

Failure to fly

Challenges and lessons learned from public-private partnerships in Tunisia



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Acronyms

AfDB	African Development Bank	IPPPs	Institutional Public Private Partnerships
ARP	Assembly of People's Representatives in Tunisia	ISDS	Investor-state dispute settlement
ASFL	African Legal Support Facility	MENA	Middle East and North Africa
BOO	Build, own and operate	NICTs	New information and communication technology
BOT	Build-operate-transfer	OACA	Office de l'Aviation Civile et des Aéroports
CSO	Civil society organisation	ODA	Official Development Assistance
CwA	Compact with Africa	OECD	Organisation for Economic Co-operation and Development
EFF	Extended Fund Facility	OFID	OPEC Fund for International Development
EIB	European Investment Bank	ONAS	National Office for Sanitation
FEMIP	Facility for Euro-Mediterranean Investment and Partnership	OPEC	Organization of the Petroleum Exporting Countries
GPOBA	Global Partnership for Results-based Aid	OTE	Observatoire Tunisien de l'Economie
IBRD	International Bank for Reconstruction and Development	PPIAF	World Bank Public Private Infrastructure Advisory Fund
ICSID	International Centre for Settlement of Investment Disputes	PPP	Public Private Partnership
IFC	International Finance Corporation	SDG	Sustainable Development Goal
IFIs	International Financial Institutions	STEG	Société Tunisienne de l'Electricité et du Gaz (Tunisian Electricity and Gas Company)
IGPP	Tunisian PPP unit (Instance Générale des Partenariats Public Privé)	WB	World Bank
IMF	International Monetary Fund	WBG	World Bank Group

Executive summary

Public-Private Partnerships (PPPs) are increasingly being promoted as the solution to the shortfall in financing needed to achieve the Sustainable Development Goals (SDGs). With ever greater frequency, PPPs are being used to deliver economic infrastructure, such as railways, roads, airports and ports, as well as key services such as health, education, water and electricity in both the global north and the global south.

A wide range of institutions, donor governments and corporate bodies have worked to incentivise or actively promote PPPs in developed and developing countries alike, with a concerted effort at global, regional, national and sectoral levels.

Many developing countries have enacted PPP laws and set up 'PPP units' to scale up their capacity to implement projects. This has been in line with loan conditionalities and policy guidance coming from international financial institutions like the World Bank (WB) and the International Monetary Fund (IMF). In recent years, countries from the Middle East and North Africa (MENA) region have focused on attracting private investment through PPPs to help fund major infrastructure projects.

Tunisia was the first country in the region to implement PPPs through "user pays" concession projects, and now PPPs are high on the national political agenda. The five-year Tunisian development plan, launched in 2016, included 100 energy, water, and waste management and agriculture projects to be financed through PPPs.

This report – carried out by researchers based in Tunisia and Europe – looks at the recent changes in the legal framework for PPPs and zeroes in on the first major infrastructure project – or 'megaproject' – carried out in Tunisia – the Enfidha and Monastir airports. It analyses the implications of the recent changes in the national regulatory framework considering: (1) how the different risks associated with PPP projects are allocated; (2) the procedures for awarding PPP contracts, including the provisions for conducting impact assessment studies; and (3) the opportunities for civil society participation.

This report also examines the wider role of the World Bank Group (WBG) – and the influence that they and other IFIs have exerted in the country.

The Enfidha and Monastir Airports

This project was launched in 2003 and began operating in 2009. It entailed building a new airport (Enfidha) and manage the existing airport (Monastir). The World Bank initially promoted this PPP as a flagship project. It carried construction costs of €560 million.

TAV Airports Tunisia was the chosen private sector partner and debt financing came from the International Finance Corporation (IFC) – the WBG's private sector lending arm – but also from the AfDB; the EIB; French development finance institution, Proparco; and the OPEC Fund for International Development. TAV airports Tunisia also received a subsidy from the Tunisian state.

This report finds that:

- The decision to develop Enfidha Airport as a user-pays PPP was questionable from the beginning. This new airport was not considered profitable by the public authorities in the first place, but it was hoped that the revenue of Monastir Airport would cancel out any losses at Enfidhar.
- The selection of TAV was not transparent and its bid was questionable from the start. The concession fees offered by TAV to the Tunisian state were higher than the other bids, but at the same time the estimation of the traffic that the airport would generate were not realistic or feasible, with or without the crises that subsequently hit the country.
- TAV Tunisia began lengthy and costly renegotiations with the Tunisian government in 2010 to review the concession fee due to be paid by the company. The global economic crisis had hit the world in 2008 and it was followed by the Tunisian revolution in 2010-2011. This impacted tourism in Tunisia. This was exacerbated by the fact that Enfidha airport mainly hosts charter flights for tourists travelling through tour operators. TAV then stopped paying fees. Threatened with costly investor-state dispute settlement (ISDS) procedures, Tunisia is in negotiations with TAV airports to find an agreement. The payment of fees has been suspended since 2010.

Tunisia's regulatory framework for PPPs

The national government reformed the regulatory framework to encourage PPP projects at around the same time that the airport was being developed. They worked with the WB and other donors, such as the European Investment Bank (EIB), the Organisation for Economic Co-operation and Development (OECD) and the African Development Bank (AfDB). The WB, for instance, provided finance through a loan dedicated to "improv[ing] the business environment".

Our analysis shows that international institutions have exerted undue influence over the domestic regulatory framework in Tunisia. The new PPP law has been introduced against a backdrop of criticism from elected national parliamentarians and civil society organisations and is problematic on several grounds. For instance, the level of transparency and public disclosure has not been satisfactory; community consultation and stakeholder engagement are not properly addressed and the development impact is not assessed throughout the project lifecycle.

Moreover, 2019 amendments paved the way for additional risks, as they weakened administrative control over PPP projects. They did not adequately take into account the fiscal risks of PPPs and major incentives for unsolicited partnerships were promoted, which opened the door for projects that respond to donor country companies' business strategies. These changes confirmed concerns that the law that donors have promoted does not adequately protect either the public entity or citizens.

The future of PPPs in Tunisia

In order to make sure that the legal framework is fit for purpose in Tunisia, the role of the national parliament and civil society needs to be strengthened, there needs to be greater transparency and oversight of PPP contracts, and strengthened capacities to negotiate and monitor contracts to make sure that projects are operating in the best interests of the people they are supposed to serve.

In conclusion, this research identifies huge risks associated with PPPs, particularly for a country like Tunisia, which needs resources to implement policies that address poverty and inequalities, including gender inequalities. Lessons do not seem to have been learned from the Enfidha Airport case. The shortcomings unveiled have cast doubt over the future of PPPs in Tunisia, and the role of donors like the WB.

Recommendations

This report recommends a set of concrete actions that could have a crucial impact on this debate and prevent future problems.

A) The Tunisian legal framework needs to be fixed as quickly as possible in order to address the following issues:

- **Governance of PPPs:** Tunisian law should provide for the highest possible standards of **transparency** and the disclosure of documents and information related to public contracting. To ensure **democratic ownership** of the PPP projects, they should be part of a national development plan adopted by the Tunisian Assembly of Representatives. The government's annual report on PPPs to the Tunisian parliament should enclose the yearly development impact assessments. The possibility of unsolicited partnerships should be drastically limited. For any major infrastructure project, the Tunisian government should ensure **democratic accountability** through informed consultation and broad civil society participation and monitoring. This includes engaging with local communities, trade unions and other stakeholders throughout the life cycle of the PPP. Governments should also ensure the right to redress for any affected communities. Furthermore, the law should ensure government control over PPPs and strengthen its capacity to manage, supervise and control PPP projects, as well as evaluate their environmental, social, human rights impact, including the impact on gender equality.

- **Development outcomes:** This implies addressing concerns in terms of affordability of the services for the public sector and the infrastructure users, and equitable access to infrastructure services, as well as avoiding negative impacts on the environment or raising inequalities, especially as regards the gender gap.
- **Fiscal risks and contingent liabilities of PPPs:** PPPs should be registered on-balance sheet and counted as debt.
- **Renegotiation and litigation in PPP contracts:** the contract should also specify the conditions under which renegotiation should be allowed, especially when it is related to the financial balance of the contract. In addition, the use of international public or private arbitration in the clauses of PPP contracts should be prohibited.

B) Although it is key to close the loopholes of the legal framework, this will not be enough to address all the problems that we have encountered. The utmost caution is needed in the implementation of PPPs, in order to protect the public interest.

- The scope of different types of PPPs should be limited to major projects carried out by the central public authority in the law. Local authorities should only be allowed to implement PPP projects if the Court of Auditors approves it, after auditing their competences and resources to manage this type of complex project.
- National capacity to deal with PPPs has proved problematic in the case of Tunisia. It is key to ensure that project outcomes are designed and assessed through the whole project lifecycle to benefit everyone in society. Governments should develop clear outcome indicators and effective monitoring to measure the impacts of PPPs on the poor, from the project selection phase to the operational phase of the project.

C) We call on the World Bank, the International Monetary Fund and other public development banks and donors to halt the aggressive promotion and incentivising of PPPs for social and economic infrastructure financing in Tunisia and globally.

We ask them to publicly recognise the poor track record of PPPs and the financial and other significant risks involved in PPPs. They should ensure that the highest possible transparency standards apply, particularly with regards to accounting of public funds, and disclosure of contracts and performance reports of social and economic infrastructure projects. And they should make sure that PPP projects are delivered in the interest of citizens rather than in the interest of external funders who may have different priorities.

Introduction

Public Private Partnerships (PPPs) are increasingly being promoted as the solution to the shortfall in financing needed to achieve the Sustainable Development Goals (SDGs). With ever greater frequency, PPPs are being used to deliver economic infrastructure, such as railways, roads, airports and ports, as well as key services such as health, education, water and electricity in both the global north and the global south.

A wide range of institutions, donor governments and corporate bodies have worked to incentivise or actively promote PPPs in developed and developing countries alike, with a concerted effort at all levels: global, regional, sectoral and national. Globally, the Third United Nations Conference on Financing for Development, which took place in Addis Ababa in 2015¹ and the 2030 Agenda for Sustainable Development,² have both established PPPs as a significant means of leveraging private finance.

Many developing countries have enacted PPP laws and set up 'PPP Units' to scale up their capacity to implement PPP projects, in line with loan conditionalities and policy guidance coming from financial institutions, such as the World Bank (WB) and the International Monetary Fund (IMF), and donor governments.³ In recent years, countries from the Middle East and North Africa (MENA) region have focused on attracting private investment through PPPs.⁴ The belief that "scaling up PPPs is essential if MENA countries are to address the multifaceted set of challenges they face"⁵ has resulted in concrete changes in how laws, policies and strategic (development and sectoral) plans are designed at a national level.

Tunisia was the first country within the region to implement PPPs through concession laws, making it a good testing ground.

Firstly, its experience with concession projects (or user-funded PPPs) and private sector involvement in infrastructure financing, construction and management dates back to the 1980s. Since 1998, PPPs have been awarded to projects including electricity, transport, water and wastewater, thereby allowing for case study analysis of existing PPPs.

Secondly, PPPs are high on the national political agenda. For the Tunisian government, PPPs are a tool to help mobilise funds to implement major infrastructure projects. The five-year Tunisian development plan, launched in 2016,⁶ includes 100 energy, water, waste management and agriculture projects to be financed through PPPs.

Thirdly, in 2015, 2017 and 2019, the national government reformed the regulatory framework to encourage PPP projects, working with the World Bank and other donors, such as the European Investment Bank (EIB), the Organisation for Economic Co-operation and Development (OECD) and the African Development Bank (AfDB). The WB, for instance, provided finance through a loan dedicated to "improv[ing] the business environment".⁷

Against this backdrop, this report aims to understand how policy space in Tunisia is being redefined as a result of the global promotion of PPPs. It will take into special consideration the role of the World Bank Group (WBG) and other relevant donors, and the influence that they have exerted in the country. It analyses the implications of the recent changes in the national regulatory framework considering: (1) how the different risks associated with PPP projects are allocated; (2) the procedures for awarding PPP contracts, including the provisions for conducting impact assessment studies; and (3) the opportunities for civil society participation.

We also aim to review Tunisia's experience with PPPs by analysing its largest PPP project to date: the Enfidha-Monastir airports project. It was supported by the International Finance Corporation (IFC), the private sector arm of the World Bank, which considered it to be a "model for other PPPs in Tunisia and the region".⁸ We looked at:

- whether the fiscal, social and environmental risks associated with the project were properly assessed and monitored
- the level of transparency and citizen engagement
- which companies were involved
- what lessons can be learned in terms of best-practice procurement protocols for governments considering PPP contracts for infrastructure or public service provision.

Box 1: What is a Public Private Partnership (PPP)?

There is no universally accepted definition of the term *Public Private Partnership*. For the purpose of this report, we define PPPs as long-term contractual arrangements, whereby the private sector provides infrastructure and services traditionally provided by governments – such as hospitals, schools, prisons, roads, airports, railways and water and sanitation plants – or where, in some agreed way, the public and private sector share the associated risks.

Civil society organisations (CSOs) have been active in the global debate on PPPs. This joint CSO report follows the *PPP Manifesto*,⁹ launched in October 2017, which was supported by more than 150 organisations and trade unions from around the world. This current briefing assesses the extent to which the associated risks and challenges identified by the *Manifesto* have been addressed by the new Tunisian legislative framework. Building on Eurodad and partners' work on PPPs, this report aims to deepen the policy debate and to provide input on ongoing policy processes at national, regional and global level. It also aims to shed light on the role of the World Bank in Tunisia's PPPs and highlight the need for greater transparency and oversight, paving the way for a stronger role for the national parliament and civil society going forward.

**This report aims to
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global level**

This report is a combination of desk-based research and fieldwork. It includes an analysis of existing literature, including official documents from the national government and donor agencies, as well as interviews with officials and relevant stakeholders at country level to cross-check and validate information.

This report is structured as follows:

Chapter 1 examines the PPP phenomenon in Tunisia. It presents the existing projects, the legal environment along with the influence of multilateral development banks. It then analyses the former and current legal frameworks to assess whether they address CSO concerns.

Chapter 2 presents the implementation challenges, identifying problems that authorities have faced with the new framework and drawing lessons from Tunisia's most expensive PPP project to date – the Enfidha-Monastir airports.

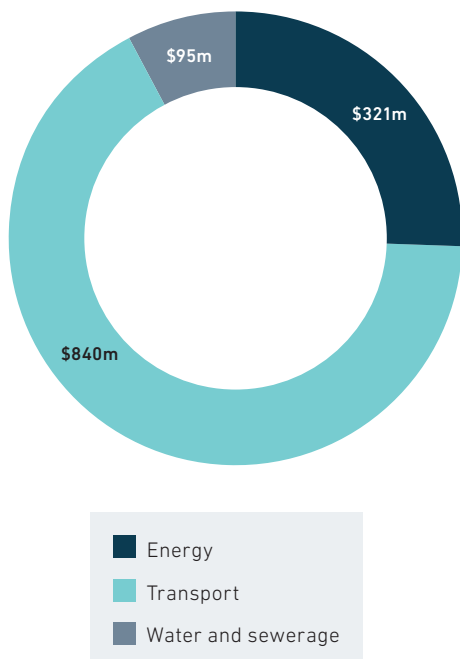
Chapter 3 suggests concrete recommendations and avenues for reform.

