

# The Specificity of Organic Laws and the Parameters of Mandatory Constitutional Review: A Comparative Analytical Study in light of Maghreb Constitutional Practice

## *La especificidad de las leyes orgánicas y los parámetros del control de constitucionalidad obligatorio: Un estudio analítico comparado a la luz de la práctica constitucional en el Magreb*

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### Abstract

This article presents a comparative legal and constitutional study of the legal framework governing organic laws (or regulatory/fundamental laws) and the mechanisms for reviewing their constitutionality in the Maghreb (Algeria, Morocco, and Tunisia), with reference to their French historical origins. The article examines these laws as texts that supplement constitutional provisions and fall within the category of "secondary constitutional norms." It explains how legal scholarship uses a formal criterion to define them and establishes their status above ordinary laws and immediately below the Constitution in the hierarchy of norms. The study also examines the conditions governing the initiation of the preventive and mandatory review to which these laws are subject, including the parliamentary nature of the text and the exclusion of executive-issued emergency legislation from such review. It also identifies the constitutional time limits for notification and referral. The article concludes with an applied statistical examination of decisions and opinions issued by constitutional adjudicatory bodies (the Algerian Constitutional Council and the Moroccan Constitutional Court) between 2015 and 2019 to assess the extent to which these bodies comply with the time limits for determining whether such laws conform to the Constitution.

**Keywords:** organic laws, regulatory laws, constitutional review, hierarchy of legal norms

### Resumen

Este artículo presenta un estudio jurídico-constitucional comparado sobre el marco legal que regula las leyes orgánicas (o leyes reglamentarias/fundamentales) y los mecanismos de control de su constitucionalidad en el Magreb (Argelia, Marruecos y Túnez), haciendo referencia a sus orígenes históricos franceses. El artículo examina estas leyes como textos que complementan las disposiciones constitucionales y se sitúan en la categoría de «normas constitucionales secundarias». Explica cómo la doctrina jurídica emplea un criterio formal para definir las leyes y establece su posición por encima de las leyes ordinarias e inmediatamente por debajo de la Constitución en la jerarquía normativa. El estudio analiza asimismo las condiciones que rigen la iniciación del control preventivo y obligatorio al que están sujetas dichas leyes, incluyendo la naturaleza parlamentaria del texto y la exclusión de la legislación de emergencia dictada por el poder ejecutivo de este tipo de control. Igualmente, identifica los plazos constitucionales para la notificación y la remisión de los asuntos. El artículo concluye con un análisis estadístico aplicado de las decisiones y dictámenes emitidos por los órganos de control constitucional (el Consejo Constitucional de Argelia y el Tribunal Constitucional de Marruecos) entre 2015 y 2019, con el fin de evaluar en qué medida dichos órganos respetan los plazos establecidos para determinar la conformidad de tales leyes con la Constitución.

**Palabras clave:** leyes orgánicas, leyes reglamentarias, control de constitucionalidad, jerarquía.

## Introduction

The principle of constitutional supremacy rests on the central premise that all legal norms derive their legitimacy from their conformity with the state's supreme founding charter. To give effect to these general principles, modern legislative thought has developed a distinct category of laws occupying the space between the rigidity of the constitutional text and the flexibility of ordinary legislation: "organic laws" (or regulatory and fundamental laws). Their intrinsic importance derives from their subject matter, which concerns the structural foundations of the state, including the form of government, the exercise of sovereignty, the organisation and powers of public authorities, and the protection of public rights and freedoms. Constitutional scholarship accordingly regards them as a functional extension of the Constitution and as supplementary constitutional norms that prevent its rigidity without depriving the constituent authority of its original power.

This category of legislation emerged from French constitutional experience, particularly under the 1958 Constitution, primarily to "rationalise parliamentary activity" and manage the balance of power between the government and Parliament. This legal innovation soon spread to numerous legal systems, particularly in the Maghreb. The Moroccan constitutional authority enshrined it throughout the country's constitutional development from 1962 to the 2011 Constitution; Algeria adopted it in the 1996 Constitution and retained it through the 2020 amendment; and the Tunisian Constitutions of 1959 and 2014 provided for it under the designation "fundamental laws." Despite the shared semantic origin of the French term *loi organique*, national applications have differed in nomenclature, subject areas, and procedures for enactment and amendment.

