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# COTUSAL controversy : Is sea salt a natural resource ?

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# Introduction

As part of its activities «to reveal the truth about past violations»<sup>1</sup> the Truth and Dignity Instance (IVD) has recently presented documents that revealed the abusive exploitation of Tunisian natural resources by the French colonizer. «Truths» linked to France's interference in Tunisia's economic choices, even after independence, were exposed to the public and the IVD had concluded that «foreign companies, in particular the French ones, operated an abusive exploitation of the resources of Tunisia.»<sup>2</sup>

Among the documents on which the IVD bases its conclusions, a convention dating from 1949<sup>3</sup> giving the right to the Compagnie Générale des Salines de Tunisie (COTUSAL) to exploit the sea salt, has been made public. This publication then reveals that by this agreement, the Resident General of France in Tunis, approved the merger of 4 French companies which operated in the Khniss, Sidi Salem, Sfax (Thyna) and Mégrine salt marshes, thus constituting COTUSAL and organizing its activity.

The 1949 Convention was the subject of much controversy. Indeed, favoring COTUSAL, this convention has allowed the latter to hold the monopoly of the salt market in Tunisia<sup>4</sup> until 1994, when its first competitor entered the market. Moreover, since the colonial era and up to the present day, this convention grants to COTUSAL a minimal tax calculated on the basis of the lowest tax bracket relating to the exploitation of Tunisian land. As a result, the company is authorized to operate a profitable public maritime domain at a merely symbolic price. Thus, COTUSAL, whose capital is currently 65% foreign and 35% Tunisian<sup>5</sup>, operates the Tunisian «Thyna»<sup>6</sup> (see Map 1) and «Sahline»<sup>7</sup> (see map 2) salt marshes, paying one French franc per hectare per year.



**Card1:** COTUSAL Sfax salt marshes  
Area: 1,700 hectares  
Average annual production: 300,000 tons



**Card2:** COTUSAL Sousse-Monastir salt marshes  
Area: 1,100 hectares  
Average annual production: 125,000 tons

With the IVD hearings, COTUSAL is back in the spotlight. Indeed, this convention had already provoked much controversy in the aftermath of the revolution, due to its neocolonial nature in allowing COTUSAL to continue to exploit the salt marshes- a national resource. In 2014, following the adoption of the new constitution by the National Constitutional Assembly (NCA), Mehdi Jomaa, the “transitional” Prime Minister with a former career in the French Hutchinson - TOTAL Group, officially had committed to the renegotiation of extractive contracts and stated that he had already dealt with the salt case.<sup>8</sup> However, a few months later the government of Mehdi Jomaa had awarded a new concession of 11,200 hectares located between Mahdia and Sfax to COTUSAL with an operating life of 30-year.<sup>9,10</sup>

The government's concession failed to take into consideration article 13 of the new constitution, despite the fact that it had already been ratified<sup>11</sup>. In doing so, it ignored the new principles relating to the exploitation of natural resources as introduced in the new constitution. Indeed, according to article 13 «Natural resources are the property of the Tunisian people. The State sovereignty over these resources is exercised on its behalf. Investment contracts relating to these resources

shall be submitted to the specialized committee within the Assembly of the Representatives of the People. Conventions ratified in respect to these resources shall be submitted to the Assembly for approval.» Regardless of these newly enshrined constitutional protections, the award of the new concession was not submitted to Parliament for approval.

COTUSAL presented several arguments to explain this omission<sup>12</sup>. Among the boldest of these arguments, was the company's attempts to disregard sea salt as a natural resource and therefore claim its exploitation is not subject to article 13 of the constitution. COTUSAL states that «the bulk of its production is made of sea salt, which is made from concentrated seawater by natural evaporation. There is no exploitation of a deposit that could eventually be exhausted.» COTUSAL goes on to claim that though «It is stated [by some critics] that COTUSAL exploits, through the 1949 Convention, the natural resources of the Tunisian subsoil...this company only produces sea salt from sea water, which is considered an inexhaustible source. There are no deposits that could eventually be exhausted.»<sup>13</sup> In his last radio intervention Mr. Fouad Lakhroua, Chairman of the Management Board of COTUSAL, considered that it was inappropriate to speak about sea salt in terms of the exploitation of national wealth: «for salt to be wealth, it is necessary that this subsoil wealth is possible, probable, certified and certain reserves. Now, sea salt is available for eternity and it's something that will never be missing!» He further specifies that, given that «COTUSAL does not exploit the waters of salt lakes or sabkhas» and that «the convention does not concern the cost of operating the waters and that society takes advantage of the salt marshes that everyone has the right to exploit,» «there is no need to talk about the natural wealth.»<sup>14</sup>

This argument is often advanced in COTUSAL's statements and communications, even in the latest press release from the French Embassy: «The COTUSAL company, owned by Tunisian and French capital and producing salt only on salt marshes.»<sup>15</sup> By using this reasoning and by minimizing the extent of exploitation of sea salt, COTUSAL urges us to move on because this is a very harmless form of exploitation; a priori there is nothing to see.

