



## **The Arab Center for the Development of the Rule of Law and Integrity**

### **“Promoting the Rule of Law and Integrity in Arab Countries” Project**

#### **Background Paper on**

#### **The Role of the Parliament in Drafting, Monitoring, and Assessing Public Policies (Moroccan Case) - Draft -**

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## **Introduction : Hypotheses and Basic Systematic Options**

The study on the role of the Parliament in drafting, monitoring, and assessing public policies requires answers to a number of questions of systematic and practical importance: what are the capabilities, standard and practical limits subject to deliberation on preferences? How questions on the quality and preferences are raised in a transitional context? What competences should the political actor have to produce a legal speech on public policies? It is not here a matter of technical competence only but a public policy linguistic and discursive competence<sup>1</sup>. What are the real capabilities to move from a parliament which contents itself to implementing classic monitoring mechanisms vis-à-vis public policies to a creative and assessor parliament?

The following hypotheses are considered as a composition attempt to present temporary elements to answer these questions

1) The parliament rationalization mechanisms which were adjusted within the Moroccan context since the 1962 Constitution are supposed to weaken the role of the Parliament in drafting, following up, monitoring, and assessing public policies. The importance of this hypothesis becomes clear when examining the following considerations:

- ❖ The import and adjustment of the Parliament rationalization happened in a context which has never knew Parliament notion<sup>2</sup> problems. It is also supposed that the import and adjustment of the Fifth Republic Constitution was ordained by the presidential and authoritarian concept.
- ❖ The increase in the influence of the Executive Power usually resulting from a constitutional structure based on rationalized Parliament leads, in the Moroccan case, to increasing the effect of unstable basic constitutional balances for the Institution vis-à-vis the Parliament, as well as intensifying the imbalance of the Executive dualism between the Royal institution and the Prime Minister on account of the latter.

<sup>7</sup> Sebastian SEGAS: “ Conversing with policy actors, on the languages of public policies” (p.3)

<sup>8</sup> It is unlike what France has known during the third (1875-1946) and fourth (1946-1958) Republics. For this reason, the Parliament rationalization was one of the main axes on the Constitution drafting agenda of the Fifth Republic where the axis regarding controlling the Parliament works was one of the basic elements through which the idea of the “rationalization of the Parliament works” was reflected, especially with respect to the government regulating the agenda, and subjecting both chambers to tribal constitutional supervision, in this regard review:

Bernard Chantebout, Constitutional Law, 18<sup>th</sup> edition, Armand Colin Ed. Paris, 2001, (p.368).



❖ In spite of the great importance of the study of public policies deliberation and discussion procedure, it's worth mentioning that different requests with a more limitative vision of the Parliaments role are trying to acquire a legal status from a view based on the fact that political decisions are currently taken in accordance with new procedures such as bargaining. These procedures had developed on the margin of classic power exercise structures i.e. hierarchy and democracy, where there is no interests sustainable balance<sup>3</sup>. In other words, it's a question of moving from a State vision centered on public policies (the General Law vision) to a vision stating that current forms of preference expression are today less formal and non-procedural<sup>4</sup>.

2) In addition to the rationalization effects hypothesis, the efficiency of which can be tested by analyzing the constitution text and the regulation laws of the Parliament and the Consultants Board, and mainly analyzing the Parliament deliberation procedures and measures, there is another hypothesis which suggests that the limited aspect of human, financial, and technical resources are factors which also contribute in restricting the role of the Parliament in terms of public policies.

3) One of the hard cores emanating from the scientific group agreement and common among different analytic transition samples towards democracy is uncertainty which illustrates transitional contexts. This same conviction gets it echo among different current theories on public policies analysis where ambiguity and uncertainty elements are divided among problematic preferences, unclear political technology, and variable participation patterns<sup>5</sup>. It is necessary to take into consideration the growth in political and social demand for participation during transitional periods, and the impasse of public policy makers who find themselves compelled to reconcile between priorities and conflicting interests which grow in size and quality within the transitional context, where proponents and advocates of an economic or social issue have, at the same time, a clear vision of what they want, and have as well clear preferences.

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<sup>3</sup> Jürgen Habermas: "Public space: Archeology of advertising as a constituent dimension of the middle-class society", translated from German by Marc B. de Launay, Payot Ed. (coll Policy criticism), Ed 1993, Paris, (p.207)

<sup>4</sup> Gilles Massardier: Policies and public actions, Ed. Armand Colin, Paris, 2003, (p. 23 & 61).

<sup>5</sup> Nikolas Zakariadis: "Ambiguity and choice in public policy: political decision making in modern democracies", Georgetown University Press, Washington D.C., 2003 (pp 153- 158)



Testing the efficiency of these hypotheses requires that the legislator recommends a bunch of basic systematic options to be tackled either in the texts standard study or in the practical case study.

- ❖ The neo-corporatist theory presumes that public policies are the result of the State special relations with some selected groups and milieus, such as the most powerful professional unions (employers' organizations, sector federations, and syndicates...). Each sector strives to impose its own conception to restore the production as an ultimate goal, leading to the emergence of potential contradictions among private requests and public interest. Respectively, the standards and technical limited aspect of the Parliament role in drafting, monitoring, and assessing public policies, as well as the uneven and exactly unknown lobbying effect brings about a hard reconciliation among conflicting interests<sup>6</sup>.
- ❖ Deliberation is a key element even in representative democracy in some institutional writings at least such as Edmund Burke writings<sup>7</sup>. In return, the deliberation authenticity requires communications which include thoughts about non-coercing<sup>8</sup> preferences; hence the importance of using the same methodological tools which are suggested by Habermas; for these tools allow to distinguish between politics as a value-based discussion and politics as a series of preference questions<sup>9</sup>. In this respect, the fundamental legitimacy content i.e. a specific distribution of symbolic resources and identifying uneven actors location should be reflected in procedural legitimacy, deliberation procedures, and Parliamentary decision making regarding public policies by turning the political language into a procedural language<sup>10</sup>.

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<sup>6</sup> Gilles Pollet: "Public policies analysis and theoretical perspectives: modeling attempt through policy retreat within a historical perspective, (under the direction) of Alain Faure, Gilles Pollet, and Philip Warin: "Building the common sense in public policies: debate about the referential notion", Ed. L'Harmattan, Paris, 1995 (pp. 25-49) (p.44)

<sup>7</sup> Check in this regard:

Jon ELSTER: "Introduction", in Jon ELSTER (Ed.) "Deliberative democracy", Cambridge, New York, Oak Leigh, Cambridge University Press, 1992.

<sup>8</sup> John S. DRYZEK: "Deliberative democracy and beyond: liberals, critics, contestations", Oxford University Press. Oxford 2000, (p 162)

<sup>9</sup> Jürgen Habermas: "Three normative models of democracy", in "Democracy and difference, contesting the boundaries of the political", Edited by Seyla Benhabib, Princeton University Press, New Jersey, 1996, (p23)

<sup>10</sup> Dominique Rousseau: "Constitutionalists, politicians, and (the renewal) idea of the Constitution" , C.U.R.A.P.P. : Law and Politics (1993), Ed. P.U.F. ( p.p. 40-52) (p 44)



- ❖ The referential notion<sup>11</sup> is expected to contribute, as produced and used in public policies, in giving elements which explain the Parliament role in the framework of public policies in our case. In this respect, many preliminary notes can be presented aiming at seeing whether the referential notion can be exploited in our case, since the notion resides in four levels:
  - ✓ Basic values and representations<sup>12</sup> where discussion about values was dropped because of the “consensual phenomenon” effect, mainly after 1998 in comparison with the previous period which witnessed crucial accountabilities in terms of public policies values by opposition parties represented in the Parliament. This accountability was often based on the social impacts of liberal economic policies.
  - ✓ Standards pursuant to the public action principles. In this regard, the Parliament’s standard position opposite the two poles of the Executive Power (i.e. the King and the government) should be evoked through public policies perspective, and through main constitutional balances by tackling two parameters “the Parliament rationalization impact” on one hand, and the “internal imbalance between the two poles of the Executive Power” on the other hand.
  - ✓ Algorithms which refer to the casual relations which express the action theory and take the form of the following logic formula (if there .....then). We can talk here about a component about the fact that the Parliament in our case has limited capabilities to defy and suggest alternative public policies scenarios presented and implemented by the government for a number of internal reasons (technical reasons, weak access to information, human resources problems), but also for external reasons including the lack of alternative political options on the international and national levels, especially in early 90s.
  - ✓ Images where the legislative institution suffers from many mental images contributing in the drastic axiological and practical legitimacy deficit. In addition to the axiological

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<sup>11</sup> Pierre Muller: public policies as building relations with the world”, in (under the direction) of Alain Faure, Gilles Pollet, and Philippe Warin: “building the common sense in public policies: debate on the notion of reference” (p.p. 153-189) (p158)

<sup>12</sup> Such as justice and equity



deficit embodied in the inferior status of the components representativeness (representativeness of social, economic, and political bodies) by the legislative institution, compared to the nation's higher representation (royalty), there are other mental images which give this legitimacy deficit a practical basis (and not only axiological basis). They are images detected on the common sense level and the political language on a large scale (absenteeism, political movement, inefficiency, and slowness)

- ❖ The discursive component regarding the deliberation of public policies course should also be considered. It requires the study of the actors' discursive structures, and how they express their real experiences regarding public policies<sup>13</sup>. It is also a crucial motive to suggest studying a number of cases according to the reports which record the deliberation and a part of the public policy actors' real experiences. In this context<sup>14</sup>, a large number of representatives may be excluded from the possibility of creating a legal speech about public policies since they don't have the linguistic, discursive, and technical competence of the public policy language. It is possible that public policy makers would not listen to them on the pretext that their speech is "political but not technical", may be "irrational", or "unrealistic", if based on the assumption stating that there is a special public policy language for each sector. Furthermore, there may<sup>15</sup> be some discursive limits in addition to practical and standard limits. In the case of the Ministry of Finances law, for example, if the Nation representatives don't speak the same technical language related to public funds, the chances that experts in the Ministry of Finance would listen to them are low. It is, then, a matter of accepting the other as a serious negotiator who has the right to speak publicly, the validity of which is checked on the monetary level during dialogue.