1. The PPP phenomenon in Tunisia

Since 1998, Tunisia has implemented several infrastructure projects through PPPs. After 2011, international donors and international financial institutions promoted adopting a new legal framework. This resulted in the adoption of a law on government-pays PPPs in 2015. However, as of mid-2019 no contract has yet been implemented under the new law and decrees. An analysis of the former and current legal frameworks is therefore important. This is needed to determine whether the current system is well suited to fostering private investments while also protecting the Tunisian people and governments from potential risks associated with PPPs, which have been well documented in the past.¹⁰

1.1 Figures, sectors and types of PPPs used in Tunisia

Figure 1: Amount invested in PPP projects since 1998 per sector (in US\$m)

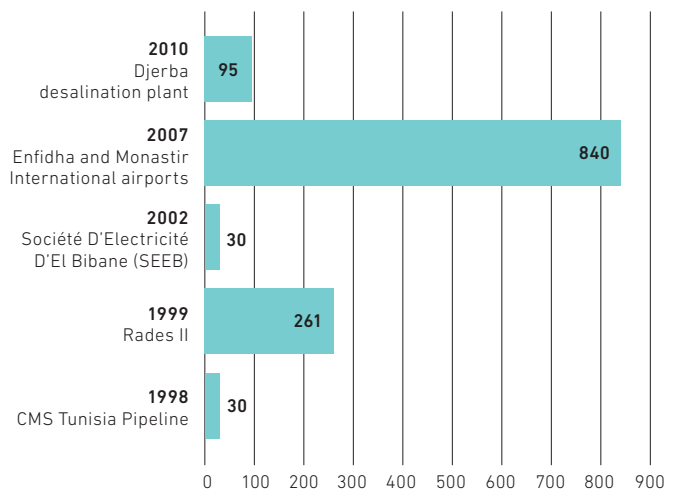


Source: World Bank. Data excludes the Miskar project as well as the divestiture of Tunisia telecom and Ooredoo Tunisia.

Tunisia has considerable experience with private involvement in infrastructure financing, construction and the management of public infrastructure. The current data regarding PPPs in Tunisia shows that a total of five contracts have been signed since 1998, amounting to US\$1.2 billion. Four of these projects were unsolicited partnerships and two of them were supported by multilateral development banks. None of these contracts has been disclosed publicly.

By far the most significant PPP is the Enfidha and Monastir International Airports project, awarded in 2007. This makes the transport sector the most prominent for assessing PPPs. While the first PPPs in Tunisia were 'Build, own and operate' (BOO) PPPs, the two latest projects included transferring ownership from the private to the public sector (for more on the types of PPPs, see Box 2).

Figure 2: Total investment per infrastructure project from 1998 to today (in US\$m)



Source: World Bank. Data excludes the Miskar project as well as the divestiture of Tunisia telecom and Ooredoo Tunisia.

Box 2: Different types of government-pays PPPs

There are different types of PPPs, which result from a combination of the different functions that the private sector performs in the partnership. For instance, the most common types of PPPs are:

BOT: This stands for Build-Operate-Transfer. It is a contractual agreement by which the private party undertakes to finance, design, build, operate and maintain an infrastructure project for a specified period of time, after which the project facilities are transferred to the licensing authority generally without payment of any compensation.

BOOT: This stands for Build, Own, Operate and Transfer. In this case, the private party owns the infrastructure project for the specified period of time before it is transferred to the contracting authority.

BOO: This stands for Build, Own and Operate. In this case the private partner owns the infrastructure project.

The legal framework governing PPPs in Tunisia makes the distinction between two types of projects: 'user-pays PPPs' and 'government-pays PPPs'.

User-pays PPPs are financed by infrastructure users and are called "concessions" under Tunisian law. They have existed since the 1990s and are governed by sectoral laws, a general framework law and decrees detailing the procurement procedures for certain major infrastructure projects. However, the concession regime was modified in 2013¹¹ and more recently in 2019. All the PPP projects that have been implemented so far in Tunisia are concessions.

Government-pays PPPs are contractual arrangements whereby the private partner provides for the financing and construction of an infrastructure project and, once completed, transfers it to the government, the contracting authority. The contracting authority will pay the total investment of the project through an annual fee over the entire duration of the contract. This type of government-pays PPPs is called 'Public Private Partnerships' under Tunisian law.

The Tunisian PPP framework also includes '**Institutional PPPs**' (IPPPs), which are structural or corporate entities that provide for cooperation between public authorities and a private party through a joint venture (public-private shareholding). Since this report focuses on PPP contracts rather than legal entities, IPPPs are excluded from the scope of our research.

1.2 The legal framework for PPPs

Over the years, International Financial Institutions (IFIs) and donor governments have promoted private investment, identifying (government-pays) PPPs as a tool to leverage these funds. This promotion has resulted in concrete changes in how laws, policies and plans are designed at a national level.

The Tunisian legal framework is two-fold in nature. On the one hand, user-pays concessions, such as water and electricity, have been governed by sectoral laws from the 1960s and by a dedicated law since 2008, which was modified in 2013 and 2019. Most of the existing projects were implemented under this framework.

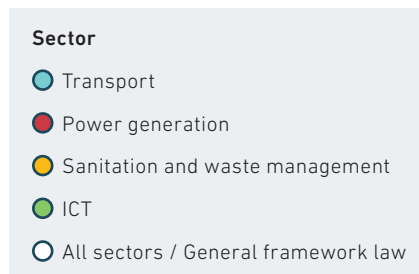
On the other hand, the new government-pays PPP law has been shaped by the World Bank and other international institutions. However, the resulting legal framework presents major risks for the public purse. It paves the way for unfair risk sharing between the private and public partner, as the public entity might end up ensuring the profitability of the PPP, from the demand risk to the currency risk, without protecting taxpayers' money in case the private partner fails to meet its obligations. There are many loopholes in terms of governance, thus raising concerns over unsolicited partnerships, lack of community consultations and transparency issues. Obligations and administrative capacity to manage and assess the social, environmental and human impact of the projects, including gender impact, is also a key issue in terms of SDG outcomes, as well as to ensure national ownership and oversight of the development outcomes of PPPs.

1.2.1. The user-pay concession PPPs

Concessions are the first type of PPPs to be authorised in Tunisia. According to the 2008 Framework Law on Concessions, concessions are PPP agreements by which the public entity – the 'licensor' – delegates the management of a public service or infrastructure to a private partner, the 'concessionaire', for a fixed period of time. The main features of concessions are:

- The infrastructure remains the property of the licensor, which means that no property rights are transferred to the concessionaire. However, the concessionaire obtains the exclusive right to use the assets, operate the facilities, maintain and make investments from the licensor.
- The concessionaire's revenue comes from user fees. The private entity depends on contractual tariffs and the numbers of users, which are evaluated by the private partner in the bidding phase. As such, it should assume the demand risk. The concessionaire then pays a fee to the licensor (public entity) for exclusive rights to an installation, which is either a fixed sum, a percentage of revenue or a combination of both.
- The contract determines the conditions under which the concessionaire uses these facilities and the price at which it provides the service.

Figure 3: Historical perspective of sectoral and general laws relating to user-pays concessions in Tunisia



- **1987:** The Decrees N°87- 654 and 87-655 for road infrastructure authorise the occupation and exploitation of the state's public road domain by the private sector through a concession contract.
- **1995:** The Decree N°17-720 for motorways allows for the construction and/or operation of existing motorways through concession agreement, followed by implementation decrees (Decree N°17-720 approving the concession agreement for the operation of the Hammam Lif-Msaken motorway by motorways of Tunisia. The Decree N°2004-1074 approving the concession for the construction and operation of the A1 El Jem- Sfax road).
- **1996:** Law N°96-27 creates and organises the Tunisian Société of Electricité and Gas and authorises the granting of concessions for the provision of electricity to people. Decree N°96-1125 sets the conditions and modalities for granting the production concession of electricity to private persons.
- **1996:** Law N°96-41 regulates waste management, control and disposal, which may be carried out by a private party subject to prior authorisation by the Ministry of the Environment and under certain conditions provided for by law.
- **1999:** The Decree N°99-2318 for railways authorises the operation of the railways by the state-owned public company SNCFT under a concession agreement.
- **2002:** The Law N°2002-47 relating to fishing ports allow for fishing ports (excluding commercial ports) to be occupied by an individual for their operation as a concession. Specifications approved by decree are also required.
- **2004:** Law N°70/2004 stipulates that the state may grant concessions to private persons for the financing, construction and operation of sanitation infrastructure (ONAS).
- **2004:** Law N°2004-33 on the organisation of land transport and ministerial order of 9 August 1989. The operation of the public land transport service by public transport may be carried out by a private carrier by means of a concession agreement.
- **2004/2005:** Civil Aviation Code enacted by Act N°99-58 and amended by Acts N°2004-54 and 2005-84 and Decree N°2007-1216 establishing the list of public service activities eligible for a concession by the Civil Aviation and Airports Office. The construction and operation of airports by the private sector under a concession contract are authorised.
- **2005:** Decree N°2005-3280 on the conditions and procedures for granting financing and building and operating sanitation infrastructure.
- **2007:** Law N°35/2007 sets out the conditions and procedures for granting these concessions. It has authorised ONAS to grant concessions for the operation of its wastewater treatment plants and for some of its services for a maximum period of 30 years.
- **2007:** Orientation Law N°2007-1 on the establishment of the digital economy (first experience of PPPs applicable to the ICT sector). End of 2011: 13 PPP agreements were signed (six in the ICT sector, four in the intelligent transport systems sector, three in the banking sector in accordance with the 2007 law on the establishment of the digital economy).
- **2008:** Decree N°2268-2008 on the list of ONAS services that may be subject to concessions.
- **2008:** Framework Law N°2008-23 on the concession regime (regulating private sector participation in the implementation of infrastructure and public infrastructure projects in all sectors in the form of concessions) and decree N°2008-2965 creating the PPP unit.
- **2013:** Decree N°2013-4630 creates the PPP unit under the Presidency. Decree N°2013-4631 amends and supplements Decree N°2010-1753, setting the conditions and procedures for granting concessions.

The section below analyses the evolution of the legal framework of the user-pays concessions PPPs and their implementation. It also analyses the driving forces behind recent changes and whether they have fixed the shortcomings of the existing framework.

The IMF and WBG have promoted user-pays concession PPPs in Tunisia since the 1980s. Concessions were gradually authorised by sectoral laws in Tunisia from 1987 onwards (as illustrated in Figure 3) in the context of a structural adjustment plan with the IMF (1986-2001) and a joint programme with the World Bank. The main conditionalities were the liberalisation of foreign trade, investment, the financial sector, prices and a disengagement in the role of the state to benefit the private sector.¹² According to the documents reviewed for this report, the World Bank has played a leading role in shaping the legal framework for concessions in Tunisia, as part of the promotion of privatisation.¹³ In 1996, the World Bank recommended Tunisian PPPs for roads, dams, energy supply and water treatment,¹⁴ thus leading to the first sectoral laws. After 2004,¹⁵ the World Bank Group encouraged Tunisia to engage in projects for sanitation and land transportation sectors, thus leading to a second package of sectoral laws.¹⁶ As illustrated in Figure 3, the framework was fragmented and failed to specify the terms, rights and obligations of the parties, etc.

This prompted the Tunisian authorities to adopt a general legal framework for user-pay concession PPPs in 2008, which widened the scope¹⁷ and generalised the type of PPPs being granted to all sectors¹⁸ and that pose many challenges today.

Below we identify the three main problematic loopholes:

- **The legal framework places excessive fiscal risks on the public purse**

First, according to Article 4 of the law, the grantor or contracting authority (the public entity) must ensure the contract's financial sustainability¹⁹ without specifying the restrictive conditions under which the state assumes certain risks with the private partner, or requiring that the contract stipulates the conditions under which such balance should be attained. In fact, the law remains very vague concerning the allocation of risks and obligations, which paves the way for controversial and costly interpretations.

In practice, in previous user-pays concession contracts, the Tunisian state has ensured the contract's financial sustainability while preserving affordable access to water by subsidising user fees, as in the case of the project of wastewater treatment plants in the North and South Tunis.

Indeed, in that case the public entity ONAS charges a low price to water consumers (users), and the government adds state subsidies to cover the costs of the project while ensuring affordable access to water. User fees may increase in order to ensure payment for the project in the future.²⁰ This example shows that, in practice, the concession law allowed for user-pays PPPs where the public entity actually bears the demand risk. This puts a question mark over the usefulness of the new legal framework dedicated to government-pays PPPs. The law on user-pays concessions was sufficient to carry out (government-pays) PPPs in Tunisia, with some amendments if necessary, without needing to commit to a new legal framework.

- **The law does not properly address the currency risk**

Currency or exchange-rate risks arise from one currency's devaluation in relation to another. This risk should not be overlooked in the case of PPPs. Rather, it must be negotiated so that the public partner is not in a situation where it has to assume this risk. In view of the current devaluation of the Tunisian dinar, this risk is all the more important to consider. In the law on concessions, it is not clear who bears this risk. In addition, the law stipulates that: "The participation of foreigners in the capital of the company set up to carry out the user-pays concession is possible by importing foreign currency, in accordance with exchange regulations and the legislation in force on foreign investment" to ensure foreign exchange earnings for the state. The state must be particularly vigilant with regard to this risk, which can be reflected in the project's cost, including a fee increase regarding PPPs financed by direct payments.

- **The law is very weak on addressing the contractual obligations for the private partner**

The Concessions Law does not require all bidding documents to be included as part of the contract (Articles 14 to 23). This was confirmed by the ongoing dispute between the TAV and the Tunisian state regarding Enfidha airport. Here TAV, the private partner, has refused to consider the technical offer as a binding contractual document. Thus, it is imperative that the law expressly mentions the documents constituting the contract, particularly the file the company submitted during the tender process (technical and financial bids in this case) and the specifications.

The 2008 law on concessions was recently amended by the so-called *loi transversale* – translated here as 'overarching law' (including the 2008 law on concessions, the 2015 law on Public Private Partnerships and the investment code adopted in 2016). This was adopted on 23 April 2019 by the Tunisian Parliament to improve Tunisia's position in the World Bank's Doing Business ranking.²¹ Once again, the World Bank Group was the driving force behind the changes in the legal framework rather than the Tunisian government.²²

What is more, the rationale behind the amendments were also driven by WB conditionalities.

- **The legal framework does not take into account administrative capacity limitations**

It is difficult to determine how decisions around the infrastructure and service delivery financing are made in practice, including support for PPPs, since no PPPs have yet been put in place under the new legal framework. However, the laws and decrees have set up an institutional framework whereby the highest level of decision-making is the Strategic Public-Private Partnership Council. This is chaired by the Head of Government and attended by the Minister of Justice, Finance and Development and Investment, the President of the General Authority for PPPs, four representatives of relevant professional organisations, the private sector, civil society and academics with experience in the field. It approves the national PPP strategy. The responsibility for implementation is in the Ministry of Finance's²³ PPP unit, which is called the General Authority for PPPs²⁴ (IGPPP in French), led by Mr. Atel Madjhoub.²⁵ However, the PPP unit lacks the expertise and human resources to manage PPPs. Finally, the law²⁶ and decrees²⁷ provide for regular monitoring and evaluation by the Court of Auditors (with the publication of reports as provided for by law) – and a control commission.