The absence of a comprehensive and precise statutory definition of organic laws in most constitutional instruments has prompted scholarly debate over their precise position within Hans Kelsen's hierarchy of norms. One school of thought regards them as equal to ordinary laws because both emanate from the same legislative authority. The prevailing scholarly and judicial view, however, recognises the supremacy of organic laws over ordinary laws and places them immediately below the Constitution. This supremacy rests on decisive formal and substantive considerations, most notably that ordinary laws derive their legitimacy from both the Constitution and organic law. In contrast, organic law derives its legitimacy solely from the constitutional instrument itself.

To safeguard this distinctive status, the constituent authority has established a stringent protective framework for organic laws. Rather than leaving them to subsequent or optional review mechanisms, it has subjected them to mandatory, preventive review before promulgation and entry into force, affirming the need for their conformity with the Constitution before they take effect.

However, this review jurisdiction faces substantial legal and practical challenges, namely:

- **Defining the scope and nature of the text subject to review:** whether mandatory review is confined to parliamentary texts or extends to ordinances, dahirs, and decrees issued by the executive during emergencies or periods of parliamentary vacancy that fall within the domain of organic law.
- **Temporal and procedural compliance:** the adherence of referring authorities (heads of state or government) to the time limits for initiating review, and the extent to which constitutional adjudicatory bodies (constitutional councils and courts) observe the express constitutional deadlines for deliberation and determination.

Against this background, the study addresses the following central research question:

To what extent have the constitutional systems of the Maghreb (Algeria, Morocco, and Tunisia) reconciled the distinctive normative character of organic laws as norms supplementing the Constitution with the requirements of their protection through mandatory constitutional review, in terms of the conditions applicable to the text, the time limits for initiating review, and actual judicial practice?

The following methodological questions arise from this central question:

1. What criterion is adopted in legal scholarship and constitutional provisions to define organic laws, and where do these laws stand in the hierarchy of norms between the Constitution and ordinary legislation?
2. How have the constitutions under comparison addressed the question of which texts are subject to mandatory review, and what is the position of texts issued by the executive during emergencies, parliamentary dissolution, and parliamentary vacancy?
3. What time limits govern referrals to constitutional adjudicatory bodies for decisions on organic laws, and to what extent do the reviewing bodies (the Algerian Constitutional Council and the Moroccan Constitutional Court) comply in practice with the constitutional deadlines for determining the referrals before them?

This study has two complementary dimensions. Theoretically, it clarifies constitutional concepts relating to laws that supplement the Constitution and resolves scholarly debate about their status and supremacy within the hierarchy of legal norms and their relationship to the constitutional block. Its applied and practical significance lies in moving beyond abstract textual readings to a statistical study of constitutional adjudication in Algeria and Morocco (2015–2019), measuring referral periods, the speed of decisions on the constitutionality of organic laws, and compliance with constitutionally prescribed time limits.

To address these questions, the study adopts an integrated methodological approach. The study uses a descriptive and analytical method to examine constitutional texts and scholarly views on the status of organic laws. This is supported by a comparative method that juxtaposes the pioneering French experience with the Maghreb systems of Algeria, Morocco, and Tunisia, and by a statistical and tabular method to analyse the timelines of judicial decisions and assess compliance with constitutional deadlines in practice.

To address the problem's dimensions and answer its questions, the study is divided into two main sections. The first addresses the conceptual framework and normative status of organic laws. Its first subsection defines these laws and traces their historical emergence in France and the Maghreb, examining scholarly approaches to their definition through formal and substantive criteria. Its second subsection considers their position within the hierarchy of legal norms, reviewing the scholarly debate between the view that they are equal to ordinary legislation and the view that their supremacy places them immediately below the Constitution as texts that supplement it.

The second section addresses the procedural framework and practical operation of mandatory review of these laws' constitutionality. Its first subsection examines the conditions and requirements for initiating mandatory review, focusing on the distinctive character of parliamentary texts, the question

of reviewing emergency executive legislation, and the constitutional time limits for notification and referral in Algeria, Morocco, and Tunisia. The study concludes with a second subsection examining actual judicial practice and the extent to which the Algerian Constitutional Council and the Moroccan Constitutional Court comply with the prescribed time limits for determination, drawing on a statistical and analytical study of decisions issued between 2015 and 2019.