## **I - The Parliament between classic legislation and monitoring mechanisms and assessment capabilities: a standard and practical study**

<sup>13</sup> In terms of public policies as narratives, view:

Frank Fischer: "Reframing public policies, discursive politics and deliberative practices", Ed. Oxford University Press, 2003

<sup>14</sup> Sebastian SEGAS" "Conversing with policy actors, on the languages of public policies", European Consortium of political research, 29<sup>th</sup> Joint Sessions of Workshops, 6-11 April, 2001 (p1)

<sup>15</sup> Sebastian SEGAS" "Conversing with policy actors, on the languages of public policies" (p2)





Since the legislation and monitoring<sup>16</sup> constitute a great part of the Parliament role in public policy, it was necessary to examine the Constitution, and the Parliament<sup>17</sup> and Board of Consultants<sup>18</sup> Rules of Procedure in order to get to know capabilities, mechanisms, and the standard limits of the Parliament role in drafting and following up public policies from a perspective based on the asymmetrical actors capacities<sup>19</sup>. In this respect, Pierre Bourdieu's famous definition of the political field acquires a great importance as to reading the standard limits in the light of existent capabilities put at the service of the Parliament in terms of public policy drafting, monitoring, and assessment. Conducting a simple test to introduce the Parliament role in public policy into the political field, and especially in the Moroccan case, may enable us realize this importance<sup>20</sup>.

It's hence important that the essay shall not be restricted to a comprehensive explanation of standard requirements regarding the mechanisms usually available in the Parliament under the rationalized parliamentary concept, as much as it should study centralized examples in order to verify these requirements practical efficacy. Besides, the basic systematic aim of this standard explanation is to give a framework for case studies, object of the second part of the essay.

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<sup>16</sup> In the framework of the law scope the legislation of which falls under the jurisdiction of the Parliament, according to chapter 46 "voting laws creates a frame for the main objectives of the government activities in economic, social, and cultural fields"

<sup>17</sup> It was also ratified by the Parliament on 29 January 2004

<sup>18</sup> The Rules of Procedure of the Board of Consultants includes similar requirements; that's why the Parliament's Rules of Procedure were kept for studying the hypotheses mentioned in the introduction elements.

<sup>19</sup> Andy Smith: "Ideas put on action: references, their mobilization and the notion of policy network", in (under the direction) of Alain Faure, Gilles Pollet and Philippe Warin: "building the common sense in public policies: debate on the referential notion", (p.p. 103-125) (p112)

<sup>20</sup> "the political field is the place where are generated, in competition among committed agents, political products, programs, analyses, comments, concepts, and events among which ordinary citizens, considered as mere consumers, should choose, with chances of misunderstanding that grow with them being far from the production place (...). It means that the political field exert an effect of censorship by limiting the political speech universe, and hence, the universe of what can be thought of on the political level"

Comments:

1)The quantum and qualitative supremacy of the Executive Power as to taking the initiative to present draft laws states that the Parliament is further (than government) from public policies production place

2) the Parliament is required to participate in determining the fundamental choices regarding public policies in a context characterized by the scarcity of information, hard access to it, limited resources which allow to mobilize a counter expertise to the government expertise, leaving little choices to the Parliament

3) the strategic role of the royal institution when setting the public policies agenda, where the royal institution's discursive products, mainly the opening speech of the legislative session in October, contribute in setting the frames of the politically thinkable and unthinkable in terms of public policies



## **1- Parliamentary committees as a place for bargaining about public policies**

The Constitution refers to the existence of permanent committees<sup>21</sup>, and the Rules of procedure of the Parliament and the Board of Consultants determine the committee's number, competence, form, and rules regarding its work.

Concerning the essay's subject, and since the main objective of the standard data presentation is to provide outline elements for case studies, the light must be shed on the requirements study in relation to the deliberation and participation in drafting public policies, initially, through legislative effort.

Theoretically, the committees work is independent, with the possibility of forming sub-committees<sup>22</sup> in order to study thoroughly legal texts submitted to them according to sectors falling under their jurisdiction and the amendments of text forwarded to them. The paragraph 5 of article 32<sup>23</sup> allows coordinating the Parliament members' work in public policies, mainly in issues, the dimension of which reaches more than one sector (the example usually given in this respect is the complementarity of work among the Finances and Economic Development Committee, the Productive Sectors Committee, and social Sectors Committee). This possibility represented by the meeting of two or more committees is being implemented by virtue of the President of the Parliament's authorization<sup>24</sup>.

Permanent committees assume an exploratory role<sup>25</sup>, and it is noted that this research role is requested to being enforced in domains which were, in the past, out of discussions when it comes to their budget, such as National

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<sup>21</sup> Paragraph 1 of chapter 42

<sup>22</sup> Article 33 stipulates that the Permanent Committee Office has “the full competence to program its activities and those of its sub-committees, to run their discussions, determine the dates and time of their meetings, and monitor the process of drawing reports submitted to, on behalf of the committee, in the plenary session. On the opposite hand, there is article 52 of the board of Consultants' Rules of Procedure. According to article 34 of the Parliament's rules of Procedure, the Permanent Committee can “create sub-committees in order to deepen the study legal texts submitted to the committee depending on sectors falling under its jurisdiction, and amendments of texts presented to the committee”. The same possibility is mentioned in article 51 of the Board of consultants' Rules of Procedure

<sup>23</sup> Paragraph 5 of article 32 stipulates that each MP who is not a member in the Committee has the right to attend and take part in its works without participating in the vote. On the opposite hand there is article 51 of the Board of Consultants' Rules of Procedure

<sup>24</sup> According to article 34

<sup>25</sup> According to article 35 permanent committees are entitled to assign some of its members to undertake a temporary reconnaissance task regarding the conditions and circumstances of the implementation of a certain legislative text, or a topic of interest for society, or regarding one of the government activities with an agreement with the Parliament Office. “Mps assigned to undertake the reconnaissance task draw a report to be presented to the committee to discuss and submit it to the Parliament Office. On the opposite hand, there is article 67 of the Board of Consultants' Rules of Procedure





Defense. The former Colonel and current MP, member of the Committee of Foreign Affairs and Defense, Ahmed Zarof highlighted that a gradual consecration of a new practice is taking place: the committee discussing the Defense budget, which is a new component, since this budget was never subject to discussion within the committee and was voted unanimously. In the same context, and in the framework of enforcing its exploratory role, the committee suggested that field visits to MPs should be conducted. Mps who are members in the committee raised questions regarding the Royal Gendarmerie Support Fund during the Fund's budget vote<sup>26</sup>; although the National Defense Directorate's cooperation still depends on the very nature of the defense sector as governed by the Royal Institution, the King being the Royal Armed Forces' Supreme Commander.

In respect to the Finances law strategic character- which can be considered as an instrument to finance the State's public policies- it seems important, from the systemic and practical way, to learn about capabilities ensured to the committee during the discussion of the Finances draft law on one hand, and the practical scope of these capabilities on the other hand.

The Finances draft law submitted by the government should be reinforced by a report on the headlines of the economic and financial balance, registered outcomes, future orientations<sup>27</sup>, as well as documents regarding the expenses of the State's independent utilities and public institutions. A file, including economic, financial, national, and international statistics and indicators, is put at the service of the Finances committee members in order to help the Committee understand economic, national, and international circumstances, and therefore, analyze the draft law. During the discussion of the Finances law, MPs may ask the government for any document containing the items of this draft law which were not enlisted on attachments<sup>28</sup>. The Finances Committee, like other permanent committees, can assume a monitoring role,

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<sup>26</sup> Interview with Colonel Ahmed Zarof, member of the Committee of Foreign Affairs and Defense in the Parliament, Al Ayam Weekly, no. 218 (12-18 February 2006) (p6-7)

<sup>27</sup> Article 124 of the Parliament's Rules of Procedure stipulates that "the Finances draft law of the year and relevant sub-budgets are submitted to the Parliament Office in due time. A report is attached to the draft law and includes the headlines of economic and financial balance as well as recorded results, future perspectives, and modifications on incomes and expenses.

The mentioned report is accompanied by documents about the general budget expenses, the Treasury private accounts transactions, public utilities run independently, and public institutions, according to the requirements of the Finances Regulation law.

<sup>28</sup> Article 125 of the Parliament's Rules of Procedure stipulates that the Parliament holds "a private plenary session where the government presents the Finances draft law

The draft law is at once submitted for study to the committee of Finances and Economic Development.

Mps have the right to request from the government each document relevant to the draft law items that were not mentioned among attachments



by appointing some of its members to check the terms and circumstances of the Finances law enforcement. It has also the jurisdiction to reach necessary information and data. It can ask the Finances Minister and the government to present some explanations during the phases of the Finances law enforcement, and draw a report to be submitted to the committee for discussion<sup>29</sup>. Nevertheless, all these capabilities should be reviewed on the light of a critical component, i.e. the monopole of information by the Ministry of Finances, the Parliament failure – due to the weakness of material capabilities – to access necessary economic, legal, and financial counter-experience to present appropriate amendment proposal. These notes are ratified either during the discussion session in the Finances Committee or during the sectarian budget discussion in the Sectors Committee. Another component is the short term during which ministries submit documents and data related to the sectors' project falling under their jurisdiction on the occasion of the discussion of sector budgets in the Sectors Committee, where the term shall not exceed three days prior to the Committee meeting. This period of time is insufficient for MPs or consultants to undertake a detailed projects study.

More important remains, however, the phenomenon of the delay in drawing the Finances draft law, mainly that the Constitution or the finances regulation law (number 7-98 dated 26 June 1998) does not stipulate any penalties in this regard<sup>30</sup>. It is worth mentioning, in this respect, that legislators became more aware of scientific problems caused by this phenomenon. In fact, in the Finances Committee report, and the equipment, planning, and regional development in the Board of Consultants regarding the Finances draft law 35.05 for the fiscal year 2006 for example, the Committee members noted the short term of the Finances law compared to the significant tax burden characterizing this year Finances draft law, as the draft law had included the book of recipient and overall collection of all the requirements of the income tax, company tax, and value added tax, as well

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<sup>29</sup> Article 123 of the Parliament's Rules of Procedure stipulates that "the Committee of Finances and Economic Development drafts necessary reports to facilitate the review of the Finances draft law and the settlement law. For these purposes, it is entitled to have access to all documents related to general budget expenses, attached budget transactions, and private accounts by virtue of the Finances Regulation law. It is also entitled to summon the Minister of Finances to give statements on the issue. It can also ask the government to give explanations during the phases of the Finances law implementation and at the end of the fiscal year

<sup>30</sup> Mohamad Harakat: "Governance and public policies assessment: essay on the role of Parliament in Morocco", in Governance and new public management in Morocco, texts compiled and presented by Mohamad Harakat, strategic management series, no.6, 2005, Published in the Moroccan Magazine for audit and development, (p.p. 47-73) (p55)



as registration fees while setting the taxes general code. For these reasons, members of the Committee considered that it would have been better to review these requirements separately from the financial law<sup>31</sup>.

