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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

INTERIM OPINION

**ON THE INSTITUTIONAL ASPECTS OF THE DRAFT LAW
ON SPECIAL PROCEDURES CONCERNING RECONCILIATION
IN THE ECONOMIC AND FINANCIAL FIELDS**

OF TUNISIA

**Adopted by the Venice Commission
at its 104th Plenary Session
(Venice, 23-24 October 2015)**

on the basis of comments by

**Mr Nicos C. ALIVIZATOS (member, Greece)
Ms Veronika BILKOVÁ (member, Czech Republic)
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I. Introduction

1. In a letter of 22 July 2015, the Chair of the Tunisian Truth and Dignity Commission (IVD), Ms Sihem Bensedrine, asked the Venice Commission to prepare an opinion on the draft organic law on special procedures concerning reconciliation in the economic and financial fields (hereafter “the Reconciliation Bill”), which the President of Tunisia had laid before the Tunisian parliament.
2. In a letter of 29 July 2015, the President of the Venice Commission informed the Chair of the Truth and Dignity Commission (IVD) that, in accordance with its practice in the case of referrals by national institutions such as ombudsmen, the Commission’s opinion would focus on the institutional aspects of the bill, with particular emphasis on its impact on the IVD’s terms of reference.
3. Mr Nicos C. Alivizatos, Ms Veronika Bílková and Ms Regina Kiener were appointed rapporteurs.
4. On 9 October, a Venice Commission delegation comprising Ms Regina Kiener and Ms Simona Granata-Menghini, deputy secretary of the Commission, visited Tunis. It met members of the IVD, representatives of the legal department of the President’s Office and the Chair of the general legislation committee of the Assembly of People’s Representatives. The Venice Commission wishes to thank those it met for their welcome and co-operation.
5. This opinion is based on the French translation of the bill provided by the Truth and Dignity Commission. The representatives of the President have informed the Venice Commission that the text as submitted by the IVD has been subsequently modified. Such modified bill will be submitted to the Venice Commission for opinion at a later stage. This interim opinion was discussed at a joint meeting of the Democratic Institutions and Fundamental Rights sub-committees on 22 October 2015 and was adopted at the 104th Plenary Session (Venice, 23-24 October 2015).

II. The national legal framework

a. Transitional justice

6. The transitional justice system adopted in Tunisia to ensure that the transition from an authoritarian regime to a parliamentary democracy passes without major upheavals and, if possible, in a spirit of national reconciliation has proved its worth in other countries. Based on the model invented by Nelson Mandela, the system requires broad consent to function properly. Moreover, its success is closely dependent on a number of factors, the most important of which is the independence of the bodies – both new and existing – required to implement it.
7. Under Article 148.9 of the Tunisian Constitution of 27 January 2014, “the State undertakes to apply the transitional justice system in all its domains and according to the deadlines prescribed by the relevant legislation. In this context reliance on the non-retroactivity of laws, the existence of previous amnesties, the force of *res judicata*, and the expiry of the time limit for prosecution of an offence or its enforcement are considered inadmissible”.
8. The organisation of transitional justice is governed by Organic Act 2013-53 on the establishment and organisation of the transitional justice system (hereafter “Organic Act 2013-53”). This law was enacted by the National Assembly on 15 December 2013, signed by the President of the Republic on 24 December 2013 and published in the Tunisian Official Gazette on 31 December 2013.

9. The first article of the Act defines the transitional justice system as an integrated process of ways and means of identifying and rectifying human rights abuses committed in the past, by uncovering the truth, requiring those responsible for the abuses to account for their actions, compensating the victims and restoring their dignity to them, in order to secure national reconciliation, preserve and archive the collective memory, establish safeguards to ensure that such abuses no longer occur in future and permit the transition from a dictatorship to a democratic system that enshrines the principles of human rights.

10. The Act establishes a whole series of mechanisms and methods that should help to “dismantle the system of corruption, repression and dictatorship” (Article 14). They include the uncovering of the truth and preservation of the collective memory, the duty and obligation to account for actions taken, reparation for harm suffered and rehabilitation, institutional reform and reconciliation.