## Part I: The Conceptual Framework and Normative Status of Organic (Regulatory/Fundamental) Laws

The legislature enacts organic (regulatory or fundamental) laws that differ from ordinary laws because they concern the system of government and individual rights and are subject to special procedures, most notably mandatory constitutional review. This procedure ensures that organic laws approved by Parliament contain no provisions contrary to the Constitution. The constitutional adjudicator reviews them preventively, before the organic law enters into force and applies.<sup>1</sup>

This category of laws is variously designated as regulatory laws, as in France and Morocco; organic laws, as in Algeria; or fundamental laws, as in Tunisia. These differences in nomenclature arise from varying translations of the term *loi organique*.<sup>2</sup>

These designations appear to reflect the functional importance of this category of laws, which addresses matters relating to the fundamental organisation of the state, including its form, its system of government, the organisation of its authorities, and the definition of their powers.

The predominant characteristic of this category is therefore that these laws supplement the Constitution by setting out its detailed and implementing provisions.<sup>3</sup> For this reason, some French constitutional scholars have described them as “secondary constitutional norms” (*normes constitutionnelles secondaires*).<sup>4</sup>

These laws originated in France as part of its constitutional development. They first emerged clearly, through the definition of their nature and subject areas, in the 1958 Constitution. However, the earliest attempts to confer a distinct status on them occurred under the 1848 Constitution and subsequently during the Third Republic.<sup>5</sup> This category of laws later spread to other constitutional systems: Spain's 1978 Constitution; Algeria's 1996 Constitution, reaffirmed in the 2016 constitutional amendment; all

<sup>1</sup> Mustafa Qallush, “The Legal and Doctrinal Framework of Organic Laws,” *Moroccan Journal of Local Administration and Development*, no. 47 (2002): 15.

<sup>2</sup> Muhammad al-Taraybi, “The Constitutional Status of Organic Laws within Morocco's Legal Framework,” *Al-Manara Journal of Legal and Administrative Studies*, special issue on constitutional law (2019): 153.

<sup>3</sup> Issam Said Abd Ahmad, *Judicial Review of the Constitutionality of Laws: A Comparative Study*, 1st ed. (Lebanon: Modern Book Institution, 2013), 327.

<sup>4</sup> Abd Ahmad, *Judicial Review of the Constitutionality of Laws*, 328.

Paul Morcos, “The Constitutional Council's Review of Fundamental Laws: Differences between Legal Systems,” in *Proceedings of the Workshop Held by the Constitutional Council and the Konrad Adenauer Foundation on 6 May 2016 to Discuss the Draft Prepared by Issam Sleiman* (Lebanese Constitutional Council, 2017), 87.

<sup>5</sup> Al-Taraybi, “Constitutional Status of Organic Laws,” 154; Abd al-Wahhab Makhoulfi and Hunayda Qasimi, “The Status of Organic Law in the Algerian Constitutional System,” *Journal of Rights and Human Sciences*, Ziane Achour University, Djelfa, no. 13 (2013): 149.

\* The question of the origins and function of organic laws: Professor Berramdane states that organic laws were first devised in France to perform an important role during the Fifth Republic: deferring the resolution of issues that remained unsettled between the leading actors in the French political system. Professor Omar Fouad Barakat likewise states that organic laws have a fixed and stable function, namely to supplement constitutional provisions (al-Taraybi, “Constitutional Status of Organic Laws,” 156). Professor Camby regards “the category of organic laws as a mechanism for parliamentary rationalisation.” Professor Ch. Sirat similarly “... sees the category of organic laws as merely one of several prescriptions intended to contain the powers of parliamentary assemblies” (Jamal Ben Salem, previously cited thesis, 207).

five previous Moroccan Constitutions (1962, 1970, 1972, 1992, and 1996), reaffirmed in the current Moroccan Constitution of 2011; and Tunisia's 1959 Constitution, reaffirmed in the current Tunisian Constitution of 2014.

## Section 1: The Concept and Historical Origins of Organic Laws

Organic laws differ from ordinary laws in their definition, the procedures for their enactment and amendment, and their position in the constitutional hierarchy. The constituent authority has therefore afforded them special protection against encroachment by the ordinary legislature or the authority vested with regulatory power.

### A. Definition of Organic Laws

Most constitutions that distinguish between categories of laws enacted by Parliament have been reluctant to define organic laws. They have confined themselves to distinguishing their subject areas, and the procedures for their enactment and amendment, and to subjecting them to mandatory constitutional review that differs from the review applied to ordinary laws.