## **2- The role of some regular mechanisms in monitoring the government work under the rationalized parliament: a model of fact finding committees as a tool to “public policies assessment”**

It can be said that the constitutional consecration of the fact finding committees<sup>32</sup> came as a result of the legislative institution desire and as a relatively late response to the constitutional project. In other words, this consecration is the fruit of an old practice<sup>33</sup> characterized by compromise and resistance<sup>34</sup>, where the only constitutional consecration of fact finding committees was recorded in the 1992 constitution. In return, the Parliament expressed the desire to take on the monitoring role through fact finding committees as of 1977, when the Parliament had integrated them in its Rules of Procedure. However, the Constitutional chamber confirmed in its decision of 22/4/1978 the unconstitutional aspect of this endeavor<sup>35</sup> based on a fundamental excuse that it was not stipulated in the 1972 Constitution among the monitoring means of government work<sup>36</sup>. It is here a situation where negotiating the constitutional consecration of one of the most classical monitoring mechanisms of public policies’ implementation by the Parliament may last too long.

<sup>31</sup> Report introduction (p2)

<sup>32</sup> Paragraph 2 of chapter 42 of the current Constitution stipulates (1996) that: “in addition to permanent committees mentioned in the previous paragraph, fact finding parliamentary committees may be formed according to the King’s initiative or by a request from the majority of members of both councils. Their mission is to gather information related to certain facts, and inform the Council which formed them about the results of their works. It is not allowed to form committees in order to inspect facts which are subject to judicial follow ups, as long as these follow ups are on going. The mission of each established fact finding committee directly when a judicial investigation is opened regarding the facts due to which they were formed.

The Regulation law sets how to manage fact finding committees

<sup>33</sup> Fact finding committees were set for the first time in the Parliament’s Rules of Procedure in the first Parliament in 1963. Besides, the Constitutional Chamber’s decision, stating that introducing fact finding missions in the Rules of Procedure is against Constitution, did not forbid resorting to these fact finding committees, in real, in two cases: the fact finding committee on the leak of Baccalaureate exams issued its report on 11 June 1979, and another fact finding committee on the events of Fès and Tangier on 14 December 1990 and presented its report to the Parliament on 12 April 1992

<sup>34</sup> Mohamed Madani: “Parliamentary inquiry committees”, in “Parliamentary institution in Morocco”, Publications in the Moroccan magazine of local administration and development, 1<sup>st</sup> Ed., 2000, Rabat, “Thèmes actuels” series, no. 23 (p.p. 159-167) (p160)

<sup>35</sup> The Constitutional Chamber’s decision no. 4, published in the Official Gazette no. 3441 on 22 April 1978

<sup>36</sup> This argument was confirmed in a number of the Constitutional Chamber’s decisions, such as the decision no. 17 of 24 July 1979, and the decision no. 182 of 22 August 1985



Furthermore, some researchers in the constitutional law stressed that it is necessary to take into consideration the component of the indicative and functional differential between inquiry and control<sup>37</sup>. The importance of this difference becomes obvious if we take into account that the second part of the Regulation law, by virtue of which inquiry committees are established, is preceded by a meaningful title: “Data collection”<sup>38</sup>, which falls under the committees jurisdiction via means set forth in article 8 (learn about documents, and summon natural persons to be listened at). In addition to that, there are other standard limits regarding the fact that the jurisdiction of inquiry committees does not cover some of the sensitive areas, and regarding the government role whether issues, subject to inquiry, are included in these areas. As a matter of fact, the article 10 of the Regulation law set forth the necessity to notify the Prime Minister in case the committee wants to gather information on facts related to the National Defense, the Internal or External State Security, or Morocco’s relations with foreign States. In this respect, the Prime Minister may object to that due to the confidentiality of documents. Other standard constraints are also imposed on the outcomes of the committee’s work, which may affect its transparency, because, according to the article 18, the Parliament shall decide to discuss the content of the committee report in a plenary session or examine it in a closed session. It has also the right to decide to issue some or all the content of the report in the official gazette.

Many remarks can, hence, be put forward regarding the position of inquiry committees among the whole mechanisms available for the legislative power in order to monitor and assess public policies. It is possible that “voters” are not informed of the complete results of the inquiry committees’ work, and the requirements of article 10 of the Regulation law may leave vital and strategic areas out of the Parliament monitoring and assessment.

A crucial component should not be neglected here; it is linked to the mission of inquiry committees as stipulated in the Constitution and the Regulation law, where it can be deduced that they cannot<sup>39</sup>, originally, undertake inquiries about the management of public utilities and contracting services, but its initial role is to inquire about a specific event, with an urgent and

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<sup>37</sup> Abdelaziz Lamghari: “Crisis and relations between the government and Parliament in Morocco”, in “The Moroccan parliamentary institution”, Publications in the Moroccan magazine of local administration and development, 1<sup>st</sup> Ed., 2000, Rabat, “Thèmes actuels” series, no. 23 (p.p.113- 159) (p130)

<sup>38</sup> Statement number 1-95-224 issued on 29 November 1995 to implement the Regulation law no. 5-95 regarding the way to manage fact finding parliamentary committees

<sup>39</sup> Unlike France for example, view in this regard:

Mohamed Madani: “Parliamentary inquiry committees”, (p163)



temporary aspect; and if it happened that the committee did an assessment effort, it is nothing but minor, indirect, and in the case of a specific event, object of the inquiry. In spite of the great outcomes achieved in the assessment, they would have not been conceived without the occurrence of an imbalance which required the establishment of an inquiry committee. The penalties effectiveness still depends on a large extent on the legal nature of the outcomes of the inquiry committees work, which cannot be considered as decisions but as elements and information used for the sake of the parliamentary institution<sup>40</sup>.

The outcomes regarding the inquiry committees work, which have been reached, can be reinforced by reading the results stated in the Parliamentary Fact Finding Committee's report about real-estate and tourist credit institution (which was a public bank institution) issued on 15 February 2001<sup>41</sup>, and by detecting the practical difficulties it had faced: Regardless of the fact that the Committee has got 4298 documents with a direct help from the real-estate and tourist credit institution itself, the Ministry of Finances, the Bank of Morocco, the Deposit and Management Fund, as well as the ministry charged with preparation of the national soil and reconstruction<sup>42</sup>, it has registered a slowness in getting those documents, (the committee did not obtain 89% of the documents until 3 months as of the beginning its work). It has also noted the existence of practical problems about the access to the archives, namely when it comes to conceded or settled loan files.

The committee faced many difficulties when summoning witnesses<sup>43</sup>, since it couldn't listen to a number of them though summons were sent to them by virtue of the public authority, and because the address of some witnesses is inaccurate<sup>44</sup>.

The explanatory framework presented by the report in order to identify imbalances in the real-estate and tourist credit acquires a significant

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<sup>40</sup> Mohamed Madani: "Parliamentary inquiry committees", (p167)

<sup>41</sup> The report of the fact finding committee on the real-estate and tourist credit institution (12 July 2000 – 9 January 2001) published in the Official Gazette no. 4874 on 15 February 2001 (p 477-539)

197 MPs from the majority presented a request to form the committee and opposition groups supported them unanimously. MP Idriss Lashkar, President of the socialist group in the Parliament, presided the committee. The committee held 52 meetings taking 168 hours, and 160 hours of field visits, and heard 102 witnesses. The report was put to vote during the meeting on 19 January 2001, and ratified it unanimously.

<sup>42</sup> The fact finding parliamentary committee's report on the real-estate and tourist credit institution (p 479)

<sup>43</sup> A number of researchers confirm actually that one of the problems which limit the efficiency of the work of fact finding committees is the incapacity to enforce the procedure of the obligation to appear in court, which falls under the jurisdiction of the judicial authorities, view in this regard:

<sup>44</sup> Mohamad Harakat: "Governance and public policies assessment: essay on the role of Parliament in Morocco", in Governance and new public management in Morocco", (p60)

<sup>44</sup> The fact finding parliamentary committee's report on the real-estate and tourist credit institution (p 481)





importance as to the essay's topic: if these imbalances are explained by external factors (the sector of tourism crisis after the 1<sup>st</sup> Gulf War 1990-1991 which led, as for the bank, to more risks centered around the tourism and real-estate sectors, since they are financed by the bank), and by internal factors determined in the report, with the real-estate and tourist credit moving from a specialized financial institution to a bank dealing with activities to which it was not adapted in terms of regulations. This led the experts in this bank to underestimate the risks of some loans.

As much as the explanatory context of imbalance detection shows high degrees of professionalism in analysis, mainly when it comes to the institutions work assessment, from the managerial aspect; as much as it distinguishes clearly among professional violations<sup>45</sup> and those considered as financial crimes (disrespect of legal and regulation texts concerning the credit institutions' activities and monitoring)<sup>46</sup>, and as much as the report could critically specify levels of responsibility (decision making parties in management, the bank's clients)<sup>47</sup> and could even determine the "nature of private documents, which are protected by the intervention of eminent personality in the State"<sup>48</sup>, samples of large and medium loans contributing in the institution's financial imbalance, and included in the report refer to low or average levels of the hierarchy of political and economic connection, though the names and positions of officials were mentioned.

