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(VENICE COMMISSION)

TUNISIA

OPINION

ON THE DRAFT ORGANIC LAW ON THE AUTHORITY FOR SUSTAINABLE DEVELOPMENT AND THE RIGHTS OF FUTURE GENERATIONS

Adopted by the Venice Commission at its 119th Plenary Session (Venice, 21-22 June 2019)

on the basis of comments by

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Project to Support Independent Bodies in Tunisia

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Table of contents

I. Introduction

1. In a letter dated 8 March 2019, the Minister assigned to the Head of Government with responsibility for relations with independent institutions and civil society and human rights, Mr Mohamed Fadhel Mahfoudh, and the Chairperson of the parliamentary committee on industry, energy, natural resources, infrastructure and the environment, Mr Amayeur Laarayedh, asked the Venice Commission for an opinion on the draft organic law on the Authority for Sustainable Development and the Rights of Future Generations (CDL-REF(2019)011), hereafter "the draft law".

2. Mr Àlvaro Gallego (expert), Mr Philip Dimitrov (Bulgaria), Mr Eirik Holmøyvik (Norway), Mr Martin Kuijer (Netherlands), Ms Finola Flanagan (expert) and Ms Verónica Tomei (expert) acted as rapporteurs for the purposes of this opinion.

3. On 17 April 2019, a Commission delegation made up of Mr Gallego, Mr Holmovik and Ms Flanagan, accompanied by Ms Martin from the Secretariat, travelled to Tunis where they met representatives of the office of the European Union Delegation and representatives of civil society, along with the Minister assigned to the Head of Government with responsibility for relations with independent institutions, civil society and human rights, Mr Mohamed Fadhel Mahfoudh, and the Chairperson of the parliamentary committee on industry, energy, natural resources, infrastructure and the environment, Mr Amayeur Laarayedh. The Venice Commission would like to thank the authorities, as well as the Council of Europe Office, for the expert manner in which this visit was organised.

4. The present opinion was prepared on the basis of the comments of the rapporteurs and the French version of the draft organic law provided by the authorities.

5. The present opinion was examined at the joint meeting of the Sub-Commissions on Democratic Institutions and on the Mediterranean Basin on 20 June 2019, and adopted by the Venice Commision at its 119th plenary session (Venice, 21-22 June 2019).

II. General context

6. The draft law on the Authority for Sustainable Development and the Rights of Future Generations (hereafter "the Authority") has been examined in an international context and in the national context of Tunisia, and not only from a legal perspective but also having regard to the objectives and principles of the Agenda 2030 for sustainable development and the operational nature of the provisions proposed.

7. When, on 25 September 2015, the United Nations General Assembly adopted the Resolution "Transforming our world: the 2030 Agenda for Sustainable Development",[1] Tunisia joined the group of nine countries whose highest representatives have pledged to lead the way in implementing this new agenda of global sustainable development goals.

8. The adoption of Agenda 2030 triggered an international process of institutional reform and experimentation. Many countries have begun implementing Agenda 2030 by creating and/or adapting their institutional arrangements for sustainable development. The majority of the national voluntary reports presented in recent years at the annual meetings of the High-level Political Forum (HLPF) mention this institutional development, of which the present draft law forms part.

[1] A/RES/70/1 https://undocs.org/en/A/RES/70/1

9. It is interesting to note how more and more countries are moving towards sustainable development, not only in terms of economic growth that can enhance the quality of life in these countries but also by ensuring that growth and improvements in living conditions are effectively an inclusive process that cuts across society. Any government's commitment to sustainable development is a first step towards fairer, greener and more sustainable countries. With this draft law, therefore, Tunisia is firmly embarked on this path.

10. A brief typology of recently created or more established sustainable development advisory bodies shows that they differ chiefly in terms of their institutional role, mission and composition.

11. As regards their role, there are independent bodies which advise the government or Parliament based on expertise and/or representation; bodies whose main task is interministerial co-ordination, plus, in some cases, an element of consultation with non-governmental actors; and bodies which make decisions about the allocation of human and financial resources. As a general rule, the governmental bodies are in the majority. There are parliamentary bodies, such as the ones found in Denmark and Germany, which have set up dedicated sustainable development entities, either to provide advice in connection with parliamentary business or to review draft legislation tabled by the government for compliance with sustainable development criteria. The role and mission of the Authority for Sustainable Development and the Rights of Future Generations of Tunisia (hereafter "the Authority"), as provided for in the draft law, seem to have several of the features mentioned above and will be examined more closely below.

12. As regards the bodies' organisational structure, according to the network of European Environment and Sustainable Development Advisory Councils (EEAC),[2] which brings together 14 bodies from 11 European countries, there are three distinct models: boards made up of stakeholders, boards made up of independent experts acting in a personal capacity, and purely scientific boards. The tendency at present is to move away from stakeholder boards. The draft law seems to have opted for a hybrid model in that there is a Board consisting of three independent experts and at the same time an Assembly with a large number of representatives covering a range of interested parties and scientific experts. The composition of the Authority calls for numerous comments and will be examined in greater depth in §§156-166 below.

13. Among the constitutions of the member countries of the Venice Commission, only the Tunisian Constitution and the Constitution of the Kingdom of Morocco of 29 July 2011 allude to a right of future generations.[3]

14. Few countries, moreover, have institutions specifically dedicated to future generations. The Finnish Parliament has had a committee for the future since 1993 while the Israeli Knesset had a Commission for Future Generations but it was abolished in 2006. Hungary established the first Hungarian Ombudsman for Future Generations attached to Parliament in 2018. In Wales, an office of the Future Generations Commissioner was set up in 2015, with the power to make proposals. Tunisia's new Authority would be one of only a handful of Venice Commission member states to deal explicitly with the rights of future generations therefore.

15. Against this general backdrop, we can only welcome the fact that Tunisia has visibly embraced the broad international trend towards placing greater emphasis on sustainable

[2] http://eeac.eu/

[3] Article 35 of the Constitution of the Kingdom of Morocco:
"The right to property shall be guaranteed. The law may limit the extent and exercise thereof if the exigencies of economic and social development of the country so require. Expropriation may proceed only in the cases and forms provided for by law. The State shall guarantee the freedom to contract and free competition. It shall work for the realisation of sustainable human development, such as to allow the consolidation of social justice and the preservation of the national natural resources and of the rights of future generations. The State shall ensure equal opportunities for all and specific protection for socially disadvantaged groups."

development in public policy making and note that it has taken a groundbreaking approach to the rights of future generations.

III. Domestic legal context

16. The draft law needs to be seen in the national legal context, namely that of the Constitution and Organic Law No. 018-47 of 7 August 2018, introducing common provisions on independent constitutional bodies (CDL-REF (2019)015, hereafter the "organic law of 2018").

A. The Constitution

17. The Constitution of the Tunisian Republic promulgated on 27 January 2014 establishes five independent constitutional bodies, which the constitution writers wished to see put in place in addition to the legislative, executive and judicial branches, in the interests of the balance of powers. The five constitutional bodies mentioned in Title VI of the Constitution are: the Elections Commission (Article 126), the Audio-visual Communication Commission (Article 127), the Human Rights Commission (Article 128) the Authority for Sustainable Development and the Rights of Future Generations (Article 129) and the Good Governance and Anti-Corruption Commission (Article 130).

Article 129 reads as follows:
"The Authority for Sustainable Development and the Rights of Future Generations shall be consulted on draft laws relating to economic, social and environmental issues, as well as development plans. The Authority may give its opinion on matters within its competence.

The Commission shall be made up of members who are competent and of high integrity, who shall undertake their tasks for a single six-year term."

18. Article 125 of Chapter VI of the Constitution on constitutional bodies reads:

"The independent constitutional bodies shall act in support of democracy. All institutions of the state shall facilitate their work.

These bodies shall enjoy legal personality and financial and administrative independence. They shall be elected by the Assembly of the Representatives of the People by a qualified majority. They shall submit to the Assembly an annual report which shall be discussed at a plenary session dedicated to this purpose for each body.
The law shall specify the composition of these bodies, representation within them, the methods by which they are to be elected, their organisational arrangements and the procedures for their supervision."

B. The Organic Law of 2018

19. The Organic Law of 2018 lists general provisions that apply to all the constitutional bodies provided for in Chapter VI of the Constitution. In particular, it provides that the bodies shall have administrative and financial autonomy, lists rules governing organisation and functioning relating to their boards and administrative bodies, budgetary and accounting rules, rules on governance and transparency, and rules on disputes and the accountability of the independent constitutional bodies.

IV. Analysis

20. The draft law was examined in the light of the above-mentioned legal framework as well as from a more general perspective, that of sustainable development governance and the rights of future generations. While there are no international standards in this area, the rapporteurs have drawn inspiration from texts on comparable institutions, such as the Paris Principles relating to the status of national institutions for the promotion and protection of human rights and the Venice Principles[4] for Ombudsmen. Best practices gleaned from existing bodies have likewise served as examples. Some of the comments were made because the draft law raises practical problems regarding the internal functioning and effectiveness of the institution. The draft law, indeed, seems to lack a certain consistency that would enable the Authority to operate with the requisite effectiveness in an area considered constitutionally important. Emphasis has therefore also been placed on the workability and effectiveness of the Authority, so that it can play the role assigned to it by the Constitution. The comments have been grouped together by points of interest while adhering to the structure of the draft law as far as possible.

A. The independence of the Authority

21. Article 125 of the Constitution confers legal personality and financial and administrative autonomy on "independent constitutional bodies". Article 1 of the draft law endows the Authority with these general characteristics mentioned in Article 125 of the Constitution while Article 2 of the draft law refers to the Organic Law of 2018.