The French Constitution, which first introduced this category of laws, provides no specific definition.<sup>6</sup> It merely sets out exhaustive lists of matters to be regulated by such laws, together with the procedures for their enactment and amendment and how constitutional review is exercised over them. Most constitutions that have adopted this category, including those of Algeria, Morocco, and Tunisia, have followed this approach, specifying exhaustive subject areas and procedures for enactment and amendment that differ from those applicable to ordinary laws.

In the absence of definitions in most constitutions,<sup>7</sup> constitutional scholars have proposed several definitions. Some French scholars define organic laws as "supplements to constitutional texts, since their provisions set out the conditions and procedures for implementing those texts. Organic laws have consequently come to mean a body of constitutional texts whose rules contain provisions relating to the organisation of public authorities."<sup>8</sup>

Duverger defines them as "laws endowed by the Constitution with a special character: a body of provisions that supplement the Constitution in relation to the organisation of public authorities. Although they are subject to the same procedures and formalities as ordinary laws, they are enacted and promulgated through specific and distinctive procedures."<sup>9</sup>

Professor Mustafa Qallush defines them as follows: "Fundamental or organic laws are laws enacted by the ordinary legislature concerning matters connected with the fundamental organisation of the

<sup>6</sup> Muhammad Abd al-Jalil al-Shaykh al-Qadi, "The Scope and Rank of Organic Laws within the Mauritanian and Moroccan Constitutional Blocks," *Al-Manara Journal of Legal and Administrative Studies*, special issue on constitutional law (2019): 467.

<sup>7</sup> A distinctive case in this respect is the Spanish Constitution, which defines organic laws in Article 81(1) as "laws concerning fundamental rights and public freedoms, those approving the statutes of autonomous regions and the general electoral system, and the other organic laws provided for in the Constitution" (Jamal Ben Salem, doctoral thesis, 211). The Spanish Constitution appears not to have exhaustively defined the subject areas of organic laws, as the French, Algerian, and Moroccan Constitutions have done. The importance of avoiding an exhaustive definition lies in preventing the exclusion of certain matters from the category of organic laws, given that these laws supplement the Constitution.

<sup>8</sup> Ahmad Ben Ziane, previously cited thesis, 139.

<sup>9</sup> Makhoulfi and Qasimi, "Status of Organic Law," 150.

state, whether its form, its system of government, the organisation of its supreme authorities, the definition of their powers, or the manner in which they perform their functions.”<sup>10</sup>

Professor François Luchaire<sup>11</sup> also maintains that fundamental laws must satisfy three conditions under Articles 48 and 61 of the French Constitution of 1958:

- The Constitution must recognise them as fundamental laws.
- They must be voted on, adopted, and amended in accordance with procedures specified in the Constitution.
- The Constitutional Council must declare their conformity with the Constitution.

These conditions help define organic laws. The most important, however, is the constituent authority’s express recognition of their status. Without this, the constitutional scholar Mustafa Qallush states, “Parliament cannot regulate a matter by means of an organic law.” In other words, any law considered by Parliament remains an ordinary law and cannot acquire the status of an organic law unless the Constitution recognises it as such, even if it concerns a matter central to the organisation of public authorities.

These definitions indicate that constitutional scholarship relies primarily on the formal criterion rather than the substantive criterion. Organic laws are thus laws enacted pursuant to a constitutional mandate through legislative procedures that differ from those prescribed for ordinary laws. Their scope may therefore extend beyond the organisation of public authorities or be confined exclusively to it. This varies between constitutional systems and between successive constitutions within the same system.

## Section 2: The Position of Organic Laws in the Hierarchy of Legal Norms

Determining the status of organic (regulatory or fundamental) laws means identifying their rank within the hierarchical ordering of legal norms (*le système pyramidal des normes juridiques*).<sup>12</sup>

Although most Maghreb constitutions have adopted the category of organic laws, they have not specified its position within their respective hierarchies of legal norms. They have merely defined the subject areas of these laws and made their enactment and amendment subject to special procedures requiring mandatory referral for review of their conformity with the Constitution.

Scholarly disagreement over the position of organic laws within the hierarchy of legal norms has produced two competing views: one supports their supremacy over ordinary laws, while the other rejects it. Each advances its own arguments.<sup>13</sup>

- **The supporting view:** proponents maintain that organic laws bind ordinary laws because of their distinctive formal characteristics and their subject areas, which supplement constitutional provisions. Ordinary laws must therefore conform to organic laws, which consequently take precedence over them.