A certain ambiguity also appears on the level of suggestions submitted<sup>49</sup> by the committee to overcome the real-estate and tourist loan crisis, as the

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<sup>45</sup> The report diagnosed some of them, as follows: inefficient organization, unchecked accounts, clientelism, complicity, mismanagement of loans allocated by the institution. The fact finding parliamentary committee's report on the real-estate and tourist credit institution (p 484-504)

<sup>46</sup> It is mainly related to the statement of 6 July 1993 regarding the activities and monitoring of credit institutions. The report referred also to cases of embezzlement, breach of trust, counterfeiting, squandering public funds or any similar notes, as well as distributing illusive profits on contributors by counterfeiting the General Account, The fact finding parliamentary committee's report on the real-estate and tourist credit institution (p 482 and 539)

<sup>47</sup> The committee set, according to contraventions, two levels of responsibility: the level of decision making parties regarding the management, organization, and monitoring, and the level of parties dealing with the real-estate and tourist credit, as original actors, accomplices, or contributors

The fact finding parliamentary committee's report on the real-estate and tourist credit institution (p 484)

<sup>48</sup> The report mentioned: "...private or protected files. They were called as such because eminent people in the State are intervening in order to treat them in a special way that might sometimes be illegal and against procedures whether they are related to loans granting, or by overlooking some terms and safeguards, or by conceding some of those loans

The fact finding parliamentary committee's report on the real-estate and tourist credit institution (p 504)

<sup>49</sup> This ambiguity concerns suggestions that can fall within public policies assessment, and not recommendations related to the implementation of classical monitoring and punishment mechanisms, where the committee recommended the activation of judicial proceedings against each person who played a





report only refers to the need to draw a “back up plan” without giving a platform of suggestions through which the committee may contribute in strengthening the Parliament role concerning public policies assessment from a perspective that goes beyond classic monitoring.

### **3- The non-activation role of the Economic and Social Council**

The Economic and Social Council is a constitutional institution since 1992, as stipulated in chapter 94 of the Constitution: the Government, the Parliament, and the Board of Consultants may consult the Economic and Social Council in all economic and social cases<sup>50</sup> where the Council expresses its opinion in the national economy’s general orientations and structure.

However, the regulation law on the Council’s structure, jurisdiction, and management stipulated in the chapter 95 of the Constitution has not been issued to date.

Hence, one of the main constitutional capabilities, which would strengthen the Parliament role in public policies, remains simply inactive.

### **4- Conclusions**

- ❖ The Constitution highlights the major role of the Royal institution in setting the public policies agenda; especially the First Session’s opening speeches (the session of October) of each legislative year. The Royal speech is not directly subject to any criticism as to the validity of its choices considered as final choices which orientate public policies. It’s worth mentioning here the chapter 28 of the constitution stipulating that “the King shall address the Nation and the Parliament, and deliver his speech before the two councils. Its content shall not be subject to any discussion.”

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role in embezzlement whether they were officials, tutors, supervisors, actors, accomplices, or contributors (The fact finding parliamentary committee’s report on the real-estate and tourist credit institution) (p 537)

<sup>50</sup> Article 174 of the Parliaments Rules of Procedure stipulates as well that “the Parliament shall consult the Economic and Social Council in all issues having an economic or social aspect, according to the rules set forth by the Regulation law of the Economic and Social Council, by virtue of the provisions of chapter 94 of the Constitution”. Article 175 of the same Rules of Procedure stipulates that if the Economic and Social Council appointed one of its members to give his opinion about the general orientations of the national economy and structure, according to the requirements of paragraph 2 of chapter 94 of the Constitution, the President of the Economic and Social Council notifies the Speaker of the House in this regard”



- ❖ Some mechanisms of the Parliament work, laid down in the Rules of Procedure, seem to be a regular extension of the Parliament system's logic based on the cooperation between the Legislative and Executive powers from the perspective of the rationalized Parliament. Using them in the local context may, however, deepen the structural imbalance between both powers. A number of analytic indicators may corroborate this interpretation. If article 41<sup>51</sup> of the Parliament's Rules of Procedure allows, for example, the mutual hearing between the government and the committee members, the article's content, in some of its paragraphs, implies the government's priorities, where hearing the ministers within committees is stipulated as a must (it must). In addition to this indicative component, another component should also be considered; it is linked to the limited practical capability to mobilize experts by the Parliament and committees, in general, in comparison with different experts working with the government or public directorates.
- ❖ The Parliament's Rules of procedure analysis reveals the government domination in the deliberation and discussion procedures regarding legislation, and eventually, in public policies drafting.
- ❖ It also seems that basic constitutional balances on the level of the relation between the first and second chambers may hinder the Parliament work development as to drafting, monitoring, and assessing public policies, where it would be sufficient, in this respect, to remind of the duality and duplication of the chambers work, and even the quasi-conformity of the two Rules of Procedure, to the extent that

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<sup>51</sup>Ministers have the right to attend the committees meetings, they can also have recourse to delegates they appoint for this purpose, according to the requirements of chapter 42 of the Constitution

Ministers shall be listened to if they request that, the government delegates have also the right to take the floor if some of the government members asked that.

Each committee has the right to request, through the Speaker of the House, in each concerning issue, to listen to:

- a member of the government,
- a representative of one of the Supreme Councils, a High Commissioner, a Manager of a public or semi public institution, or the State's company with the presence of the government delegate tutor of the sector

By virtue of the same constitutional requirement, these capabilities are mentioned in article 58 of the Board of Consultants' Rules of Procedure



some researchers prefer to describe this situation as the Bi-parliamentary system instead of the Bi-chambers system<sup>52</sup>.

- ❖ Pursuant to these data, the standard and practical domination of the Executive Power, in its two poles, can be noticed in the series of public policy decision making. It is a domination revealed by many powers: the Royal speech Power safeguarded by the Constitution, the Expertise Power, which is usually on the side of the government, since it has the competences needed from experts in public directorates. It is also able, financially and technically, to mobilize experts outside the public directorates.
- ❖ Furthermore, there is another component represented in the Expertise Power. The validity of its results is certified by the Royal Institution (the symbolic and practical power to decide 50 years of human development for example). Concerning the Parliament's weak material resources, as well as the material and technical failure to mobilize criticism or counter expertise, pretext options available for the Parliament in public policies remain very limited, and they are often restricted to reproduce the government diagnosis, as well as the solutions it comes up with, with a major difference, i.e. to use, in a competitive and conflict way, the pretext of authority according to the royal speech authorities, or studies conducted by the government and the other executive services in the State (such as the High Commission on planning).
- ❖ But failing to mobilize counter expertise by the legislative institution is not only caused by the limited financial resources put at its disposition, as one cannot ignore the phenomenon represented by the fact that a number of researchers in Human sciences and sociology started, gradually, since the 90s separate their activities in academic Institutes in order to work as government consultants, office members, and assigned to undertake tasks and studies. This

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<sup>52</sup> Fathallah El Rhazi” “Bicameral system and instruments of the parliamentary action”, in “Rotation and democratic transition”, public law collection, published by Omar Bendourou, Proceedings of the seminar organized by the studies and research group, democracy and human rights, in collaboration with the department of public law of the Souissy faculty of law – Rabat, on 20-21 April 2000, published with the support of Konrad Adenauer Foundation, 2001 (p.p. 115-129) (p126)



is a “migration” directed towards the government, initially, and not towards the Parliament. This shift regarding the orientations of researchers in Sociology, which seems international<sup>53</sup>, largely reduces the opportunities to mobilize counter expertise even if material capabilities are available.

- ❖ The conclusion is reinforced about the fact that the Parliament rationalization’s usual mechanisms would contribute- in the Moroccan case- in at least weakening the Parliament role as to drafting, following up, monitoring, and assessing public policies; and thus, by evoking the government right to contribute in setting the agenda while making it on the level of the Presidents seminar<sup>54</sup>, as well as its right to replace the agenda by a complementary<sup>55</sup> one, and change the priorities of the draft laws presented by the government and the law suggestions that it approves when arranging the agenda<sup>56</sup>. In addition to that, the government has the last word (via consultation) when voting in parts a legal text<sup>57</sup> or when approving the discussion of amendments submitted by MPs, after opening the discussion, in parallel with the direct approval to discuss the amendments submitted by the government<sup>58</sup>. The government has, as well,

<sup>53</sup> By way of comparison, a similar orientation was registered in Latin America, review in this respect:

Lisa Anderson: Pursuing truth, Exercising power: social science and public policy in the 21<sup>st</sup> century, Columbia University Press, New York, 2003 (pp 105-106)

<sup>54</sup> According to article 50, the Presidents seminar is summoned to meet by the request of the Speaker of the House. The Speaker of the House shall tell the Prime Minister of the date and time of the Presidents’ seminar meeting. The Government shall send its representative to the meeting, and he has the right to intervene in the discussions to express the government’s opinion regarding the agenda progress, and organization when it comes to concerning issues.

<sup>55</sup> According to article 54 of the Parliament Rules of Procedures, “if the government asks to change the Parliament’s agenda pursuant to the requirements stipulated in chapter 56 of the Constitution, by adding, reducing, or replacing one or many texts, the speaker immediately informs the Parliament’s Office in order to draw a complementary agenda, and notifies the Presidents seminar about it.

<sup>56</sup> According to article 53: “the Office draws the Parliament’s agenda. This agenda includes, by priority and according to the arrangement set by the government, the discussion of draft laws submitted by the government and the law suggestions that it approves pursuant to the requirements stipulated in chapter 56 of the Constitution.”

<sup>57</sup> Article 72 stipulates that: “a vote in parts may be requested regarding a legal text. The demander should determine the sections or chapters that he requests to be subject to vote in parts. The vote in parts applied to a legal text, necessarily, if the government, the concerned committee, or the majority of present MPS asks that. In other cases, the President decides, after consulting the government, or the concerned committee, whether the topic requires a vote in parts or no, hence by taking into consideration the requirements of chapter 57 of the Constitution.”

<sup>58</sup> According to article 110: “Mps and government have the right to make amendments. The government, after opening the discussion, shall object reviewing any amendment which was not previously exposed



the last word in gathering the mixed bi-committee, in case of urgency, and when failing to adopt a draft law or suggest a law after being discussed for two times in either Councils, or one time in each of them<sup>59</sup>.

- ❖ despite the importance of requirements related to the financial and administrative management of the Parliament (the Office is entitled to draw the Parliament's budget<sup>60</sup>, the possibility to form a committee to supervise the budget spending<sup>61</sup> annually and on the basis of relative representation, the Office is entitled to draw the Parliament's budget and run its affairs, the right of Parliamentary committees to obtain material capabilities and human resources<sup>62</sup>), the Parliament doesn't have a financial independence as long as the credits allocated to the

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before the concerned committee, thus according to the requirements of chapter 57 of the Constitution.” As to article 112, it stipulates that: “after opening the general discussion, no amendments shall be accepted except those submitted or approved for discussion by the government.”