Thus, this controversy raises a decisive question: Is salt a natural resource? Indeed, the declarations of COTUSAL suggest that salt is neither a natural resource nor a national wealth. What does it represent then? Within the framework of this paper, we will address this problematic.

## Imen Louati, Ph.D.

Research Officer -Community

Field Work Coordinator

imen.louati@economie-tunisie.org

## Is salt a natural resource ?

<sup>1</sup>The IVD was instituted by Organic Law n°2013-53 of December 24, 2013 which relates to the attribution and organization of transitional justice.

<sup>2</sup>IVD press release issued on March 14, 2018.

<sup>3</sup><http://www.ivd.tn/wp-content/uploads/2018/03/%D9%88%D8%AB%D9%8A%D9%82%D8%A9-%D8%B9%D8%AF%D8%AF-4.pdf>

<sup>4</sup>Article 3 of the 1949 Convention

<sup>5</sup><http://www.cotusal.tn/>

<sup>6</sup>Sfax salt marshes which cover 1,700 hectares and produce 300,000 tons of salt per year. This site also serves as an ornithological natural reserve for winter bird migrations.

<sup>7</sup>Salt marshes in Sousse-Monastir, covering more than 1,100 hectares and producing an average of 125,000 tons of salt per year.

<sup>8</sup><https://www.youtube.com/watch?v=0smKqKdIqjs&w=640&h=360>

<sup>9</sup><http://www.cnudst.rnrt.tn/jortsrc/2014/2014f/jo0242014.pdf>

<sup>10</sup><http://nawaat.org/portail/2014/04/14/le-gouvernement-jomaa-octroie-une-nouvelle-concession-de-sel-a-cotusal/>

<sup>11</sup>Constitutional Act No. 2011-6 of 16 December 2011 on the provisional organization of public authorities (OPPP) was used.

<sup>12</sup><http://www.cotusal.tn/communiquer/>

<sup>13</sup><http://www.cotusal.tn/mise-au-point-et-droit-de-reponse-de-la-cotusal/>

<sup>14</sup><http://www.cotusal.tn/lemission-la-matinale-de-shemsfm-a-propos-de-cotusal/>

Examining the etymology of the term «resource», it appears that it is derived from the Latin *resurgere*, which means to get up again, to restore, to recover from one's strength or one's power<sup>16</sup>. In its common usage, «resource» is defined as that which «can improve an unfortunate situation.»<sup>17</sup> Thus, we can understand the concept of natural resources as the means by which an individual's or community's situation could benefit and be improved.

Natural resources are in fact often defined in terms of their usefulness to humanity. As the Encyclopedia Americana puts it: «natural resources are naturally occurring materials that are useful to man or could be useful under conceivable technological, economic or social circumstances.»<sup>18</sup> As a result, «resources are not, they become; they are not static but expand and contract in response to human wants and human actions.»<sup>19</sup>

This notion is also found in UNESCO's definition of natural resources, for which, «in the broad sense, natural resources include everything that is derivable for the use of man from any part of the universe. In the physical sphere they include energy from sunshine and gravity as well as mineral deposits and the rain. In the biological sphere they include domesticated as well as wild plants and animals; and they include human resources too.»<sup>20</sup>

Whatever the definition, natural resources are defined according to their utility to humanity. Taking into consideration these varied, it is necessary to establish a classification to achieve further clarity. Such classification will be determined by



<sup>15</sup><https://tn.ambafrance.org/Communique-de-presse-relatif-a-l-exploitation-des-ressources-naturelles->

<sup>16</sup>« resurgo », in Félix Gaffiot, *Dictionnaire latin français*, Hachette, 1934

<sup>17</sup>Le Petit Robert – dictionnaire alphabétique et analogique de la langue française

<sup>18</sup> 19 *Encyclopedia Americana* (1982), p. 792. <http://unesdoc.unesco.org/images/0014/001436/143605fb.pdf>

<sup>19</sup> Zimmerman, E.W. (1951) *World Resources and Industries: A Functional Appraisal of Availability of Agricultural and Industrial Materials*, New York, Harper and Brother

<sup>20</sup><http://unesdoc.unesco.org/images/0014/001436/143605eb.pdf>

<sup>21</sup> Miller T., (2002). *Living in the environment: principles, connections, and solutions*; p.12. Belmont (Cal.) : Thomson Learning, Inc.