11. The Act establishes a new institution, the Truth and Dignity Commission (IVD), to implement the legislation. The Commission is an independent and neutral body composed of two representatives of victims’ associations, two representatives of human rights defence associations and thirteen independent experts, all elected by a special committee of the National Assembly and appointed by decree. The IVD’s term of office is four years, renewable once for one year. The appointment procedure ended on 30 May 2014 with the appointment of its fifteen members. They met for the first time on 17 June 2014 and elected Ms Sihem Bensedrine as their Chair. In June 2014, the Commission commenced its activities. Among other things, it established six specialist committees to carry out its statutory terms of reference (concerned with, respectively, institutional reforms and functional verification, arbitration and conciliation, research and investigation, reparation and rehabilitation, conservation and memory, and women).

12. The IVD’s terms of reference include the investigation of financial corruption and the misappropriation of public funds, after which it must refer any violations to the special benches that have been set up in the courts (Article 8).

13. Reflecting the main aims of the transitional justice system set out in Article 1 of the Act, the IVD enjoys wide-ranging terms of reference and powers (Articles 38-55). To carry out these tasks, Article 40 grants it significant prerogatives. As a general rule, the Commission can use any means or mechanism that might help it to uncover the truth, in particular a right of access to public and private archives; receiving complaints and applications concerned with violations; investigating legal violations using any means or mechanisms that it considers necessary; summoning to appear before it any person it considers useful to question or whose evidence it wishes to hear; requesting the assistance of public officials in carrying out its investigations and inquiries, or to provide protection; requiring the judicial and administrative authorities, and all other public bodies, legal persons and individuals, to supply any documents or information in their possession; a right of access to cases pending before the courts and the latter’s judgments and decisions; requesting information from official foreign parties and foreign non-governmental organisations; taking evidence in public and private premises; carrying out searches for and seizures of documents, moveable property and instruments used in connection with violations it has investigated; and reporting on these activities.

14. As well as Organic Act 2013-53, other legislation has been passed since the Dignity Revolution of 2010-2011 for the purposes of transitional justice. It includes Legislative Decree 1 of 19 February 2011 granting an amnesty to all those who had been convicted of or prosecuted for certain political offences before 14 January 2011; and the Legislative Decree of 24 October 2011 providing compensation for those killed or injured in the revolution of 14 January 2011, which is intended to commemorate the memory of the victims of the revolution and secure their entitlement to certain rights and benefits, including their right to compensation.

b. Combating corruption

15. Under Article 10 of the Constitution, the state shall prevent corruption. Articles 125 and 130 of the Constitution also provide for an independent constitutional body concerned with good governance and combating corruption. The body in question shall have legal personality and financial and administrative autonomy. Institutional legislation to establish this body is currently being drawn up.

16. Framework Legislative Decree 2011-120 of 14 November 2011 on combating corruption lays down the fundamental principles of the national anti-corruption policy and establishes an independent public body, the national anti-corruption commission, whose duties include co-ordinating public activities in this area and receiving complaints about and accusations of corruption, undertaking investigations, and forwarding information about corruption offences to the relevant authorities, including the courts. This independent body has legal personality and administrative and financial autonomy (Article 12).

17. The national anti-corruption commission has replaced the national corruption and misappropriation investigation commission established under Legislative Decree 2011-7 of 18 February 2011 and has inherited its case files, some of which concern corruption cases dating from before 2011. There is no reference to this body in the transitional justice system legislation.

c. The role of the President of the Republic

18. Under Article 72 of the Constitution, the President shall ensure compliance with the Constitution; he or she therefore has particular responsibility for securing transitional justice and combating corruption.

III. The international legal framework

19. The international rules governing transitional justice include:

- Security Council: The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General, 23 August 2004, S/2004/616;
- Human Rights Council, General Assembly: Analytical study on human rights and transitional justice, 6 August 2009, A/HRC/12/18;
- Resolution adopted by the General Assembly on 16 December 2005: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 21 March 2006, A/RES/60/147;
- General Assembly: Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 29 November 1985, A/RES/40/34;
- General Assembly, Human Rights Council: Resolution on Human Rights and Transitional Justice, 12 October 2009, A/HRC/RES/12/11;
- General Assembly, Human Rights Council: Resolution on Right to the Truth, 18 December 2013, A/RES/68/165.