<sup>59</sup> According to chapter 58 of the Constitution and articles 136 and 137 of the Parliament's Rule of Procedure, since article 136 stipulates that: “if a draft law is not adopted or a law is not suggested after being discussed twice in both Councils, or once in each of them if the government declared an urgency, the government shall arrange a meeting of a mixed bi-committee formed by members of the two Councils, according to chapter 58 of the Constitution.” Article 137 stipulates that the government “notifies of its decision, aiming at forming a mixed bi-committee, the Speaker of the House, who immediately notifies the Parliament of that. Shall directly be stopped each on going discussion regarding the text subject of the request.”

<sup>60</sup> Article 22 of the Parliament's Rules of Procedure stipulates: “the Office draws the Parliament's budget and run its financial affairs; the credits allocated to the Parliament's budget are included in the State's general budget.”

<sup>61</sup> Article 23 of the Parliament's Rules of Procedure stipulates that Parliament shall form “a temporary committee on the basis of the relative representation of the committees in order to verify that the Parliament's budget for the previous year was spent appropriately. It shall also present a report in this regard to the Parliament, within a period of six months from the date of its establishment.

This committee is composed of 13 members among which are the presidents of Parliamentary committees or their subordinates.

Members of the Parliament's Office are not entitled to participate in the works of this committee unless they are asked to submit information or data about the budget spending.

The committee supervising the budget spending is formed, for the first time after opening October's session of the second legislative year, of each following year, and in the last time it is formed once month prior to the closing of the regular session where the legislative mandate ends.

The Office sets up a Statute where it determines the rules applied to the Parliament's audit, the committee undertakes its work according to regulations laid down regarding the committees work in this Rules of Procedure.

<sup>62</sup> Article 28 of the Parliament's Rules of Procedure stipulates that “Parliamentary committees have the right to obtain material capabilities and human resources in the Parliament's premises, such as desks, and personnel to organize their internal interests, which are appropriate to the number of each committee's members. The Parliament's Office tries to provide them within the Parliament's capabilities at the beginning of the legislative period.”





Parliament's budget are included in the State's general budget. The problem of material, human and logistic capabilities still exists and remains subject to debate by the MPs and the staff working in legislative institutions.

- ❖ If we tackle the importance of the institutionalization of the Parliament action and its role in reinforcing the role of the legislative institution when drafting, following up, and assessing public policies, mainly the conclusions of the researcher Nelson Posby<sup>63</sup> regarding the Parliament's committees decision to consecrate the Parliament's work traditions, and thus by studying the course of the institutionalization of the Parliament's work in the U.S House of representatives. It is possible to assume that a high ratio of the Parliamentary committee's renewal may negatively affect the necessary aggregate to support the course of the institutionalization of the Parliament's work, and promoting the Parliament's work in public policies, which also influences its independency. This hypothesis was really confirmed, on the Afro-American level, through the study conducted by the researchers Agustias and Parejo<sup>64</sup> as to the Moroccan Parliament. After studying the ratio of Parliamentary renewal between 1977 and 1993 in comparison with the 1970's Parliament which didn't last long, and emerged directly after the putting an end to the extraordinary situation, it turned out that one cannot talk about a stable Parliamentary class which can launch institutionalization<sup>65</sup>. In other words, there was no Parliamentary class in harmony having a common approach of authority which can create a consent around objectives and procedures, or provide appropriate conditions to lay the foundation of a institutional culture special to MPs. It is a

<sup>63</sup> Posby determined three indicators to the institutionalization of the Parliament action: independency, the degree of the institution's internal complication, and harmony

Nelson Posby: "The institutionalization of the U.S. House representatives", The American political science review, vol LXIII, 1968 (public policies 144-168)

<sup>64</sup> Maria Agustias and Parejo Fernandez: "Political class and Parliamentary institutionalization in Morocco since 1977", in Morocco's Ancient and New elite (under the direction of Nouredine Sraieb with the collaboration of Amina El Messaoudi), Research and Study Institute on the Arab and Muslim World, Edisud, Aix-en-Provence, 2003, (public policies 149-167)

<sup>65</sup> Maria Agustias and Parejo Fernandez: "Political class and Parliamentary institutionalization in Morocco since 1977", (p 161)





situation which may have negative repercussions on the Parliamentary institution's<sup>66</sup> independence opportunities. Nothing stands in the way of this conclusion keeping its current character as to the previous and current Parliamentary mandate.

- ❖ One can conclude that one of the factors which can help explain the limited role of the Parliament in public policies is the factor represented by the intervention philosophy of the Parliament heading towards a classic monitoring practice rather than assessing the public action according to costs accounts<sup>67</sup>. This situation, is however linked to the institutional framework, since a number of researchers<sup>68</sup> concluded that the limited capacity in assessing public policies (compared to the Parliament classic monitoring) in legislative and regulatory texts in Morocco is not due to the original non recognition of the assessment importance, but it is linked to the absence of a detailed identification of their conditions for being taken into consideration in institutional reform projects, namely on the level of the constitutional and legal organization.

## **II- Case studies**

Concerning the importance of discussion within committees, as a center of negotiation and bargaining related, on the level of procedures, to public policies, a number of cases were chosen to be studied. They have a great importance on the structural level (study on the standard and practical situation of the Parliament's financial authorities), as well as on the level of the legislative production current agenda around current public policies (the draft law on political parties, the Free Trade agreement, and the health coverage code).

### **1- The Parliament's financial authorities limits**

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<sup>66</sup> Maria Agustias and Parejo Fernandez: "Political class and Parliamentary institutionalization in Morocco since 1977", (p 162)

<sup>67</sup> One of the most indicative cases in this respect is that investment expenses which are given authorizations within programs could not be discussed and adopt by the Parliament, in an exact manner, so that its effect would continue for a long time without undertaking a deep study of its programs and financial covers.

<sup>68</sup> Review in this regard the collective book of: A. Bouabid, L. Jaidi, M. Harakat: "Public action assessment", Abderrahim Bouabid and Friedrich Ebert Foundation, 2004.



This paragraph gains its importance from the fact that the Parliament’s financial authority is considered as a strategic authority in terms of public policies, one of the most valuable terms in which legislative institutions contribute in when making public policies.

The financial jurisdictions of the Parliament, which are initially represented by issuing the financial law, are considered important (chapter 50 of the Constitution)<sup>69</sup>. Among other jurisdictions there are: the possibility to present suggestions and amendments regarding the Finances draft law, provided that it does not lead to the reduction of public resources, creation public employment, or increase existing employment (chapter 51 of the Constitution)<sup>7071</sup>. The concept of the Parliament rationalization allows understanding the reason according to which the Parliament was not assigned the jurisdiction to present an amendment, which causes the reduction of the State’s financial resources, the creation of public employment, or increase existing employment, taking into consideration the risks of depriving the government of its financial means needed to implement its policy, or of exacerbating the budget deficit rate. However this does not give a good reason to the narrow interpretation of chapter 51 adopted by the government to trim down, in terms of quality and quantity, the suggestions to amend the Finances law issued by MPs; where the government usually considers that the word “resources” indicates, at the same time, the size and structure of resources. Whereas the broad interpretation of the public employment notion allows imagining the reduction possibility or remove a certain resource while suggesting to find or adding another resource without affecting the total size of resources. This

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<sup>69</sup> Chapter 50: “the Finances law is issued by the Parliament by voting according to conditions stipulated in a Rules of Procedure. The Parliament votes for one time the equipment expenses needed to carry out the development plan, and thus, when it approves the plan. The effect of the approval covers, automatically, the expenses throughout the plan period. The government is the only institution entitled to present draft laws aiming at changing the approved programs as mentioned. If, at the end of the fiscal year, the Finances law is not voted, or no decision is taken as to its implementation due to its referral to the Constitutional Council according to chapter 81, the government opens, by virtue of a decree, the credits needed to run public utilities, and undertaking their tasks based on what is provided in the budget submitted for approval. In this case, the work consists of deducing revenues according to legislative and regulatory requirements applied to them except for revenues which are meant to be cancelled in the Finances draft law. As for revenues, the amount of which shall be reduced in the draft law, they are deduced on the basis of the new suggested amount.

<sup>70</sup> Chapter 51: “the suggestions and amendments presented by MPs are rejected if their approval leads, as to the financial law, either to reduce public resources or to create public employment or increase existing employment

<sup>71</sup> Article 130 of the Parliament’s Rules of procedure reminds, by virtue of chapter 51 of the Constitution, of such expressions.



broad interpretation will probably promote the Parliament initiative in terms of suggesting amendments on the Finances law.

In the light of the same concept, one can understand the specific character of the voting procedure of the Finances law where article 129 of the Parliament's Rules of Procedure stipulates that the whole first part is voted (i.e. the part including the resources, costs, and financial balance data) according to enforced terms when voting a whole draft law. In this case, if the Parliament does not agree on the first part of the Finances draft law, the latter is totally rejected before the voting the second part related to expenses. In return, by voting the first part, the Parliament is bound to vote the second part.

On the level of practice, there are many practical obstacles regarding the level of technical control in the expectation estimates<sup>72</sup> of budget and balance control operations. The level of technical control requires complicated studies on a statistic basis unfound in the Parliament, under the quasi-monopoly of information in the Ministry of Finances<sup>73</sup>, as to the Finances law implementation.

One of the practical limits, which also hinder the performance by the Parliament of its role in monitoring and assessing the Finances law implementation, is the delay in drafting the settlement law<sup>74</sup> which determines the Finances law implementation. If the Finances regulation law sets forth that the settlement law should be drafted at least at the end of the second fiscal year following the implementation of the Finances law, the following examples will reveal the significant interval between the settlement law year and the year it was drawn in order to identify the Parliament limited capabilities in prospective assessment and monitoring of public policies. In fact, the settlement law for the year 1995 was not ratified until 2002. As for the settlement laws for the years 1996, 1997, and 1998 they were adopted in 2003<sup>75</sup>. Practically, the Parliament does not have a

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<sup>72</sup> Among cases of expectation estimates there is the case about the legislator determining the tax recipient and price in the light of the revenues and fiscal product being subject to the economic conjuncture.