<sup>22</sup>Biotic natural resources refer to living beings and living matter such as agricultural products, fish, wood etc. whereas abiotic natural resources are resources that are inanimate such as soil, minerals, petroleum, etc.

<sup>23</sup>Organic natural resources are resources manufactured by living beings such as oil, coal etc. whereas inorganic resources are chemical bodies such as water, carbon dioxide, sodium chloride, ammonium cyanate etc.

<sup>24</sup>Ben Rouine C., (2014). *Les énergies renouvelables sont-elles des ressources naturelles ?* Observatoire Tunisien de l'économie

<sup>25</sup>*Encyclopaedia Universalis*

the specific angle from which the object is studied. Thus, a natural scientist will emphasize the generation of living and non-living resources; the economist the abundance or scarcity of resources, their distribution in the world and the costs entailed to access them; the environmentalist the intrinsic value of natural resources and the need for their sustainable use; and the lawyer will study natural resources in relation to ownership rights.

In modern terms, natural resources are classified as perpetual, renewable and non-renewable resources. A perpetual resource is, for example, the sun, which is continually renewed on a human time scale. A renewable resource is one that can be replaced more or less quickly (from a few hours to a few decades), such as forests, pastures, fertile soils, water, air. Finally, non-renewable resources are those that exist in fixed quantities, because only geological processes can renew them (from a few hundred to a few thousand years). As a result, these resources can be consumed much faster than they are renewed. Energy resources such as oil and natural gas, metallic and non-metallic minerals are referred to as non-renewable resources<sup>21</sup>. A more specific category, energy resources, distinguishes between those that can be renewed, such as hydro, wind or solar energy, and non-renewable energy resources, such as coal, gas, oil and certain heavy metals, such as uranium.

In addition to developing an operational and precise definition of natural resources, the quantity, quality and degree of transformation of resources must also be clearly established and evaluated since, in addition to being perpetual, renewable and non-renewable, natural resources can be raw or transformed.

Indeed, on the one hand, it would be tempting to say that any commodity, any production, requires the input of natural resources, so that the consequence of this reasoning would be to say that any product could be qualified as a natural resource. On the other hand, one could also say that only raw resources are considered natural resources. The first definition means that if everything is a natural resource then it is not necessary to have a separate definition. The second omits that any resource requires a minimum of transformation to be usable. Thus, in its 1964 definition, UNESCO distinguishes two types of natural resources: raw resources, which are used to satisfy human needs; and transformed resources, which are impacted in one way or another by humans. The definition of a natural resource therefore depends on the degree of transformation to which resources have been subjected before entering the «natural resources» category. Once this distinction is made, it is It is easy to classify natural resources according to whether they are renewable or not, biotic or abiotic,<sup>22</sup> organic or inorganic,<sup>23</sup> in air, in subsoils or on the Earth's surface.<sup>24</sup>

In the absence of such a distinction, the concept, definition and use of resources depends largely on the perception of user groups, as illustrated by the case of salt in Tunisia. Salt, or sodium chloride, is one of the most abundant minerals on Earth. It has two main origins, namely salt marshes, by evaporation of seawater or subsoil, and by mineral extraction of rock salt (halite). Reserves are currently estimated at 3,7 10<sup>18</sup> tones for rock salt and 5 10<sup>25</sup> tones for salt dissolved in the oceans and seas with a sea salt content between 30 and 40 grams per liter of seawater. Thus, salt is one of the few products in the world that is least likely to lack in the millennia to come: rock salt reserves are considerable and sea salt is practically inexhaustible.<sup>25</sup>

However, following the last debate on COTUSAL, while it is obvious to all stakeholders in this debate that rock salt is a natural resource because it is extracted from the subsoil and is naturally non-renewable, the same could not be said for sea salt. Indeed, COTUSAL removed sea salt from the natural resource category, because it is inexhaustible and is not extracted from the subsoil. However, as discussed above, a natural resource is defined according to its usefulness to man, and its renewal or not is used to classify it within the different categories of natural resources and not



to define it as a natural resource. As for the fact that salt is not extracted from the subsoil, no definition of natural resources has limited them to the subsoil, on the contrary, all definitions take into account the different elements of the environment that condition their accessibility via different technologies. Since salt, whether sea salt or rock salt, is an essential mineral for the functioning of the human organism and is necessary for life, in terms of «usefulness to man» it perfectly meets the conditions of necessity and usefulness in the definition of a natural resource.