<sup>10</sup> Al-Shaykh al-Qadi, “Scope and Rank of Organic Laws,” 468.

<sup>11</sup> Salima Mesrati, *The System of Constitutional Review of Laws in Algeria*, edition unspecified (Algeria: Dar Houma for Printing, Publishing, and Distribution, 2015), 130.

<sup>12</sup> The principle of the hierarchy of legal norms refers to the rules that constitute each state’s legal system, arranged in a pyramid in which legal norms are ranked one above another according to their legal force. The Austrian jurist Hans Kelsen expounded the theory of the hierarchy of legal norms. The concept of this theory requires investigation.

<sup>13</sup> See Zakaria Aqnush, previously cited work, 90.

➤ **The opposing view:** proponents regard organic laws as legislative norms like any others. They argue that references to the supremacy of organic laws over ordinary laws arise from their special procedures and their connection to the organisation of public authorities. They therefore reject the proposition that organic laws are superior because of the importance of the matters they regulate, since the subject areas of ordinary laws are also sensitive and no less important than those reserved for organic laws.

We observe that most scholars regard organic laws as occupying a position above ordinary laws and below the Constitution, including Professor Lavroff Cadart<sup>14</sup> and Professor Mustafa Qallush.<sup>15</sup> Professor François Luchaire likewise endorses this view, arguing that it is further reinforced by the fact that an organic law cites only the Constitution in its recitals. In contrast, an ordinary law cites both the Constitution and organic law.<sup>16</sup>

In our view, organic laws occupy the second rank, immediately below the Constitution, in the hierarchy of legal norms. This is because their specific subject areas play an important role in extending and supplementing constitutional texts, unlike ordinary laws. They possess the value of a constitutional norm<sup>17</sup> because their enactment and amendment follow special procedures prescribed by the Constitution, and because constitutional adjudicatory bodies must review them before promulgation.

## **Part II: The Procedural Framework and Practical Operation of Mandatory Review of the Constitutionality of Organic Laws**

### **Section 1: Conditions and Parameters for Initiating Mandatory Constitutional Review**

The constitutional provisions on constitutional review and the legislation governing constitutional review bodies indicate that three conditions must be met to initiate mandatory review of organic laws approved by Parliament. These relate to (A) the nature of the text and (B) the time limits for initiating review.

#### *A. The Nature of the Text*

Most legal scholars and courts favour the formal criterion in defining legislation. This criterion links the concept of law to the authority that enacts it, provided that this is consistent with the separation of powers. In this sense, legislative acts are those enacted by Parliament in accordance with the Constitution.<sup>18</sup>

Most Maghreb constitutions have adopted this approach. Article 112 of the Algerian Constitution (2016 amendment) states that “... it has sovereign authority to draft and vote on laws.” Similarly, Article 70 of the Moroccan Constitution of 2011 provides that “Parliament exercises legislative power. Parliament votes on laws ....” Most constitutions also divide the legislative function between Parliament and the government,<sup>19</sup> specifying the domain of legislation. This is reflected in Articles 140 and 141 of the

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<sup>14</sup> See al-Taraybi, “Constitutional Status of Organic Laws,” 157.

<sup>15</sup> See al-Taraybi, “Constitutional Status of Organic Laws,” 157.

<sup>16</sup> See Aqnush, previously cited work, 90.

<sup>17</sup> See Aqnush, previously cited work, 67.

<sup>18</sup> See Aqnush, previously cited work, 102.

<sup>19</sup> See Aqnush, previously cited work, 102.

Algerian Constitution (2016 amendment). The Moroccan Constitution of 2011 defines the domain of legislation in Articles 70 and 71 and in other constitutional provisions, while the Tunisian Constitution defines it in Article 65.

The texts subject to this review are those the Constitution expressly designates as organic laws and requires the competent authority to promulgate. The Algerian constituent authority provides in Article 141 that "... an organic law shall be subject, before its promulgation, to review by the Constitutional Council of the text's conformity with the Constitution." Article 1 of the Constitutional Council's Rules of Procedure confirms this. Similarly, Article 132 of the Moroccan Constitution of 2011 provides that "... organic laws shall be referred to the Constitutional Court before the order for their promulgation is issued ...." This is confirmed by Article 21 of Organic Law No. 13-066 on the Constitutional Court: "Organic laws definitively adopted by Parliament ...."