22. Article 4 of the Organic Law of 2018 provides that "The bodies shall have administrative and financial autonomy, in accordance with the Constitution and the provisions of this Law.
In the performance of their duties, the bodies shall not be subject to any hierarchical or supervisory authority. They shall not be given any instructions. Any interference with their operation by any party shall be prohibited."

23. This provision seems to be in line with Principle 14 of the Venice Principles, which states that "The Ombudsman shall not be given nor follow any instruction from any authorities".

24. As for the composition of the Authority, another factor to be considered when assessing autonomy, it is interesting to note that the Authority is the only body which, under Article 129 of the Constitution, is to be made up of members who are "competent and of high integrity" as opposed to "independent, neutral, competent and of high integrity", criteria stipulated by the Constitution for all the other constitutional bodies mentioned in Chapter VI of the Constitution. This point will be discussed below (see §§ 100-104*), as will the question of the appointment of Board members who, being appointed by a qualified majority, for a non-renewable term, offer substantial guarantees of independence in keeping with the Venice Principles.

25. Articles 7 and 13 of the Organic Law of 2018 provide that the office of Chairperson or member of the Board of the Authority and the office of director of the administrative body are incompatible "with membership of the government, the Constitutional Court or the Judicial Service Commission and with the holding of elective office. Nor may it be combined with any other public office or professional activity." Read in conjunction with Articles 36 and 37 of the draft law, which deal with conflict of interest issues, these rules would seem to be appropriate in order to protect the subjective and objective impartiality of the Authority.

[4] CDL-AD (2019)005, Principles on the Protection and Promotion of the Ombudsman Institution ("the Venice Principles").

26. Article 10 of the 2018 Organic Law further states that members of the Authority are to enjoy functional immunity. This functional immunity fully reflects Principle 23 of the "Venice Principles"[5] which states that "The Ombudsman, the deputies and the decision-making staff shall be immune from legal process in respect of activities and words, spoken or written, carried out in their official capacity for the Institution (functional immunity). Such functional immunity shall apply also after the Ombudsman, the deputies or the decision-making staff-member leave the Institution." The immunity of Board members may only be waived by an absolute majority in Parliament, which is the same majority as the one required to adopt an organic law.

27. Under Article 11 of the Organic Law of 2018, members of the Authority's Board may be removed from office only by a two-thirds majority, which is the same as the one required for appointments. This provision is fully in line with Principle 11 of the Venice Principles,[6] which provides that "The Ombudsman shall be removed from office only according to an exhaustive list of clear and reasonable conditions established by law. These shall relate solely to the essential criteria of "incapacity" or "inability to perform the functions of office", "misbehaviour" or "misconduct", which shall be narrowly interpreted. The parliamentary majority required for removal – by Parliament itself or by a court on request of Parliament- shall be equal to, and preferably higher than, the one required for election. The procedure for removal shall be public, transparent and provided for by law."

28. In its opinion on the draft law relating to the Higher Committee for Human Rights and Fundamental Freedoms of Tunisia, the Venice Commission recommended providing for the possibility of dismissal only "in exceptional circumstances, namely in the event of serious infringements or serious attacks on the reputation of the Committee".[7] Under Article 39 of the draft law, dismissal (removal from office) is possible only in the event of serious misconduct or a final conviction for a deliberate offence or crime. Such a restriction is to be welcomed.

29. The Authority's financial autonomy is also guaranteed in Article 17 of the 2018 Organic Law, which ties in with Principle 21 of the Venice Principles.[8] In its Opinion on the final draft Constitution of the Republic of Tunisia, moreover, the Commission had previously welcomed the financial autonomy of the independent constitutional bodies.[9]

B. The Authority's powers and responsibilities

30. The Authority's powers and responsibilities are expressly provided for in Chapter II of the draft law, "Tasks and prerogatives of the Authority", which is divided into two sections: Section I "Tasks of the Authority", Articles 4 to 6, and Section II "Prerogatives of the Authority, Articles 7 to 11.

31. These articles call for numerous observations, particularly with regard to the consistency and precision of the Authority's mission and its prerogatives.

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[5] CDL-AD (2019)005, Principles on the Protection and Promotion of the Ombudsman Institution, §23.
[6] CDL-AD (2019)005, Principles on the Protection and Promotion of the Ombudsman Institution, §11.
[7] CDL-AD (2013)019, §53.
[8] CDL-AD (2019)005, Principles on the Protection and Promotion of the Ombudsman Institution, §21: "Sufficient and independent budgetary resources shall be secured to the Ombudsman institution. The law shall provide that the budgetary allocation of funds to the Ombudsman institution must be adequate to the need to ensure full, independent and effective discharge of its responsibilities and functions. The Ombudsman shall be consulted and shall be asked to present a draft budget for the coming financial year. The adopted budget for the institution shall not be reduced during the financial year, unless the reduction generally applies to other State institutions. The independent financial audit of the Ombudsman's budget shall take into account only the legality of financial proceedings and not the choice of priorities in the execution of the mandate."
[9] CDL-AD (2013)032, §184.

1. The concept of sustainable development and rights of future generations

32. The Constitution (Article 129) and the draft law both refer to the body as “the Authority for Sustainable Development and the Rights of Future Generations”.

33. The concept of sustainable development has been around in various shapes and forms for decades and is still a bone of contention among organisations and institutions, which have different definitions of it.[10] The commonly accepted definition of sustainable development, however, comes from the 1987 Brundtland report, produced by the UN’s World Commission on Environment and Development.

34. According to this report, sustainable development is:

> 1.“development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.
>
> 81.“In its broadest sense, the strategy for sustainable development aims to promote harmony among human beings and between humanity and nature”.[11]

35. According to Per Becker, “the first part of this definition indicates that sustainable development is the development that can be maintained over time, while the second part indicates that sustainable development is the development that can be safeguarded from the impact of negative events and processes.”

36. From the Brundtland report, it is clear that the concept is complex, but that it involves striking a balance between economic development, ecological sustainability and social justice between rich nations and poor nations and between the generations. These three factors are clearly reflected in the new Sustainable Development Goals set by the United Nations in their Agenda 2030.[12]

37. The reference to the rights of future generations implies that those rights are closely bound up with the notion of sustainable development. The government must be accountable not only to current generations of citizens, but also to future generations who will have to contend with a much more globalised world in which economic and environmental problems will require urgent attention. It is worth noting that linking the two concepts, namely sustainable development and the rights of future generations, imposes an additional responsibility to promote sustainability in a more just society and thus undeniably enshrines the notion of sustainability.

2. Tasks of the Authority (Articles 4 to 6)

38. Article 129 of the Constitution limits the Authority’s activities to "economic, social and environmental issues, as well as development plans". It appears from this wording, then, that these areas fall within the Authority’s remit. In doing so, Article 129 of the Constitution gives the Authority a very broad area of competence, which would probably cover much of the parliamentary agenda. The Constitution does not indicate what priorities are to be pursued by the Authority in the three areas explicitly mentioned. This constitutional mandate does nevertheless provide a very wide framework, both at the legislative level and in terms of

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[10] Mr Per Becker provides an overview of the different stages and conceptual approaches in his work: “Sustainable Development in Sustainability Science. Managing risk and resilience for sustainable development”.
[11] See “*Our Common Future*”, Chapter 2, IV.1 and 81.
[12] https://www.un.org/sustainabledevelopment/.

development plans. During the visit, the delegation was informed that 80 draft laws were currently before Parliament, so it is essential to indicate clearly on which draft laws or development plans the Authority is required to give its opinion. It should not be so overburdened that it is no longer able to fulfil the most important aspects of its role. In order to provide the Authority with a clear framework of powers and responsibilities, it would be helpful if the draft law specified the field in which it is to exercise those powers and responsibilities within the limits prescribed by the Constitution.

39. It should be noted that the draft law sets out the Authority's tasks only in very general terms, as the field and scope of the Authority's competence are not elaborated on. Article 4, the first article of Section I on the Authority's tasks, simply refers to "matters relating to its area of competence", an area which is not clarified in the previous articles (Articles 1 to 3). From this point of view, Article 4 has little legal meaning in itself.

40. Conversely, too, Article 4 lists the parties and institutions with which the Authority is to have dealings and authorises it to adopt "mechanisms for the broad participation of the regions concerned and civil society". A better option here would be to allow the Authority to conduct consultations as broadly as possible, as it deems appropriate in order to fulfil its mission. The article could also list a few institutions in a non-exhaustive manner. That way the Authority would have the necessary discretion.

41. Article 4 could also reinforce the idea that the Authority represents a strengthening of direct, democratic participation and dialogue on laws, standards and programmes. Providing for a specific body or interregional commission comprising representatives of central government and regional authorities could increase dialogue and participation and pave the way for more effective performance of the tasks set out in Article 5. Local administrations, after all, are a pervasive means of bringing governance closer to citizens. Thanks to their proximity, they know better than anyone what citizens need and are in a position to respond quickly.

42. In Article 5, the description of the framework of powers and responsibilities seems narrower than the one provided in the Constitution. In the Constitution, the notion of "sustainable development" is mentioned in the title of Article 129, but not in the main body of the text. Ideally, the guiding principle of sustainable development should have been mentioned in the main body of the Constitution. The very short explanatory statement that accompanies the draft law seems, moreover, to list economic, social and environmental issues as separate areas for possible investigation by the Authority, and do not necessarily include sustainable development issues. There seems, therefore, to be some inconsistency between the wording of Article 5 and these two texts, making it difficult to accurately determine the scope of the Authority's powers and responsibilities.

43. It is more or less clear from the wording of Article 5 that the main focus of the Authority's work is to ensure that sustainable development is implemented in the policies and measures adopted by public authorities at all levels. While this is a laudable objective, it is not at all clear how the Authority is to achieve it, given the terms of Article 7, which limits consultation to laws and development plans. According to the meaning assigned to the term "development plans" in the Tunisian legal system, it would appear that the Authority has no power to put sustainable development on the agenda in the everyday policy and decision making of national, regional or local public bodies.