The new overarching law, amending previous PPP laws, does not address the above-mentioned shortcomings, and instead creates new loopholes.²⁸ Four key points can be mentioned:

1. While **the central government lacks the required capacity to manage extremely complex user-pays concession contracts**, local and regional authorities can now also engage in PPP contracts, which seems unrealistic.
2. **The amendments weaken administrative control over the PPP throughout its lifecycle.** Grants given to user-pays concession projects are now subject to simplified procedures. Moreover, the private partner should have obtained all the necessary administrative authorisations to fulfil the contract (unless otherwise stipulated in the contract), which involves implicit risks.
3. **The amendments weaken good governance and equal opportunities rules in tendering procedures.** Unsolicited partnerships have now been extended to projects not including a direct or indirect financial contribution from the state. The time limits for replies from public authorities (90 days)²⁹ have been specified. The margins of preference of the spontaneous bidder have been increased to 15 per cent instead of 2 per cent), thus questioning value for money in the final choice of the call for tender.
4. Creating the category of concessions 'with simplified procedures' for large public services and infrastructure projects removes important safeguards.

As a matter of fact, the 2008 framework law governing user-pays concessions has failed to deliver. The most important and ongoing user-pays concession projects were granted and implemented under sectoral laws prior to the 2008 concession law. In the last 11 years, no user-pays concession projects have been carried out, despite incentives to involve the private sector in infrastructure. Calls for tenders were launched after 2008 but failed to attract bidders, either because the project was not financially sustainable, or the private partner was reluctant to share the risk, as in the case of the cross-border deep-water port near Enfidha, or due to non-transparent and unlawful procedures, as in the case of the Djerba seawater desalination plant.³⁰

Now, however, some projects have received bids, which are under review. Given the identified loopholes of the legal framework, this raises some red flags. Among the bids, there is a BOT concession project in the water and sanitation sector with the National Office of Sanitation (ONAS). The project consists of the construction of a major infrastructure spread over 3,000 km and including 15 wastewater treatment plants and 300 pumping stations in Tunis North (two regions including Grand Tunis and Ariana) and Tunis South (four provinces for a period of ten years). The call for tender is in its final bidding phase.³¹

Several shortcomings have been identified in the 2008 concession law and have not been revised, despite recent amendments. They were prompted by international pressure rather than the public sector's desire to improve management and allocation of risks in PPP projects. This has resulted in a (user-pays) concession framework with many shortcomings.

1.2.2. Shaping the legal framework for government-pays PPPs

In 2011, a new era started after the so-called Arab Spring uprisings in Tunisia, during which the WBG has been a key player in promoting PPPs. Under Béji Caid Essebsi's transitional government,³² three essential changes were introduced:³³

1. The Directorate-General for PPPs was set up. This office is responsible for "strengthening international and regional cooperation in the field of public-private partnership to benefit from financing mechanisms in this field", "monitoring and steering the preparation and allocation of programmed projects between the public and private sectors" and for "creating a data bank and compiling statistics for public-private partnership projects".³⁴
2. 13 (users-pay) PPPs were identified.
3. The (government-pays) PPP law was drafted.

A law enabling government-pays PPPs was passed following strong international pressure by the IMF and World Bank, through loan conditionality and policy advice. Below we list different players that influenced the law-making, in a period characterised by government instability (eight governments between January 2011 and August 2016).

a. The World Bank Group intensively pushed for PPPs

In Tunisia, World Bank promotion dates back to 1996 and intensified after the Arab Spring, leading to the new regulatory framework for government-pays PPPs.³⁵ It promoted PPPs in sectors such as new information and communication technology (NICTs), energy and water desalination³⁶ and private sector participation in the provision of basic services.

The IFC, the private sector lending arm of the Bank, played an important role in the development of PPPs in Tunisia, not only in terms of capacity building but also in identifying and executing PPP transactions.³⁷ They also provided technical assistance to water operator ONAS and to the Minister of Investment to "restructure the incentive scheme and introduce necessary legislative and institutional changes".³⁸

The International Bank for Reconstruction and Development (IBRD), which is the arm of the Bank that provides loans to middle-income and creditworthy low-income countries, worked on the "enabling environment for business" to attract private investment to the energy (including renewables), water and transport (including logistics centres and ports) sectors, which built on 'successful PPPs' in the MENA region.³⁹

Thus, by establishing a new legislative framework for renewable energy projects, combined with the Tunisian electricity company STEG's willingness to support such projects, the World Bank expected to launch new private investments in the region with IFC support. To date, Tunisia has received World Bank finance through a US\$500 million loan from the IBRD promoting "strengthening the regulatory framework for PPPs"⁴⁰ and PPPs for mega projects such as infrastructure to connect industrial areas and technology parks to motorways.

b. The IMF pushed for PPPs through loan conditionality

The **International Monetary Fund (IMF)** has been a key player in moving PPPs forward in Tunisia through its loan **conditionalities**. Faced with political and economic uncertainties, the Tunisian government requested financial assistance⁴¹ in 2012 from the IMF, which was granted in 2013. From August 2014 onwards,⁴² PPPs have continuously⁴³ appeared in IMF-requested reforms. The IMF first welcomed "the authorities' determination to promote competition law, investment law, and bankruptcy and public-private partnerships as key government priorities for the new Parliament's programme",⁴⁴ but later referred to discussions in parliamentary committees, regretting delays in the final approval of the PPP Act.⁴⁵ To obtain the last payment of this sixth review, Tunisia promised its adoption by December 2015 and the IMF exerted pressure on the Tunisian authorities until the law was adopted.⁴⁶ In 2016, IMF assistance through the Extended Fund Facility⁴⁷ was conditional on the country's economic and financial reform programme, including the adoption of laws on PPPs but also, on implementing its decrees.⁴⁸

c. The Deauville partnership and G20 supported law making and PPP implementation

Following the Arab Spring uprisings,⁴⁹ the Deauville Partnership was launched in May 2011 at a G8 meeting, allowing the concerted promotion of PPPs by IFIs and donors. The G8 brought together international organisations – the WBG, the IMF,⁵⁰ the AfDB, the Islamic Development Bank, the European Bank for Reconstruction and Development (EBRD), the EIB; International Financial Institutions and Associated States (Gulf countries, Turkey in particular) – with the objective of promoting and organising bilateral and multilateral action to support Egypt, Tunisia, Morocco, Jordan, Libya and finally Yemen.⁵¹ This alliance of countries and IFIs agreed on reforms to be made as conditionality in exchange for substantial funding and implementation through coordinated technical assistance through the MENA transition fund.

Donors and IFIs exerted direct influence on the drafting of the law through the Deauville Partnership.

The partnership's economic pillar identified the "private sector as an engine for growth".⁵² The project 'Operationalising PPPs in Tunisia', launched in January 2013⁵³ and, partially financed by the MENA Transition Fund,⁵⁴ assisted the Tunisian government in shaping the new PPP law, setting up an institutional framework and strengthening the future PPP unit's capacities. Through this project, the OECD and the AfDB have played a key role in the law's evolution.⁵⁵ Their interlocutor was the User-pays Concession Monitoring Unit within the President's administration. When the law was adopted on 27 November 2015 by the Assembly of People's Representatives (ARP),⁵⁶ the OECD was satisfied that it was "in line with many of the international good practices" presented in the report.⁵⁷

Concerted pressure was exerted through different organisations, including those from Europe. In 2015, the OECD also recommended using international assistance funds for project preparation – the WBG's Public Private Infrastructure Advisory Fund (PPIAF); the African Legal Support Facility (ASFL) or the most recent Africa 50 Fund from the AfDB; the EIB's MED 5P initiative (2014); and the Global Partnership for Results-based Aid (GPOBA).⁵⁸ The Deauville Partnership was accompanied by the extension of the European Bank for Reconstruction and Development's (EBRD)⁵⁹ mandate to MENA countries in democratic transition, and its support for certain potentially controversial economic policies.⁶⁰ Similarly, the EIB continued to operate in the region through the Facility for Euro-Mediterranean Investment and Partnership (FEMIP), which focused its operations on infrastructure financing and support for the private sector.⁶¹ The European Commission also encouraged the implementation of reforms through aid. In 2014, Tunisia became the first recipient of a so-called Umbrella grant in the 'more for more' incentive mechanism framework, which rewards progress made in terms of reforms.⁶² The 2014-2017 EU-Tunisia European Neighbourhood Policy (ENP) programme foresees PPP promotion including an indicator specifying an increase of the number of PPPs signed in the second strategic objective, which is dedicated to governance, transparency and business climate.⁶³

The G20 Compact with Africa (CwA) continued the concerted promotion of PPPs of the Deauville Partnership.

Most of the donor countries and IFIs in the Deauville Partnership are also involved with the G20 CwA. The G20 CwA was initiated under the German G20 Presidency (March 2017) to promote private investment in Africa, including in infrastructure.⁶⁴ They recommend "accelerat[ing] the operationalisation of PPPs" by publishing a pipeline of priority projects where private investment accounts for at least 51 per cent of the total, to reinforce the institutional capacity of the PPP Unit and create an online platform for PPP projects.⁶⁵ In 2018, they also recommended that the Council of Ministers should identify and adopt a proposed law to amend the current legislative framework in order to introduce financial instruments for PPPs (contracts, risk mitigation, etc.) by 2020. The CwA identifies a deadline and a 'partner' – IFC, EBRD, WBG, AfDB – for each recommendation.⁶⁶

d. The Tunisian parliament was reluctant to pass the law

It was apparent that the law was not drafted by the Tunisian Government. As soon as the law was introduced to the Constituent National Assembly (ANC) in October 2012, linguistic inconsistencies were noted. Some observers concluded that this bill was a translation, given the legal terms used.⁶⁷ Indeed, the Tunisian government and the European Union had chosen French lawyer Xavier Ghelber⁶⁸ "to adapt the current law on concessions as required by the donors", namely the European Union, the WBG and the AfDB.

There was some reluctance to pass the law in the Tunisian parliament. The proposal was drawn up under the transitional government in 2011 and submitted to the Tunisian parliament in October 2012. But discussions delayed the adoption, while the reform's success was a donor condition to grant budgetary support to Tunisia.⁶⁹ It was therefore envisaged to bypass the democratically elected legislative assembly.⁷⁰

- **Two decrees were issued in 2013 by the Government without parliamentary approval,**⁷¹ setting out the conditions and procedures for granting user-pays concessions and creating a unit to monitor user-pays concessions within the Presidency.⁷²
- **The adoption of the 2019 transversal law bypassed the Parliament Finance Committee.** Some investors and donors were not satisfied with the adopted law, as the Tunisian Parliament Finance Committee had excluded, for example, the "operation of infrastructure" from the scope of the law. This issue was fixed by the "Business Climate Improvement Act" of 29 April 2019, which amended the laws on PPPs, without any discussion in the country's own Finance Committee.⁷³

1.2.3. Does the new PPP law protect Tunisian people's interests from risky PPPs?

As demonstrated above, international donors and creditors exerted undue influence on Tunisia's legislative and regulatory framework to make sure the new PPP law was adopted. But the resulting law has many loopholes and does not address the many challenges of PPPs already highlighted in extensive literature:⁷⁴

Transparency: PPP contract negotiations are extremely complex and are usually conducted under "commercial information confidentiality".⁷⁵ This lack of transparency can significantly increase the **risk of corruption** and reduce the **capacity of governments to regulate in the public interest**.⁷⁶ Addressing this problem would allow for a better assessment of fiscal risks.⁷⁷

Stakeholder engagement: PPPs are a popular way to finance 'mega-infrastructure projects'. But dams, highways, large-scale plantations, pipelines and carbon-intensive energy infrastructure can wreck natural habitats, displace communities and destroy natural resources such as lakes and rivers. As a result, PPPs can lead to forced displacement, repression and other abuses of local communities and indigenous peoples. Engaging with local communities and conducting impact assessments throughout the project's lifecycle is one way to mitigate these risks.

Dispute settlement: PPP contracts tend to favour **opaque and unaccountable international adjudication**. By favouring international arbitration that lacks transparency, over local or national courts, and by not taking the disadvantages associated with these ISDS systems into account, **PPPs can threaten democracy at the local level**.⁷⁸

Fiscal impact: In most cases, PPPs are the most expensive financing method for projects.⁷⁹ **The fiscal risks of PPPs have been widely acknowledged** by international institutions,⁸⁰ Courts of Auditors, CSOs and researchers. The fiscal costs are not simply the result of explicit liabilities (such as compensation mechanisms for possible income shortfalls) as expressed in contractual provisions and mentioned in the decree, but also potential guarantees and other contingent liabilities. Examples include payments required from governments in certain circumstances, such as in the case of a devaluation of the national currency, or in the event that demand falls below a specified threshold.

Below we assess whether the new Tunisian law addresses these challenges and ensures a fair sharing of risk regarding direct (cost of capital, rates of return, construction costs) and indirect costs (transaction, renegotiation, limited competition)⁸¹ between the private and public partners. Tunisian law rightly mentions the "principle of contractual balance through risk sharing in the contract between the public entity and the private partner".⁸² In our assessment we stress the following points:

- **The level of transparency and public disclosure is not satisfactory**

The new Tunisian (government-pays) PPP law standards for disclosure and transparency are very low. The 2015 law provided for greater transparency⁸³ in awarding and implementing (government-pays) PPP projects to limit conflicts of interest, corruption or unethical behaviour risks. This was reflected in new requirements such as publishing decisions to the partnership contract by the public entity⁸⁴ or control and audit reports.⁸⁵ But publications by the general (government-pays) PPP authority are limited to "an extract of the signed partnership contract" on their website.⁸⁶ The "registry of real rights encumbering buildings, works and fixed equipment built under public-private partnership contracts" is public but provides very limited information.

Meanwhile, the Tunisian PPP unit (IGPPP) website has only a few numbers and photos of existing projects and no impact assessment for projects that are in the pipeline. This lack of transparency is reinforced by strong confidentiality requirements for civil servants involved in PPPs.⁸⁷ Full transparency – which would imply the full disclosure of impact assessments, contractual documents, etc. – is not guaranteed and so prevents citizens and local communities from engaging with the public authorities. Moreover, the annual report on the implementation of PPPs, which the government must submit to the assembly of people's representatives each year, is not published. Nor is the report annexed to the budget, which gives an overview of all (government-pays) PPP commitments in the entire public sector.⁸⁸ The law is also not in line with the General Principles of Open Procurement.⁸⁹ This is a particularly sensitive issue in a country going through a democratic transition process, where fighting corruption has been at the heart of the people's demands and the costs of poor **transparency** have been widely recognised.

- **Community consultation and stakeholder engagement are not properly addressed**

Local community engagement is not foreseen by the new (government-pays) PPP law. Even though it would improve PPP development outcomes (government-pays), simultaneously creating a smoother operating environment for all parties, including the government and the private sector.⁹⁰ Experience has shown that the lack of local community consultation is a problem for democratic accountability.⁹¹ This consultation is neither included in the new law, its decrees nor in the preliminary phase of the various technical, financial, economic, environmental and social impacts, including gender impact. The OECD already pointed out this shortcoming in 2016, along with the need to “broaden the scope and coverage of existing public participation instruments in Tunisia so that civil society can be appropriately involved in all phases of (government-pays) PPP preparation and monitoring and communicate with private providers in a regular and effective manner”.⁹²

- **The development impact is not assessed throughout the project lifecycle**

The new (government-pays) PPP law is strong on assessing the development impact in the preparatory phase of the project, but not through the whole of its life cycle. In the phase prior to submitting the project, the new legal framework ensures that the public authority conducts legal, economic, financial, social, technical and environmental impact studies, including gender impact, as well as the elements that justify using a (government-pays) PPP rather than another contractual form, particularly regarding the public entity’s financial situation and whether the necessary funds to implement it are available.⁹³ In terms of sustainability and human development criteria, the law foresees that the call for tenders shall mention the minimum percentage of activities covered by the partnership contract, which the private partner will be required to award to small and medium-sized enterprises in Tunisia via subcontracts,⁹⁴ as well as the percentage of products used that are produced at national level, and the response of the offer to the requirements of sustainable development.⁹⁵ However, once the preliminary study phase has been completed, these criteria do not seem to be regularly evaluated.

