

COMPARISON OF THE AUTHORITIES OF UPPER AND LOWER LEGISLATIVE HOUSES

SPECIFIC AREAS OF AUTHORITY EXAMINED

1. Should the Council of Representatives send all draft laws to the Federation Council for discussion or just those related to regions?
2. What should the joint responsibilities of the two houses be regarding appointing executive branch and other officials?
3. What should the joint responsibilities be regarding passing the budget and other issues?

To assist the Constitutional Review Committee in answering the above questions, IILHR has compiled a comparative examination of the respective areas of authority for upper and lower legislative houses for the following countries: Germany, Egypt, Nigeria, and the United Arab Emirates.

The chart below summarizes the relative authorities of the upper and lower houses in terms of appointment responsibilities, legislative jurisdiction (i.e. which draft laws does each house have legal authority over), and budgetary issues. Following the chart, IILHR has provided language from the constitutions of each of the countries examined relating to the three topics.

Overview of the authorities of the upper and lower houses

	Appointment Responsibilities	Legislative Jurisdiction	Budget and other issues
Germany	The lower house elects the Federal Chancellor (prime minister). A candidate is proposed by the Federal President and the election is then held exclusively among the Members of the lower house, who vote in a secret ballot without any prior debate. The candidate requires an absolute	The upper house (<i>Bundesrat</i>) has authority over laws which are considered to directly affect the regions the members of the upper house represent. The upper house has power of absolute veto over these laws. These laws include: <ul style="list-style-type: none">• Remuneration and pensions of members of the public service at regional and local level²• Constitutional amendments³ (must be amended by 2/3 majority of both houses)• General administrative rules⁴	Under the Constitution, the lower house has the right to adopt the budget and control its implementation by the government. The budget bill may only become law if it gains a majority in Parliament. The draft budget and draft Budget Act are presented simultaneously to the upper and lower houses where

² German Constitution, art 74a(2) available at <http://www.constitution.org/cons/germany.txt>.

³ *Id* at 79(2).

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	<p>majority in Parliament.</p> <p>It is only possible for the Federal Chancellor to be voted out of office by Parliament – by means of a constructive vote of no confidence. The lower house must elect a successor by the majority of its Members and request that the President dismiss the current Chancellor and appoint the newly elected candidate. The President must comply with this request.¹</p>	<ul style="list-style-type: none"> • Execution of federal laws by the regions⁵ • Funded mandates where regions must provide more than a quarter of the grant⁶ • Federal tax laws where revenue accrues wholly or in part to the regions⁷ <p>For laws not in the above list (those not seen as directly affecting the regions), the upper house can delay passage with an objection. The lower house can overrule the objection/delay by an absolute majority. If 2/3 of the upper house object to a law, the support of 2/3 of those present in the lower house and an absolute majority can overrule the objection.⁸</p>	<p>they are reviewed.</p> <p>The upper house delivers its comments on the draft budget within six weeks. The Federal Government issues a counterstatement to the upper house's comments, then transmits the information to the lower house. The lower house is then able to take account of the attitude of the regions opinions on the matter.</p> <p>After the budget is agreed on and adopted in the lower house, it is again presented to the upper house. If the upper house agrees immediately, the act becomes law. If the upper house has reservations, it may demand a Mediation Committee. If the committee proposes amendments, the lower house must again vote on them. If the amendments are rejected, the upper house can still object but the lower house can overturn the objection with a vote.⁹</p>
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⁴ *Id* at 83(2).

¹ *Election of the Federal Chancellor*, GERMAN BUNDESTAG, at http://www.bundestag.de/htdocs_e/parliament/function/budget/adoption.html (last visited May 29, 2009).

⁵ *Id* at 84(1).

⁶ *Id* at 104a(3).

⁷ *Id* at 105(3).

⁸ Public International Law & Policy Group, *The Iraq Federation Council*, 17 (July, 2006).

⁹ *Adoption of the Federal Budget*, GERMAN BUNDESTAG, at http://www.bundestag.de/htdocs_e/parliament/function/budget/adoption.html (last visited May 29, 2009).