<sup>73</sup> Mohamed Harakat: "Governance and public policies assessment: essay on the role of the Parliament in the assessment of Public action in Morocco", Governance and new public management in Morocco, text compiled and presented by Mohamed Harakat, strategic management series, no. 6, 2005, publication of Morocco audit and development magazine, (p.p. 47-73) (p.55).

<sup>74</sup> According to chapter 48 of the Finances regulation law issued on November 26, 1998, the settlement law determines the final amount of cashed incomes and expenses to be spent for the same fiscal year, to which the balance sheet of the year is limited.

<sup>75</sup> Mohamed Harakat: "Governance and public policies assessment: essay on the role of the Parliament in the assessment of Public action in Morocco", (p58)



chance to assess public policies due to the delayed discussion of the settlement law.

In spite of the above mentioned standard capabilities, mainly when it comes to the role of the Finances committee, there are practical difficulties to follow up a number of financial transactions related to credit movement, especially that the budget implementation is subject to conjuncture fluctuation, and that the executive power can delay estimates and expectations for them to be in conformity with the current situation by changing credits as adopted by the Parliament, mainly on the level of opening additional credits, surpassing the credits opened in the Finances law as to debt expenses and personnel expenses, altering and redeploying posts, and transferring credits whether it is a question of management or investment.

One can notice, through the analysis of the suggestions about the amendment of the Finances draft law presented by MPs, that it often remains limited, seeks only to achieve some requirements, or requests that certain professional categories or sectors<sup>76</sup> be exempted from taxes or obtain permanent reductions.

We should highlight here the increased conscious registered on the level of the legislative institution as to the importance of affording the resources needed to help assessment and monitoring institutions assume their role. It is very significant in this respect that all committees jointly presented an amendment to change the credits mentioned in table b attached to article 60, and table c attached to article 61 of the Finances draft law in order to give financial courts the capabilities that would help them achieve their roles in supervising public money<sup>77</sup>.

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<sup>76</sup> Among the amendments presented by majority groups in the Board of consultants regarding the Finances draft law number 35.05 for the fiscal year 2006 is adding private education institutions and the professional structure of facilities which take advantage of permanent reductions or income tax exemptions as to enrollment expenses reaching around 24000 dirham annually in order to encourage them turnout to private education.

Review the report of the Finances committee, equipment, planning, and regional development in the Board of Consultants about the Finances draft law number 35.05 for the fiscal year of 2006, the amendments of majority groups (p 2 and 6)

<sup>77</sup> Review the report of the Finances committee, equipment, planning, and regional development in the Board of Consultants about the Finances draft law number 35.05 for the fiscal year of 2006 (the report introduction p 10)



## **2- The situation of the draft law number 36.04 regarding political parties**<sup>78</sup>

The first thing to be noticed by reading the Mps discussion of the draft law articles, and the Consultants discussion of the political parties draft law as endorsed by the Parliament is the diagnostics convergence regarding Morocco's political scene. This strengthens the hypothesis about the drop in raising the question of values and consensual preferences.

Apart from the competitive use of the argument of power which prevailed in the first years of the rotation experience, one can notice, on the discursive level, and through the analysis of a number of paragraphs related to the discussion conducted by the Committee of justice, legislation, and human rights in the Board of Consultants, as well as by the Committee of the interior, decentralization, and infrastructures in the Parliament about the draft law, a tendency to the consensual and common use of the argument of power by all political parties. Besides, it is worth mentioning that the compatible use lays the foundation of an agreement on the references<sup>79</sup> of public policies related to the management and regulation of the political scene.

As to the report of the Board of Consultants, and in spite of the notes stating that the main role of the Ministry of the Interior regarding the management of the establishment course comprises risks of sliding from declaration to an intermediate kind of permit allocation, with the violation it causes to the freedom of establishment, and the possibility to reduce the parties independence<sup>80</sup>, this did not turn into amendments that can present alternative suggestions of the draft law perspective, except for amendments submitted by majority groups and by the confederal<sup>81</sup> team (from the

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<sup>78</sup> This case study resorted to a qualitative content analysis of the Committee of justice, legislation, and human rights in the Board of Consultants about the draft law no. 36.04 regarding political parties, the Directorate of Legislation, Monitoring, and Foreign Affairs, Permanent Committees and Ordinary Sessions Department, Permanent Committees Service, the legislative mandate 1997-2006, the ninth legislative year, session of October 2005, as well as to the report of the Committee of the interior, decentralization, and infrastructures in the Parliament about the draft law no. 36.04 regarding political parties, session of October 2005.

<sup>79</sup> It turns out from this constructive paragraph: "...these high instructions (regarding the rehabilitation of the political field, the rationalization the political, administrative, and financial management of political parties) which lead political actors created dynamism in claiming the independent legalization of political parties similar to the other international experiences. As a result, this action was based on fundamental references such as the high royal will, the Constitution requirements, and the democratic concepts proclaimed by both the civil and political societies." The report of the Committee of justice, legislation, and human rights in the Board of Consultants about the draft law no. 36.04 regarding political parties (p3)

<sup>80</sup> The report of the Committee of justice, legislation, and human rights in the Board of Consultants about the draft law no. 36.04 regarding political parties (p 10)

<sup>81</sup> The team of the Labor Confederation Association in the Board of Consultants





Opposition) on the level of articles 9<sup>82</sup> and 15<sup>83</sup> of the draft law to abolish the suspensive effect of the requests to annul the establishment submitted by the Minister of the Interior to the administrative court.

Applicants of these amendments could not vote for them in order to keep the two articles as they were mentioned in the draft law.

On the level of the Parliament and despite the importance of the discussion about the second paragraph of article 4 of the draft law<sup>84</sup> as to the potential ambiguity that may be triggered by interpreting the expression of banning the establishment of the party on a religious basis under a constitutional Order which considers Islam as the religion of the State. In spite of the amendments presented by a number of majority and opposition groups<sup>85</sup> to make the content of this paragraph more accurate, all amendments were rejected by the government representatives in the committee, and therefore withdrawn. It is then a fashion to create consent around this paragraph of article 4, as mentioned in the draft law presented by the government. This was reflected by the result of the vote of the draft law articles inside the committee, where the article was maintained as mentioned in the draft law. The result of the vote came as follows: 28 approvals, zero objection, and 4 abstentions<sup>86</sup>.

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<sup>82</sup> Article 9 of the draft law as ratified by the Parliament stipulates that: “if the terms and procedures of establishing the party were not in conformity with the provisions of this law, the Minister of the Interior asks the Administrative Court in Rabat to reject the declaration of the party establishment within a period of 60 days starting from the date of presenting the establishment file mentioned above in article 8.

The Administrative Court gives its decision about the file mentioned above in the first paragraph within a period of 30 days as from the date of its registration in the record. In case of challenge, the competent court gives its decision within 60 days.

Presenting the request to reject the establishment to the Administrative Court in Rabat suspends the procedures of the party establishment.

<sup>83</sup> Article 15 of the draft law as adopted by the Parliament stipulates: “the party is considered as legally established after 30 days of the date of submitting the file mentioned above in the first paragraph of article 14, except when the Minister of the Interior asks the Administrative court in Rabat within the same period and according to the terms determined in article 53 of this law to annul the establishment of the party.

Presenting the request to reject the establishment to the Administrative Court in Rabat suspends all of the party activities.

<sup>84</sup> Paragraph 2 of article 4 of the draft law stipulates that: “is considered null and void any establishment of a political party on a religious, linguistic, ethnic, or partial basis, or founded, in general, on a discriminatory basis or violating human rights.”

<sup>85</sup> The committees of the Popular Movements Union and the Liberals National Association, and the committees of Justice and Development as well as the Socialist Alliance.

<sup>86</sup> The report of the Committee of the interior, decentralization, and infrastructures on the draft law no. 36.04 regarding political parties (p 106)





### **3- The situation of the draft law number 28.04 to approve, in principle, the ratification of the Free Trade Agreement signed between Morocco and the USA in Washington on 15 June 2004**<sup>87</sup>

It is a model case to represent those who are elected for the private domain<sup>88</sup> of the royal institution, especially the fields of foreign affairs and defense. Such thing can be concluded by compiling the greatest arguments around which is centered the presentation of the delegated Minister of Foreign Affairs and Cooperation in order to submit the Free Trade Agreement to the Committee of Foreign Affairs, Borders, Occupied zones, and National Defense in the Board of Consultants.

- ❖ First argument (an implied recall of the fact that the foreign policy is part of the royal institution's private domain): the agreement is the fruit of a decision taken by his Majesty the King and the US President<sup>89</sup>. It is a sovereign decision (this is the form used in the answers of the delegated Minister during the discussions of the members of the Committee of Foreign Affairs and National Defense in the Parliament regarding the agreement)
- ❖ Second argument: many States asked to undertake negotiations in order to make a similar agreement<sup>90</sup>.
- ❖ Third argument: fears expressed by the Committee regarding the impact of the large disparities in the development levels between both countries were tackled during negotiations mainly on the sectarian level<sup>91</sup> (agriculture, textile, and pharmaceutical industry)

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<sup>87</sup> This case study resorted to a qualitative content analysis of the report of the Committee of Foreign Affairs, Borders, Occupied zones, and National Defense in the Board of Consultants regarding the draft law no. 28.04 to approve , in principle, the ratification of the Free Trade Agreement signed between Morocco and the USA in Washington on 15 June 2004, directorate of Legislation, Monitoring, and Foreign Affairs, Permanent Committees and Ordinary Sessions Department, Permanent Committees Service, the legislative mandate 1997-2006, the eighth legislative year, session of October 2004.