- **2019 amendments pave the way to additional risks**

The 2019 overarching law raises concerns as it removes requirements related to administrative licences necessary for the implementation of the partnership contract concluded with it. It could pave the way for environmental authorisation exemptions by the Tunisian environmental agencies,⁹⁶ thus suppressing important environmental safeguards.

- **Fiscal risks are not adequately taken into account**

The new law requires the fiscal impact of (government-pays) PPPs to be evaluated when this type of contract is chosen. However, it does not require either the methodology, the modalities or the criteria for the comparative cost/benefits analysis, to determine whether it is more economically and socially advantageous to use a PPP rather than a public contract.⁹⁷ The fiscal risks should also be subject to close monitoring throughout the lifecycle. **Lack of competition and excessive emphasis on unsolicited partnerships both raise concerns about governance.**

In the new Tunisian legal framework, competition is the rule,⁹⁸ but the law also allows competitive dialogue,⁹⁹ restricted tendering,¹⁰⁰ direct negotiation and ‘unsolicited partnerships’,¹⁰¹ which undermine the competitive process. PPPs entail many different fiscal risks, through both direct and indirect costs. Among the indirect costs, competition is a key issue. Indeed, few companies have the capacity to apply for mega infrastructure projects. This reduces governments’ choice and competition in tendering processes.¹⁰² Limited competition among companies can increase the final project cost and increase the opportunities for corrupt behaviour.¹⁰³ In addition, limited competition creates increased risk for the public sector because companies are large and powerful enough to take on the regulators in the case of conflict and can force contracts to be renegotiated on more favourable terms.

Moreover, PPP costs are accounted for off-balance sheet, which means that they do not appear in the national budget balance sheet and therefore are not counted as debt. Meanwhile the government is supposed to ensure that “any PPP project is affordable and that the overall budget allocation for investment is sustainable”,¹⁰⁴ especially given Tunisia’s fiscal pressures¹⁰⁵ and the absence of a sustained growth path in Tunisia.¹⁰⁶ Indeed, the fact that PPPs can be accounted for off-budget, combined with international pressures to facilitate foreign direct investment, can create fiscal sustainability risks for the government. Without a systematic approach to cost identification, allowing a consolidated view of the risks combined with the absence of a published balance sheet, presenting all assets and liabilities from the Tunisian general government, “the future PPP regime will [continue to] be a source of risk for public finances in the long term” (IMF).¹⁰⁷ Similarly, in the event of bankruptcy, the government may have to launch a rescue plan at its own expense to ensure the continuity of the public service, as was the case in 2018 with the collapse of the construction giant Carillion.¹⁰⁸ Detailed analysis of contracts and their obligations to identify¹⁰⁹ the full fiscal costs, their statistical and budgetary treatment, are recommended to allow current and potential costs (also called contingent liabilities) to be considered in debt calculations and more specifically in the Tunisian medium-term expenditure planning (MTEF) framework.

The latest version of the law provides major incentives for unsolicited partnerships. This paves the way for tied aid, which is foreign aid that must be spent in the country providing the aid (the donor country) – for example, by awarding the PPP contract subsidised by aid to a multinational of the donor country. It favours projects that are not necessarily in line with its development plan

but in line with donor countries companies' expectations. It also weakens the rule of good governance and the principles of procedural transparency, equality and equivalence of opportunities, enshrined in Article 5 of the law. That is why the delicate issue of spontaneous proposals has been subject to several revisions in the different versions of the law.

The new Tunisian legal framework provided that the investor may submit an unsolicited PPP to the public entity for the implementation of a project, but with three safeguards: 1) the company should present a 'preliminary opportunity study of the project'; 2) the public person may accept, reject or amend it; and more importantly 3) the preferential margin for the private initiator of an unsolicited partnership in the competitive bidding process was limited to 2 per cent. However, the new 2019 law stipulates that, in the event of recourse to a call for tenders preceded by an unsolicited tender, the tenderer carrying the tender shall automatically be included in the shortlist after the pre-qualification phase and shall be granted a margin of preference at the tender evaluation stage of up to 20 per cent. This has the result of affecting the final decision, which should be based on the best value for money and development outcome.

This is to be understood in a global context where more than one sixth of development aid (ODA) is tied. As a result, in 2016, nearly US\$25 million was officially reported as conditional aid – more than half of the total ODA budget for health, population and water. Tunisia does not seem to have escaped unscathed. The Rades C station under construction received a US\$1 million ODA loan from Japan, while a joint venture between Mitsubishi Hitachi Power Systems and Sumitomo Corporation won the contract to build the Rades C plant.

- **Renegotiation and dispute settlement create uncertainty for the public sector**

The law provides the parties with recourse to arbitration, in the event of a dispute over the contract, in the absence of friendly settlement and in the event that the conciliation process fails.¹¹⁰ Moreover, as the law is not clear on which documents are legally binding, it creates legal uncertainty in case of litigation.

Tunisia has signed more than 60 bilateral investment treaties and has already been a respondent in four International Centre for Settlement of Investment Disputes (ICSID) court cases. Three have reached closure:¹¹¹ two were discontinued and one was lost by Tunisia. One ongoing case by a Dutch investor (ABCI Investments v. Tunisia) remains open.¹¹² The arbitration case Tunisia lost concerned state guarantees in a concession contract, but the case was not fully disclosed, in particular regarding the financial information.

Arbitration has already cost states trying to regulate their economies hundreds of millions of dollars.¹¹³ It also poses a problem for democratic control and respect for the rule of law, as investors could demand compensation for the fact that the Tunisian government has legislated on worker protection, health or environmental protection.¹¹⁴

In summary, the global promotion of PPPs by IFIs such as the World Bank and IMF has exerted undue external influence over the domestic regulatory framework in Tunisia. The new PPP law has been introduced against the backdrop of criticism from elected national parliamentarians and civil society organisations and is riddled with loopholes. Our analysis, which is bolstered by findings from the case study laid out in Chapter 2, demonstrates that the new law is weak and problematic and does not work for the good of Tunisia's population. In order to make sure that the legal framework is fit for purpose in Tunisia, the role of the national parliament and civil society needs to be strengthened as a matter of urgency and there needs to be greater transparency and oversight of PPP contracts going forward to make sure that these national projects are operating in the best interest of the people they are supposed to serve.

2. New projects and old problems? Lessons learned from Tunisia

This chapter looks at the poor track record of delivering PPP projects in the public interest in Tunisia and illustrates the undue influence of international donors by looking in detail at one specific case study – the Enfidha-Monastir airports concession.

2.1 Projects in the pipeline

Once the law and decrees were adopted, donors have continued to promote implementation intensively through loan conditionality, conferences, technical assistance and the promotion of specific projects. The IMF used loan conditionality, as loan disbursements are linked to changes in PPP laws¹¹⁵ and PPP implementation. This conditionality was combined with soft influence through technical assistance, for example, by preparing a pipeline of projects for the “Tunisia PPP 2018” high-level conference conveying government officials, donor countries and businesses. EBRD, IFC, IBRD, AfDB¹¹⁶ and French ministries¹¹⁷ also provided technical assistance. For example, a consultancy with ONAS aimed to increase the private sector’s share in water management from 25 per cent to 50 per cent.¹¹⁸ The related pilot project was part of the MENA Transition Fund’s technical assistance.¹¹⁹

This influence resulted in the government’s ambitious project pipeline but has not led to any signed contracts so far. The Tunisian development plan clarified the intentions and infrastructure investments programming for the 2016–2020 period. By mobilising US\$60 billion in investments over five years – 60 per cent of which would come from the private sector from Asia, Europe and the United States – the Tunisian development plan aimed to achieve a growth rate of at least 4 per cent¹²⁰ and to reduce the unemployment rate to 12 per cent by 2020.¹²¹ When it was launched, the Tunisian development plan was expected to generate more than 50 investment projects, including 12 PPPs in several sectors.¹²² In 2018, the government announced 34 megaprojects totalling US\$9 billion (22.2 billion dinars) – a third of Tunisia’s national income,¹²³ 90 per cent of these are reported to be “under development”¹²⁴ in addition to the two pilot projects. However, it should be noted that:

- No infrastructure (government-pays) contract has been signed so far under the new (government-pays) PPP law.¹²⁵
- The eight calls for tenders published between 2017 and 2019 fall under the old concession regime and do not appear in the 2016–2020 development plan.

These developments therefore throw into question the ability of the (government-pays) PPP legislative frameworks, promoted by the World Bank, to successfully foster investment. It unfortunately confirms criticisms expressed when the law was adopted by elected national parliament representatives regarding Tunisia’s ability to achieve its objectives.¹²⁶ Rather than going down, the national unemployment rate reached 15.5 per cent in 2018.¹²⁷

2.2 PPP project pipeline not aligned with Tunisia’s development plan

Most of the government-pays PPP projects in the pipeline and recently signed or foreseen (user-pays) concessions are not in line with the Tunisian development plan. First, projects were identified by the World Bank in April 2016,¹²⁸ without prior impact assessments and before the adoption of the Tunisian development plan in July 2016. This does not respect Tunisia’s democratic ownership of its development plan. Second, only two government-pays PPPs in the pipeline today (the Sfax metro and the Gabes-Medenine railway line) were initially included in Tunisia’s 2016–2020 development plan (including 12 PPP projects).¹²⁹ Only one user-pays PPP project in the pipeline today was included in the initial plan: the Enfidha deep water port,¹³⁰ a project that had already failed in the past¹³¹ due to land expropriation and state compensation issues.¹³² Looking at the user-pays concessions granted since 2017, none appeared in the initial 2016–2020 development plan.

Desperate to attract foreign investments, Tunisia seems ready to engage in megaprojects that are not included in the 2016–2020 plan or in the 2018 project selection.¹³³

This trend seems to be confirmed by looking at three Memorandums of Understanding signed with China in 2019. These include new projects such as a metro in Nabeul, or a study of the motorway project between Boussalem and the Algerian border, neither of which was originally included in the development plan priorities regarding PPPs.¹³⁴ Similarly, the user-pays concession for the treatment and recovery of household and similar waste and technical landfill for the Province of Gabès, whose call for tenders was open between December 2018 to February 2019, did not appear on the list of projects presented to the press in the autumn of 2018. Moreover, the project is financed by a loan from the German investment bank KfW to the Tunisian government, which imposes its own rules for the award of supply, works and associated service contracts within the framework of financial cooperation with partner countries in these projects, despite the new legislative framework.¹³⁵

Thus, the spectre of uncontrolled development, of prioritising projects that benefit the private sector rather than human development and of seeing project choices dictated by donors, now hangs over Tunisia. The country urgently needs to invest in its infrastructure, but it also needs to prioritise its investments and control its debt, as well as making sure its people are getting access to the services they deserve.

2.3 The failure of the Enfidha-Monastir airport

The Enfidha airport is the first major infrastructure project or ‘megaproject’ carried out under a PPP in Tunisia and the first international airport operated by a private company in the Northern African region.¹³⁶ This project was launched in 2003 and began operating in 2009 as a BOT concession (see Table 1 for more details). We chose to look more closely at this project not only because it is the only major PPP project completed to date, but also because the period since its inception – ten years – has provided a time-period to study the challenges related to the implementation of PPPs in Tunisia and to draw lessons for managing future PPP projects. Last but not least, this is the only WBG-supported PPP project in Tunisia. The project to build the new airport in Enfidha resulted from the 1998 strategic study for the development of the airport master plan for 2020. Indeed, the end of this master plan stressed the need to build a new airport given that capacity at the eight airports on Tunisian territory (19 million passengers) was soon to be reached.¹³⁷ In 2003, Tunisia saw 20 million passengers passing through its airports.

The contract’s preparation and conclusion took two years, from 2005 to 2007. The BOT Enfidha-Monastir concession was signed on 18 May 2007 between TAV Tunisia, a wholly-owned subsidiary of TAV Airports Holding, and the Ministry of State Lands and Land Affairs, the licensing authority, until 2047.

Table 1: TAV Tunisia liabilities per airport

	Enfidha Airport	Monastir Airport
Type of contract	BOT Concession	BOT Concession
TAV legal obligations under the contract	Designing Construction Maintenance Repair and maintenance Improvement Exploitation Public service management Pay an annual concession fee to the Tunisian State	Maintenance Repair and maintenance Improvement Renovation Exploitation Public service management Pay an annual concession fee to the Tunisian State
Duration	40 years	40 years

Source: TAV Airports Annual Report 2012

- **A questionable PPP from the start**

There is a lack of transparency around this PPP. We based the case study on studies and annual reports of the concessionaire (TAV airports) from 2007 to 2018, as well as a series of interviews with the key stakeholders involved in this project. This included the Ministry of Transport’s Air Transport Department¹³⁸ and the General Authority for Public Private Partnerships.¹³⁹ The Ministry of Finance did not respond to our request for an interview. The request for access to information submitted to the Tunisian authorities to obtain a copy of the PPP contract for this project was refused on the grounds of confidentiality. Our request to the EIB allowed access to parts of the financing contract between TAV and IFC.

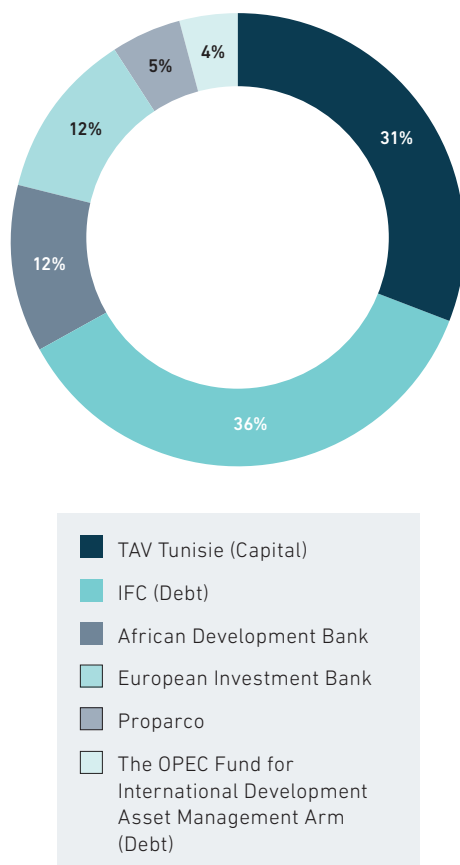
The Enfidha airport was not considered profitable in the first place. The feasibility studies commissioned by the Tunisian state concluded it was necessary to use a PPP, given that the high cost could not be solely financed by the Tunisian state, as initially envisaged. At that time, the total estimated cost of the project was €2 billion. Additionally, the project’s technical study commissioned by the Tunisian state concluded it was necessary to combine both the construction and management of the new Enfidha airport with the management of Monastir International Airport (located 65km from Enfidha-Hammamet) to help with its economic sustainability.