44. Another problem is that the law does not provide a working definition of "sustainable development". The articles in Section 2 concerning the prerogatives of the Authority (Articles 7 to 10) depend on a clear and precise definition of the Authority's tasks; this lack of precision undermines the Authority's prerogatives.

45. It is clear that the concept of sustainable development cannot and should not be exhaustively defined in the draft law. Given the complex and fuzzy nature of the concept (see §§ 33 to 36 above), however, it would have been helpful if the draft law had mentioned some of the characteristics implied by "sustainable development" in order to give the Authority a clear framework for its powers and responsibilities and indicate the priorities on which it is to focus in its work. That way, the Authority would have a sound legal basis for screening consultation requests according to their relevance, thus easing the effect of the very short time frames within which it is required to deliver its opinions (see below §§ 74 to 79). The commonly accepted definition found in the Brundtland Report could serve as a reference.

46. In view of the tasks set out in Article 5, it would also be advisable to grant the Authority additional powers so that it could introduce a sustainable development perspective into government decisions and policy making that do not fall within the scope of Article 7, for example by developing criteria and benchmarks on sustainable development.

47. Lastly, Article 5 assigns the Authority the task of "ensuring dissemination of the culture of sustainable development", which is no longer included in Section 2 on the Authority's prerogatives. Although it can be deduced from Chapter IV on "guarantees to ensure the proper functioning of the Authority and its accountability" that this aspect would be covered by the task of producing and disseminating periodic reports on sustainable development (Article 41), there seems to be no indication in the rest of the draft law as to how this task is to be accomplished in practice.

48. Article 6 seems to go further than the notion of sustainable development by requiring the Authority to work "to preserve the aspirations of future generations, to defend their rights, in particular the right to cultural heritage, civilisational heritage and national identity, as well as the right to a healthy and balanced environment, a stable economic and social context and sustainable natural resources that meet the economic, social and cultural needs of future generations and ensure their continued secure existence".

49. While the aspirations of future generations are a key factor in the concept of sustainable development, it remains unclear how the notions of "cultural and civilisational heritage" and "national identity" tie in with sustainable development. Nor is it by any means certain that these issues are covered by the wording of Article 129 of the Constitution, which requires the Authority to be consulted "on draft laws relating to economic, social and environmental issues, as well as development plans".

50. Furthermore, by extending the Authority's already very broad remit to include "cultural heritage" and "civilisational heritage", the draft law risks watering down the concept of sustainable development and at the same time the Authority's objectives and the resources available to it. Even if the notion of sustainable development were to include such matters, it is counterproductive to single them out and overburden the Authority. A more sensible option might be to provide an appropriate general definition of sustainable development for the contemporary era.

51. It appears there may also be a discrepancy between the terms of Article 129 of the Constitution and those of Article 6 of the draft law. The Commission delegation was informed during talks in Tunis that the Authority's remit could partially overlap with that of another advisory body, namely the National Council for Social Dialogue, which was set up in 2018. It was difficult for the delegation to ascertain to what extent the two bodies would overlap in practice, but under the terms of the law establishing it, the National Council for Social Dialogue, which includes representatives of the government as well as employers' and workers' unions, must be consulted about any laws and decrees "relating to labour, economic and social

development plans and economic budgets".[13] Although the focus of the National Social for Dialogue Council is on employment issues, this is also a factor in sustainable development. Both institutions are or can be consulted on texts that relate to economic issues. Although the fact that consulting the Authority is mandatory reduces the risk of "forum shopping", there is a strong likelihood that the two institutions will be called on to give opinions on the same drafts. The danger is therefore that an overlap of competences with other institutions would detract from the Authority's opinions, with, for example, proponents of a text preferring to cite any positive assessment that might have been given by another institution even if the perspective were different.

52. It is therefore recommended that the Authority's tasks be differentiated as far as possible from those of the National Council for Social Dialogue and that efforts be made to avoid the risk of the former's authority being called into question by other actors on the ground that the Authority had exceeded its mandate.

53. Finally, as recommended by the Venice Commission in its opinion on the High Committee for Human Rights and Fundamental Freedoms of the Republic of Tunisia,[14] it is recommended that the Authority be empowered to make recommendations concerning the ratification of relevant international instruments and to monitor the implementation of those instruments. Extending the Authority's powers and responsibilities to international obligations and standards is entirely appropriate, as sustainable development issues are, by nature, international.

54. To summarise, the tasks of the Authority, as provided for in the draft law, seem extremely obscure and vague. Since the Authority's powers and responsibilities and the priorities which it is to pursue depend on its mission, the draft law should be reviewed in order to provide a more precise and coherent description of the latter.

3. Prerogatives of the Authority

55. According to Article 129 of the Constitution, the Authority is an advisory body. The draft law defines in section 2 of Chapter I, Articles 7 to 11, the powers of the Authority, which will act in four different circumstances: mandatory consultation, optional consultation, on its own initiative and on the initiative of citizens.

56. As a preliminary remark, it should be noted that the draft law does not clearly specify whether the Authority's opinions are binding or not. It can be deduced from the general context that the opinions are not binding and it would be wise to spell this out in the draft law.

57. A question of constitutional philosophy arises: whether or not to support the idea of creating constitutional bodies with consultative powers only. The comparison with other commonly found bodies such as the Ombudsman becomes even less favourable if one considers that the main functions of such bodies are to receive and process complaints, not to mention the current tendency to allow them to apply to the Constitutional Court and other judicial authorities. For such independent constitutional bodies however, binding decision-making powers vis-à-vis political authorities can be justified by their specific mission, which is to protect individual rights.

58. The main task of an advisory body is to bridge the gap between scientific knowledge and policy making, and to identify and report relevant (long-term) developments to policy makers in a formal way. In order to fulfil this mission, the institution concerned must not be perceived by political actors and in the domestic legal order as being made up of lobbyists or activists. This is all the more true when the institution is called upon to act in a policy area as sensitive as

[13] See Article 3 of Law No. 2017-54 of 24 July 2017 creating the National Council for Social Dialogue and establishing its mandate and mode of operation.
[14] CDL-AD (2013)019, §11.

sustainable development where there may be a wide range of legitimate policy options, where the budgetary implications are considerable and where there are liable to be significant differences in the views held by different political parties. It is important to avoid a situation where the Authority's work is rejected by some stakeholders as one-dimensional, biased and systematically inclined to reflect the views of a particular (political) party. Indeed, attention was drawn to this point at the 6th intercultural workshop on "The role and place of independent bodies in a democratic state", one of the conclusions of which was that "the basic condition for their proper functioning is the depoliticisation of their function".[15]

59. Similarly, the advisory body should not - even de facto - be co-responsible for the political choices that need to be made. The body may act as an influential adviser to political entities such as the government or Parliament, but ultimately it is for the latter to decide policy.

60. Lastly, authority is a key factor in the effectiveness of any advisory body. This effectiveness is dependent on the quality, strength and substantive coherence of the opinions adopted and their subsequent acceptance by all relevant actors, including Parliament, and the public at large. It is essential therefore to know to whom the body is to give advice, at what point this advice is to be requested and on what kinds of drafts. As will be seen below, the draft law does not provide very clear answers on these three points, greatly hampering the effectiveness of the institution.

a. Mandatory consultation

i. Matters on which the Authority must be consulted

61. Under Article 7, first paragraph, of the draft law "the Authority shall be consulted on:

- draft laws relating to economic, social and environmental issues,
- national and regional development plans, the planning policy document, the economic balance and the economic plan monitoring reports."

62. This provision is perhaps the most crucial in determining the mandate of the Authority. It should be noted here that the substantive scope of the questions triggering mandatory consultation is extremely broad, unless Article 7 is interpreted narrowly in the light of the above-mentioned Article 5.

63. While most laws involve economic and social issues, it seems unlikely that all draft laws containing economic and social elements would also raise sustainable development issues. Although the substantive scope of mandatory consultation derives from the Constitution, it should be qualified in the draft law and/or the Authority should be given the power to screen draft laws according to their relevance to sustainable development and the rights of future generations. Allowing the Authority to screen draft legislation would also make it possible to fulfil the constitutional obligation, without it being for the applicants to decide whether or not to refer a matter to the Authority, based on political or other considerations. In that case, the draft law could simply stipulate that all draft laws must be referred to the Authority.

64. For the sake of clarity, it ought to be stated in Article 7 that the subject matter on which the Authority is to be consulted is "sustainable development and the rights of future generations" in order to make explicit the focus of the Authority's scrutiny.

[15] Intercultural Workshop on Democracy, Tunis 13-14 November 2018, CDL-PI (2018)010.

65. In addition, the draft law does not mention budget proposals among the texts about which the Authority must be consulted. These texts should be added to the list, particularly with regard to government action relating to sustainable development and preserving the rights of future generations in accordance with the provisions of Article 6, first paragraph, of the draft law.

66. Lastly, it seems that the authors of the draft law were anxious to limit the mandatory referral of cases to the Authority to draft laws. It might be helpful, then, to make it clear in the draft law that the texts to be submitted to the Authority are draft laws that will be adopted by Parliament and not any other type of statutes or subordinate legislation, such as decrees for example. It is also not clear from the wording, therefore, whether or not legislative proposals (*propositions de loi*) are among the texts about which the Authority must be consulted. If so, some rephrasing would be in order for this reason too.

67. As for the section in Article 7 referring to "National and regional development plans, the planning policy document, the economic balance and the economic plan monitoring reports", these documents should be further defined as consultation here is mandatory. Unless "national and regional development plans" are specialised terms used in the domestic legal system or have a specific meaning, the wording as it stands is not sufficient to clearly establish which documents are subject to mandatory consultation. It is important to ensure that mandatory consultation is clearly defined and not so broad as to make the Authority's task impossible.