<sup>88</sup> Consecrated in the Constitution in paragraph 2 of chapter 31 of the Constitution which stipulates that the king signs and ratifies agreements as well as the appointment, by him, and accreditation of Ambassadors (paragraph 1 of chapter 31). The king shall also submit the decision of waging war to the Ministerial Council he presides, by solely notifying, in case of waging war, the Parliament and the Board of Consultants (chapters 74 and 66 of the constitution)

<sup>89</sup> The report of the Committee of Foreign Affairs, Borders, Occupied zones, and National Defense in the Board of Consultants regarding the draft law no. 28.04 to approve , in principle, the ratification of the Free Trade Agreement signed between Morocco and the USA in Washington on 15 June 2004 (p.1)

<sup>90</sup> The report of the Committee of Foreign Affairs, Borders, Occupied zones, and National Defense in the Board of Consultants regarding the draft law no. 28.04 to approve , in principle, the ratification of the Free Trade Agreement signed between Morocco and the USA in Washington on 15 June 2004 (p 7)

<sup>91</sup> The report of the Committee of Foreign Affairs, Borders, Occupied zones, and National Defense in the Board of Consultants regarding the draft law no. 28.04 to approve , in principle, the ratification of the Free Trade Agreement signed between Morocco and the USA in Washington on 15 June 2004 (p 7)



The above mentioned classification reveals that the presentation and answers of the delegated Minister of Foreign Affairs and Cooperation adopted an argumentation strategy that does not give any chance to ask preference questions which can check on the spot the practical efficiency of the agreement ratification. If the Constitution stipulates in paragraph 2 of chapter 31 that “the King does not ratify agreements which impose expenses on the ministry of Finances except after being approved by virtue of a law”, article 132 of the Parliament’s Rules of Procedure stipulates that only the draft law on authorizing the agreement ratification is put to the vote, and does not include the articles of the agreement which >>>>>>>>>> and no relevant amendment shall be presented<sup>92</sup>. Out of two available options i.e. approving the agreement ratification or rejecting it, the first option remains from the practical way the single option.

This conclusion is also reinforced by the sharp critics articulated by members of the Committee of Foreign Affairs, National Defense, and Islamic Affairs in the Parliament regarding the USA economic policy and strategic choices in the Middle East. This wasn’t necessarily translated in the Committee into votes against the agreement (7 with, zero objection, 2 abstentions)<sup>93</sup>.

#### **4- The situation of the draft law to amend article 147 of the law number 65.00 as a fundamental code for health cover presented by wagers representatives**

Wagers representatives<sup>94</sup> submitted to the Board of Consultants a draft law to change article 147 of the law number 65.00 as a code for health cover in order to link the enforcement of the provisions of fundamental compulsory insurance to the date of publication of practice texts to install the administrative and management equipment of the National Agency for Health Insurance, the National Fund of Social Care Organizations, and the

<sup>92</sup> Article 132 of the Parliament’s Rules of Procedure stipulates that if the draft law on authorizing the agreement ratification or approving an international agreement not subject to ratification is put to vote, the Parliament shall examine the draft law according to the requirements of paragraphs two and three of chapter 31 of the Constitution, does not vote the articles of these two instruments, and no relevant amendments shall be presented.

<sup>93</sup> Check some of this critics in the report (p. 4-10)

<sup>94</sup> The Moroccan Labor Union, the Labor democratic Confederation, the Public Workers Union in Morocco, the National work Union in Morocco, the Labor democratic Federation

View the report of the Committee of education, cultural and Social Affairs on the draft law to change article 147 of the law number 65.00 as a fundamental code for health cover, the legislative mandate 1997-2006, the eighth legislative year, session of October 2004, Directorate of Legislation, Monitoring and Foreign Affairs, Permanent Committees and Ordinary Sessions Department, Permanent Committees Service, (p 6)



National Fund of Social Security. It also aims at linking the provisions of the Medical Aid System to the publication of practice texts related to this system.

The study of the amendment reasons allows us to find out the main arguments presented by wagers representatives to prove the efficiency of this draft law:

- The delay in the enforcement of a law as a code for cover due to the fact that text, regulation decrees were not issued until late 2004.
- Avoid waiting a special fiscal year because of the code's social importance during implementation
- Parties to social dialogue, such as the government, employers, and unions, reached an agreement

Among the three arguments, the first one has an inspection character, whereas the second falls under the wagers representation concept which is the reason behind the existence and role of unions themselves. As to the third argument, it requires a special attention from the researcher, since it seems here that the chances of approving this draft law to the extent of putting it to unanimous vote were originally determined by reaching compromises via negotiations outside the legislative institution, in the framework of social dialogue and before presenting the draft law.

This case reveals a relatively new approach in public policies. It can be understood in the light of the model of “Advocacy coalition framework” as developed by Sabatier<sup>95</sup>. This model attempts to explain public policies through competing coalitions’ interaction<sup>96</sup>, and gives great importance to the role of public policies sub-patterns in drafting and implementing public policies<sup>97</sup>. These are patterns which the Parliament partly controls in our case, since approving the suggested amendment submitted by the four unions in the Board of Consultants is considered as a consecration of the results that were reached in the context of the social dialogue rounds between the government and unions. These rounds are held in another framework away of the legislative institution. It is one of the reasons which explain the unanimous ratification of this draft law.

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<sup>95</sup> Sabatier: “An Advocacy coalition framework of policy change and the role of policy oriented learning therein”, policy studies, 21, 1988, (p.p. 129-168)

<sup>96</sup> Frank Fischer: “Reframing public policies, discursive politics and deliberative practices”, (p 95)

<sup>97</sup> Frank Fischer: “Reframing public policies, discursive politics and deliberative practices”, (p 80)



In the same context, this model can give an explanation to the agreement among the four unions of usually opposite interests and choices and to their consent on the level of a sub-pattern of public policies<sup>98</sup> (the health cover). This model is also an appropriate context, for example, to shed the lights on the partial limitation of the voting behavior of a Parliamentary team by the negotiation results reached in other contexts apart of the legislative institution. In this respect, we can explain the union team of the Labor democratic Confederation in the Board of Consultants in a positive way for the first time regarding the Finances law thanks to the high results that were obtained in the social dialogue according to the union's opinion.

## **5- Conclusions**

- ❖ Discussion elements which seem, at first sight, to lead to crucial amendments in the draft law do not necessarily result neither in draft amendments nor in vote against the draft law. For example, 39 out of the 62 articles composing the draft law on the political parties were unanimously voted in the Committee of justice, legislation, an human rights in the Board of Consultants,
- ❖ Among examples that can be used to prove the limited capabilities of the technical expertise mobilization is the Free Trade Agreement with the USA due to the difficulty in analyzing the content of the Free Trade Agreement which includes around 400 pages: the text of the agreement, appendixes, and correspondences exchanged among Moroccan and US negotiators. In addition to that the subject of the agreement covers a large variety of contexts<sup>99</sup> which require the mobilization of highly specialized experts.
- ❖ From a discursive perspective, a study should be conducted on the terms of the ideological production of public policies. This perspective is very important for it may enable to understand the Parliament failure to mobilize technical expertise not as a mere technical or material problem but as a problem related to the intellectual function of public policies. In the Moroccan case, it became the choice of a trip which is on the ambiguous edge

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<sup>98</sup> Frank Fischer: "Reframing public policies, discursive politics and deliberative practices", (p 95)

<sup>99</sup> Agriculture, health measures, botanical health measures, fabrics and garments, rules of origin, customs administration, trade technical barriers, preemptive measures, public deals, investment, cross-border trade in services, financial services, telecommunications, e-commerce, intellectual property rights, labor, environment, transparency, management of the agreement, urgent conflict settlement, abolishing customs tariffs.



between policy and administration (the model of technocrats who lately joined political parties), contributing in the intellectual determination of public policies' critical options. The joint effort deployed by representatives of professional and administrative sectors and by politicians to surmount the contradiction between regulation (which is an answer to problems hierarchy that should be surpassed) and legalization (i.e. the legalization of public policies options as to those who did not profit)<sup>100</sup> is one aspect of the consent phenomenon in our case. It has stamped a number of fundamental legal texts such as the labor code (2003). In this respect, the Parliament position as an arbitration space would be secondary compared to dialogues undertaken in other consultation structures with the government supervision and participation (such as collective dialogue). In the case of the Free Trade Agreement, and in terms of rhetoric analysis, the effort deployed by Al Tayeb Al Fasi Al Fahri, the delegated Minister of Foreign Affairs while discussing the Free Trade Agreement is to recover stories-narratives of the remaining public policies actors (such as the Coalition for the Right in Treatment) in order to curb any possibility to use them by MPS to raise preference questions.

- ❖ In the conversational analysis approach, complaining about failing to mobilize expertise refers indirectly to the need of linguistic competence, where “technical terminology” seems like a challenge which can hardly be discussed and deliberated on the basis of equality with its producers usually called by MPs “the government experts”. It is a double failure that can be observed in the form of two problems: a reference problem i.e. the difficulty to state to what the term refers in fact, and the meaning problem i.e. the difficulty to understand the term<sup>101</sup>. That's why a fundamental element must be taken into consideration: terminology produced and exchanged within public policies is carried by powerful experts<sup>102</sup>. As a matter of fact, one of the mains functions of public policies' language and rhetoric can be identified based on one of the functions the researcher Richard ghiglione link to any

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<sup>100</sup> Philippe Warin: Public policies, multiplicity of arbitration and social order construction, in (under the direction) of Alain Faure, Gilles Pollet and Philippe Warin: “Building the common sense in public policies: debate on the notion of references”, (p.p. 85-103) (p 86 and 89)

<sup>101</sup> View in this regard

Philippe Blanchet: Pragmatics from Austin to Goffman, Ed. Bernard Lacoste, Paris, 1995

<sup>102</sup> Sebastian SEGAS: “Conversing with policy actors, on the languages of public policies” (p16)





communication aspect, i.e. building a world of relations by creating to speakers positions which determine how and who is the actor who is entitled to produce arguments, the validity of which can be tested during a discussion about public policies.”<sup>103</sup>

- ❖ Unlike the European Union<sup>104</sup> for example, data, in the Moroccan case, related to lobbying are not characterized by visibility. Besides, the degree of lobbying is defined by the level according to which lobbyists realize the power, position, and influence of the institution<sup>105</sup>. In our case, and according to the legislative institution position, lobbyists would turn less toward to Parliament and would prefer to direct their efforts to ministerial sectors and directly influence when drawing draft laws. This idea is strengthened in accordance with the corporatist structure of the main professional associations based on lobbying<sup>106</sup>.
- ❖ Many common diagnosis sessions which were held in the Parliament, and allowed the author of the background paper to activate and participate in them, as well as the application forms given to MPS, committee cadres, and parliamentary groups<sup>107</sup> in order to set the needs related to expertise in the respect of undertaking a database for experts in favor of the Board of Consultants revealed that there is an increasing consciousness of the government “technical and practical supremacy” via its experts. There is also a general agreement on identifying the needs related to expertise which are usually considered by MPs and

<sup>103</sup> Richard Ghiglione: “I understood you”, Ed. Armand Colin, Paris, 1989

<sup>104</sup> View in this regard

Stijn Smismans: “Law, legitimacy and European Governance: functional participation in social regulation”, Ed. Oxford University Press, New York, 2004 (p55)

<sup>105</sup> Stijn Smismans: “Law, legitimacy and European Governance: functional participation in social regulation”, (p57)

<sup>106</sup> According to P.C. Shmitter, corporatism can be defined as a model of interests representation where its component are organized in limited, individual, binding, non competitive, hierarchic, functionally distinct, recognized, and authorized categories if they were not established by government. They are given a monopoly representation in sectors they represent in return of respecting a kind of monitoring when choosing their leaders, on the form requests, and kinds of support.