The selection process, based on overestimated revenue, was also questionable. TAV Airports won the tender to carry out the project in March 2007, having proposed a higher fee to be paid by the company to the public entity. There was suspected corruption involved in the final choice of concessionaire in the Enfidha-Monastir’s concession decision-making process. Nabil Chettaoui, former Tunisair CEO, launched the Enfidha airport PPP, and granted it to the TAV on behalf of Belhassen Trabelsi, brother-in-law of former President Ben Ali with a 5 per cent commission. He was reportedly promoted to President and Chief Executive Officer of Tunisair on 1 February 2007, following these negotiations for services rendered.¹⁴⁰ However, the Tunisian judiciary has not yet been able to close the court case as B. Trabelsi has been arrested in France but not yet extradited to Tunisia.

The construction was slightly delayed. Construction of Enfidha began in July 2007 and was completed in December 2009 with three months’ delay. The first flight landed in December 2009¹⁴¹ and TAV Tunisia began operating Monastir airport on 1 January 2008.¹⁴²

The overestimated demand made the offer attractive during the bidding process but economically unsustainable in the mid-term. TAV Tunisia must pay a variable annual concession fee to the Tunisian state, which has been set as a percentage of the annual revenues of the two airports and which will increase at a rate between 11 per cent and 26 per cent of annual revenues.¹⁴³ At the time of the bid, additional capacity was needed: the Monastir airport was undersized (theoretical capacity of 3.5 million passengers) while facing a growing demand (4.3 million international passengers in 2007). The stated objective of the Enfidha concession was not only to face this demand, but also to become one of the main air transport hubs in North Africa and to reach a flow of 7 million passengers per year, with the possibility of reaching 22 million passengers in the long run.¹⁴⁴ TAV Tunisia has planned to create 2,200 direct jobs during the construction phase and 1,200 direct jobs during the operating phase. The operation of Monastir airport was also granted to TAV Tunisia SA in order to ensure the project's economic profitability.

Figure 4: Financing structure of the Enfidha project €560 million (in %)



Source: Observatoire Tunisien de l'Économie (OTE)

The IFIs that promote PPPs were involved in the project.

The construction of Enfidha airport cost €560 million. TAV Tunisia financed the project mainly through debt (69 per cent of the project financing, see Figure 4) and equity (up to 31 per cent), which was the minimum required by the Tunisian state:

- The IFC¹⁴⁵ 15 per cent equity stake in TAV Tunisia in June 2009 worth €28 million equity investment;¹⁴⁶ a full financing package of **€398 million**, including direct long-term senior and subordinated loans of €135 million;¹⁴⁷ and a €263 million syndicated loan underwritten by ABN Amro, Société Générale and Standard Bank in 2008.¹⁴⁸
- The AfDB – **€70 million** loan in 2009.¹⁴⁹
- The EIB – **€70 million** in Enfidha Airport in 2009 but this loan defaulted in 2016 and 2017.
- Proparco (French Development Finance Institution) – **€30 million** loan in 2009.¹⁵⁰
- OPEC Fund for International Development (OFID)¹⁵¹ – **US\$22 million**.¹⁵²

TAV Tunisia received an **€11 million** subsidy for this project from the public sector. IFIs are also the main promoters of PPPs in Tunisia, which would explain their significant financial support in this project. Additionally in 2009, TAV Tunisia sold 15 per cent of its shares to the IFC.

A financially unsustainable project

In 2009, the project began operating in a difficult economic context. The global economic crisis in 2008, followed by the Tunisian revolution in 2010–2011, impacted on tourism to Tunisia. This is all the more important since Enfidha is an airport that mainly hosts charter flights for tourists travelling with tour operators, making it extremely dependent on tourism. However, these difficulties were already flagged in the technical and feasibility studies prior to the launch of the Tunisian state's call for tender. This was the reason for the construction and operation of the new Enfidha airport and the operation of Monastir airport being combined to help with its economic sustainability.

Figure 5: Tourist flows at Tunisian airports from 2007 to 2018

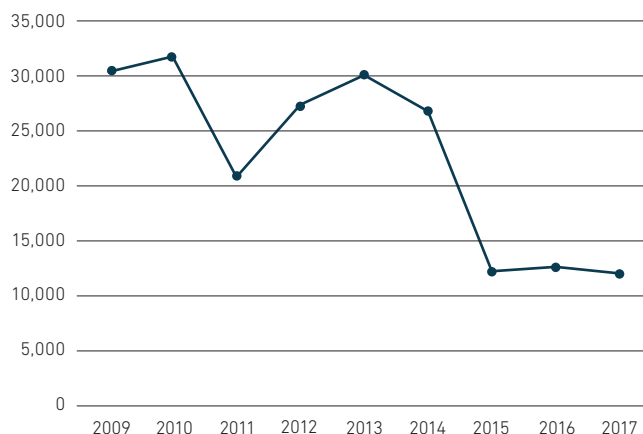
Source: OACA, Ministry of Tourism; TAV Airports Annual Reports, 2007 to 2018



The traffic forecasts were overestimated when the technical and financial offers were submitted and the financial offer was based on these. Thus, when analysing the evolution of tourist flows (in millions of passengers) since the two airports opened, the actual flows are well below the estimates submitted in the financial offer. As we see in Figure 5, since 2007, Tunisia has welcomed as many as 7 million passengers per year at all eight airports. Since 2009, the flow of tourists in Enfidha-Monastir airports (see Figure 5) has not exceeded 4 million and is generally on a downward trajectory. These figures are being discussed in the renegotiation process.¹⁵³ Since 2015, the year in which deadly attacks took place in tourist hotspots Sousse and Le Bardo, passenger numbers have fluctuated between 1.4 and 2.5 million per year to Enfidha and Monastir airports.¹⁵⁴ The number of commercial flights has decreased from 30 million in 2009 to 12 million in 2017 (see Figure 6).

Figure 6: Number of commercial flights to Enfidha-Monastir airports

Source: TAV Airports Annual Reports, 2007 to 2018

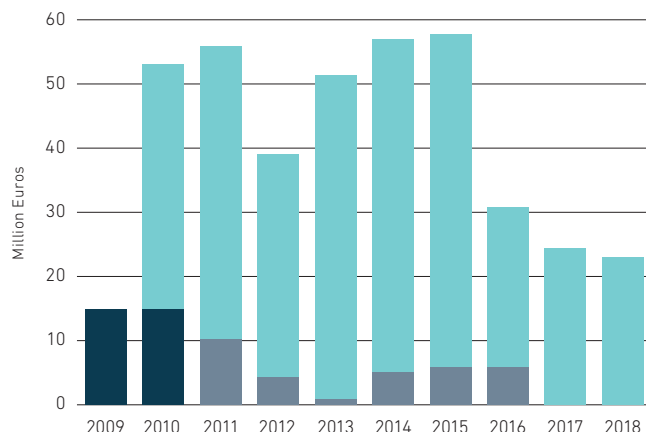


In 2010, TAV Tunisia began negotiations with the Tunisian state to review the annual concession fee due by TAV, given that external factors had disrupted the project's economic sustainability, leading to an imbalance in the contract (see Figure 7). TAV Tunisia asked the Tunisian state to share the damage and adopt new adjustments in risk sharing by activating Article 44 of the contract. This stipulates that, in the event of an unforeseeable event external to the parties and which causes a disruption in the financial equilibrium of the concession, both parties shall take the necessary measures to restore the conditions needed for the balance of the contract, such as, for example, the suspension or renegotiation of the fee.¹⁵⁵

Figure 7: Evolution of TAV Tunisia's revenues (million euros) and evolution of the amount of annual concession fees due to the Tunisian state (million euros)

Source: TAV Airports Annual Reports, 2008 to 2018

■ TAV Tunisia's revenues
 ■ Fees suspended
 ■ Fees paid to the State of Tunisia



The suspension of fee payments has not improved the project's financial balance and, since 2016, TAV Tunisia has been in deficit, with revenues dropping by more than 50 per cent (see Figure 7). The flow of tourists resumed tentatively in 2018 with 2.5 million passengers (Figure 5), but this is far from the 7 million estimated by the TAV in its traffic forecasts and financial offer.

TAV no longer pays the fees. According to the contract,¹⁵⁶ TAV Tunisia has a 40-year concession period and the annual concession fee is paid on the basis of the annual revenues of Monastir and Enfidha airports, which is calculated according to the annual turnover. However, as TAV's revenues have fallen since 2010, TAV Tunisia has been renegotiating with the Tunisian state to request a revision of the contract, the business plan and the annual concession fee. In addition, the contract was suspended and no concession fees have been paid since 2010.

Threatened with costly ISDS procedures, Tunisia gave up on most of the TAV fees in 2012-2013. An Intergovernmental Commission has been set up to oversee the ongoing negotiations with the TAV, which brings together representatives from all ministries, including the First Ministry, the Ministries of Finance, Transport and State Affairs. Negotiations are taking place between the Tunisian state, TAV Tunisia and also the main donors of the project (in this case, the WBG and the AfDB). Several rounds have already been completed and the Tunisian state came close to bringing the dispute to the International Centre for Settlement of Investment Disputes (ICSID), with TAV Tunisia having activated Article 44 of the contract as well as the Bilateral Investment Treaty between Tunisia and Turkey.¹⁵⁷ At the close of the 2010 and 2011 rounds of negotiations, the royalty payments from 2010 onwards were negotiated downwards and postponed. Two new amendments were signed in 2012 and 2013 between TAV and the Ministry of Public Domain, which was the granting authority at that time. On the basis of these negotiations:¹⁵⁸

- The concession fee payable for Enfidha International Airport for the year 2010, expiring on 31 January 2013, was reduced and the payment deferred.
- The concession fees payable were reduced by €4.3 million in 2011, €5.192 million in 2012, €5.788 million in 2013 and €6.428 million in 2014, after which they were suspended and deferred pending the outcome of the ongoing negotiations.

Negotiations are still ongoing between TAV Tunisia, the Tunisian state and donors to reach a final agreement.

Following the fatal attacks in 2015, tourist flow through the two airports fell by 58 per cent. During that same year, TAV Tunisia once again entered into negotiations with the Tunisian state and its lenders under the principle of the financial equilibrium of the contract with a view to a possible restructuring aimed at restoring the concession's economic balance. Negotiations have resumed and the suspension of fees since 2010 has been maintained to date. A financial and technical audit of the Enfidha-Monastir concession was commissioned by the Tunisian state and carried out by Mazars in 2014/2015. The conclusions of this audit have not been made public, but they have been the subject of several different interpretations by both parties.

TAV is still threatening Tunisia with filing a request for arbitration.

TAV Tunisia is currently pursuing negotiations with the Tunisian authorities and its lenders with a view to reaching an agreement on restructuring its concession and financing. Negotiations are at an advanced stage and an agreement covering the entire period from 2010 to 2019, during which no concession fees or debt have been paid, is due to be agreed and signed by the parties.¹⁵⁹ According to its annual reports, TAV Tunisia is in great financial difficulty and its long-term financial debts amount to €1.2 billion. However, arbitration proceedings or even terminating the contract are not ruled out if the overall project fails: "Although management believes that it is very likely the standstill agreement will be signed in the near future, in the event that a common solution cannot be reached in due course, TAV Tunisia is exposed to material legal and financial consequences including, but not limited to, the use of its legal rights including the filing of a request for arbitration for the rebalancing of the concession contract and, if unable to do so, the termination of the concession contract."¹⁶⁰

If these proceedings are concluded in favour of TAV then this would raise a question mark over the future of PPPs and the involvement of donors, in particular the World Bank.

This PPP was supposed to have served as a model for other PPPs in Tunisia and the broader region.¹⁶¹ According to IFC, its portfolio in Tunisia has experienced difficulties due to the TAV Tunisia project, which has been affected by the slowdown in tourism resulting from the financial crisis and events in 2015. Since then, the IFC has tried to rebalance this concession "in a way that is acceptable to the various stakeholders" because of the "crucial role that this PPP plays for the future of PPP programmes and overall investor confidence in Tunisia."¹⁶²

- **Problems encountered in the concession's management**

This research found that the concession PPP was mismanaged from the start:

- *Mismanagement in monitoring the concession contract*

The Tunisian state failed to monitor the Enfidha-Monastir concession properly. Two major follow-up problems were raised during our interviews with the Tunisian PPP unit (IGPP) and the Ministry of Transport:

There is a lack of required skills and competences on the public authority side. Indeed, the licensing authority that signed the contract with the TAV, namely the Ministry of State Domains and Land Affairs, did not have the specific technical skills required for monitoring purposes. The Ministry of State Domain was designated as the contracting authority and as TAV Tunisia's counterpart, because they are responsible for the public domain and the land operated by TAV. However, this ministry does not have the necessary skills to monitor the PPP, unlike the Ministry of Transport, which lacks the necessary resources. Current negotiations also focus on changing the granting authority to transfer monitoring of the concession to the Ministry of Transport. The most appropriate licensing authority, which also has the necessary expertise, is the Office de l'Aviation Civile et des Aéroports (OACA). However, the latter is also an airport operator, which raises the issue of conflict of interest.¹⁶³

There was a lack of dedicated resources. Indeed, the various interviews we conducted with the Tunisian authorities also highlighted the lack of skills and monitoring tools for PPPs. These are new financial arrangements and their contracts are extremely complex to manage and monitor, requiring specific expertise that is still lacking within the Tunisian administration. Monitoring them requires the use of additional human and financial resources, namely specialised firms. In the case of the Enfidha concession, neither the Ministry of State Domains, the Ministry of Transport nor the IGPP used any real monitoring tools or dedicated human resources, which is a real problem.

- *Costly renegotiations for the public purse*

While the provisions in the Enfidha-Monastir concession contract cited by the Deputy Director of Air Transport state the private partner should assume most of the risks, the state is also responsible for the financial balance of the contract, according to the law.¹⁶⁴ The risk sharing conditions and the contract's notion of financial equilibrium are unclear and open to different interpretation depending on the licensor or concessionaire's perspective. It presents a significant challenge that the state is also responsible for the general financial equilibrium of the contract, but without specifying the restrictive conditions under which these risks are assumed. The state can either assume high-cost risks or, as in the case of Enfidha airport, drastically reduce the concession fees collected.

- *Lessons learned from the Enfidha-Monastir concession*

The Enfidha-Monastir concession case has enabled the concession authorities to experience the challenges of managing a major PPP infrastructure project and allowed us to learn from the issues raised. Given that it is failing, it is no longer mentioned in World Bank PPP literature in the MENA region as a model project.¹⁶⁵

A. Ensuring value for money and a sustainable contractual business model

The technical and financial offer should be subject to particular attention when studying the bidders' individual offers. Indeed, the amount of the proposed annual concession fee is often one of the determining criteria for selecting the bidder in addition to the technical criteria. Thus, the bidder proposing the highest annual fee is, in most cases, the one who wins the call for tenders. This creates an incentive for the bidder to present an overly optimistic scenario during the bidding process and to renegotiate the contract later on. Moreover, the public entity is legally responsible for the financial equilibrium of the project, according to the law. It is essential to counterbalance this incentive by ensuring that the private concessionaire subsequently bears the risks related to the business model proposed in the bid, which implies a change in law and particular attention to the drafting of the contract.

