

**A call upon the people's representatives from the civil coalition to reject the reconciliation draft bill in the financial and economic fields**

**Honorable representatives of the People,**

The organizations, undersigned herein, call upon you, honorable representatives of the people, to the urgent need to give up considering the draft bill number 49 of the year 2015, pertaining to the special procedures in the economic and financial areas, currently submitted to the General Legislation Committee upon its referral to the Assembly of the People's Representatives on July 15, 2015.

We are adamant this draft bill is contrary to the Constitution and inconsistent with the international commitments of the Republic of Tunisia in the field of human rights, anti-corruption and Transitional Justice.

We submit to you in this letter our arguments and the rationale behind our attitude towards this draft bill while drawing your attention to the references used as attachment to back up our submissions as follows:

**1- Economic reasons**

- Unlike the claimed purposes of this draft bill, we firmly believe that the measures contained in the bill are likely to strain the Tunisian economy while at the same time enhancing corruption by maintaining public officials implicated in corruption, free from any accountability or liability, thus sending the wrong signals to national and foreign investors.
- Implementation of these measures shall grant additional privileges to those implicated in the system of corruption for further illicit enrichment while punishing honest hardworking entrepreneurs who have earned their wealth legally, which is a blatant breach to a constitutional principle, that of equality among citizens.
- Impunity in cases of corruption shall undermine both investors' and public trust in State institutions, especially at a time when citizens are still reeling down from the impact of the stiffening economic crisis. Furthermore, this uncalled for amnesty granted for the benefit of the corrupt under the regime of the despot will be construed by the public opinion as a sponsorship to corruption by the State which is in fact required to combat it, another blatant breach to the anti-corruption convention signed by Tunisia.
- The drafters of this bill are advocating its financial yield and profitability; but when looking into its first article, one can easily note the absolute absence of any data or information regarding that cost-effectiveness aspect, which is inconsistent with the requirements of purely accurate legislative work. Moreover, this bill is going to provide immunity to the corrupt as they will be held accountable to the extent of their declarations and statements without any measure of accountability, which means that the amount of recovered assets will be low and well below the expectations, in comparison with the funds stolen.

## 2- Constitutional reasons

- A violation to the requirements of the Constitution's preamble: The Tunisian Constitution enshrined in its preamble the need to avoid inappropriateness, injustice, stressing the effort to cut ties with corruption and highlighting the principle of good governance that combats tax evasion and fraud. It also advocated good management of public funds and the prohibition of corruption. Such clear-cut constitutional pledges and commitments have been undermined by this draft bill, especially that the latter does not provide for any consequences or sanctions for abuse of public funds and financial corruption (articles 1 and 2 of the draft bill). It also deals with civil servants and their like in a clear breach of the general provisions and expenditure and their repercussions with regards to taxation and fines (articles 7 and 8 of the draft bill).
- It is worth clarifying that the notion of civil servants and their like, according to the Penal Code refers to the staff of central, regional and local departments, ministers and members of the ministry office, secretaries of state, presidents and chief executive officers of administrative departments and public facilities, in addition to judges, law enforcement and custom officers, ambassadors and consuls, governors and delegates.
- Violation to the right to litigation, stripping it of any substance: The Reconciliation Committee, within the draft bill, stands as an administrative body under the executive power; its proceedings shall not be subject to any judicial oversight, which constitutes a breach to the right to litigation in the first place, and a breach to the right to dual-degree litigation secondly (article 108 of the Constitution).
- Violation to the principle of transparency: The draft bill stipulates that the Reconciliation Committee's proceedings be held behind closed doors, away from any oversight or supervision, while its findings shall not be published in the National Gazette. As a consequence, this draft bill is inconsistent with the principles of transparency, integrity and accountability of public amenities as per article 15 of the Constitution.

## 3- Reasons pertaining to the contradiction between the draft bill and the Tunisian State's commitments in terms of Transitional Justice and human rights

This draft bill will disrupt the efforts exerted to invigorate the process of Transitional Justice aimed at truth seeking and the safeguards against any prospect of recurrence of the violations perpetrated in the past. Here are some of the arguments in support of this viewpoint:

- Dismembering the process of Transitional Justice by encroaching on the powers granted to the Truth and Dignity Commission to address crimes of abuse of public funds and financial corruption (article 12 of the draft bill).

Opacity characterizing the time frame and the pledge: This draft bill does not define the time frame for the enforcement of the provisions, no defined beginning or end unlike the provisions governing Transitional Justice which defined the scope of expertise of the Truth and Dignity Commission from July 1955 to December 2013. Moreover the draft bill stopped short of defining the concept of

financial corruption and abuse of public funds, especially after ruling out both crimes of bribery and stealing public funds.

- This draft bill ensures confidentiality of data and information regarding reconciliation applicants, which will hinder public institution vetting and reform, the mechanisms that help dismantle the system of corruption associated with gross human rights violations. We believe that naming those responsible for the violations and underscoring corruption mechanisms they adopted will contribute to anti-corruption effort and to the protection of public funds.
- This draft bill is overlooking the victims' civil rights, including the right to know about the presence of a case in substance and the right to reparation for their benefit.
- This draft bill does not guarantee any measure aimed at truth seeking regarding economic and financial crimes in order to cross examine the data submitted by reconciliation applicants. Amnesty granted to civil servants and their like within public institutions will mean that their actions are not going to be appraised with the required integrity and competence to determine the extent of their implication in the corrupt system. This evaluation is a key request for the victims in order to restore public trust in their public institutions and in their the State.

In view of all these reasons, the organizations and associations, signatories to this message call upon the representatives of the people who took the oath to respect the Constitution in keeping with article 58 to abstain from debating this draft bill and not to vote for it should it be submitted to the General Assembly of the Assembly of the Representatives of the People.

We also call upon them to shoulder the efforts exerted by the civil society aimed at holding a national seminar dealing with Transitional Justice to which all stakeholders involved in the process of Transitional Justice will be invited to debate the output to this process. This meeting shall also provide an opportunity to deal with the issues of economic and financial crimes for the remainder of the mandate of the Truth and Dignity Commission based on the approach of national consensus for the sake of a successful transition to democracy.

**The associations signatories of this message:**