68. In short, both the range of issues and the types of texts (primary and subordinate legislation) on which the Authority must be consulted should be better defined; consideration could be given to introducing a screening procedure within the Authority.

ii. The procedure for mandatory consultation

69. The mandatory consultation procedure calls for some comments as regards determining who is entitled to refer a case to the Authority, the timing of the referral and the time limit within which the Authority is required to deliver an opinion.

70. The draft law does not clearly state which authorities may apply to the Authority or at what point in the process of drafting a law or development plan the Authority is to be consulted. The timing of the referral and the identify of those making the request affect the impact of the Authority's opinion, particularly in view of the very short time frame for delivering an opinion and the diverse composition of the Authority. As a general rule, the earlier the opinion is given in the preparation of the draft in question, the greater the Authority's role and participation will be. If the Authority is consulted in the final stages of the legislative process, it will probably be difficult - politically and practically speaking - to make changes based on the recommendations contained in the opinion.

71. With regard to the timing of referrals, it follows from the context of Article 7 that the Authority should be consulted before submitting the draft law or plan to Parliament, since any such draft law or plan must be accompanied by the Authority's opinion. Under Article 62 of the Constitution, ten deputies, the President of the Republic and the Head of Government may submit legislative proposals or draft laws: it appears therefore that one of these institutions would need to consult the Authority before submitting the texts to Parliament, since they must be accompanied by the Authority's opinion. It follows, although it is not very clear, that the Authority's opinions are intended primarily for Parliament, and to a lesser extent for the authors of draft laws or plans at the drafting stage.

72. Although it would not be wise for the advisory body to be consulted repeatedly during the policy-making process, as this would greatly increase the workload, it is important that the opinion have the potential to be of use. In this regard, it is commendable that the draft law requires the party proposing the draft law to provide Parliament with an explanation if it decides

to disregard the Authority's advice. Such an obligation could raise the threshold for consideration of the Authority's opinions and serve to better inform Parliament and the public at large.

73. In short, it would be helpful if the draft law spelt out very clearly the procedures to be followed with regard to referrals, the timing of mandatory referrals and who can apply to the Authority.

74. The draft law also specifies the time limits within which the Authority must give its opinion, namely "one month from the receipt of the consultation in the case of draft laws" and three months for plans. The draft law does not make any provision for extending the time limits. Given that draft laws and plans may be complex in nature, and the time needed to involve the Assembly in the decision-making process, these time frames seem far too short. They are short by any measure but particularly so given the Authority's very broad mandate, and the extremely heavy workload that entails, and, above all, the complexity of the analysis to be carried out and the expertise required, expertise that may not be available in-house. Add to this the fact that the Assembly meets every three months and the deadline starts to look impossible.

75. Article 7 states that "failure to reach a decision within the specified time limits shall not prevent the procedures from being completed", which seems to indicate that if the Authority has not managed to give an opinion, the authorities' obligation to consult will nevertheless be deemed to have been fulfilled.

76. Where several draft laws or plans are submitted to the Authority at the same time, it is quite conceivable that the Authority might not be able to provide an opinion or that it might have to compromise on the quality of the opinion. Since opinions are only advisory, their value and specifically the constitutional obligation to consult the Authority depends on the quality of the recommendations and their being available to Parliament.

77. During the visit to Tunis, the delegation was informed that the short time frame granted to the Authority had been considered necessary in order to avoid delays in the legislative process. Although a fair balance obviously needs to be struck between appropriate consultation and the effectiveness of the legislative process, the Venice Commission nevertheless recommends a less rigid approach in the draft law in order to avoid the Authority becoming paralysed. At a minimum, the Authority should be able to request an extension of the deadline for particularly complex or important draft laws or plans, or in cases where it is consulted about several texts at the same time.

78. As mentioned above, the Authority could also be allowed to screen consultation requests according to their relevance to sustainable development, for example by simplifying the procedure which would not then involve the Assembly, in the case of draft laws and plans that clearly do not raise significant sustainable development issues.

79. Lastly, it might be wise to require the government to regularly brief the Authority on draft laws and plans that are being drawn up so that the Authority can provide some preliminary advice, for example in the form of lists of criteria or benchmarks, at the drafting stage. It should nevertheless be borne in mind that while the Authority has the potential to be an influential adviser to political entities such as the government and Parliament, ultimately it is for these entities to decide on policy.

b. Optional consultation

80. Article 7, paragraph 4, provides for possible consultation "by public authorities" on "questions and draft regulatory texts relating to their area of competence". The draft law does not specify which authority may apply to the Authority and whether the Authority may refuse to

deal with a request. In this respect, it should be borne in mind that granting all public authorities the power to consult the Authority in this way could lead to extensive use of this facility and risks overburdening the Authority to an indeterminate degree.

81. Even though consultation of this kind is not mandatory, it would be helpful to also clarify the terms of this provision, or perhaps do away with this possibility altogether, even if that means giving the Authority the right to itself take up a matter and/or refuse to deal with a request on the grounds of capacity or relevance, particularly in the case of subordinate legislation.

c. Opinions issued by the Authority proprio motu

82. Under Article 8 of the draft law, "the Authority may, on its own initiative, issue an opinion on any economic, social or environmental matter and on any strategic guidance document concerning public policies or programmes or major national projects or regional and international projects or conventions... To assess their compliance with sustainable development approaches and objectives."

83. It is important that the Authority not be treated as a quasi-advisory agency by the government and that it has the power to determine - at least in part - which issues it will advise and report on.

84. As regards assessing compliance, it is recommended that the Authority adopt a methodology with clear criteria for conducting such assessments. Having the power to issue opinions on its own initiative on any subject within its competence allows the Authority rather than public authorities to put sustainable development on the agenda and to engage in public awareness raising. This provision is welcome, therefore, and is in line with the recommendations of the Venice Commission.[16]

85. Under the third paragraph of Article 8, "the Authority may propose to the legislative and executive branches and to the Higher Council of Local Authorities such reforms as it deems necessary... ". It is not clear from this wording whether that requires the relevant authorities to respond or to initiate changes or whether such proposals are to be construed as advice, which is not legally binding, in the same way as opinions given under Articles 7 and 8 of the draft law.

86. From a normative point of view, unless reform proposals are substantively different from an opinion issued by the Authority under Article 7 or the first paragraph of Article 8, it is not necessary to specifically mention reform proposals in the draft law. In any event, the status of such reform proposals and the corresponding obligations for the relevant authorities, if any, should be clarified.

87. In addition, Article 9 of the draft law provides that the Authority may also, on its own initiative or upon request, carry out studies and research within its sphere of activity. This is a third type of document that the Authority may examine, therefore.

88. The article also provides that the Authority may develop partnerships with similar national or international governmental or non-governmental bodies or institutions. Creating partnerships with other sustainable development actors seems therefore to be a clear task under the law, although it should be not merely a possibility but rather a means to achieve sustainable development in Tunisia.

[16] CDL-AD (2013) 019, § 11, C.

d. Citizens' initiative

89. Article 10 of the draft law envisages a citizens' initiative of at least 5,000 signatures in order to seek the Authority's opinion on issues related to its area of competence. During the visit, the delegation was informed that the minimum number of signatures required for a citizens' initiative would be lowered to 1,000. In any event, it remains unclear what steps the Authority is required to take and what the procedure is following any such initiative.

90. It is unclear whether the Authority has an obligation to produce an opinion in response to a citizens' initiative. Or is its sole function to receive initiatives, decide whether they are admissible and forward them to another competent body? The draft law specifies that the Authority must, within two months of the request, give an opinion "on whether they can be accepted and forwarded to the party concerned". It appears from this wording that the Authority can reject a citizens' initiative, without giving reasons for its decision. In order to prevent the right to a citizens' initiative referred to in Article 10 from being exercised in an impractical or arbitrary manner, the draft law should set out the procedures for rejecting such initiatives.

e. A supervisory function?

91. Under Article 5 of the draft law, the Authority must "ensure" respect for sustainable development at the national, regional and local levels in public policy making.

92. The verb "ensure" suggests that the Authority should have a monitoring and prosecutorial function vis-à-vis public authorities, including Parliament and the government. [17]
Since the Authority's functions are merely advisory, however, it is unclear how it can fulfil the objective set out in Article 5 of the draft law.

f. The obligation to assist the Authority

93. Article 8 of the draft law places an obligation on all state institutions to "facilitate the work of the Authority and allow it to have access to the texts and documents it needs to carry out its functions".

94. A general obligation on state institutions to assist independent bodies arises from Article 125 of the Constitution and Article 2 of the 2018 Organic Law.

95. This general provision requires further elaboration, however, something the draft law fails to provide to a sufficient degree.

96. The positioning of this obligation in the draft law ought to be reviewed as well. Article 8, after all, deals with cases where opinions are issued by the Authority acting on its own initiative.

97. Placing the obligation on state institutions in Article 8 suggests, therefore, that the obligation in question applies only in cases such as these, and not in cases of mandatory or optional referrals under Article 7 or cases where the Authority is asked to give an opinion in response to a citizens' initiative under Article 10 of the draft law.

[17] See, in comparison, Article 102 of the Constitution: "The judiciary is independent. It ensures the administration of justice, the supremacy of the Constitution, the sovereignty of the law, and the protection of rights and freedoms."

98. The obligation for any state institution to provide access to documents and all relevant information is an important tool for independent institutions when it comes to supervising public authorities. This, incidentally, is one of the principles set out in the "Venice Principles".[18]

99. Specific means should therefore be envisaged in the law in order to give full effect to this provision, such as a description of the structures concerned. As stated in the Venice Principles, "unhindered access to buildings, institutions and persons" should be provided for, together with access to "all relevant documents, databases and materials".