The contract's provisions should be drafted in a concise and clear manner, especially on risk sharing, and all bidding documents should be included in the contract to avoid divergent interpretations. Renegotiation is all the more risky for the state because the private partner has several treaties and legal texts in its favour, such as the Bilateral Investment Treaties, which protect private investors to the detriment of the state. The outcome of renegotiations often leads to a risk sharing arrangement whereby the state assumes a larger share or is forced to revise its fees collection rights downwards.

B. Better monitoring: the need for project dedicated human resources

The absence of a dedicated entity for monitoring and controlling the Enfidha concession was a major failure on the part of the Tunisian state. The inter-ministerial commission set up a joint commission, which brings together several senior executives from different ministries. However, this commission remains insufficient. It is necessary to have an entity dedicated to monitoring and control for each PPP project, whether through a specialised firm or a dedicated public entity. The ongoing negotiations should remedy this problem by amending the competent licensing authority in the air transportation field (namely the Ministry of Transport and not the Ministry of State Domains) on the one hand, and the creation of an entity dedicated to monitoring the project on the other hand. Both have been raised for the Enfidha-Monastir concession.

Managing this type of PPP project requires dedicated skills, both in the ministry concerned and within the PPP unit. The Enfidha airport case has shown that the concession represents a very complex and cumbersome management structure and can be costly for the state. That is why it must be restricted to certain specific cases and public services management should be managed and funded through concessions. The dedicated entity should be responsible for follow-up after the call for tenders, the choice of the concessionaire as well as the project follow-up.

The World Bank and Tunisian authorities have not learned the lessons from this floundering PPP project. Unfortunately, the overarching law adopted in April 2019 does not take into account these lessons learned. Worse still, the scope of concessions has been extended to local authorities, and administrative procedures have been simplified for small and large concession projects. The PPP unit is still understaffed and lacks expertise. The law still puts all the financial risks on the public purse and includes an article on arbitration. There is nothing in the law on renegotiations and the bidding offers are still not legally binding as part of the contracts. The law does not allow room for transparency, thus paving the way for corruption.

The World Bank Group continues to recommend the extensive use of PPPs.¹⁶⁶ In fact, a new airport project is in the pipeline of projects within the Ministry of Transport. Feasibility studies are currently underway for the construction of a new airport, Airport City, to replace Tunis-Carthage airport and other options are also under consideration, including renovating the actual Tunisian airport. The national authorities should learn the lessons from the Enfidha airport concession to make sure they put in place safeguards to prevent the catastrophic failure of another major PPP project and ensure these megaprojects fit with a national development plan.

The WBG continues to recommend the extensive use of PPPs. In fact, a new airport project is in the pipeline.

3. Conclusions and recommendations

PPPs have been widely promoted by IFIs in Tunisia, and indeed around the world, as a way to attract private investment to build major infrastructure projects. As part of this, the national legal framework has been recently reformed in Tunisia, under the influence of the World Bank Group and other IFIs and donors. However, as this research shows, the new framework is centred on investors' interests and places too much risk on the public purse. This has been illustrated by the failure of the most expensive PPP in Tunisia: the Enfidha airport.

As this report is published, the 2019 new law has just been passed and PPP implementation remains part of IMF and WBG conditionality,¹⁶⁷ as well as on the agendas of the G20 Compact with Africa (CwA) and MENA transition fund for Tunisia. **The World Bank Group continues to recommend the extensive use of PPPs for infrastructure in the MENA region, especially for airports.**¹⁶⁸ The pressure to use public money to finance PPP infrastructure projects that have not been approved in the Tunisian development plan remains strong, while Tunisia needs support to implement policies to address poverty and inequalities. Indeed, significant inequality still exists in the labour market, with high unemployment, especially among women and young people (25.22 per cent), as well as widespread informal and precarious employment.¹⁶⁹ Gender gaps are significant, as women often have less skilled jobs and employment-to-population rates are at least three times lower for women than for men.¹⁷⁰ Unemployment rates for people with a university diploma reached 30.5 per cent in 2016, and even higher for women (40.4 per cent).¹⁷¹ There are also significant regional inequalities in terms of living standards and employment¹⁷² – in the North-West and Centre-West rural areas, poverty rates are reaching high levels of 28.4 per cent and 30.8 per cent respectively.¹⁷³

While in the short term, PPPs may appear cheaper than traditional public investment, as in the case of the Enfidha-Monastir airport, over time they can turn out to be more expensive and undermine fiscal sustainability, thus shrinking the national fiscal space and preventing future investment in finance policies to reduce inequalities, including regional unbalances and gender gap. Beyond the costs, fiscally unsustainable social infrastructure can have a negative impact on access to public services and, therefore, on people's lives.

As this report shows, IFIs and donor countries have prompted the Tunisian authorities to adopt a legal framework for PPPs through two major laws, one dealing with user-pay concession PPPs (2008) and one dealing with government-pay PPPs (2015). These were both modified by an overarching law in 2019. The law was adopted because of pressure through soft and hard conditionality and despite reluctance at a national level. The resulting framework has many loopholes, and paves the way for risky PPPs. Combined with the off-balance sheet treatment of PPPs in the national budget, this places excessive fiscal risk on the public purse. Our research shows that community engagement, transparency and disclosure, the prevention of unsolicited partnerships, assessment of the human, social and environmental impact, including gender impact, throughout the whole lifecycle of a PPP are not being properly addressed.

The Enfidha airport project offers a perfect illustration of why Tunisia is not ready for the implementation of risky and expensive PPPs. Indeed, the case study has shown that the technical and financial offer should be subject to particular attention when studying the bidders' individual offers. The contract's provisions should be drafted in a concise and clear manner, especially on risk sharing and all bidding documents should be included in the contract. The absence of a dedicated entity for monitoring and controlling the Enfidha concession was a major failure on the part of the Tunisian state. Indeed, managing this type of PPP project requires dedicated skills in the ministry concerned – skills that are currently lacking.

Unfortunately, the legal framework put in place between 2008 and 2019 does not take into account these lessons learned; neither does it prevent major problems from happening again in future. Worse still, the scope of concessions has been extended to local authorities, and administrative procedures have been simplified for small and large concession projects.

This report recommends a set of concrete actions that could have a crucial impact in this debate and prevent future problems.

A) The Tunisian legal framework needs to be fixed as quickly as possible in order to address the following issues:

- **Governance of PPPs:** Tunisian law should provide for the highest possible standards for **transparency and disclosure** documents and information related to public contracting, in line with Open Contracting Global Principles – disclosing all contracts and bidding documents, as well as impact assessments throughout the project lifecycle. To ensure **democratic ownership** of the PPP projects, they should be part of a national development plan adopted by the Tunisian Assembly of Representatives. The government's annual report on PPPs to the Tunisian parliament should enclose the yearly development impact assessments. The possibility of unsolicited partnerships should be drastically limited. For any major infrastructure project, the Tunisian government should ensure **democratic accountability** through informed consultation and broad civil society participation and monitoring. This includes engaging with local communities, trade unions and other stakeholders throughout the life cycle of the PPP. Governments should also ensure the right to redress for any affected communities. Furthermore, the law should ensure government control over PPPs and strengthen its capacity to manage, supervise and control PPP projects, as well as evaluate their environmental, social, human rights impact, including its impact on gender equality.
- **Development outcomes:** This implies addressing concerns in terms of affordability of the services for the public sector and the infrastructure users, and equitable access to infrastructure services, as well as avoiding negative impacts on the environment or raising inequalities, especially as regards the gender gap.
- **Fiscal risks and contingent liabilities of PPPs:** PPPs should be registered on-balance sheet and counted as debt. A systematic approach to cost identification, which would involve creating a database of existing projects with their objectives, the parties to the contract, the investment made in each clause, and the project schedule until project closure. The law should ensure that the contract does not allocate an excessive level of risk onto the public sector – including exchange rate risk.

- **Renegotiation and litigation in PPP contracts:** the contract should also specify the conditions under which renegotiation should be allowed, especially when it is related to the financial balance of the contract. The contract, the technical and financial offer submitted to the call for tenders, as well as the specifications, should be binding and part of the contractual documents. In addition, the use of international public or private arbitration in the clauses of PPP contracts should be prohibited. PPP contracts with arbitration clauses that point to international courts represent a threat to government's ability to regulate in the public interest, including the need **to adapt the country to climate change commitments.**

B) Although it is key to close the loopholes of the legal framework, this will not be enough to address all the problems that we have encountered. The utmost caution is needed in the implementation of PPPs, in order to protect the public interest. PPPs should be limited to major projects carried out by the central public authority. Local authorities should only be allowed to implement PPP projects if the Court of Auditors approves it, after auditing their competences and resources to manage this type of complex project.

National capacity to deal with PPPs has proved problematic in the case of Tunisia, so it is key to ensure that project outcomes are designed and assessed through the whole project lifecycle to benefit everyone in society. Governments should develop clear outcome indicators and effective monitoring to measure the impacts of PPPs on the poor, from the project selection phase to the operational phase of the project.

C) We call on the World Bank, the International Monetary Fund and other public development banks and donors to halt the aggressive promotion and incentivising of PPPs for social and economic infrastructure financing in Tunisia and globally. We ask them to publicly recognise the poor track record of PPPs and the financial and other significant risks involved in PPPs. They should ensure that the highest possible transparency standards apply to PPPs, particularly with regard to accounting of public funds, and disclosure of contracts and performance reports of social and economic infrastructure projects. And they should make sure that PPP projects are delivered in the interests of citizens rather than in the interest of external funders who may have different priorities.

Endnotes

- 1 United Nations, 'Addis Ababa Action Agenda' (Third International Conference on Financing for Development, Addis Ababa: United Nations Department of Economic and Social Affairs Financing for Development Office, 2015), <https://sustainabledevelopment.un.org/index.php?page=view&type=400&nr=2051&menu=35>.
- 2 United Nations, 'Transforming Our World: The 2030 Agenda for Sustainable Development', Resolution adopted by the General Assembly, (25 September 2015), https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E.
- 3 Brunswijk, 'Unhealthy Conditions'.
- 4 'PPP Knowledge Lab: Countries'.
- 5 Arezki and Belhaj, 'Developing Public-Private Partnership Initiatives in the Middle East and North Africa: From Public Debt to Maximizing Finance for Development'.
- 6 Council of Ministers, Tunisia, 'Press Release from the Council of Ministers'.
- 7 World Bank, 'Projects: Tunisia Business Environment and Entrepreneurship DPF'.
- 8 'IFC Makes €28 Million Equity Investment in Tunisia Airport Projects', Press Release, (30 June 2009), <https://ifcextapps.ifc.org/ifcext/pressroom/ifcpressroom.nsf/0/79A0052073179633852575E5006C8948?OpenDocument>.
- 9 'World Bank Must Stop Promoting "Dangerous" Public-Private Partnerships', Press Release, *Eurodad PPPs Manifesto*, (11 October 2017), <https://eurodad.org/PPPs-Manifesto>.
- 10 María José Romero, 'What Lies Beneath?' (Brussels: Eurodad, July 2015), <https://eurodad.org/files/pdf/1546450-what-lies-beneath-a-critical-assessment-of-ppps-and-their-impact-on-sustainable-development-1450105297.pdf>.
- 11 OECD, 'Opérationnaliser les partenariats public-privé en Tunisie', 2016, <https://www.oecd.org/countries/tunisia/PPP-en-Tunisie-Vol-1.pdf>.
- 12 Jihen Chandoul, 'Tunisie et FMI, Injustices Transitionnelles', Policy Brief, (20 April 2017), <https://www.economie-tunisie.org/fr/observatoire/analyse-economique/tunisie-et-fmi-injustices-transitionnelles-0>.
- 13 World Bank, 'Memorandum of the President of the International Bank for the Reconstruction and Development to the Executive Directors on a Country Assistance Strategy of the World Bank Group for the Republic of Tunisia', 25 June 1996, <http://documents.worldbank.org/curated/en/388431468175456741/pdf/multi-page.pdf>.
- 14 World Bank, 'Memorandum of the President of the International Bank for the Reconstruction and Development to the Executive Directors on a Country Assistance Strategy of the World Bank Group for the Republic of Tunisia'.
- 15 Journal officiel de la République Tunisienne, 'Law n°70-2004', 2 August 2004.
- 16 Journal officiel de la République Tunisienne, 'Decree n° 2005-3280', 19 December 2005; Journal officiel de la République Tunisienne, 'Decree n° 2008-2268', 9 June 2008, <http://www.legislation.tn/en/detailltexte/D%C3%A9cret-num-2008-2268-du-09-06-2008049022683>.
- 17 The 2008 law on user-private concessions is oriented towards delegating public services to a private partner, who is remunerated by end users in return for service delivery. The concessionaire may also be responsible for building, modifying or extending of buildings, works and installations, or for acquiring necessary assets to fulfil the subject matter of the contract. The contract may authorise the concessionaire to occupy parts of the domain belonging to the grantor in order to carry out, modify or extend the above-mentioned constructions, works and installations. Temporary occupation of public property does not constitute a user-pays concession within the meaning of this Act.
- 18 Journal officiel de la République Tunisienne, 'Framework Law N° 2008-23', 1 April 2008, <http://extwprlegs1.fao.org/docs/pdf/tun80935.pdf>.
- 19 Journal officiel de la République Tunisienne, 'Framework Law N° 2008-23', I. Article 4.
- 20 Fatma Ben Rabii and Moncef Smaoui, Interview with Mrs Fatma Ben Rabii, Director of Private Sector Participation and Mr Moncef Smaoui, Head of Central Department in charge of the concession project unit, March 2019.
- 21 'Committee Report', accessed 10 September 2019, http://www.arp.tn/site/servlet/Fichier?code_obj=106629&code_exp=1&langue=1.
- 22 The WBG's representative in Tunisia, George Joseph Ghora, stated in December 2018 that the financial institution is determined to make all the necessary financial and technical resources available to Tunisia to climb in the rankings. He said that an action plan to improve Tunisia's positioning will be in place by 2020, with work teams trained to develop appropriate indicators. 'Doing Business: la Tunisie dans le Top 50 d'ici 2020 ? | Réalités Online', *Toutes les dernières News en Tunisie et dans le monde*, 6 December 2018, <https://www.realites.com.tn/2018/12/doing-business-la-tunisie-dans-le-top-50-dici-2020/>; *ibid.*; *Entreprises Magazine*, 'Classement Doing Business 2020 : La BM déterminée à placer la Tunisie dans le TOP 50', *Entreprises Magazine*, 7 December 2018, <https://www.entreprises-magazine.com/classement-doing-business-2020-la-bm-determinee-a-placer-la-tunisie-dans-le-top-50/>.
- 23 The National Committee for the Approval of Public Projects (CNAPP); Directorate General for Investment Prospects; directorates within the Ministry of Technology, Communication and Digital Technologies, Ministry of Local Affairs, monitor the contracts.
- 24 Journal officiel de la République Tunisienne, 'Décret Gouvernemental N° 2016-1185', 14 October 2016, http://www.legislation.tn/fr/detailltexte/D%C3%A9cret%20Gouvernemental-num-2016-1185-du-14-10-2016-jort-2016-085__20160850118532?shorten=IBOu.
- 25 Journal officiel de la République Tunisienne, 'Décret Gouvernemental N° 2017-1151 N', 20 October 2017, http://www.legislation.tn/fr/detailltexte/D%C3%A9cret%20Gouvernemental-num-2017-1151-du-20-10-2017-jort-2017-086__20170860115132?shorten=IBOu.
- 26 Journal officiel de la République Tunisienne, 'Décret Gouvernemental N° 2016-772', 20 June 2016, para. Article 33, <http://www.igppp.tn/sites/default/files/D%C3%A9cret%20G2016-772.pdf>.
- 27 Journal officiel de la République Tunisienne, 'Arrêté N° 2017-4550', 97, (1 December 2017), http://www.legislation.tn/fr/detailltexte/Arr%C3%AAt%20C3%A9-num-2017-4550-du-01-12-2017-jort-2017-097__2017097045504?shorten=IBOu.
- 28 'Projet de loi N°22/2019 relatif à l'encouragement de l'investissement et l'amélioration du climat des affaires', *Marsad Majles*, accessed 2 October 2019, <https://majles.marsad.tn/2014/fr/lois/5c86982e4f24d00682ef7fac/texte>.
- 29 The public entity must reply within 90 days. The absence of a reply signifies refusal and must then be followed by a call for tenders within a period of at least 3 years if the offer under consideration has been accepted.
- 30 Ridha Gabouj, Interview with Mr Ridha Gabouj, Director General of Rural Engineering and Water Management, Ministry of Agriculture, March 2019.
- 31 Ben Rabii and Smaoui, Interview with Mrs Fatma Ben Rabii, Director of Private Sector Participation and Mr Moncef Smaoui, Head of Central Department in charge of the concession project unit.
- 32 'Pour Jalloul Ayed, une troisième voie est possible', *HuffPost Maghreb*, 22 June 2013, https://www.huffpostmaghreb.com/entry/jalloul-ayed-economie-tun-mg_3482582.
- 33 Jihen Chandoul, 'Une bombe à retardement ? - Rapport sur les Partenariats Publics Privés', 1 December 2012, <http://www.economie-tunisie.org/fr/observatoire/analyse-economique/bombe-a-retardement-rapport-partenariats-publics-privés>.
- 34 Journal officiel de la République Tunisienne, 'Décret N° 2011-2856', 7 October 2011, <https://legislation-securite.tn/fr/node/45062>.
- 35 World Bank, 'Tunisia - Country Partnership Strategy for the Period FY10-13' (The World Bank, 23 November 2009), <http://documents.worldbank.org/curated/en/365451468311147178/Tunisia-Country-partnership-strategy-for-the-period-FY10-13>; World Bank, 'Tunisia - Country Partnership Framework for the Period FY 2016-2020' (The World Bank, 19 April 2016), <http://documents.worldbank.org/curated/en/253011468180259354/Tunisia-Country-partnership-framework-for-the-period-FY-2016-2020>.
- 36 World Bank, 'Tunisia - Country Partnership Framework for the Period FY 2016-2020'.
- 37 World Bank, 'Tunisia - Investment, Competitiveness and Inclusion Development Policy Financing Project' (The World Bank, 25 May 2018), <http://documents.worldbank.org/curated/en/408781530329592442/Tunisia-Investment-Competitiveness-and-Inclusion-Development-Policy-Financing-Project>.
- 38 Jihen Chandoul, 'An 2 de la révolution tunisienne: Les intérêts économiques privé' (Observatoire Tunisien de L'Économie, July 2013), http://www.economie-tunisie.org/sites/default/files/20130702_-_jc_-_ppp_an_2_de_la_revolution_tunisienne.pdf.
- 39 World Bank, 'Tunisia - Country Partnership Framework for the Period FY 2016-2020'.
- 40 World Bank, 'Tunisia - Investment, Competitiveness and Inclusion Development Policy Financing Project'.
- 41 In the form of a 2-year Stand-By Agreement (SBA) of SDR 1.146 billion (about US\$1.61 billion and 400 per cent of Tunisia's share), which was granted on 7 June 2013.
- 42 International Monetary Fund, 'Le Conseil d'administration du FMI achève la quatrième revue au titre de l'accord de confirmation pour