20. Tunisia ratified the International Covenant on Civil and Political Rights (1966) in 1969, and at a regional level, the African Charter on Human and Peoples' Rights (1981) in 1983. Tunisia is also obliged under international law to apply the principle of equality before the law (Article 26 of the Covenant, Article 3 of the Charter on Human and Peoples' Rights).

21. In 2008, Tunisia ratified the United Nations Convention against Corruption (2005), A/RES/58/4. In several reports on Tunisia, the World Bank has stressed the urgent need to combat corruption. In its Report No. 86179-TN, it stated that “the scale of state capture in Tunisia under Ben Ali was extraordinary - by the end of 2010 some 220 firms connected to Ben Ali and his extended family were capturing an astounding 21 per cent of all private sector profits annually in Tunisia (or US\$233 million, corresponding to over 0.5 per cent of GDP). That such a small group of 114 people could appropriate such a large share of Tunisia’s wealth creation illustrates how corruption has been synonymous with social exclusion” (p. 312). According to a 2014 World Bank report, “the prevalence of corruption ‘to speed things up’ in Tunisia is among the highest in the world by international standards”.¹

IV. The draft organic law on special procedures concerning reconciliation in the economic and financial fields

22. The Tunisian President’s office has submitted to the Assembly of People’s Representatives a draft organic law on special procedures concerning reconciliation in the economic and financial fields. According to its explanatory memorandum, the purpose of this bill is to strengthen transitional justice with regard to offences linked to corruption and the misappropriation of public funds and ensure that such action achieves its goals. In justifying this objective, the bill refers to the specific nature of such violations and their negative impact on the investment climate and citizens’ confidence in public institutions.

23. The bill contains twelve articles. According to Article 1, its purpose is to establish a favourable economic climate and increase confidence in state institutions. To that end, it introduces special measures to deal with financial corruption and the misappropriation of public funds. It states clearly and precisely that these measures will lead to the final closing of cases, or in the words of Article 1 “a final turning of the page”.

24. In particular, the bill establishes the following special measures (Articles 2-3 and 7-8):

- An amnesty for public officials and other state employees for acts relating to financial corruption and misuse of public funds, so long as these acts were not carried out for personal gain.
- The possibility of concluding a reconciliation agreement with persons who have benefited from acts associated with financial corruption or misappropriation of public funds, that is those who have secured personal gains and are not entitled to an amnesty.
- An amnesty for currency offences.²

25. The bill (Articles 3-6) will establish a Reconciliation Commission to apply these measures. The Commission, which will be answerable to the Prime Minister’s office, has six members: a representative of the Prime Minister in the chair, one representative each of the ministers of justice and of finance, the head of the state litigation service or his or her representative and two members of the IVD (Article 3). The Commission is an administrative authority that is not deemed to be “independent” and has neither legal personality nor administrative and financial autonomy.

¹ World Bank, Bringing Opportunity, Good Jobs and Greater Wealth to all Tunisians, May 2014, p. 17.

² A similar measure was introduced in Act 2007-41 of 25 June 2007, establishing an amnesty for currency and tax offences: <http://www.cnudst.nrt.tn/jortsrc/2007/2007f/jo0512007.pdf>

26. The Reconciliation Commission will consider requests presented by persons who have profited from acts linked to financial corruption or misappropriation of public funds (Article 3). It will rapidly determine the sums or the interests unlawfully obtained and offer the individual concerned reconciliation, in the form of payment of a defined sum.

27. The Reconciliation Bill repeals all the provisions in Article 12 of Organic Act 2013-53 relating to financial corruption and misappropriation of public funds.

V. Analysis

28. This opinion considers the following questions:

- a) Is it justifiable to establish an additional transitional justice body in Tunisia?
- b) Is the transfer of IVD powers to the Reconciliation Commission compatible with Article 148 of the Constitution?
- c) Does the procedure laid down in the Reconciliation Bill offer sufficient safeguards for it to be considered to be equivalent to the procedure of the IVD?
- d) Does the transitional justice procedure provided for in the Reconciliation Bill make it possible to achieve the same procedural objectives as those provided for in Organic Act 2013-53 on transitional justice?
- e) Is the Reconciliation Bill sufficiently harmonised with Organic Act 2013-53 on transitional justice?

a) Is it justifiable to establish an additional transitional justice body in Tunisia?