C. Organisational structure of the Authority

100. Chapter III of the draft law is devoted to the Authority's organisational structure with three sections dealing with three levels of organisation: the Board, Section 1; the Authority's Assembly, Section 2; and the Administrative Body, Section 3.

101. While the Authority appears, at first sight, to start from a position of strength, through its anchoring in the Constitution, rendering it independent of short-term political pressures, and the fact that its establishment may be required by law, in practice its institutional strength and political impact also depend on its ability to take targeted and timely action. This ability is further determined by the internal organisation of the Authority, which calls for both general and article-specific comments.

102. Under Article 12, the Authority consists of three tiers, namely a Board, an Assembly and an administrative body.

103. In terms of internal governance, the Board is the central decision-maker and external representative, the Assembly - the deliberative body and the administrative body - the executive. While this arrangement would seem on the face of it to be appropriate, it is difficult, on closer inspection of the draft law, to gauge to what extent the Authority is truly independent and capable of functioning effectively.

104. In order to promote the regional participation provided for in Article 4 (see § 41 above), one option might be to provide for a specific body or commission to foster dialogue between the various central, regional and local authorities.

105. According to Article 13, the Authority is to draw up its rules of procedure and organisation chart, which must be sent to the administrative court for approval before being submitted to the Authority's Board. This is a very onerous and complex obligation for an institution that has only advisory functions. It is arguable whether minor changes in the Authority's internal organisation of the Authority warrant a full-scale ex ante judicial review.

1. The Board (composition and conditions governing election)

The draft law deals with the composition and conditions governing the election of the Board in Articles 14 to 18 and addresses its tasks and operating procedures in Articles 21 to 24.

[18] See CDL-AD (2019)005, Principles on the Protection and Promotion of the Ombudsman Institution, § 6: "The Ombudsman shall have discretionary power, on his or her own initiative or as a result of a complaint, to investigate cases with due regard to available administrative remedies. The Ombudsman shall be entitled to request the co-operation of any individuals or organisations who may be able to assist in his or her investigations. The Ombudsman shall have a legally enforceable right to unrestricted access to all relevant documents, databases and materials, including those which might otherwise be legally privileged or confidential. This includes the right to unhindered access to buildings, institutions and persons, including those deprived of their liberty."

a. Numerical composition of the Board

106. Under Article 14, the Board consists of three members elected by Parliament.

107. The Authority thus differs from the other independent constitutional bodies, which all have nine members.

108. A 3-member board is vulnerable to abstentions and conflicts of interest, especially given the area in which the Authority operates. Also, the fact that the Chairperson has the casting vote (Article 22) in the event of a tie has a far greater impact when there are only 3 members.

109. The delegation was pleased to learn during its visit, therefore, that the Tunisian Parliament has decided to increase the number of Board members to nine, bringing it into line with the other independent constitutional bodies. Such a move should also better enable the Authority to fulfil its onerous responsibilities and cope with the inevitable absences of its members and any conflicts of interest that might arise during the term of office. A three-person Board was patently inadequate.

b. Appointment by Parliament

110. Under Article 125 of the Constitution, the independent constitutional bodies are to be elected by a qualified majority, by Parliament.

111. This provision is in keeping with the recommendations of the Venice Commission which prefers appointments by Parliament in the case of Ombudsmen (see Principle 6 of the "Venice Principles"),[19] whereas the Paris Principles are silent on the subject where national human rights institutions are concerned. In its 2013 opinion on the draft Tunisian Constitution, the Commission, moreover, emphasised the importance of having independent bodies elected by a qualified majority.[20]

112. Indeed, in order to prevent partisan political considerations or specific interests from influencing appointments to positions that require a high degree of independence and impartiality, as in the case of judicial councils or Ombudsman institutions, the Venice Commission has, on numerous occasions, recommended appointment by a qualified majority. [21]

113. The Constitution does not specify what constitutes a qualified majority, leaving it to the legislator to decide what this majority should be. Article 14 of the draft law stipulates a qualified two-thirds majority in the case of the Board.

114. While the Venice Commission has always advocated qualified majority voting, it has at the same time warned of the risk of paralysis and has also recommended developing robust anti-deadlock mechanisms.[22] Such mechanisms should therefore be provided for in the draft law. Given the tasks which the Authority is called upon to perform and its limited powers, reducing the qualified majority to three fifths would be appropriate, and in the event of a deadlock, there should be the possibility of holding a second round of voting. During the visit,

[19] CDL-AD (2019)005, Principles on the Protection and Promotion of the Ombudsman Institution, § 6: "The Ombudsman shall be elected or appointed according to procedures strengthening to the highest possible extent the authority, impartiality, independence and legitimacy of the Institution."
[20] CDL-AD (2013)032, Opinion of the Final Draft Constitution of the Republic of Tunisia, §187.
[21] See CDL-AD (2007)028, Judicial Appointments, § 32; CDL-AD (2019)005, Principles on the Protection and Promotion of the Ombudsman Institution, § 6, See also, CDL-AD (2010)040, Report on European Standards as regards the Independence of the Judicial System: Part II - the Prosecution Service, § 36.
[22] See CDL-PI (2018)003rev and CDL-AD (2013)028, §12.

the rapporteurs were informed that the requisite majority would be reduced to three fifths precisely in order to avoid deadlocks.

c. Length of term

115. Under Article 14, the term of office of members of the Board is six years, non-renewable.

116. The Venice Commission, in its "Venice Principles", is in favour of non-renewable mandates,[23] while the Paris Principles make no mention of the subject. A relatively long term of office, not synchronous with that of Parliament, without the possibility of renewal, allows the office holder to give opinions free of any considerations relating to future re-appointment. Although the "Venice Principles" advocate a slightly longer mandate for Ombudsmen, a longer term of office for a body such as the Authority which is merely advisory in nature seems unnecessary. A six-year term of office is also in line with the recommendation made by the Commission in its opinion on the Higher Committee for Human Rights and Fundamental Freedoms of the Republic of Tunisia.[24]

d. Eligibility

117. The main eligibility requirement is laid down in the Constitution, Article 129 of which states that the Authority shall be "made up of members who are competent and of high integrity". This requires that members have the ability to perform their role as board members in a satisfactory manner and that they be honest and of high moral character.

118. Article 14 should therefore begin by incorporating these basic constitutional requirements, even if they have to be elaborated on below, as indeed they are.

119. Article 14 lists six eligibility criteria which call for various observations.

i. The requirement to be a Tunisian national

120. The requirement to have Tunisian nationality in order to be eligible for membership of the Board is not a constitutional obligation. One can see, however, why in the case of an independent body it might make sense to keep this condition, notwithstanding the fact that there could be excellent non-Tunisian candidates.

ii. The requirement “to be influential"

121. This is an unclear, rather subjective and therefore questionable criterion. Either the draft law should provide an explanatory definition or it should indicate which body will decide who can be considered influential and in which sector of society. This criterion could, furthermore, be covered by the competence requirement. In any event, should this criterion be maintained, it would be better to use the term "authoritative" rather than "influential".

iii. The requirement to have twenty years’ experience in the legal field, or in social sciences or the humanities

122. There are three major problems with this requirement.

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[23] CDL-AD (2019)005, Principles on the Protection and Promotion of the Ombudsman Institution, §10: “The term of office of the Ombudsman shall be longer than the mandate of the appointing body. The term of office shall preferably be limited to a single term, with no option for re-election; at any rate, the Ombudsman’s mandate shall be renewable only once. The single term shall preferably not be stipulated below seven years.”

[24] Joint opinion on Law No. 2008-37 of 16 June 2008 relating to the Higher Committee for Human Rights and Fundamental Freedoms of the Republic of Tunisia, §43.

123. First, it is uncertain whether the requirement to possess twenty years' experience is compatible with the Constitution, which refers only to two criteria, namely competence and integrity, in Article 129. Considerable competence can be acquired in less than "twenty years of experience", and long experience is not necessarily synonymous with competence. While the Constitution demands that members be competent, insisting on 20 years' experience or competence as a strict eligibility criterion is excessive. It is interesting to note in this respect that for all other constitutional bodies the members must be "independent, neutral, competent and of high integrity" whereas in the case of the Authority, they are required only to be competent and of high integrity.

124. Secondly, the requirement to have twenty years' experience is a very strict one which makes it difficult in practice to achieve an inter-generational balance. This condition also has the paradoxical effect of limiting the Board's understanding of the needs and concerns of future generations, which is the very purpose of this Authority dedicated to sustainable development.

125. Thirdly, since the Authority is also mandated to study texts on the environment, in the context of sustainable development, one wonders why people with a high level of competence in the natural sciences should be excluded. Given the Authority's area of competence, it would seem important that this field be included.

iv. The requirement for a high level of competence in conducting studies, publishing or supervising research

126. Combined with the previous condition, this requirement seems to favour persons from academia. While it is entirely appropriate that Board members should be required to demonstrate their competence in one of the areas covered by the Authority, limiting the pool of potential candidates to those who have produced material of this type is unduly restrictive. It is recommended that the words "for example" be inserted in front of "conducting studies, publishing or supervising research", as it is not desirable that the list should be prescriptive to this degree.

v. The requirement for integrity

127. In view of its importance, this condition should not be in a list. Rather it should appear in the general introductory paragraph in Article 14.

128. In addition, in the "Venice Principles", the Commission has identified as essential criteria "high moral character, integrity and appropriate professional expertise and experience".[25] The notion of "high moral character" is also provided for in Article 21 of the European Convention on Human Rights as an eligibility criterion for the post of judge at the European Court of Human Rights. It would be appropriate for this notion to be included in the draft law, particularly when the issue of integrity is addressed.

vi. No prior convictions for crimes or deliberate offences

129. Crimes or deliberate offences means serious infringements as opposed to misdemeanours which are not in themselves an indication of lack of integrity.