Although sea salt is not a raw source, since it is obtained from the evaporation of sea water, itself an inexhaustible natural resource, it is nonetheless a natural resource. Indeed, its exploitation is very simple, since it is based on the evaporation of sea water and the progressive concentration of salt until its harvest in solid form. In addition, the exploitation of sea salt via salt marshes was once a technical feat whose design and development of the required knowledge and skills were based on observations of a physico-chemical nature and the mastery of hydraulics. Thanks to the ingenuity of our ancestors, salt is now «easily» accessible to man. In effect, the transformation of the basic resource (in this case sea water) remains natural and requires a natural physico-chemical process to obtain it. Thus, the process to obtain salt from sea water remains insignificant and requires us to include sea salt within the category of natural resources.

## Is salt a national wealth ?

The production of salt in the world has an economic value. Indeed, thanks to the expansion of chemistry and the growth of the world population, salt has become one of the leading commodities of economic activity. By virtue of its abundance and its distribution over the surface of the globe, it does not attract attention like oil. Nevertheless, its global importance is a fact.

The production of salt in Tunisia has made it possible for years to both satisfy local demands and export to other countries. Indeed, salt production is estimated at 1.5 million tons annually, 90% of which are destined for export. Approximately 30 companies and 6 individuals operate in the salt sector, producing 665 jobs<sup>26</sup>, 430 of which are created by COTUSAL<sup>27</sup>. COTUSAL has a turnover of nearly 30 million dinars with an annual production of 1 million tons of salt (out of a total of 1.5 million tones extracted in the country<sup>28</sup>), of which 750,000 tones are destined for export.<sup>29</sup> The annual production of sea salt by COTUSAL represents 70% of the salt produced in Tunisia.

With regard to these figures, it is clear that the exploitation of sea salt in Tunisia is a national wealth as it is wealth produced by businesses resident in the territory. If we take the definition in classical economics: «national wealth consists of all goods and services, which the ownership or the use satisfies society as a whole,» it seems rather absurd to affirm the fact that the production of sea salt is not a national wealth.

Remember that salt marshes require a flat and impermeable soil, the presence of salt water, a climate conducive to evaporation and the absence of precipitation during a certain period of the year. The flat sea marshes, located at sea level, therefore offer good topographical and geological conditions.<sup>30</sup> Simple exploitation, based on the evaporation of sea water and the progressive concentration of salt until its harvest in solid form, requires sun and wind to evaporate the sea water. Hence the preference for the Mediterranean coasts. However, not all coasts are suitable for such development.<sup>31</sup> With its coastline of 1400 km and its Mediterranean climate, Tunisia offers the best conditions for sea salt exploitation. It is therefore a considerable advantage for any company to have access to the Tunisian salt marshes.

Moreover, it is misguided for COTUSAL to state that «in order that the salt can be

<sup>26</sup>Statement by Najeh Chérif, Director of Research and Mining at the Ministry of Energy, Mines and Renewable Energy, Seminar of the Tunisian Institute of Strategic Studies: Salt Industry in Tunisia realities and prospects.

<sup>27</sup><http://www.cotusal.tn/mise-au-point-et-droit-de-reponse-de-la-cotusal/>

<sup>28</sup>National Institute of Statistics, 2011.

<sup>29</sup><http://www.cotusal.tn/reponses-aux-campagnes-de-presse-et-media/>

<sup>30</sup>Encyclopaedia Universalis

<sup>31</sup>Daire M.Y., (1999). Le sel à l'Age du Fer : réflexions sur la production et les enjeux économiques. Revue Archéologique de l'Ouest. Volume 16. pp. 195-207.

a wealth, this subsoil wealth must be possible, probable, certified and certain reserves»<sup>32</sup> as sea salt does not fall under this rule. Indeed, the proven, probable and possible resource condition only concerns mineral resources of the subsoil such as rock salt and not sea salt, all the more so as these conditions concern the definition of mineral resource and not the definition of national wealth or natural resources. Thus, salt is a national wealth. Opponents of COTUSAL accuse it of despoiling the country's national wealth. Whether this wealth is plundered or not by COTUSAL is a legitimate question but to go so far as to exclude the exploitation of salt as a form of national wealth is not appropriate in this context.