- la Tunisie et approuve un décaissement de 217,5 millions de dollars', Press Release, (29 August 2014), <https://www.imf.org/fr/News/Articles/2015/09/14/01/49/pr14400>.
- 43 International Monetary Fund, 'Tunisia : Fifth Review Under the Stand-by Arrangement, Request for Modification of Performance Criteria', 5 December 2014, <https://www.imf.org/en/Publications/CR/Issues/2016/12/31/Tunisia-Fifth-Review-Under-the-Stand-by-Arrangement-Request-for-Modification-of-Performance-42564>.
- 44 International Monetary Fund, 'Tunisia : Fifth Review Under the Stand-by Arrangement, Request for Modification of Performance Criteria'.
- 45 International Monetary Fund, 'Tunisia : Fifth Review Under the Stand-by Arrangement, Request for Modification of Performance Criteria'.
- 46 International Monetary Fund, 'Le conseil d'administration du FMI achève la sixième revue de l'accord en faveur de la République Centrafricaine au titre de la facilité élargie de crédit et approuve un décaissement de 31,70 millions de dollars', Press Release, (1 July 2019), <https://www.imf.org/fr/News/Articles/2019/07/01/pr19259-central-african-republic-imf-exec-board-completes-6th-rev-ecf-arrange-approves-disbursement>.
- 47 International Monetary Fund, 'Le Conseil d'administration du FMI approuve un accord élargi avec la Tunisie au titre du mécanisme élargi de crédit portant sur 2,9 milliards de dollars', Press Release, (20 May 2016), <https://www.imf.org/fr/News/Articles/2015/09/14/01/49/pr16238>.
- 48 International Monetary Fund, 'Tunisia : Request for an Extended Arrangement Under the Extended Fund Facility-Press Release; Staff Report; and Statement by the Executive Director for Tunisia', 2 June 2016, <https://www.imf.org/en/Publications/CR/Issues/2016/12/31/Tunisia-Request-for-an-Extended-Arrangement-Under-the-Extended-Fund-Facility-Press-Release-43932>.
- 49 'Déclaration Finale: Sommet Du G7 à Taormine, Italie', 26 May 2017, accessed 3 October 2019, <https://www.consilium.europa.eu/fr/meetings/international-summit/2017/05/26-27/>.
- 50 Agence Française de Développement, 'Cadre d'intervention : Méditerranée et Moyen-Orient', 3 August 2017, <https://issuu.com/objectif-developpement/docs/cadre-intervention-mediterranee-moy>.
- 51 Agence Française de Développement, 'Cadre d'intervention : Méditerranée et Moyen-Orient'.
- 52 Jihen Chandoul, 'Le partenariat de Deauville, à l'origine des politiques économiques en Tunisie', 7 September 2015, https://www.economie-tunisie.org/sites/default/files/20150917_economie_politique_le_partenariat_de_deauville.pdf.
- 53 Sakala, Zondo. *Letter of Intent. MENA transition fund*, 2013, https://www.menatransitionfund.org/sites/mena_trans_fund/files/documents/TN%20AfDB-OECD%20operationalising%20PPP%20%28AfDB%20EL%29.pdf
- 54 African Development Bank Group, 'Avis à Manifestation d'intérêt: Operationalisation de Partenariats Publics-Privés En Tunisie', accessed 3 October 2019, <https://www.afdb.org/fileadmin/uploads/afdb/Documents/Procurement/Project-related-Procurement/Tunisie%20-%20Op%20p%20A-9rationalisation%20des%20partenariats%20publics-priv%C3%A9s%20-%20EOI.pdf>.
- 55 Middle East and North Africa Transition Fund, 'Progress Report', 30 June 2018, <https://www.menatransitionfund.org/documents/progress-report-june-30-2018-tunisia-annex>.
- 56 Journal officiel de la République Tunisienne, 'Loi n° 2015-49', 27 November 2015, <http://www.legislation.tn/sites/default/files/fraction-journal-officiel/2015/2015F/096/Tf2015491.pdf>.
- 57 OECD, 'Opérationnaliser les partenariats public-privé en Tunisie'.
- 58 OECD, 'Opérationnaliser les partenariats public-privé en Tunisie'.
- 59 Agence Française de Développement, 'Cadre d'intervention : Méditerranée et Moyen-Orient'.
- 60 Chafik Ben Rouine and Ouns Messaadi, '2012 – 2014 : Premier Bilan de La Banque Européenne de Reconstruction et de Développement En Tunisie' (Observatoire Tunisien de L'Économie, 4 March 2015), https://www.economie-tunisie.org/sites/default/files/20150304_-_om_cbr_-_berd_premier_bilan_en_tunisie_0.pdf.
- 61 Agence Française de Développement, 'Cadre d'intervention : Méditerranée et Moyen-Orient'.
- 62 European Commission, 'European Neighbourhood Policy And Enlargement Negotiations', Text, (6 December 2012), https://ec.europa.eu/neighbourhood-enlargement/neighbourhood/countries/tunisia_en.
- 63 Directorate General for Development and Cooperation -Europeaid and European External Action Service, 'Programmation de l'Instrument Européen de Voisinage (IEV) (2014-2017) : Cadre Unique d'Appui pour l'appui de l'UE à la Tunisie (2014-2015)' (European Commission, n.d.), 3 October 2019.
- 64 G-20 Finance Ministers and Central Bank Governors, 'The G-20 Compact with Africa: A Joining AfDB, IMF, and WBG Report' (Baden-Baden, Germany, 17 March 2017), <https://www.compactwithafrica.org/content/dam/Compact%20with%20Africa/2017-03-30-g20-compact-with-africa-report.pdf>.
- 65 G-20 Finance Ministers and Central Bank Governors, 'The G-20 Compact with Africa: A Joining AfDB, IMF, and WBG Report'.
- 66 G-20 Finance Ministers and Central Bank Governors, 'The G-20 Compact with Africa: A Joining AfDB, IMF, and WBG Report'.
- 67 Chandoul, 'An 2 de la révolution tunisienne: Les intérêts économiques privé'; Mustapha Beltaief, Interview Mustapha Beltaief from the Faculty of Law and Political Science of Tunis and former member of the High Authority's Commission of Experts for the Achievement of the Objectives of the Revolution, 2019.
- 68 Jihen Chandoul, 'L'Affaire PPP: L'avocat français qui écrivait les lois à la place des députés tunisiens', April 2014, https://www.economie-tunisie.org/sites/default/files/20140412_-_jc_-_ppp_lavocat_francais.pdf.
- 69 Chandoul, 'L'Affaire PPP: L'avocat français qui écrivait les lois à la place des députés tunisiens'.
- 70 Chandoul, 'An 2 de la révolution tunisienne: Les intérêts économiques privé'.
- 71 Journal officiel de la République Tunisienne, 'Décret N° 2013-4631', 18 November 2013, http://www.legislation.tn/sites/default/files/news/decret2013_4631_0.pdf.
- 72 Journal officiel de la République Tunisienne, 'Décret N° 2013-4631'.
- 73 'Voici le nouveau projet de loi sur l'investissement et l'amélioration du climat des affaires en Tunisie', *Webmanagercenter*, 15 March 2019, <https://www.webmanagercenter.com/2019/03/15/432300/voici-le-nouveau-projet-de-loi-sur-linvestissement-et-lamelioration-du-climat-des-affaires-en-tunisie/>.
- 74 Romero, 'What Lies Beneath?'
- 75 'World Bank Must Stop Promoting "Dangerous" Public-Private Partnerships'.
- 76 'World Bank Must Stop Promoting "Dangerous" Public-Private Partnerships'.
- 77 Timothy C Irwin, Samah Mazraani, and Sandeep Saxena, 'How to Control the Fiscal Costs of Public-Private Partnerships' (IMF, 16 October 2018), <https://www.imf.org/en/Publications/Fiscal-Affairs-Department-How-To-Notes/Issues/2018/10/17/How-to-Control-the-Fiscal-Costs-of-Public-Private-Partnerships-46294>.
- 78 Cecilia Olivet, Bettina Muller, and Luciana Ghiotto, 'Impacts of Investment Arbitration against Latin America and the Caribbean' (TNI, 11 December 2017), <https://www.tni.org/en/publication/isds-in-numbers>.
- 79 'World Bank Must Stop Promoting "Dangerous" Public-Private Partnerships'.
- 80 Irwin, Mazraani, and Saxena, 'How to Control the Fiscal Costs of Public-Private Partnerships'.
- 81 María José Romero and Mathieu Vervynckt, 'Public-Private Partnerships: Defusing the Ticking Time Bomb', October 2017, <https://eurodad.org/Entries/view/1546817/2017/10/05/Public-Private-Partnerships-Defusing-the-ticking-time-bomb>.
- 82 International Monetary Fund, 'Tunisia : Fiscal Transparency Evaluation', 7 November 2016, <https://www.imf.org/en/Publications/CR/Issues/2016/12/31/Tunisia-Fiscal-Transparency-Evaluation-44369>.
- 83 Journal officiel de la République Tunisienne, 'Loi n° 2015-49', para. Article 5.
- 84 Journal officiel de la République Tunisienne, 'Loi n° 2015-49', Article 16.
- 85 Journal officiel de la République Tunisienne, 'Loi n° 2015-49', Article 33.
- 86 Journal officiel de la République Tunisienne, 'Loi n° 2015-49', Article 33.
- 87 Journal officiel de la République Tunisienne, 'Loi n° 2015-49', Article 11.
- 88 OECD, 'Opérationnaliser les partenariats public-privé en Tunisie'.
- 89 'About', *Open Contracting Partnership*, accessed 4 October 2019, <https://www.open-contracting.org/about/>.
- 90 World Bank, 'A Guide to Community Engagement for Public-Private Partnerships', June 2019, https://consultations.worldbank.org/Data/hub/files/consultation-template/global-guide-community-engagement-pppsopen-consultation-template/materials/ppp_community_engagement_guide_fin_for_7-19a.pdf.
- 91 Eurodad, 'History RePPeated: How Public Private Partnerships Are Failing', October 2018, <https://eurodad.org/HistoryRePPeated>.
- 92 OECD, 'Opérationnaliser les partenariats public-privé en Tunisie'.
- 93 Journal officiel de la République Tunisienne, 'Loi n° 2015-49', Article 7.
- 94 Journal officiel de la République Tunisienne, 'Loi n° 2015-49', Article 14.
- 95 Journal officiel de la République Tunisienne, 'Loi n° 2015-49', Article 14.
- 96 Ministère des Affaires Locales and et de l'Environnement, 'Etude d'impact Sur l'environnement Tunisie', *ANPE*, accessed 4 October 2017, http://www.anpe.nat.tn/Fr/etude-deimpact-sur-leenvironnement_11_165.