29. Article 148.9 of the Tunisian Constitution requires the state to apply the transitional justice system 1) in every field of activity, and 2) within the deadlines specified in the relevant legislation. Article 10 of the Constitution requires the state to combat corruption.

30. The Tunisian Constitution does not impose any particular form of transitional justice, or body to oversee it, it simply refers to the "the relevant legislation". Nor does Organic Act 2013-53 prohibit the enactment of special legislation on the economic and financial spheres of activity. It follows that, in principle, the law on transitional justice can be amended by another organic act. However, any changes to the legal system must be compatible with the Constitution and with the democratic principles of the rule of law (certainty of the law, equality before the law, good faith and mutual trust, lawfulness and proportionality) and international law.

31. Article 148.9 requires the state to respect the deadlines laid down in the legislation on transitional justice. The IVD's term of office is set at four years, which can be extended once for a further year.

32. The Tunisian President's representatives referred to the need for issues relating to financial offences to be dealt with urgently and effectively. This would enable the IVD, which is overburdened with work, to concentrate on serious human rights abuses.

33. The Venice Commission delegation that visited Tunis was told that the IVD became operational in December 2014. On 8 October 2015, it had received 16 879 complaints from 24 governorates. More than 400 complaints were declared inadmissible. All the other complaints have been registered in the IVD's information system. Under the procedure it has laid down, it has held some 600 public hearings, and investigations into these cases have been initiated. The arbitration hearings have not started, the State representative having not been appointed. To date, no cases have been closed. The IVD only has 120 officials. The specialist judicial benches provided for in Article 8 of Organic Act 2013-53 have not been established. The IVD's term of office expires in June 2018. It has decided that it will not deal with individual complaints

during the final year of this term, but will concentrate instead on the preparation of its final report.

34. The Venice Commission is aware that in numerous countries, proceedings before bodies set up to uncover and remedy human rights abuses have often run into the ground, for lack of resources or of political commitment on the part of government. This may have harmful consequences for political life in the countries concerned, and in the case of economic and financial offences for their very economies. If this is the case here, it would appear reasonable in principle to take steps to expedite the proceedings under way. On condition, however, that this does not call into question the legitimacy of the overall process.

35. It is true that the IVD's terms of reference are very broad and its prerogatives almost unique in a law-governed state. In itself, establishing a specialist commission responsible for dealing with financial cases would be a positive step, given that several bodies have expressed concerns about the situation, including the United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, according to whom "some of the functions that the bill assigns to the commission, for example, the administration of reparations and the work on corruption cases, will very likely overburden the commission and, as a consequence, distract it from its very core functions as a truth commission".³

36. However, Article 148.9 requires the state to apply transitional justice in all its domains. The bill must therefore ensure that the objectives of and conditions governing transitional justice laid down in Organic Act 2013-53 also apply to offences relating to corruption and misappropriation of public funds. A "twin track" transitional justice system can only be compatible with Article 148 of the Constitution if the two tracks are equivalent, that is largely the same, and are both capable of achieving the goals of transitional justice laid down in the Tunisian legal system.

b) Is the transfer of IVD powers to the Reconciliation Commission compatible with Article 148 of the Constitution?

37. The IVD and the Reconciliation Commission differ from an institutional standpoint. The former is an autonomous and independent body, whose members have been chosen by the National Constituent Assembly according to a procedure and criteria specified in the organic act. It is composed of fifteen experts, including civil society representatives (in particular from associations of victims and human rights defenders), chosen by the Assembly for their neutrality, impartiality and competence (Article 19 of Organic Act 2013-53). The legislation safeguards the impartiality and personal neutrality of the commissioners, who also enjoy immunity. As one important element of their personal independence, the legislation establishes a specific procedure for the dismissal or resignation of members of the IVD. The latter has wide terms of reference and is granted broad ranging powers under the legislation, which enables it to carry out its duties in a comprehensive and coherent fashion.