[25] CDL-AD (2019)005, Principles on the Protection and Promotion of the Ombudsman Institution, §8: "The criteria for being appointed Ombudsman shall be sufficiently broad as to encourage a wide range of suitable candidates. The essential criteria are high moral character, integrity and appropriate professional expertise and experience, including in the field of human rights and fundamental freedoms";
See also CDL-AD (2004)041 Joint Opinion on the Draft Law on the Ombudsman of Serbia, §13.

e. The appointment procedure

130. The appointment procedure is described in great detail in Articles 15 to 20. And yet, on the key issues of selection and ranking of candidates, the draft law is unclear.

131. Under Article 15, the competent parliamentary committee receives and examines the applications and then selects and ranks nine candidates according to an evaluation scale based on objective, transparent criteria.

132. It is difficult to discern from the wording of this article what the criteria are, who decides them, what the composition of the Selection Committee is, and whether these criteria are different from the eligibility requirements set out in Article 14. According to the "Venice Principles": "The procedure for selection of candidates shall include a public call and be public, transparent, merit based, objective, and provided for by the law." [26]

133. It could be proposed, for example, that the selection committee be made up of persons with appropriate qualifications other than members of Parliament. This would bring more independence and expertise to the selection process. Parliament would of course have the final say when presented with the shortlist of candidates.

134. A further option could be for the selection process to involve an interview with, or a presentation given by, the candidate.

135. If the number of Board members rises to nine, as indicated during the visit, the number of candidates selected will need to increase accordingly.

136. It should also be noted that the Organic Law of 2018 does not provide for any additional new criteria and that the Constitution refers to two conditions, namely competence and integrity (see §117 above).

137. It is difficult to ascertain, too, whether it falls to the parliamentary committee to decide these criteria and then to evaluate candidates accordingly. Although, in itself, this is not too much of a problem, since the candidate must in any case secure a qualified two-thirds majority in Parliament, the provision as currently worded allows qualifications other than professional experience in the Authority's sphere of activity to be given priority. Given the level of detail contained in the draft law, moreover, this point ought to be clarified.

138. In short, it is recommended that the wording of Article 15 be substantially revised to clarify the grey areas.

139. Under Article 17 of the draft law, the committee's decisions are subject to appeal. While it is of course entirely laudable that the draft law should provide for a judicial remedy, it is important to bear in mind that the decision being contested, namely an assessment of a list of candidates on the basis of predefined criteria, is taken by democratically elected representatives. This could put a strain on the relationship between Parliament and the judiciary. It would be wise, therefore, to include a provision to the effect that judicial review is to be limited to an assessment by the court to determine merely whether the selection committee's decision is compliant with the procedure prescribed by law.

[26] CDL-AD (2019)005, Principles on the Protection and Promotion of the Ombudsman Institution, §7

140. Article 18 requires that the gender parity rule be respected in the composition of the Board, which according to the draft law consists of three members. This proposal should be further elaborated, having regard in particular to the fact that the Chairperson of the Board has a casting vote in the event of a tie.

2. The tasks of the Authority's Board and its operating procedures

141. The Board's tasks and operating procedures are dealt with in sub-section 2, Articles 21 to 24.

142. Under Article 21 "the Board of the Authority shall supervise the performance of tasks relating to sustainable development and the rights of future generations and in particular shall ensure the following functions:...", there then follows a list of 12 functions ranging from administrative matters such as approval of the rules of procedure, the organisation chart and standing committees, the budget or annual report to more substantive matters such as the study of questions submitted for opinion, approval of opinions, proposals and studies carried out by the Authority's Assembly.

143. Among the numerous items on this list, the need to draw up special regulations for the Authority's staff is debatable. They could be governed by the general civil service regulations.

144. While, in principle, the administrative functions do not pose a problem in terms of comprehension, the Board's functions with regard to the opinions, studies and any other substantive document produced by the Authority and the procedures followed for this purpose are lacking in clarity and open to misinterpretation.

145. Among the functions listed in Article 21, the one concerning "approval of opinions, proposals and studies carried out by the Assembly of the Authority" could stand to be clarified. It assumes that the Board can reject the decisions of the Assembly, which would be a logical conclusion in the light of the Constitution. It is doubtful, however, whether the Board has a legal obligation to canvas the views of the Assembly before taking such a decision and it needs to be determined to which decisions this applies. Given the very short deadlines prescribed by law, it is recommended that the Board be permitted to take certain decisions without consulting the Assembly first, such as procedural decisions or decisions on draft laws or plans that do not raise significant sustainable development issues. These points should be clarified in the draft law.

146. In addition, an *a contrario* reading of Article 21 could further imply that all decisions that are not taken by the Board, having regard to the list in that article, would then be taken by the Authority's Assembly. That would mean therefore that the Assembly would be involved in a greater number of issues such as, for example, deciding whether the Authority should give an opinion, or launch a study on its own initiative (Articles 8 and 9 of the draft law).

147. During the visit, it became apparent that the article was to be read as meaning that the Board would be responsible for giving the Authority's opinion based on the one given by the Assembly, by which it is not bound, and for forwarding it to the parties concerned. If this is indeed the procedure envisaged, it should be set out in far greater detail.

148. It is not very clear from the draft law, moreover, which body is to assist the Board in its tasks. It can be deduced from Section III on "the administrative body" that the latter is to carry out the preparatory work for producing the Authority's opinions and other texts, but it is not clear whether this work will be done under the supervision of the Authority's Assembly, with a Board that ultimately adopts opinions and forwards them to the interested parties.

149. One final point to note is that the Board's tasks do not include raising public awareness of sustainable development issues in Tunisia and monitoring sustainability. The draft law could be more ambitious and include both of these functions as well.

150. In general, although it is stated in Article 13 that the Authority is to draw up rules of procedure, the draft law should be clearer about the working procedures between the different constituent parts of the Authority.

151. Articles 22 and 23 confer a predominant role, with powers heavily concentrated in the Chairperson.

152. Judging by the length of the Board's term of office, the specific profile sought, the selection procedure, the limited number of Board members and the long list of tasks with powers concentrated in the hands of the Chairperson, it is clear from this draft that the Board is the real policy-making body within the Authority. As well as being the contact point for those seeking opinions, it would also appear to be the body that has the power to set the agenda and priorities and to take initiatives.

153. To ensure optimal functioning, however, one option might be for the Board to consist exclusively of qualified experts, empowered to deliver opinions without first consulting the Assembly, yet while keeping it regularly informed, on draft texts which are not crucial or controversial. Under that arrangement, the government would ask the Authority for opinions, which would be delivered by the Board. The Board would brief the Assembly on a regular basis about the opinions given, it being understood that it would always be open to the Assembly to express its views and contribute to the public debate.

154. In short, to ensure greater efficiency in the Authority and given, *inter alia,* the very short deadlines for delivering some of the Authority's opinions, the variety of its tasks and its complex composition (see comments on the Authority's Assembly (§§ 156 to 165 below), it is imperative that the draft law clarify or even substantially modify the Board's tasks and the roles and relationships between the different constituent parts of the Authority, making it clear who does what.

3. The Assembly

155. The Authority's Assembly is the subject of Section II of the draft law and is dealt with in Articles 25 to 31.

156. The first point to note is that neither the Constitution nor the 2018 Organic Law makes any provision for such an Assembly. There is, therefore, no sound legal basis for the existence of this Assembly and given the draft law as it stands, it is questionable whether there is any real need for a body of this kind, with the arguments for abolishing it outweighing the case for maintaining it.

157. Under Article 25, the Assembly is made up of the members of the Board and members appointed by decision of the Chairperson of the Board, for a four-year term, renewable once only.

158. In providing for an Assembly, it seems that the legislator was anxious for the advisory body, which is what the Authority is, to represent a range of functions, rather than consisting entirely of experts. The result is a multi-stakeholder consultative body with the emphasis on functional mix. Like the composition of the Assembly, however, the decision to opt for such an arrangement calls for several comments.

159. In addition to the question of whether such a body is necessary, the main problem concerns the size of the Assembly, with the excessively rigid rules laid down in Article 25 merely aggravating the potentially negative impact of these provisions on the institution's operational efficiency.

160 Article 25 lists in detail the social partners, professional bodies, enterprises, public institutions, local authorities, parties, organisations, associations and experts who are to be represented.

161. The Assembly will be made up of seventy-seven individual members from the following groups: fifteen members from economic or professional organisations, thirty members from public institutions, sixteen members drawn from associations and sixteen experts. Added to these are representatives of the most representative professional employers' organisations and trade unions. While the other organisations mentioned above have a specific number of seats allocated, no limit is stipulated for this last category so there is no way to know how many people will ultimately sit in the Assembly. Nor does the draft law stipulate a total maximum number.

162. It is difficult to assess whether the distribution of seats is such as to ensure that the Authority represents a good cross-section of civil society and general interests in Tunisia. It is clear from this list, however, that environmental aspects are under-represented in relation to economic and social aspects. Surprisingly, too, there is virtually no mention of the education sector in the list.

163 Such detailed regulation with respect to the composition of the Assembly leads to excessive rigidity and is sorely lacking in the kind of flexibility that would make it possible to adapt to changing circumstances over time. It is entirely conceivable that one of the many organisations might cease to exist, or that organisations might merge, or that some organisations might become less representative or influential over time, making it questionable whether they should be allowed to sit in the Assembly. At the same time, new major players may very well emerge which would have every right to expect to be admitted.