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<p>Egypt</p>	<p>The lower house (People’s Assembly) does not appointment powers over executive officers, but may cause the resignation of the executive cabinet by voting a motion of censure. For this reason, the Prime Minister and his cabinet are necessarily from the dominant party or coalition in the assembly.</p>	<p>The upper house (<i>Shoura</i>) must work to preserve revolutionary principles. It has consultative jurisdiction over limited areas of legislation. The upper house must <u>ratify</u>:</p> <ul style="list-style-type: none"> • Proposals for amendments to the constitution • Draft laws complementary to the constitution • Peace and alliance treaties and all treaties affecting the territorial integrity of the state or sovereignty rights <p>The lower house acts in a consultative capacity regarding:</p> <ul style="list-style-type: none"> • Drafts of the general plan for social and economic development • Draft laws referred to the upper house by the President of the Republic • Matters referred by the President relative to the general policy of the state or its policy regarding Arab or foreign affairs.¹⁰ <p>The lower house (People’s Assembly) is the principle legislative body.</p>	<p>Approval of the state budget goes through the lower house only.¹¹</p>
<p>Nigeria</p>	<p>The Nigerian legislature is modeled after that of the United States. The upper house has the power of impeachment of judges and other high officials of the executive branch including the Federal Auditor-General and the members of the electoral and revenue commissions. The power is subject to prior request by the President.</p>	<p>All national legislation in Nigeria must pass through both the upper and lower houses of the legislature before passing to the executive for approval. Both houses have equal power and jurisdiction.¹²</p>	<p>The president must present a budget proposal to the National Assembly (both houses) for the next year.</p> <p>The Constitution provides for parliamentary approval of the annual budget. However, it is vague in many respects. For example, the Constitution does not specifically require parliamentary approval for annual revenue estimates or the financial plan of government.</p>

¹⁰ See http://www.shoura.gov.eg/shoura_en/joursdiction_en.asp?menu=1 (last visited May 29, 2009), see also Egyptian constitution Articles 195, available

at http://www.shoura.gov.eg/shoura_en/const_pdf/eng_const.pdf (last visited May 29, 2009).

¹¹ *Id.* at Articles 86, 114, 115, 116, 121.

¹² Public International Law & Policy Group, ‘The Iraq Federation Council’ 19 (July 2006).

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	<p>The upper house also confirms the President's nomination of senior diplomats, members of the federal cabinet, federal judicial appointments and independent federal commissions.</p> <p>Both houses must agree before any bill is passed as law and is submitted to the President for assent or veto. The legislature may pass a vetoed law by a two-thirds vote of both chambers.</p>		<p>The legal framework also does not provide any clarity on the extent of legislative powers. For example, its powers to amend the budget.</p> <p>There is no law that specifies the budget format, what documents are to accompany the budget, or how and when budget information is to be disseminated. Similarly, there is no requirement to release information on actual in-year spending, procurement, public assets and liabilities.¹³</p>
<p>South Africa</p>	<p>The South African legislature has the authority to nominate and regulate the appointment and authority of:</p> <ul style="list-style-type: none"> • The Public Protector (who investigates state actions) • The Human Rights Commission • The Commission for Gender Equality • The Auditor-General (who is responsible for the financial management of national and provincial institutions) • The Electoral Commission • The Broadcasting Authority¹⁴ 	<p>The lower house (National Assembly) may review bills on any topic introduced by Cabinet members, Deputy Ministers, or a member of a National Assembly committee.</p> <p>When the lower house passes a bill that affects the provinces, specifically those regarding:</p> <ul style="list-style-type: none"> • Location of Parliament • Intervention in legislative spheres reserved to the provinces in order to maintain national security; economic unity; essential national standards; establish minimum standards required for the rendering of services; or to prevent unreasonable action by a province which is prejudicial to another province or to the country as a whole. • procedures for provincial legislatures to grant authority to delegates • recognizing provincial authorities • promoting democratic values 	<p>The legislature has the authority to establish regulations guiding the establishment of budgets for the national, provincial, and municipal governments.¹⁶</p> <p>Both houses must work to create the Financial and Fiscal Commission.¹⁷</p>

¹³ International Budget.Org, Africa Fiscal Transparency: Nigeria, *available* at <http://www.internationalbudget.org/resources/NIGERIA.pdf> (last visited May 29, 2009).

¹⁴ South African Constitution, Articles 181-194, at <http://www.info.gov.za/documents/constitution/1996/index.htm> (last visited May 29, 2009).

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		<ul style="list-style-type: none">• regulating the Public Service Commission• Regulating national public service employment• Regulating the Financial and Fiscal Commission¹⁵ <p>the bill must be referred to the upper house (NCOP) and each province (rather than each delegate) gets one vote. The NCOP must pass the bill, pass an amended bill, or reject the bill.</p> <p>Bills passed without amendment go to the president for assent. Bills passed with amendments are referred back to the lower house for reconsideration. If the upper house rejects the bill, it goes to a mediation committee. If the mediation committee cannot agree within 30 days, the bill dies.</p> <p>All other bills (i.e. those not affecting the provinces), are submitted to the upper house where each delegate gets one vote to pass, pass with amendments, or reject. Bills passed with amendments or which are rejected go back to the lower house for reconsideration. The lower house does not have to accept the rejection or amendment and may repass the bill. Bills passed in this manner are sent to the president for assent.</p>	
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¹⁶ *Id* at article 215.

¹⁷ *Id* at article 220.

¹⁵ South African Constitution, Articles 42(6), 44(2), 65(2), 163, 195(3)-(4), 196, 197, 220(3) respectively at <http://www.info.gov.za/documents/constitution/1996/index.htm> (last visited May 29, 2009).