38. In contrast, the Reconciliation Commission is an administrative body. It has six members, four of whom are representatives of the executive power. The Commission must, admittedly, also include two members of the IVD, which in turn is made up of independent experts and representatives of both victims' associations and civil society. However, such members are fewer in number than the representatives of the public authorities. Moreover, Article 3 of the bill makes it possible to establish the Commission even without the appointment of all six of its members, "on condition that its membership is not fewer than four". This provision therefore effectively allows the Commission to take up its activities without any participation whatever of civil society representatives. Moreover, according to the members of the IVD, their mandate would be incompatible with that of a member of the Reconciliation Commission. Members of

³ See UN Doc. A/HRC/24/42/Add.1, 30 July 2013, § 37.

the Commission are not required to have any specialist knowledge, such as expertise in the financial field, whereas Article 20 of Organic Act 2013-53 makes the participation of a financial specialist obligatory.

39. Unlike the IVD, the Reconciliation Commission does not have legal personality or financial and administrative autonomy, both of which are conditions laid down in the Tunisian Constitution for constitutional bodies, such as the one responsible for good governance and combating corruption (the national anti-corruption commission established under Framework Legislative Decree 2011-120 of 14 November 2011 does have legal personality and financial and administrative autonomy).

40. Finally, the bill offers no safeguards for the personal independence of the Commission members, who, unlike their counterparts in the IVD, have no functional immunities. Nor is the Reconciliation Commission formally obliged to carry out its duties completely neutrally and independently. Its members are not bound by professional confidentiality or a duty of discretion. The bill does not establish any procedure for the dismissal or resignation of Commission members and they are not protected against unilateral removal from their positions by the executive bodies that they represent on the Commission.

41. The Venice Commission considers that the Reconciliation Commission does not offer sufficient safeguards of independence to ensure that the transitional justice procedure that it is required to carry out would be the “equivalent” of that of the IVD.

c) Does the procedure laid down in the Reconciliation Bill offer sufficient safeguards for it to be considered to be equivalent to the procedure of the IVD?

42. The IVD’s arbitration and conciliation committee considers applications for settlements relating to financial corruption cases (Article 45), including cases where the state is the victim. These applications do not lead to the termination of inquiries and criminal proceedings until the settlement has come into force. However, the proceedings or the process of executing the penalty are resumed if it is established that the perpetrators of the violations have deliberately concealed the truth or have not declared all their unlawful gains. The following conditions must be met before a request for arbitration and conciliation is accepted: written acknowledgement of the person requesting conciliation of the facts that led to an unlawful gain and the value of this gain (documents in support of the applicant’s claims must be attached to the request) and his or her explicit apologies. The arbitration decision must include a detailed description of the facts, a finding of whether violations did or did not occur, with supporting evidence, and statements of the level of seriousness of any violations, and of the nature of the detriment caused, its value and what form reparation should take. It also confers authority to execute the decision. Decisions are published.

43. Applications for reconciliation must include a description of the facts that led to gains being made and the amount concerned, as well as documents and other material in support of the application. When such applications are made, the judicial authorities suspend consideration of the relevant cases, while taking the necessary steps to ensure that there is no impunity during the period in which the reconciliation process is under way (Article 4). The Reconciliation Commission assesses the value of the moneys or other benefits secured after ensuring that the information contained in the reconciliation application is correct (Article 5). The reconciliation decision must specify the nature of the damages to be paid and their value, and the fact that they have been agreed by all the parties. The reconciliation procedure does not require the presentation of apologies. Reconciliation decisions must be handed down within a period of no more than three months from the date on which the application is received (Article 4). Decisions are not published as such. According to Article 9 of the bill, it is not permitted to use information obtained in connection with the application of this statute for purposes other than those for which it is intended. The Reconciliation Commission must submit a report on the results of its

activities to the Prime Minister, who will forward a copy to the IVD (Article 11). It is not clear what form of follow up the IVD might give to these reports, since it would no longer have jurisdiction *ratione materiae* to deal with the subject matter. The representatives of the President have stressed that, as it is stated in the explanatory note to the bill, a report setting out all the activities relating to the cases with which the Reconciliation Commission has dealt during its operation must be filed with the IVD, so that the activities of reconciliation in the fields of financial wrongdoing and misappropriation of public funds may be included in the IVD's final report. The publicity of these reconciliations is therefore delayed until the end of the mandate of IVD.