164. Article 25 may also pose problems in terms of interpretation as it is not clear whether representativeness refers to the number of members in professional organisations or trade unions or whether it refers to relevance to the Authority's sphere of activity.

165. It is best, therefore, not to legislate to such a degree on the composition of the Assembly with regard to the representation of the social partners, but rather to allow such matters to be addressed via, for example, a decree, which can be far more easily amended and adapted to the circumstances than a law. For example, the draft law could simply state that 15 seats are to be allocated to "economic organisations and professional bodies" and that more detailed regulation will be provided in the form of a decree.

166. The Assembly will also have an unknown number of political members. In effect, "each chairperson of the municipal council of each municipality which is a governorate capital or his/her representative in his/her capacity as a member" is to have one seat. Similarly, "each political party or electoral alliance represented in the Assembly of People's Representatives excluding the deputies" is to have one seat. That means that each of the 24 Tunisian "governorates" will have a representative in the Assembly, to which must be added, following the 2018 elections, the eight parties or electoral alliances of the Tunisian Parliament, each of which will have a representative.

167. In total, unless the number of parties changes, and unless there is a miscalculation, the Assembly would now have 112 members, making it excessively large and unwieldy. Having so many members could also be counterproductive.

168. In addition, having non-state actors and public actors sit in the same body may pose problems with regard to the prerogatives of Parliament, and the separation of powers in general. Political representation is a prerogative of Parliament. The Authority should not have political members or members of public institutions subject to political instructions, therefore.

169. Technically speaking, the Authority is generally meant to advise Parliament; whether Parliament is required to heed this advice on the ground that it comes from an institution that can claim to be representative of the people remains open to question. Conversely, downplaying the Authority's opinions because some of its members are too close to the political authorities is equally possible and would be no less damaging to the authority of the institution in question.

170. Few institutions that advise the government or Parliament are "representative" in the way that the Authority's Assembly is to be under the terms of the draft law. By way of comparison, the level of representation in the network of European Environmental Advisory Councils varies from ten members for the Netherlands to fifty members in the case of France.[27]

171. In 2013, in its opinion on the Higher Committee for Human Rights and Fundamental Freedoms of the Republic of Tunisia, the Venice Commission made the following comment regarding the size of a constitutional institution with similar powers: "Both larger and smaller commissions have their advantages and disadvantages – while it is easier for the former to properly reflect all parts of the population, and have a truly pluralist nature, smaller commissions may be more flexible, and have shorter decision-making processes".[28] This comment applies equally to the Authority, with the practical problems connected with its size far outweighing any benefits that might come from being large.

172. Such a broad, diverse composition, covering various actors from civil society and public entities, at different levels of governance, with different systems of appointment, fits the inclusive and comprehensive approach adopted by Agenda 2030 for sustainable development which is based on the co-operation of all actors in society across different sectors and levels. According to those whom the delegation spoke to, moreover, it was a conscious choice to have a large Assembly because the Authority is only an advisory body and its size would help to ensure multiple points of reference when examining texts.

173. It is important to note here that sending a draft law or plan to the Authority cannot in itself be deemed to constitute, or replace, the kind of public consultation that is an essential part of the drafting process. During the delegation's visit, it was difficult to ascertain to what extent the parties with an interest in this draft law had been truly consulted.

174. The Venice Commission has consistently pointed out that the preparation of a draft law must include genuine and inclusive consultation with interested parties and civil society before adopting draft laws concerning them. This is good practice and an important element of the rule of law.[29] Genuine and representative involvement of civil society in the framing of a draft law can only be achieved by following a proper consultation plan.

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[27] Netherlands 10 members, Germany 15 members, Luxembourg 15 members, Belgium 24 members, Ireland 28 members, Portugal 38 members, France 50 members.

[28] CDL-AD (2013) 019, §41.

[29] See CDL-AD (2017)015, Opinion on Hungary's Draft Law on the Transparency of Organisations receiving support from abroad, §27; CDL-AD (2016)007, Rule of Law Checklist, p. 13; CDL-AD(2018)035 Joint Opinion on Section 253 on Hungary's special immigration tax of Act XLI of 20 July 2018 amending certain tax laws and other related laws and on the immigration tax, §46; CDL-AD(2008)042, Opinion on the Draft Law on protection against discrimination of "the former Yugoslav Republic of Macedonia", § 28 and CDL-AD(2009)018 Opinion on the concept paper for a new Law on Statutory Instruments of Bulgaria, § 79.

175. In short, on a practical level, having such a diverse and large membership increases the risk of absences, vacant posts and members who cannot attend meetings at which, according to Article 29, opinions are to be adopted by an absolute majority with a quorum of two thirds of the members present, something that might not always be easy to achieve. It is important to note here that, while Article 21 states that it is the Board that adopts the Authority's opinions, Article 29 confers this right on the Assembly.

176. From a substantive point of view, it is obvious that, with such a large and diverse membership, the Assembly will not be able, even within committees, to produce coherent opinions. There needs to be a major rethink of the role, size and timing of the Assembly's intervention, therefore, if the body is to be relevant to the needs of the institution at all.

177. Under Article 29, the Assembly is to meet at least once every three months, and whenever the Board deems it necessary, to consider and approve the written questions on the agenda. This provision provides some flexibility but having frequent meetings may also make it difficult to achieve the requisite two-thirds quorum.

178. In order to maximise the effectiveness of the Authority, another option might be to convene the Assembly only on important points, one possible criterion being the rank of the text submitted for opinion in the hierarchy of norms, or the controversial nature of the draft. The procedure would then be similar to the one that seems to prevail in the draft law, namely: the government refers a matter to the Authority, the Board asks the Assembly for its opinion, and then produces the opinion and forwards it to Parliament. The objectives and targets of Agenda 2030[30] could serve as benchmarks when deciding which laws are to be referred to the Assembly; the other opinions having been dealt with by the Board alone, which would brief the Assembly on a regular basis.

179. Article 27 states that "The board of the Authority shall select candidates from among experts and representatives of associations in accordance with an evaluation table to be drawn up for this purpose." This provision makes sense where the sixteen seats reserved for experts are concerned. What is less understandable, however, is why associations could not choose and designate the person they want to represent them in the Assembly themselves.

180. Article 28 of the draft law provides for the creation of nine standing committees within the Assembly. This is an understandable attempt to meet the need for specialisation, particularly in such a large and heterogeneous body as the Authority's Assembly, in order to make it more effective. In subdividing the Assembly in this way, however, the drafters would seem to be falling into the old trap of the silo approach which Agenda 2030 seeks to overcome through its integrated and interdependent approach. Sustainable development is a multidimensional concept that requires thinking about the multiple connections between the different policy areas and goals.

181. It is most regrettable, therefore, to see Article 28 relegating sustainable development to a sectoral body entitled the "Committee on the Environment, Sustainable Development, Climate and Spatial Planning". Such treatment is hardly commensurate with the principle of sustainable development or the fact that this principle is enshrined in the Constitution and that there is a constitutional body dedicated to sustainable development and the rights of future generations. It is further recommended that the notion of sustainability be introduced into some of the committees, namely the Committee on "Sustainable" Planning, Finance and Investment and the Committee on "Sustainable" Infrastructure, "Sustainable" Urban Planning and "Sustainable" Housing and Transport.

[30] https://www.un.org/sustainabledevelopment/

182. The "Committee on Youth, Children, Women and Persons with Special Needs", which is also provided for in Article 28, likewise poses a problem insofar as it is not appropriate for women to be placed in a group with three sections of the population who do not have legal capacity. Under the Constitution, women as a group cannot be deprived of capacity in any way, with Article 21 stating that "All citizens, male and female, have equal rights and duties, and are equal before the law without any discrimination". If it is felt that there is a need to increase the visibility and prominence of women in society, one option could be to set up a committee dedicated to women, but certainly women should not be placed in a group with persons who have no legal capacity.

183. Lastly, in order to meet the need to streamline the Assembly's work and to respond to the lessons learned from Agenda 2030, it might be worth considering setting up committees based on societal issues, such as the transformation of the food system, or based on the Authority's tasks: opinions, research studies, public awareness measures, observatories to monitor societal change, etc... While the diverse nature, size and frequency of its meetings make it unlikely that the Assembly could initiate many actions, its composition means that any awareness-raising measures it might take would have a far-reaching impact.

184. In short, there are serious problems with the Assembly, as envisaged in this draft law. Firstly, its existence is not a constitutional requirement but seems to spring from a concern that the Authority should not be a body composed exclusively of experts. Secondly, while the Assembly seems to have been created in an attempt to have a truly representative body, albeit an unsuccessful one, since the way in which the different members are selected is questionable and makes the body less representative, it would seem appropriate to review the current arrangements and greatly reduce the Assembly so that it can make a real professional contribution rather than serving as a representative body and, failing that, to consider abolishing it altogether. Neither the Constitution nor the 2018 Organic Law require an assembly to be set up within the Authority. An alternative to an assembly prescribed by law would be to empower the Board to appoint experts to provide advice on a case-by-case basis on specific needs. Should Tunisian lawmakers wish to keep an assembly, it is strongly recommended that the relevant provisions be thoroughly revised and that the assembly be converted into a small body of experts. Clear procedures should also be laid down.

4. The administrative body

Section III of the draft law deals in Articles 32 to 35 with the administrative body.

185. According to the description in Article 32, the administrative body performs traditional administrative tasks such as assisting the Chairperson of the Authority, ensuring administrative and financial management, preparing the budget, drafting the minutes of the Authority or being in charge of archiving. It seems that it is also to have more substantial functions insofar as the draft law stipulates that it "shall assist in the preparation of the Authority's draft reports", "the preparation of case files submitted to the Board" and more vaguely that it shall "carry out such tasks as are entrusted to it by the Board". The preparation and dissemination of educational material on sustainable development in Tunisia could be specifically mentioned in this list.