- 97 Jihen Chandoul, 'Note de synthèse à propos du projet de loi sur les PPP en Tunisie' (Observatoire Tunisien de L'Économie, 4 June 2015), https://www.economie-tunisie.org/sites/default/files/20150604_-_pp_-_jc_-_projet_de_loi_ppp_vf.pdf.
- 98 Journal officiel de la République Tunisienne, 'Loi n° 2015-49', Article 3; Journal officiel de la République Tunisienne, 'Décret Gouvernemental N° 2016-772'.
- 99 Journal officiel de la République Tunisienne, 'Loi n° 2015-49', Article 3; Journal officiel de la République Tunisienne, 'Décret Gouvernemental N° 2016-772'.
- 100 Journal officiel de la République Tunisienne, 'Décret Gouvernemental N° 2016-772', Article 9.
- 101 Journal officiel de la République Tunisienne, 'Loi n° 2015-49', Article 10.
- 102 Romero and Vervynck, 'Public-Private Partnerships: Defusing the Ticking Time Bomb'.
- 103 EPSU and PSIRU, 'Exposing the Myths around Public-Private Partnerships', December 2014, <https://www.psiro.org/sites/default/files/2015-01-PPP-EPSUPPBriefingfinal.pdf>.
- 104 OECD, 'Les partenariats public-privé en Tunisie: Analyse du cadre budgétaire', August 2015, <https://www.oecd.org/fr/daf/inv/politiques-investissement/PPP-Tunisie-Volume-3.pdf>.
- 105 OECD, 'Les partenariats public-privé en Tunisie: Analyse du cadre budgétaire'.
- 106 Wafa Amr, 'Statement at the End of an IMF Staff Review Mission to Tunisia', Press Release, (9 April 2019), <https://www.imf.org/en/News/Articles/2019/04/09/pr19109-tunisia-statement-at-the-end-of-an-imf-staff-review-mission-to-tunisia>.
- 107 International Monetary Fund, 'Tunisia', 7 November 2016.
- 108 Phillip Inman, 'Carillion Taxpayer Bill Likely to Top £150m', *The Guardian*, 26 September 2018, sec. Business, <https://www.theguardian.com/business/2018/sep/25/carillion-collapse-likely-cost-taxpayers-more-than-150m-unite>.
- 109 Irwin, Mazraani, and Saxena, 'How to Control the Fiscal Costs of Public-Private Partnerships'.
- 110 Journal officiel de la République Tunisienne, 'Loi n° 2015-49', Article 30.
- 111 Lundin Tunisia B.V. v. Republic of Tunisia (ICSID Case No. ARB/13/15); Lundin Tunisia B. V. v. Republic of Tunisia (ICSID Case No. ARB/12/30); Ghaith R. Pharaon v. Republic of Tunisia (ICSID Case No. ARB/86/1), <https://icsid.worldbank.org/en/Pages/cases/casedetail.aspx?CaseNo=ARB/13/15>
- 112 UNCTAD, 'ABCI Investments v. Tunisia | Investment Dispute Settlement Navigator', *Investment Policy Hub*, 31 July 2019, <https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/172/abci-investments-v-tunisia>.
- 113 Olivet, Muller, and Ghiotto, 'Impacts of Investment Arbitration against Latin America and the Caribbean'.
- 114 Forum Tunisien pour les droits économiques et sociaux et al., 'Accord de Libre-Échange Complet et Approfondi: Tunisie', May 2018, https://www.cncd.be/IMG/pdf/alecatunisie_notecommune_mai2018.pdf.
- 115 International Monetary Fund, 'Tunisia : Fifth Review Under the Extended Fund Facility, and Requests for Waivers of Nonobservance and Modification of Performance Criteria and for Rephasing of Access', 18 July 2019, <https://www.imf.org/en/Publications/CR/Issues/2019/07/11/Tunisia-Fifth-Review-Under-the-Extended-Fund-Facility-and-Requests-for-Waivers-of-47106>.
- 116 Government of Tunisia, 'Letter of Intent to the International Monetary Fund'.
- 117 After the conference, a workshop on the PPP projects gathered the Caisse des Dépôts et Consignations (CDC), various delegations from the Agence Française de Développement (AFD), the Groupe Caisse des Dépôts français, the STOA, the Embassy of France in Tunisia and the Instance Générale de Partenariat Public Privé (IGPPP) on 26 March 2019. Source: IGPP website, Workshop de coordination sur les projets PPP. Tunis, IGPP, 2019.
- 118 World Bank, 'Tunisia - Country Partnership Framework for the Period FY 2016-2020'.
- 119 Middle East and North Africa Transition Fund, 'Progress Report'.
- 120 Council of Ministers, Tunisia, 'Press Release from the Council of Ministers'.
- 121 Ibid.
- 122 Council of Ministers, Tunisia, 'Press Release from the Council of Ministers'.
- 123 Asef Ben Ammar, 'Tunisie : Des PPP pour 34 mégaprojets d'une valeur de 9 milliards \$ US', *Kapitalis*, 15 October 2017, <http://kapitalis.com/tunisie/2017/10/15/tunisie-des-ppp-pour-34-megaprojets-dune-valeur-de-9-milliards-us/>.
- 124 Hamza Marzouk, 'Tunisia 2020 : l'heure du bilan a sonné', *L'Economiste Maghrébin*, 3 January 2018, <https://www.leconomistemaghreb.com/2018/01/03/tunisia-2020-bilan/>.
- 125 'Tunisia Snapshots - Private Participation in Infrastructure (PPI)', *World Bank Group*, accessed 7 October 2018, <https://ppi.worldbank.org/en/snapshots/country/tunisia>.
- 126 'Tunisia Snapshots - Private Participation in Infrastructure (PPI)'.
- 127 HuffPost Tunisie, 'Le Taux de Chômage En Tunisie a Atteint 15,5% Au Quatrième Trimestre 2018', *Al HuffPost Maghreb*, 15 February 2019, https://www.huffpostmaghreb.com/entry/le-taux-de-chomage-en-tunisie-a-atteint-155-au-quatrieme-trimestre-2018_mg_5c66dbbbe-4b033a79941a57d.
- 128 In April 2016, the World Bank pointed out sectors of Information and Communication Technology, energy, water desalination, but also identified potential beneficiaries - STEG, the Tunisian electricity and gas company and SAB Méditerranée, a digital company, and project (the North Tunis Wastewater Treatment Plant). See: OECD, 'Opérationnaliser les partenariats public-privé en Tunisie'.
- 129 Ministère du Développement, de l'Investissement et de la Coopération Internationale, 'Le Plan de Développement 2016-2020', July 2016. http://www.tunisie.gov.tn/uploads/Document/02/978_445_Plan-developpement_2016_2020.pptx.
- 130 'Grands chantiers: Le projet du port en eaux profondes d'Enfidha réactif', *Webmanagementcenter*, 28 January 2018, <https://www.webmanagercenter.com/2018/01/28/415379/grands-chantiers-le-projet-du-port-en-eau-profonde-denfidha-reactive/>.
- 131 The construction of a deep water port in Enfidha in the form of a build-operate-transfer (BOT) PPP had already failed a first time: the project study had been completed in 2007 and the call for tenders launched in 2008 but no bid had been deemed admissible because the risks had been underestimated and the risk sharing between the Tunisian government and the investor were considered insufficient. See: OECD, 'Opérationnaliser les partenariats public-privé en Tunisie'.
- 132 'Grands chantiers: Le projet du port en eaux profondes d'Enfidha réactif'.
- 133 'La liste des 33 projets présentés au forum international sur les PPP', *Instance Générale de Partenariat Public Privé*, (20 September 2018), <http://www.igppp.tn/fr/La%20liste%20des%20projets%20pr%C3%A9sent%C3%A9s%20au%20forum%20international%20sur%20les%20PPP>.
- 134 'La liste des 33 projets présentés au forum international sur les PPP'.
- 135 Agence Nationale de Gestion des Déchets, 'Concession portant sur le traitement et la valorisation des déchets ménagers et assimilés et d'enfouissement technique y afférents pour le Gouvernorat de Gabès', *Instance Générale de Partenariat Public Privé*, (21 December 2018), <http://www.igppp.tn/fr/node/46>; KfW, 'Règles Pour l'engagement de Consultants Dans Le Cadre de La Coopération Financière Avec Les Pays Partenaires.', August 2016, <https://www.kfw-entwicklungsbank.de/Download-Center/PDF-Dokumente-Richtlinien/Consulting-F.pdf>.
- 136 Elnimr, 'Algérie et Tunisie: La BEI Soutient Trois Grands Projets Privés, Preuve Que Le Maghreb Est Une Terre d'opportunités Pour Les Investisseurs Privés Locaux et Européens', Press Release, *European Investment Bank*, (13 March 2009), <https://www.eib.org/fr/press/all/2009-043-eib-supports-3-large-private-projects-in-algeria-and-tunisia-showing-that-maghreb-is-a-land-of-opportunities-for-local-and-european-private-investors>.
- 137 Tunis-Carthage Airport, Sfax Airport, Gabes Airport, Tabarka Airport, Djerba Airport, Tozeur Airport, Monastir Airport, Gafsa Airport.
- 138 Asma Mekki, Interview with Mrs Asma Mekki, Public Services Advisor, Deputy Director of Air Transport, March 2019.
- 139 Atef Majdoub, Interview with Mr. Atef Majdoub, Director of IGPP, March 2019.
- 140 Caterina Amicucci and Stoyanova Desislava, 'Ben Ali's Airport: How IFIs Helped Build the Last Useless Infrastructure Project of the Tunisian Regime', November 2012, <https://www.counter-balance.org/wp-content/uploads/2013/05/Ben-ali-airport.pdf>; Moncef Mahroug, 'Tunisie: Audit des appels d'offres des aéroports de Monastir et Enfidha', *Webmanagercenter*, 2 July 2014, <https://www.webmanagercenter.com/2014/07/02/152015/tunisie-audit-des-appels-d-offres-des-aeroports-de-monastir-et-enfidha/>; 'Selon Le PDG de Tunisair, Airbus Aurait Arrosé Le Gendre de Ben Ali !', *Tuniscope*, 7 April 2011, <https://www.tuniscope.com/article/7261/actualites/societe/tunisair-airbus-070116>.
- 141 Operations include all airport activities such as passenger handling, apron services, counter check-in, ground handling, cargo and parking, taxi services, excluding air traffic services.

- 142 Activity report of TAV Airports. TAV, 2008, <http://www.tavyatirimciiliskileri.com/en-EN/Pages/Annual.aspx>.
- 143 Activity report of TAV Airports. TAV, 2012, <http://www.tavyatirimciiliskileri.com/en-EN/Pages/Annual.aspx>.
- 144 Activity reports of TAV Airports. TAV, 2009-2012, <http://www.tavyatirimciiliskileri.com/en-EN/Pages/Annual.aspx>.
- 145 World Bank Group, 'Data on Private Participation in Infrastructure (PPI)', accessed 7 October 2019, <https://ppi.worldbank.org/en/ppidata>.
- 146 'IFC Makes €28 Million Equity Investment in Tunisia Airport Projects'.
- 147 Ibid.
- 148 Zibu Sibanda, 'IFC's Support to TAV Airports Holding Promotes Business and Tourism in Tunisia', Press Release, (2 May 2008), <https://ifcextapps.ifc.org/ifcext/pressroom/ifcpressroom.nsf/0/7EAAF52FE1771DEB-8525743D004DB5B4?OpenDocument>.
- 149 African Development Bank Group, 'La BAD appuie le plus important projet privé d'infrastructure en Tunisie - Prêt de 70 millions d'euros pour financer l'aéroport d'Enfidha', Press Release, (14 January 2009), <https://www.afdb.org/fr/news-and-events/afdb-supports-tunisia-largest-private-infrastructure-project-a-senior-loan-of-euro-70-million-to-finance-the-enfidha-airport-project-4279>.
- 150 Proparco, 'Aéroport d'Enfidha-Hammamet : Une Infrastructure Aéroportuaire Essentielle Pour Toute La Région', 27 February 2009, <https://www.proparco.fr/fr/tav-tunisie>.
- 151 Accord financier pour le futur aéroport d'Enfidha. Tunis, Econostrum, 2009.
- 152 Different numbers can be found at the following sources: 'OFID - Activities by Country', accessed 2 October 2019, https://app3.ofid.org/ords/f?p=108:6:0::NO:6:P6_COUNTRY_INR:81; 'The OPEC Fund for International Development', November 2017, https://www.arabhellenicchamber.gr/wp-content/uploads/2017/12/1.-OFID_SESSION-1.pptx.
- 153 Interview with Air Transport Directorate General., March 2019.
- 154 Le Monde and Agence France Presse, 'Attentat de Sousse : La Majorité Des Victimes Sont Britanniques', *Le Monde*, 27 June 2015, *Le Monde* Afrique edition, https://www.lemonde.fr/afrique/article/2015/06/27/attentat-de-sousse-la-majorite-des-victimes-sont-britanniques-pas-de-francais-a-ce-stade_4663275_3212.html.
- 155 Interview with Air Transport Directorate General.
- 156 Annual report. TAV Airports, 2012.
- 157 Interview with Air Transport Directorate General.; Interview with the IGPP, March 2019.
- 158 Interviews and Annual Reports of TAV Airports 2013 to 2017.
- 159 Annual report and Interview. TAV Airports, 2017/2018.
- 160 Annual reports, TAV Airports, <http://www.tavyatirimciiliskileri.com/en-EN/Pages/Annual.aspx>.
- 161 'IFC Makes €28 Million Equity Investment in Tunisia Airport Projects'.
- 162 'IFC Makes €28 Million Equity Investment in Tunisia Airport Projects'.
- 163 Interview with Air Transport Directorate General.
- 164 Journal officiel de la République Tunisienne, 'Framework Law N° 2008-23'.
- 165 Arezki and Belhaj, 'Developing Public-Private Partnership Initiatives in the Middle East and North Africa: From Public Debt to Maximizing Finance for Development'.
- 166 Arezki and Belhaj, 'Developing Public-Private Partnership Initiatives in the Middle East and North Africa: From Public Debt to Maximizing Finance for Development'.
- 167 International Monetary Fund, 'Tunisia : Fifth Review Under the Extended Fund Facility, and Requests for Waivers of Nonobservance and Modification of Performance Criteria and for Rephasing of Access'.
- 168 Arezki and Belhaj, 'Developing Public-Private Partnership Initiatives in the Middle East and North Africa: From Public Debt to Maximizing Finance for Development'.
- 169 OECD Economic Surveys Tunisia, OECD, March 2018. <http://www.oecd.org/economy/surveys/Tunisia-2018-OECD-economic-survey-overview.pdf>
- 170 ILOSTAT, 2019. <https://www.ilo.org/ilostat/faces/oracle/webcenter/portalapp/pagehierarchy/Page21.jspx>
- 171 Larbi, Dridi, de la Misonneuve, Documents de travail du Département des Affaires économiques de l'OCDE No. 1486 Vers une croissance plus inclusive en Tunisie, 2019. <https://www.oecd-ilibrary.org/docserver/55c7e0c4-fr.pdf?expires=1571742073&id=id&accname=guest&checksum=8042D32F84CA90E141E5CCC30D48B691>
- 172 ILOSTAT, 2019. <https://www.ilo.org/ilostat/faces/oracle/webcenter/portalapp/pagehierarchy/Page21.jspx>
- 173 Tunisia profile, World Bank website : <https://www.worldbank.org/en/country/tunisia/overview>.

Eurodad

The European Network on Debt and Development (Eurodad) is a network of 50 civil society organisations (CSOs) from 20 European countries, which works for transformative yet specific changes to global and European policies, institutions, rules and structures to ensure a democratically controlled, environmentally sustainable financial and economic system that works to eradicate poverty and ensure human rights for all.

Observatoire Tunisien de l'Economie

The Tunisian Observatory of Economy (TOE) is a NGO think tank launched in 2012, undertaken by a number of researchers, analysts and activists concerned about Tunisian economic policies after the onset of the Tunisian revolutionary process. TOE carries out analysis, studies and advocacy work with regard to economic policies and their impact on development through independent, documented and critical information. TOE aims at democratizing economic issues to initiate a critical and constructive debate outside the technocratic spheres, and foster citizen engagement in the economic policies decision making-process.



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