## Is salt exploitation covered by Article 13 ?

Since salt is indeed a national wealth and a natural resource, it seems that by arguing the contrary, the aim of some stakeholders in the debate around COTUSAL is to avoid submitting the marine salt exploitation to Article 13 of the Tunisian constitution.

According to Article 13 of the Tunisian constitution, «Natural resources are the property of the Tunisian people. The State sovereignty over these resources is exercised on its behalf. Investment contracts relating to these resources shall be submitted to the specialized committee within the Assembly of the Representatives of the People. Conventions ratified in respect of these resources shall be submitted to the Assembly for approval». Although there have been several interesting debates regarding whether or not to include the publication of contracts and amendments, the definition of «natural resources» in this article was hardly discussed.

Indeed, if we compare article 13 of the Tunisian constitution to the equivalent articles of Latin American constitutions, countries recognized as being pioneers in natural resource issues,<sup>33</sup> it becomes apparent how comparatively underdeveloped the definition of natural resources is in Article 13 itself. For example, article 348 of the Bolivian Constitution contains the following definition of natural resources : «Natural resources are minerals in all their forms. The main areas of concern are the state, hydrocarbons, water, air, soil and subsoil, forests, biodiversity, electromagnetic spectrum and all physical elements and forces that can be exploited.» Similarly, in article 408 of the Ecuadorian Constitution, there is a clear definition of what can be designated as a natural resource: «Non-renewable natural resources and, in general, subsurface products, mineral and hydrocarbon deposits, substances of a different nature than soil, including those found in areas covered by territorial marine waters and maritime zones, as well as biodiversity and its genetic heritage and radio spectrum, are the inalienable, imprescriptible and exclusive property of the State». Thus, in the Tunisian context, to better understand the definition of natural resources as referred to in Article 13, it is necessary to return to the intentions of deputies when they discussed this article. In the initial formulation of Article 13, from the focus was on phosphate, gas and oil exploitation. That is essentially what members of Parliament meant by natural resources. Nevertheless, as confirmed by the Reporter General of the Constitution, Habib Khedher, “it can even be said that the meaning of ‘natural resources’ is larger than that.” Concerned about the limitations to the definition of natural resources included in article 13, 115 deputies signed a petition in support of a new version of the article, including the five heads of parliamentary blocs. According to the investigative journalist Mohamed Dhia Hammami,<sup>34</sup> who closely followed the debates around Article 13 : «During the reformulation of the article, it was discovered that renewable energy sources, surface water , and even air were not covered in this text. It was therefore decided to delete the expression ‘located in the subsoil’ to broaden the scope of this article to include different types of natural resources: fossil, renewable, water, etc., as well as to the entire national

<sup>33</sup>The theory of the permanent sovereignty of States over their natural wealth and resources is a Latin American concept. It was Chile that initiated the debate within the United Nations in 1952. Subsequently, a whole range of arguments was developed concerning the political, economic and legal problems relating to this concept.

<sup>34</sup><https://nawaat.org/portail/2014/02/19/essai-dimmersion-dans-le-sens-profond-de-larticle-13-de-la-constitution-tunisienne/>

territory: air, sea and land.” As Hammami points out, the legal texts governing natural resources include: the hydrocarbons code, the mining code, the law regulating the exploitation of quarries, the forestry code, the code of the waters, etc.

In the mining code, salt is considered as «mined» and classified in the 4th group of mines: «Solid or dissolved natural salts, present in massive deposits or in natural brine such as chlorides (including sea salt), bromides, iodides, borates, sulphates, nitrates and other associated salts in same deposits.»<sup>35</sup> Thus, if phosphate is covered by article 13, then salt from territorial waters are also covered, since they are all considered as «mined», in accordance with the mining code.