44. The Venice Commission considers that, in the absence of detailed procedural rules, it is unlikely that the reconciliation procedure as provided for in the bill will permit the truth, a key element of reconciliation, to emerge, since the proceedings before the Commission are too brief for a detailed examination of the facts. Moreover, the public are not informed of the results of the reconciliation. Although according to Article 10, the reconciliation procedure does not affect the rights of others and, consequently third parties can take action in the ordinary courts to seek reparation for damage suffered as a result of financial corruption, the description of the facts of the case and evidence of the offence's commission are not made public, which would otherwise make it easier for third parties to secure reparation.

45. The Venice Commission therefore considers that the guarantees that the truth will be established or that the findings will be made public provided by the procedure before the Reconciliation Commission are not sufficient for it to be considered to be equivalent to the procedure of the IVD.

d) Does the transitional justice procedure provided for in the Reconciliation Bill make it possible to achieve the same procedural objectives as those provided for in Organic Act 2013-53 on transitional justice?

46. One of the items in IVD's terms of reference is institutional reform (Chapter 5 of Organic Act 2013-53). In particular, this entails weeding out officials found responsible for corruption and other violations from state institutions and departments (Article 14). The IVD is authorised to recommend the termination of employment, dismissal or enforced retirement of any person holding senior public office (Article 43). In contrast, the reconciliation procedure does not provide as such for any negative effects on the posts or careers of officials (of whatever grade) who acknowledge their participation in financial corruption or the misappropriation of public funds.

47. The Venice Commission therefore considers that the procedure before the Reconciliation Commission does not permit the achievement of one of the objectives of transitional justice, namely institutional reform.

e) Is the Reconciliation Bill sufficiently harmonised with Organic Act 2013-53 on transitional justice?

48. Certain comments are called for regarding the legislative technique. If – as is the case here – draft legislation alters the scope of another statute, in accordance with the principles laid down in § 30 above, there must be no ambiguities or doubts concerning the applicability and scope of the relevant provisions, whether of the legislation in force or of the new legislation. As a general rule, conflicts of laws can occur when insufficient care has been taken to define the boundaries between previous and future laws, which can lead to inconsistencies, omissions and lack of precision. Moreover, the new law must not needlessly differ from existing rules of law, thereby posing a threat to the effectiveness of both the new legislation and that already in force. Finally, the harmonious nature of the legal system must not be put at risk because the objectives of the new and of the existing laws are incompatible.

49. In contexts as sensitive as transitional justice and the fight against corruption, law makers must take particular care when designing and formulating legislation that covers the same area of activity as an existing statute. To avoid incompatibilities and conflicts between their objectives, the two laws must be closely harmonised. For example, to ensure the internal logic and coherence of the relevant laws, it is not sufficient simply to repeal, in Article 12 of the bill, all the provisions relating to financial corruption and misappropriation of public funds specified in Organic Act 2013-53 of 24 December 2013. Rather, in the interests of legal certainty each of the articles to be repealed must be specified and the remaining provisions modified or supplemented, so that the existing legislation is not stripped of its substance. Such harmonisation undoubtedly places a significant additional burden on the legal drafting process, notably on account of the very general character of the provisions on the mandate of IVD in Organic Act 2013-53, but is essential if the principles of conformity to law and of the rule of law are to be fully respected and transitional justice is to be administered in a transparent and effective manner.

50. The vague wording of Article 12 of the bill makes it difficult to identify the relevant articles of Organic Act 2013-53, and therefore the powers that the IVD will continue to exercise, particularly through its arbitration and conciliation committee. The article in question could therefore give rise to insurmountable conflicts of jurisdiction between the new Commission and the IVD, which is not conducive to expediting the transitional justice process or making it more effective.

