall also guarantee the existence of plural and fair media.

The Authority shall be composed of nine independent, impartial, competent and experienced members to be elected for one five-year period, renewable on a partial basis.

### **Human Rights Authority**

#### **Article (129)**

The Human Rights Authority shall oversee the extent to which human rights and fundamental freedoms are respected and promoted. The Authority shall also propose amendments to the laws related to human rights.

The Authority shall conduct investigations into the violation of any human rights with a view to settlement or referral to the competent authority.

The Authority shall be composed of independent and impartial individuals to be elected for one, non-renewable six-year period.

### **Authority of Sustainable Development and Rights of Future Generations**

### **Article (130)**

The Authority shall have cognisance over the general policies of the state, at the economic, social and environmental levels, with a view to attaining sustainable development that can guarantee the rights of future generations.

The Authority shall be consulted on draft laws related to the areas under the jurisdiction thereof and on the development plans. The Authority's opinions, as well as the justification for non-adoption of such opinions by the Legislative Power, shall be published.

### **Authority for Good Governance and Anti-Corruption**

### **Article (131)**

The Authority shall contribute to the policies of good governance and anti-corruption, follow up on the implementation thereof and spread the relevant culture, and promote the principles of transparency, integrity and accountability.

The Authority shall unearth all cases of corruption within both the public and private sectors and shall investigate therein and refer the cases to the competent authorities.

The Authority shall render the opinion thereof with respect to draft provisions of law and disposition related to the duties undertaken thereby.

The Authority shall be composed of fair, independent and competent individuals to be elected for one six-year period, renewable on a partial basis.

## **Chapter 7 – Local Government**

### **Article (132)**

Local administrative organisations shall be based on the principle of decentralisation within the framework of the unity of the state.

Decentralisation shall be represented in local groups made up of municipalities, districts and regions covering the entire nation in accordance with a distribution strategy governed by law.

Other local authorities may be established by virtue of a law.

### **Article (133)**

Local authorities shall enjoy a legal personality as well as financial and administrative independence. They shall attend to local interests in accordance with the principle of free discretion.

### **Article (134)**

Local authorities shall manage elected councils.

Municipal and regional councils shall be elected by virtue of general, free, secret and direct elections.

Regional councils shall be elected by the members of the local and regional councils.

### **Article (135)**

Local authorities shall enjoy self-managed terms of reference, terms of reference co-managed with the state, and terms of reference transferred thereto by the state.

The co-managed and transferred terms of reference shall be distributed in accordance with the principle of branching.

Local authorities shall enjoy dispositional power in satisfying their mandates.

### **Article (136)**

Local authorities shall be furnished with self-generated resources and with resources given thereto by the state. Financial systems of local authorities shall be governed by law.

All terms of reference established or transferred to local authorities by the state shall be coupled with the relevant resources required.



**Article (137)**

With a view to consolidating the principle of solidarity between authorities, the state shall guarantee the provision of additional resources for the welfare of local authorities in accordance with the provisions of settlement and adjustment.

The state shall balance local resources with local burdens.

**Article (138)**

Local authorities shall have the freedom to dispose of the resources thereof in accordance with the rules of good governance and under the supervision of the financial judiciary.

**Article (139)**

Local authorities shall, with respect to the legitimacy of the work thereof, be subject to subsequent supervision as well as to judicial supervision.

**Article (140)**

Local authorities shall adopt the mechanisms of democracy and partnership to ensure the broadest participation of citizens and civil society in the preparation of development programs and the development of land and shall follow up on the execution and evaluation thereof in accordance with the provisions of the law.

**Article (141)**

Local authorities may cooperate and enter into partnerships with each other with a view to laying down programs or executing work of common interest.

Local authorities may also join international and regional unions and establish partnerships and cooperation on a decentralised basis.

Forms of cooperation and partnerships between authorities shall be regulated by law.

**Article (142)**

The Supreme Council of Local Authorities shall have cognisance over cases related to development and balance between authorities and shall give opinion with respect to any legislation related to local planning, budget and financial issues.

The Head of the Supreme Council of Local Authorities may attend discussions of the Chamber of Deputies and address such.

The composition of the Supreme Council of Local Authorities and the mandates thereof shall be defined by law.

**Article (143)**

The administrative judiciary shall have cognisance over disputes related to the jurisdiction of local and central authorities as well as over any disputes arising among local authorities.

## **Chapter 8 – Amendment of the Constitution**

### **Article (144)**

The President of the Republic, as well as one-third of the members of the Chamber of Deputies, shall have the right to initiate a request to amend the Constitution. A proposition initiated by the President of the Republic shall have priority.

### **Article (145)**

Each proposition to amend the Constitution shall be submitted by the Chamber of Deputies to the Constitutional Court to ensure that such proposition is not related to an article to which the Constitution has banned any amendment. The Chamber of Deputies shall then study the proposed amendment with a view to obtaining the approval of the absolute majority of the members on the concept of amendment.

### **Article (146)**

The Constitution shall be amended upon the approval of two-thirds of the members of the Chamber of Deputies and after the amendment has been approved by an absolute majority when put to a referendum.

### **Article (147)**

No amendment shall be introduced to the present Constitution unless after the elapse of a five-year period as of the date of entry into force thereof.

### **Article (148)**

No amendment to the Constitution may be prejudice to:

- Islam, being the religion of the state.
- The Arabic language, being the official language.
- The republican nature of the regime.
- The civil capacity of the state.
- Gains of human rights and freedoms guaranteed under the present Constitution.
- The number and duration of presidential terms. Such may not be subject to increase.

## **Chapter 9 – Final Provisions**

### **Article (149)**

The Preamble of the present Constitution shall be deemed an integral part thereof and shall be just as valuable as all the provisions stated hereunder.