By contrast, the Tunisian Constitution does not make review of fundamental laws mandatory. Article 120 of the 2014 Constitution provides for optional constitutional review, provided that it is initiated within seven days of the Assembly's adoption of the bill. Article 3 of Organic Law No. 14 of 2014, dated 18 April 2014, on the Provisional Authority for the Review of the Constitutionality of Bills, defines bills as follows: "... bills shall mean all legislative texts adopted by the National Constituent Assembly or the Assembly of the Representatives of the People that have not yet been promulgated ...."

Restricting the texts subject to review to organic laws stems from the possibility that an authority other than Parliament may issue legal norms equivalent to organic laws. Under the Algerian Constitution, the President of the Republic may legislate by urgent ordinances when the National People's Assembly is vacant or during parliamentary recesses. Under the Moroccan Constitution, the King may likewise issue dahirs equivalent to organic laws to fill the legislative vacuum arising from the dissolution of Parliament, pursuant to the principle of "the permanence and continuity of the state" (Article 42) and the constitutionally recognised principle that public services are organised "... based on continuity in the provision of services" (Article 154).

Under Article 70 of the Tunisian Constitution of 2014, the President of the Republic may issue decrees in agreement with the Head of Government when Parliament has been dissolved. The Head of Government may also issue decrees within the legislative domain when the Assembly of Representatives authorises it to do so (Article 70).

This category of legal norms is not subject to review of its conformity with the Constitution, because none of the three constitutions provides for such review. All three require the laws concerned to emanate from Parliament and to be promulgated before entering into force. Under the Algerian and Tunisian Constitutions, the President of the Republic, and under the Moroccan Constitution, the King, need not issue a separate promulgation order for ordinances, decrees, or dahirs: their signature alone suffices for entry into force. Consequently, these instruments are not submitted to constitutional review.

### *B. Time Limits for Initiating Review*

The procedures governing the enactment and amendment of organic laws under the Algerian Constitution (2016 amendment) include Article 144, which provides that "The President of the Republic shall promulgate the law within thirty (30) days from the date of its receipt ...." Thus, the promulgation of organic laws falls within the President of the Republic's powers. Article 186 of the same Constitution

also requires the President to refer the organic law to the Constitutional Council after Parliament approves it and before promulgation, for review of its conformity with the Constitution.

Mandatory review of an organic law must therefore be initiated within the thirty days allowed to the President of the Republic to promulgate the law after receiving it as approved by Parliament. This period is suspended when the Constitutional Council is seised, pending its determination of the organic law's conformity with the Constitution, and when the President requests a second deliberation on the text, a procedure authorised under Article 145 of the 2016 constitutional amendment.

The Moroccan Constitution does not indicate when the period for initiating review of organic laws begins or ends. The second paragraph of Article 132 of the 2011 Constitution affirms the mandatory initiation of conformity review before the King issues the order for promulgation. Article 21 of Organic Law No. 13-066 on the Constitutional Court, however, requires immediate referral to the Constitutional Court,<sup>20</sup> subject to the adoption of the organic laws by Parliament. The Head of Government therefore remains responsible for referring organic laws to the Constitutional Court upon receipt.<sup>21</sup>

The Tunisian constituent authority expressly specifies the time limits for initiating constitutional review of fundamental laws in Article 120 of the 2014 Constitution, which provides for "... reviewing the constitutionality of bills at the request of the President of the Republic, the Head of Government, or thirty members of the Assembly of the Representatives of the People, submitted within a maximum of seven days from the date of the Assembly's adoption of the bill, or from the date of its adoption of the bill in an amended form after its return by the President of the Republic ...."

A challenge on grounds of unconstitutionality must therefore be brought within seven days of the Assembly of Representatives' adoption of the bill in its initial form, or of its adoption in an amended form following its return.

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<sup>20</sup> See Yahya Halwi, *The Moroccan Constitutional Council's Practice in Constitutional Review*, 1st ed. (Oujda: Dar al-Gharb Publishing and Distribution Company, 2016), 17.