<sup>106</sup> Stijn Smismans: “Law, legitimacy and European Governance: functional participation in social regulation”, (p58)

<sup>107</sup> This operation falls under the framework of the project aiming at “supporting the project of the Moroccan Parliament Activities” carried out by the International Development Center” of New York University in the framework of Memorandum of Understanding concluded between the USAID and the Moroccan Parliament, where the author of the background paper carried out a database for experts including 150 experts, 387 institution to support the Parliamentary committees capabilities. In this regard, many common diagnosis sessions were held, mainly the workshop on 30 June 2005





cadres as a structural need extremely looming in many occasions such as dealing with a draft law having a specialized technical aspect (the chartered accountants draft law, the Stock Exchange draft law), when practicing parliamentary diplomacy, or raising the quality of the supervision of the government action (as when studying the impact of the Free Trade Agreement concluded between Morocco and the USA on the sector of meat). This reveals the importance of the Parliament demand on expertise in order to increase the quality of the legislative action (namely on the level of draft laws amendment or law proposals), and to ensure the efficiency of the supervision of the government action. Furthermore, what shows the close link, regarding the participants perspective, between expertise, and the possibilities to improve the Parliament participation in drafting, implementing, following up, and assessing public policies is that standards suggested by participants to determine experts focused primarily on the need to ensure a balance of opinions generated in terms of expertise in a way that allows to produce a counter expertise. Standards focused, as well, on the need to take into account the expert's technicality in his field of specialization, and the impact of his opinions in public policies decision making.

- ❖ The above mentioned diagnosis is stamped by a structural character reflected by an increased demand on expertise and on creating an integrated information system which provides a simultaneous access to reports, statistics, and studies. This demand was expressed years ago from the “government monopoly of the authority and technical aspect of drawing draft laws and their enforcement texts”<sup>108</sup>, with a great emphasis on expertise within government (the government Secretariat General, experts and technicians in public administration, consultants, people charged of studies, tasks...), against the scarcity of study offices, expertise in Parliament Affairs, and in technical domains which attracted the attention of the legislative production in the last years (labor, insurance, joint companies, chartered accountants). Legislators consider that this situation leads paving the way to adopt studies

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<sup>108</sup> Ibrahim Rachidi, Deputy Speaker: “the Parliament’s Expertise houses in Morocco: what the MP expects from expertise houses?”, in D. Ali Al Sawi (editor): “The Parliament’s expertise houses, mission and role” (the work of the discussion seminar held in Cairo, 22-24 December 2001) with the support of the UNDP, (p 149-150)



and proposals submitted by professional organisms and bodies with the lack in alternative sources of information or in the counter expertise<sup>109</sup>.

- ❖ It seems that since the “consensual rotation” in 1998 questions about values or preferences in public policies are no longer raised with the same intensity as prior to this date. However, it is necessary to check it, for questions about values (such as those related to the fundamental ideological options of the economic and social order) witnessed consent in their regard, at least since late 80s with the collision of the Oriental camp. Nevertheless, the 90s were subject, on the level of the legislative institution, to sharp discussions, and a discursive conflict due to preference questions.
- ❖ Some researchers<sup>110</sup> define the legislative mandate 1984-1992 as the mandate of “management crisis” which was subject to accountability by the government’s opposition to public policies inside the Parliament, mainly that the mentioned legislative mandate coincided with the implementation of the structural adjustment policy (1983-1993). In spite of the regression in recalling the conflict of ideological authorities at that time, questions related to preferences (the issue of the social impacts of the government economic and social policy), the rationalization and efficiency of adopted policies were harshly raised during this legislative mandate in many occasions mainly the Finances law, the fiscal reform and privatization of public facilities. Besides, the supervision petition<sup>111</sup> of May 1990 was also a dramatic moment in this course.

### **III- Suggestions to improve the Parliament role in public policies**

It seems that the legislative institution will be obliged to be opened to lobbying, since it allows MPs to offer information and expertise to decision

<sup>109</sup> Ibrahim Rachidi, Deputy Speaker: “the Parliament’s Expertise houses in Morocco: what the MP expects from expertise houses?”, (p 150)

<sup>110</sup> Abdelaziz Lamghari: “Crisis and relations between the government and Parliament in Morocco”, in “The Moroccan parliamentary institution”, (p 145)

<sup>111</sup> The supervision petition was presented by opposition parties in the Parliament: the Independence party, the Socialist Federation of Popular Forces, the Progressive and Socialist party, and the Democratic Popular Labor Organization.

The supervision petition was submitted shortly after the PM speech during the spring session of 1990, after the government presented a draft law on the amendment of the Finances. It also coincided with the increase in the prices of consumer goods on May of the same year.



makers. In this respect, the European Commission's<sup>112</sup> experience may be recalled as well as that of the U.S. Congress in legalizing the practice of this action with transparency in the framework of the 1946 law which considers lobbying as, by itself, an existing profession and should be registered in the Secretariat of the Parliament and Senate<sup>113</sup>.

This requires thinking about the code of ethics for clean lobbying practices to ensure transparency and the knowledge of terms of access to decision makers, regarding public institutions (in this context, the experience of both the U.S. Congress and the European Commission can be useful). It is essential for it enables the Parliament generate information by laying the foundation of structures to assess the public action; leading to fight the government information monopoly. It also requires exploiting some available standard mechanisms to improve the Parliament role in monitoring and assessing public policies. One of the most indicative examples in this regard is the possibility provided by article 92 of the law on financial courts. Within the assistance afforded to the Parliament by the Accounts Supreme council, on the occasion of examining the report on the financial law enforcement and the conformity general declaration prepared according to article 47 of the Finances Regulation law, the Council can respond to the verification and audit requests submitted by the Heads of the two Parliament Chambers pursuant to chapter 97 of the constitution<sup>114</sup>. It is probable that the sustainable implementation of this possibility would become a practice where the Accounts Supreme Council would evolve from a judicial body for financial audit into a body which adds public policies assessment to its competence. At a certain level, one can think of a legal consecration for this potential improvement like the improvement witnessed by the British National Audit Office (i.e. equivalent to the Accounts Supreme Council). The law on public accounts verification for 1983 has provided the British Office, in addition to its initial competence in public institutions financial audit, with an further and qualitative competence i.e. the audit of performance, by using the assessment method<sup>115</sup>. The Office offers also an independent information source to the British House of Commons through the reports it presents to the public accounts committee, along side other

<sup>112</sup> Stijn Smismans: "Law, legitimacy and European Governance: functional participation in social regulation" (p56)

<sup>113</sup> Philippe Ardant: Political institutions and constitutional law, 16<sup>th</sup> edition, L.G.D.J. collection DELTA, Paris, 2004, (p289)

<sup>114</sup> According to chapter 97 of the Constitution "the Accounts Supreme Council provides the Parliament and the government with its assistance in its fields of competence by virtue of the law"

<sup>115</sup> Bernard Perret: "public policies assessment", Ed. La découverte, Paris, 2001 (p.68)



assessment companies; and this makes the assessment system polycentric. The same evolution occurred in the USA in the case of the General Accounting Office which was established in 1921 and witnessed in the 50s a shift as it didn't content itself to its initial task i.e. accounts auditing, but also examining public policies assessment. There is also the study of the possibility to adapt some foreign experiences about providing the Parliament with structures for public policies assessment, such as the Parliament office for political assessment in France. It resulted from an initiative in the form of a draft law that was presented on July 1995, pending ratification by the requirements of the law of 14 June 1996, specific to the Office. The activities of this institution include a retrospective and prospective assessment in a way by far similar to the Italian experience where the parliamentary body for administrative supervision conducts a public policies assessment based on simplified standards such as legitimacy, conformity, profitability, and efficiency. In this respect, one can think, on a short term, of establishing a financial analysis unit in the Parliament composed of specialized experts, like the Congressional Budget Office<sup>116</sup>, specialized in choice analysis in the field of economic policy, its cost determination, results assessment in coordination with the above mentioned General Accounting Office.

Expanding the interpretation of chapter 51 of the Constitution, as mentioned in the paragraph about the Parliament financial authorities, by interpreting the public employment concept according to functional classification of expenses, allows specifying the program rather than the classical classification by sectors. This requires moving from the classic perspective of means pondering to results pondering as a basic condition for management assessment.

### **Final Elements**

What are the real capabilities to evolve from a Parliament which contents itself to implement the classic monitoring mechanisms of public policies to an innovative and assessing Parliament<sup>117</sup>? This question acquires, in fact, a significant importance within the constitutional theory itself as to overcoming structural problems when choosing parliamentary rationalization, the Parliament functional imbalances at the same time, in addition to surpassing the Parliament's double failure regarding the means

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<sup>116</sup> Established in 1974

<sup>117</sup> J.-P. Duprat: "The assessing Parliament", International Magazine of Constitutional Law, no.2, 1998 (p.p. 551 and f.)



needed to get information and the capacity to influence the government projects and programs<sup>118</sup>.

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<sup>118</sup> Mohamad Harakat: “Governance and public policies assessment: essay on the role of Parliament in Morocco”, in Governance and new public management in Morocco, texts compiled and presented by Mohamad Harakat, strategic management series, no.6, 2005, Published in the Moroccan Magazine for audit and developmen, (p.p. 47-73) (p47)