186. It is not clear from this wording whether the administrative body, headed by the Director under the supervision of the Board (Article 33), will simply be required to assist the Board in its role as a policy maker, or whether, more substantially, it is to be the body responsible for preparing the Authority's opinions, this time under the supervision of one of the Authority's committees or the Director who himself operates under the supervision of the Chairperson of the Authority. At the same time, the functions of the administrative body vis-à-vis the Assembly are equally vague, unless its sole purpose is to engage in communication activities to create and support a common identity for what is nevertheless a very heterogeneous body. It can also

be deduced from these articles that the role of promoting sustainable development in Tunisia will depend to a large extent on close co-operation between the Board and the Director.

187. In view of the powers vested in the Board, including with regard to the functions of the Assembly, and the limited number of Board members, it is reasonable to suppose that the administrative body's assistance will be crucial and that the body in question will have a very heavy workload. There is nothing illegal in that as such, but again, a better clarification of roles and procedures within the Authority might be helpful in forming a proper assessment of the work to be carried out by the administrative body and ensuring an effective modus operandi.

D. Safeguards to ensure the proper functioning of the Authority and its accountability

Chapter IV of the draft law is dedicated to safeguards for ensuring the proper functioning of the Authority and holding it to account, which are dealt with in Articles 36 to 42.

188. Chapter IV of the draft law describes the procedures for dealing with allegations of insider trading and failure to observe professional secrecy.

189. Unlike other constitutional bodies, the Tunisian Constitution does not require members of the Authority's Board to be "neutral". Perhaps the framers of the Constitution shrewdly anticipated that some Board members might come from bodies, whether in the public or private sector, that would have a vested interest in the areas examined by the body itself. Which is precisely why the provisions on conflict of interest need to be drafted extremely carefully.

190. Under Article 36, each member of the Board and the Authority's staff must declare any conflicts of interest in accordance with the legislation on illicit enrichment and conflict of interest. The same requirement also appears in the Organic Law of 2018, in Article 9. No mention is made, however, of members of the Assembly, a body which is not referred to in the aforementioned organic law but which is certainly provided for in the draft law under review. It therefore follows from the wording of Article 36 et seq. that members of the Assembly are not required to declare conflicts of interest. It would be interesting to know why such an exemption has been granted or what the justification for it is.

191. Article 37 seems to deal with situations where the member concerned by a conflict of interest declares it. The scenario where a Board member fails to declare a conflict of interest or denies that there is one when someone else, for example, makes an allegation to that effect is not addressed. The draft law should also specify whether only cases of proven conflicts of interest are covered by the law.

192. Article 38 refers to the possibility of the Chairperson, members of the Board, members of the Assembly and staff members of the Authority being dismissed or disciplined in the event of a violation of professional secrecy amounting to "serious misconduct".

193. Unfortunately, the draft law does not indicate - even in general terms - how the disciplinary procedure is to be conducted and whether the individual concerned is to have access to legal protection. The draft law should indicate more clearly in what circumstances Board members' appointments are to be terminated early. Such cases should be clearly provided for and transparent and objective procedures for dismissal laid down. A similar recommendation was made in the opinion on the Higher Committee for Human Rights and Fundamental Freedoms of Tunisia[31] and, more recently, in an opinion on the draft act

[31] See CDL-AD (2013)019, §§ 55-56.

amending the Constitution, on the draft act on the human rights and equality commission, and on the draft act on equality of Malta:[32]

"It is necessary to […] develop some detail on the substantive conditions for dismissal. In particular, it is not clear if the member concerned will have the right to be heard and to challenge the dismissal before a court, whether the decision should be reasoned, etc."

E. Additional proposals

194. Article 41 provides that the Authority's annual report is to be submitted to Parliament and discussed at a general meeting dedicated to this purpose. A transmission report should also be made when the mandate expires and a newly constituted Authority takes office. It would be a good idea to mention the possibility for the Authority to report to Parliament on the situation with regard to sustainable development in Tunisia so as to pave the way for better public awareness and greater transparency in terms of the policies implemented and the political commitments to achieve sustainability.

195. During the visit, the delegation was informed of the wish to see sustainable development introduced in all government bodies. This would not only help to clarify the scope and different aspects of the consultation but would also introduce some consistency into the policies and decision-making of the government and Parliament. In this respect, in order to ensure an element of consistency in the Administration's' sustainable development policy, it is true that it makes sense to have a focal point for sustainable development in each administration. The focal points are officials who have received sustainable development training and are therefore in a position to review and revise in advance the texts issued by their Ministry from a sustainable development perspective. Another option worth considering would be to create a specialised parliamentary committee, so that sustainable development is not just one element in a very wide field encompassing industry, energy, natural resources, infrastructure and the environment, as is currently the case in Tunisia.

196. This policy coherence should facilitate, or even reduce, the Authority's supervisory and remedial work, allowing it to focus on the most essential points in order to preserve the social, economic and environmental rights of present and future generations. Nevertheless, in order to enable the Authority to fulfil its functions and objectives as effectively as possible, the draft law should be substantially revised, mainly in the areas listed in the conclusions, and, failing that, according to the possible alternatives to the current provisions presented in the main body of this opinion.

V. Conclusions

197. The Venice Commission welcomes the decision to confer constitutional status on the Authority for Sustainable Development and the Rights of Future Generations, whose existence will not depend, therefore, on short-term political considerations alone.

198. The Venice Commission is also pleased to note that neither the concept nor the institution provided for in the draft law poses a threat to the principles on which the Authority is based. It is a question of constitutional philosophy whether or not to support the idea of creating constitutional bodies with consultative powers only. The comparison with other commonly found institutions such as the Ombudsman becomes even less favourable if one considers that the main functions of such bodies are to receive and process complaints, not to mention the current tendency to allow them to apply to the Constitutional Court and other judicial authorities.

[32] See CDL-AD (2018)014, § 53.

199. The effectiveness of the institution, as provided for in the draft law, is very uncertain, however, in two important respects: the lack of clarity surrounding the Authority's mandate, which has an impact on the potential workload, and secondly the procedure within the Authority and interaction between the different bodies. The draft law seems to lack a certain consistency that would enable the Authority to operate with the requisite effectiveness in an area considered constitutionally important.

200. In order therefore that the Authority should enjoy the full range of powers and functions normally vested in advisory bodies of this type, and in order to make it fully operational, in accordance with legal standards and best practice, the Venice Commission mainly recommends introducing the following measures and amendments:

- Clearly redefine the scope of the Authority's competence, in keeping with the constitutional provisions, avoiding any overlap with other institutions;
- Clearly define the scope of the mandatory consultation, in terms of substance, the type of texts submitted, and if necessary widen it but not so far as to include secondary legislation. At the same time, consider changing the very short time frames and, failing that, adapt the operational procedures;
- Place greater emphasis on the obligation for all state institutions to "facilitate the work of the Authority". Render the obligation meaningful and set out approprate ways in which it is to be fulfilled;
- Review the eligibility criteria for Board members to bring them into line with the Constitution and increase the number of members to nine as for other bodies; review the number of shortlisted candidates accordingly;
- Review the number of Assembly members and the conditions governing their selection, in order to make this body fully operational. Failing that, consider abolishing the Assembly.

201. The Venice Commission also recommends introducing the following measures and changes:

a. With regard to the legal framework for the Authority's work:
- Reiterate the key elements of sustainable development, and explicitly include the rights of future generations;
- Consider the possibility of screening requests for opinions and/or having opinions adopted by the Board alone;
- Give the Authority a free choice regarding consultation.

b. With regard to the powers of the Authority:
- Define the terms of the optional consultation by spelling out more clearly who can ask the Authority for an opinion, or review the referral system and create more opportunities for the Authority to act on its own initiative;
- Specify what the obligations of the Authority are following a citizens' initiative;
- Render the monitoring function meaningful and set out appropriate means by which it is to be performed; include international treaties;
- Reconsider and describe in clear terms the different procedures according to the types of referral.

c. With regard to the organisation of the Authority:

In terms of the Board,
- Expand the Board's remit to include raising public awareness about sustainable development;
- While the procedure for appointment by Parliament by a two-thirds majority is to be welcomed, provision needs to be made for anti-deadlock mechanisms;

- Clearly specify the Board's tasks, in particular with regard to opinions and studies or any other substantive document;
- Further clarify the relationship between the Authority's different bodies.

In terms of the Authority's Assembly:
- - Review and clearly specify the functions of the Assembly;
- - Review the rationale behind the standing committees or the need for them to exist at all. Failing that, alter the names of some of the committees and bring them into line with the constitutional provisions; incorporate the notion of sustainability.

In terms of the administrative body:
- Better define the functions of the body vis-à-vis the Board and the Assembly, where appropriate;
- Clarify the disciplinary procedure and the procedure for dismissal;
- Reconsider the need to draw up special regulations for staff;
- Review the conflict of interest procedure and extend it to members of the Assembly.

202. More broadly, in order to provide a conducive framework for sustainable development objectives, consideration could also be given to:

- Promoting consistency between administrations by appointing focal points specialising in sustainable development;
- Creating a parliamentary committee dedicated to sustainable development;
- Creating an inter-regional commission to ensure better representation and local co-ordination.

203. Lastly, the Commission notes that the preparation of a draft law must include genuine and inclusive consultation with interested parties and civil society before adopting draft laws concerning them. This is good practice and an important element of the rule of law.

204. Sending a draft law or plan to a body for a consultative opinion, however wide the membership of that body, cannot in itself be deemed to constitute, or replace, the public consultation that is a necessary part of any legislative drafting process.

205. The Venice Commission remains at the disposal of the Tunisian authorities for any further assistance in connection with this draft law.