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## Section 2: Judicial Application of Constitutional Time Limits for Determination (A Comparative Statistical Study, 2015–2019)

The following table shows the extent to which the Algerian Constitutional Council observes the constitutional time limits for determining referrals, together with the interval between the adoption of an organic law and its referral to the Constitutional Council by the President of the Republic. The table contains the Constitutional Council's opinions on the conformity of organic laws over the last five years (2015–2019).

| Opinion No. | Date of opinion | Procedure | Date of adoption | Date of referral to the Constitutional Council | Interval between adoption and referral | Time taken to determine constitutionality |
|-------------|-----------------|-----------|------------------|------------------------------------------------|----------------------------------------|-------------------------------------------|
| 02/16       | 11/08/2016      | Ordinary  | 19/07/2016       | 24/07/2016                                     | 05 days                                | 18 days                                   |
| 03/16       | 11/08/2016      | Ordinary  | 19/07/2016       | 24/07/2016                                     | 05 days                                | 18 days                                   |
| 04/16       | 11/08/2016      | Ordinary  | 19/07/2016       | 24/07/2016                                     | 05 days                                | 18 days                                   |
| 01/17       | 16/03/2017      | Ordinary  | 01/03/2017       | 05/03/2017                                     | 04 days                                | 11 days                                   |
| 01/18       | 13/02/2018      | Ordinary  | 10/01/2018       | 22/01/2018                                     | 12 days                                | 22 days                                   |
| 02/18       | 02/08/2018      | Ordinary  | 01/07/2018       | 4/07/2018                                      | 03 days                                | 29 days                                   |
| 03/18       | 02/08/2018      | Ordinary  | 01/07/2018       | 4/07/2018                                      | 03 days                                | 29 days                                   |
| 04/18       | 02/08/2018      | Ordinary  | 01/07/2018       | 4/07/2018                                      | 03 days                                | 29 days                                   |
| 01/19       | 14/09/2014      | Ordinary  | 13/09/2019       | 14/09/2019                                     | 01 day                                 | 01 day                                    |
| 02/19       | 14/09/2019      | Ordinary  | 13/09/2019       | 14/09/2019                                     | 01 day                                 | 01 day                                    |
| 03/19       | 04/12/2019      | Ordinary  | 28/11/2019       | 01/12/2019                                     | 03 days                                | 03 days                                   |

The following table shows the extent to which the Moroccan Constitutional Court observes the constitutional time limits for determining referrals, as well as immediate referral by the Head of Government, as prescribed in Article 21 of Law No. 33-066 on the Constitutional Court. The table contains the decisions of the Constitutional Council, now the Constitutional Court, on the conformity of organic laws over the last five years (2015–2019).

| <b>Opinion No.</b> | <b>Date of opinion</b> | <b>of Procedure</b> | <b>Date of adoption</b> | <b>Date of referral to the Constitutional Council</b> | <b>Interval between adoption and referral</b> | <b>Time taken to determine constitutionality</b> |
|--------------------|------------------------|---------------------|-------------------------|-------------------------------------------------------|-----------------------------------------------|--------------------------------------------------|
| 955/15             | 04/03/2015             | Ordinary            | 09/02/2015              | 18/02/2015                                            | 9 days                                        | 14 days                                          |
| 961/15             | 18/05/2015             | Ordinary            | 28/04/2015              | 08/05/2015                                            | 10 days                                       | 10 days                                          |
| 962/15             | 19/05/2015             | Ordinary            | 28/04/2015              | 08/05/2015                                            | 10 days                                       | 11 days                                          |
| 966/15             | 30/06/2015             | Ordinary            | 09/06/2015              | 16/06/2015                                            | 7 days                                        | 14 days                                          |
| 967/15             | 30/06/2015             | Ordinary            | 09/06/2015              | 16/06/2015                                            | 7 days                                        | 14 days                                          |
| 968/15             | 30/06/2015             | Ordinary            | 09/06/2015              | 16/06/2015                                            | 7 days                                        | 14 days                                          |
| 969/15             | 12/07/2015             | Urgent              | 23/06/2015              | 09/07/2015                                            | 16 days                                       | 3 days                                           |
| 970/15             | 12/07/2015             | Urgent              | 30/06/2015              | 07/07/2015                                            | 7 days                                        | 5 days                                           |
| 971/15             | 12/07/2015             | Urgent              | 23/06/2015              | 09/07/2015                                            | 16 days                                       | 3 days                                           |
| 991/16             | 15/03/2016             | Ordinary            | 10/02/2016              | 18/02/2016                                            | 8 days                                        | 25 days                                          |
| 992/16             | 15/03/2016             | Ordinary            | 10/02/2016              | 18/02/2016                                            | 8 days                                        | 25 days                                          |
| 1000/16            | 27/05/2016             | Ordinary            | 04/05/2016              | 13/05/2016                                            | 9 days                                        | 14 days                                          |
| 1009/16            | 12/07/2016             | Ordinary            | 31/05/2016              | 16/06/2016                                            | 16 days                                       | 26 days                                          |
| 1010/16            | 12/07/2016             | Ordinary            | 31/05/2016              | 16/06/2016                                            | 16 days                                       | 26 days                                          |