While COTUSAL argues that the extraction of salt from the Tunisian marshes does not fall under Article 13 because “such exploitation is based solely on the exploitation of the sea water, sun and wind by evaporation and only concerns the consumption of renewable energies without any risk of depriving future generations of a such wealth,”<sup>36</sup> it seems essential to remind them that the sun, the air, and the sea are part of the national territory and therefore their exploitation is governed by article 13. In addition, attention should also be drawn to the fact that article 13 has not been written only to protect future generations but primarily to guarantee the Tunisian people and the state maintain ownership and sovereignty over the resources of the national territory. Indeed, the importance of the article 13 is mainly based on the introduction of two principles of «property» and «sovereignty».

According to the Permanent Sovereignty principle, the State has ownership over its natural resources on its territory and is thus the only one entitled to exploit them. Based on elements of customary international law, and enshrined in particular by United Nations General Assembly Resolution 1803 (XVII) of 1962, the Permanent Sovereignty over natural resources is one of the norms of contemporary international law, considered as a corollary to the right of peoples to self-determination. This legal principle emerged in response to what were perceived to be the unequal contracts of the colonial era, notably the «concessions» contracts imposed on the governments of that time in the extraction of oil and minerals.<sup>37</sup>

Under the principle of Permanent Sovereignty over natural resources, the State has a number of rights over these resources. Thus in the case of Tunisia, the State, on behalf of the people, has the right to control and regulate, to freely prospect and exploit, to dispose of, and to develop its natural resources. Moreover, the State has the right to invite foreign investments, as well as the right to nationalize and expropriate. This was specified in Resolution 1803 of the General Assembly of the United Nations on 1962.<sup>38</sup> Thus the right to control its natural resources confers on the State the power to determine how these resources will be exploited and governed.

The Tunisian mining code has specified that «mines» are part of the country’s national wealth, belonging to the public domain of the Tunisian State. As delineated in this code, mines are governed by the “concession system,” conferring to the concession holder the right to ownership over the natural resources. The holder of a concession has the right to dispose of the mining products extracted from its concession.<sup>39</sup> However, article 13 establishes the State’s right of ownership. Thus, the «mines» are the property of the State and are part of its domain- it allocates, in the name of the people and thus after the approval of the Assembly of the Representatives of the People (ARP), the rights and periods of use of these «mines» by fixing the conditions of exploitation. As a result, the research and exploitation of this national wealth are the subject of state contracts.

Under article 13 of the Constitution, the granting of concessions to natural resource exploitation is now more transparent and its conditions are subject to Parliamentary approval. Thus, the exploitation of salt in Tunisia, whether it is marine salt or rock salt, should now be discussed and approved by the ARP.

<sup>35</sup>Act No. 2003-30 of 28 April 2003 promulgating the Code of Mines.

<sup>36</sup> وزارة الصناعة تعتبر استخراج الملح غير خاضع للفصل 13 من الدستور المتعلق باستغلال الثروات الطبيعية

<sup>37</sup>Fischer G., (1962). La souveraineté sur les ressources naturelles. *Annuaire Français de Droit International*. Volume 8, pp. 516-528.

<sup>38</sup><http://www.ohchr.org/FR/ProfessionalInterest/Pages/NaturalResources.aspx>

<sup>39</sup>Article 55, Act No. 2003-30 of 28 April 2003 promulgating the Code of Mines.

<sup>40</sup>For the rest, it is the code of mines of 1953 or 2003 that establishes the relationship with the guardianship.

<sup>41</sup>Article 1 and 3 of the 1949 Convention.

<sup>42</sup><http://www.cotusal.tn/communique-de-la-cotusal/>

<sup>43</sup>Oral hearing session on Monday 28 May 2018 by the Committee on Industry, Energy, Natural Resources, Infrastructure and the Environment (at 38:00) <https://www.youtube.com/watch?v=CtD7KTHveLo>

<sup>44</sup>Oral hearing session on Monday 28 May 2018 by the Committee on Industry, Energy, Natural Resources, Infrastructure and the Environment (at 37:35) <https://www.youtube.com/watch?v=CtD7KTHveLo>

<sup>45</sup>Speech by Deputy Samia Abbou at the plenary session of 21 May 2018 (at 4:15:30). <https://www.youtube.com/watch?v=CXxpGb8EhYM>