51. According to its first article, the main purpose of Organic Act 2013-53, which is also the purpose of transitional justice, is to secure national reconciliation, by uncovering the truth, requiring those responsible for abuses to account for their actions, compensating the victims and restoring their dignity to them. According to Article 4 of the Organic Act, uncovering the truth involves all the means, procedures and investigations used to dismantle the system of dictatorship, by defining and identifying all the violations committed, and seeking out their causes, their circumstances, their origins and the conditions under which they occurred, together with their consequences. It is absolutely clear that the system of dictatorship referred to in Article 1 of the Act was one that was inextricably linked to corruption. The application of the draft law would restrict the IVD's jurisdiction to human rights abuses that are not linked to corruption. Yet it must be recognised that a considerable number of the 17 000 complaints pending before the IVD are corruption related, and that these cases cannot easily be distinguished from the remainder. The overlapping of the powers of the IVD and the Reconciliation Commission would lead to a form of disorder that can only prolong and complicate the transitional justice process.

VI. Conclusions

52. The Venice Commission notes that for any system of transitional justice to function properly, there must be a broad measure of consent. Its success is also closely dependent on numerous other factors, the most important of which is the independence of the bodies – new and existing – required to implement it.

53. The Venice Commission has examined the institutional aspects of the bill “on the special procedures concerning reconciliation in the economic and financial fields” and has reached the following conclusions:

- a) Is it justifiable to establish an additional transitional justice body in Tunisia?

54. The Tunisian Constitution does not impose any particular form of transitional justice, or body to oversee it, it simply refers to the “the relevant legislation”, nor does Organic Act 2013-53 prohibit the enactment of special legislation on the economic and financial spheres of

activity. It follows that, in principle, the law on transitional justice can be amended by another organic act. In the interests of achieving transitional justice “ within the deadlines prescribed by the relevant legislation”, it may in principle be reasonable to take steps to expedite current proceedings, for example by creating a special commission responsible for dealing with financial cases.

55. However, a “twin-track” system of transitional justice – involving both the Truth and Dignity and the Reconciliation Commissions - can only be compatible with the requirement of Article 148 of the Tunisian Constitution that the transitional justice system be applied “in all its domains” if the two tracks are equivalent, that is largely the same, are both capable of achieving the goals of transitional justice laid down in the Tunisian legal system and are in compliance with the Rule of Law.

b) Is the transfer of IVD powers to the Reconciliation Commission compatible with Article 148 of the Constitution?

56. The Venice Commission considers that the Reconciliation Commission does not offer sufficient guarantees of independence to permit the conclusion that the transitional justice machinery relating to financial corruption and the misappropriation of public funds is equivalent to that operating in other domains.

c) Does the procedure laid down in the Reconciliation Bill offer sufficient safeguards for it to be considered to be equivalent to the procedure of the IVD?

57. The Venice Commission considers that the Reconciliation Commission’s procedure does not offer sufficient guarantees that the truth will be established or that findings will be made public.

d) Does the transitional justice procedure provided for in the Reconciliation Bill make it possible to achieve the same procedural objectives as those provided for in Organic Act 2013-53 on transitional justice?

58. The procedure before the Reconciliation Commission does not permit the achievement of one of the objectives of transitional justice, namely reform of the institutions.

e) Is the Reconciliation Bill sufficiently harmonised with Organic Act 2013-53 on transitional justice?

59. The general repeal, in Article 12 of the bill, of all the provisions relating to financial corruption and misappropriation of public funds specified in Organic Act 2013-53 of 24 December 2013 is incompatible with the principle of legal certainty. This could give rise to insurmountable conflicts of jurisdiction between the new Commission and the IVD, which is not conducive to expediting the transitional justice process or making it more effective.

60. The Venice Commission considers that the legal basis of the IVD must not be altered in a manner that would effectively render its activities pointless, thereby undermining the goal of national reconciliation.

61. If Organic Act 2013-53 is considered to be incapable of achieving all its objectives, particularly in the economic and financial fields, it will become necessary to modify it - which is the role of parliament - in accordance with the Constitution. It goes without saying that such draft legislation would have to be drawn up in co-operation with civil society and the relevant institutions, in particular the IVD.

62. The representatives of the President of Tunisia have stressed that, the bill having been submitted to parliament, certain amendments will be made to it by the committee responsible for examining it; they have expressed their readiness to take into account the remarks contained in the Venice Commission's preliminary opinion in order to make the improvements and amendments which are necessary in the light of these remarks, in co-operation with the Venice Commission. The Venice Commission is ready to co-operate with the Tunisian authorities.