| <b>Opinion No.</b> | <b>Date of opinion</b> | <b>of Procedure</b> | <b>Date of adoption</b> | <b>Date of referral to the Constitutional Council</b> | <b>Interval between adoption and referral</b> | <b>Time taken to determine constitutionality</b> |
|--------------------|------------------------|---------------------|-------------------------|-------------------------------------------------------|-----------------------------------------------|--------------------------------------------------|
| 1012/16            | 03/08/2016             | Urgent              | 26/07/2016              | 28/07/2016                                            | 2 days                                        | 6 days                                           |
| 1013/16            | 03/08/2016             | Urgent              | 26/07/2016              | 28/07/2016                                            | 2 days                                        | 6 days                                           |
| 1014/16            | 03/08/2016             | Urgent              | 26/07/2016              | 28/07/2016                                            | 2 days                                        | 6 days                                           |
| 70/18              | 06/03/2018             |                     | 06/02/2018              | 14/02/2018                                            | 8 days                                        | 20 days                                          |
| 71/18              | 12/03/2018             |                     | 13/02/2018              | 16/02/2018                                            | 3 days                                        | 24 days                                          |
| 89/18              | 25/12/2018             |                     | 27/11/2018              | 10/12/2018                                            | 13 days                                       | 15 days                                          |
| 95/19              | 02/09/2019             | Ordinary            | 02/08/2019              | 16/08/2019                                            | 14 days                                       | 17 days                                          |
| 97/19              | 05/09/2019             | Ordinary            | 26/07/2019              | 16/08/2019                                            | 21 days                                       | 20 days                                          |

## Conclusion

Examining the legal framework governing organic (regulatory/fundamental) laws provides an essential basis for understanding constitutional balances and the mechanisms protecting the supremacy of legal norms in the comparative systems under study (Algeria, Morocco, and Tunisia). By combining theoretical and conceptual analysis with applied statistical examination of constitutional decisions, this study reaches the following findings, followed by practical recommendations and prospects:

### First: Findings

1. **Functional and normative specificity:** the study demonstrates that organic laws are not merely ordinary parliamentary legislation, but “supplementary and secondary constitutional norms” whose status derives from the state’s founding charter. They organise public authorities and provide a framework for fundamental rights and freedoms, giving them a rank above ordinary legislation and immediately below the Constitution in the hierarchy of norms: a privileged intermediate position.
2. **The primacy of the formal criterion:** constitutional scholarship and adjudication favour formal and procedural criteria over the substantive criterion in defining these laws. Organic status does not arise merely from the importance of their subject matter, but from express recognition and authorisation by the constituent authority and their subjection to stringent procedures for enactment and approval.
3. **The effectiveness of constitutional adjudication in observing time limits:** the statistical examination of the period 2015–2019 reveals notable compliance by constitutional adjudicatory bodies (the Algerian Constitutional Council and the Moroccan Constitutional Court) with the constitutional time limits for determining conformity, alongside greater flexibility and rapid responses in the urgent cases found in the Moroccan experience.

### Second: Recommendations and Prospects

- **Closing the review gap affecting executive acts:** explicit constitutional provisions are needed to subject ordinances, decrees, and major executive decisions issued within the domain of organic laws to mandatory prior constitutional review, protecting that domain against executive encroachment during parliamentary vacancies or recesses.
- **Harmonising and specifying referral periods:** constitutional instruments should clearly stipulate the timing and deadlines for referring organic laws to constitutional adjudicatory bodies, addressing what the Moroccan instrument lacks compared with the Algerian and Tunisian Constitutions, to prevent any delay imposed by the executive before submitting the text to the court.
- **Establishing comprehensive mandatory review:** the Tunisian model, which made review of fundamental laws under the 2014 Constitution optional and subject to a short deadline of seven days, should be revised to establish mandatory preventive review, following the Algerian and Moroccan experiences, to safeguard the state’s legal and constitutional certainty.

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