The recent controversy surrounding COTUSAL, as well as the one that broke out in 2014, have yet to be resolved. Subject to the 1949 Convention for the Sousse and Sfax salt marshes, which represents half of the company's production,<sup>40</sup> COTUSAL was granted the exclusive right to extract sea salt for 50 years at a symbolic price as well as the exclusive right to export sea salt for 30 years.<sup>41</sup> Let us also recall that only COTUSAL exploits sea salt under the 1949 convention and the Sousse and Sfax salt marshes are therefore exempted from the mining code that covers all other Tunisian sea salt operators. In light of this unequal convention, the application of article 13 makes sense. Indeed, as explained above, article 13 concretizes Permanent Sovereignty over natural resources, a principle emanating from the desire of States to review the unequal contracts of the colonial period, such as the 1949 convention. COTUSAL had declared that «if tomorrow the law changes, COTUSAL will submit to it.»<sup>42</sup> However, the granting of the concession of «Sebkhat El Gharra» by ministerial decree on 14 March 2014 by ministerial decree is not in conformity with the new Constitution, which was ratified on 26 January 2014. The decree thus contravenes provisions of article 13 of the Tunisian Constitution. Are we therefore to assume that in making this statement COTUSAL meant to imply that it would only submit to the law if it changed «in its favor»?

During the 21 May 2018 plenary session, the Secretary of State for Energy, Mines and Renewable Energies, Hashem Hmidi, confirmed that his ministry will not accept COTUSAL's future requests for extension. However, it is up to the Ministry to take the initiative to stop the automatic renewal of the agreement. Indeed, the 1949 Convention expires in 2029 and, as stipulated in article 3 of the Convention, the State must notify COTUSAL 10 years before the expiry of the current extension period, i.e. before the end of 2019, if it intends to end this Convention. Otherwise, it will be automatically renewed for a period of 15 years, i.e. until 2044. Thus, by claiming that it is awaiting the request for an extension from COTUSAL, whereas the Convention requires the Ministry of Energy, Mines and Renewable Energies to take the first step, questions are raised concerning the sincerity of Ministry to really put an end to this situation and break this agreement between the COTUSAL and the Tunisian State.

The Secretary of State for Mines has renewed his department's commitment to ending the renewal of the 1949 Convention at the earliest opportunity and vowed to take the initiative with regards to COTUSAL.<sup>43</sup> According to Hashem Hmidi, due to COTUSAL's exemption from the mining code as a result of the 1949 convention, the State has registered an annual shortfall of about 500,000 TND, or a total of 7.500.000 TND since 2003 when the code first came into effect. There is an additional annual shortfall of about 400,000 TND of taxes due to the Coastal Protection and Development Agency that COTUSAL is exempted from paying under the 1949 convention, which represents the sum of 9,200,000 TND to this agency since its creation in 1995.<sup>44</sup>

In addition, an advisory commission has been set up by the Ministry of Energy, Mines and Renewable Energies to find legal solutions to terminate this agreement. One of the proposals is to amend the mining code so that COTUSAL could now register, knowing that the company had made the request outside the code's legal time limits. Member of Parliament, Samia Abbou,<sup>45</sup> questioned the will of the Ministry of Energy, Mines and Renewable Energies to amend the Code of Mines as well as drawing attention to the gravity of this abusive modification. In effect, this amendment would imply, on the one hand, significant delays which will most likely result in renewal of the COTUSAL convention without submitting to the mining code, as was the case with the first late application which turned out to only be a way to save time so that the convention could be renewed for another 15 years. On the other hand, this amendment will imply continue favoritism towards COTUSAL, where all other companies have had to comply with the mining code in its current version.



Furthermore, if the mining code is amended to bring a company's activity into line with it, what would be the scope of these amendments? If COTUSAL considers that sea salt is not a natural resource, would amending the code be an opportunity to remove sea salt from the mining code, resulting in a situation where the conventions that will bind the State to COTUSAL and future sea salt operators will not be exempted from the stipulation in article 13 requiring approval by the ARP? Are not all these delays and attempts actually ways to ensure COTUSAL's future operating activities will remain outside of the remit of article 13 of the Constitution?

# Conclusion

In conclusion, sea salt is a natural resource and cannot be defined otherwise. Therefore, conventions between the Tunisian State and sea salt operators must be subject to the provisions of article 13.

Article 13 of the Constitution represents a first step towards more equitable and transparent governance of natural resources, but the controversy surrounding COTUSAL and the 1949 convention, which concern the country's two largest salt marshes, has revealed that there is still some way to go to clarify how natural resources are defined.

Nevertheless, it is clear that in the current Tunisian context, the controversy surrounding COTUSAL and the 1949 convention has sparked important debates on natural resources, political choices and their repercussions. It has also enabled researchers, journalists and members of civil society to contribute positively and constructively to public debate.

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