



THE UPPER HOUSES IN ARAB PARLIAMENTS

**THEIR REPRESENTATIVE,
LEGISLATIVE AND OVERSIGHT FUNCTIONS
AND THEIR ROLE IN THE BUDGET PROCESS**

**COMPARATIVE STUDY
OF THE CONSTITUTIONAL AND LEGAL FRAMEWORK**

French Version Inside

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Their Representative, Legislative and Oversight
Functions and their Role in the Budget Process

The opinions and recommendations expressed in this study are those of the author and do not necessarily reflect those of the United Nations Development Programme.

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The Upper Houses in Arab Parliaments: General Comparison Framework

This study is the first-ever exhaustive comparative review of the upper houses of Arab parliaments. It is the fruit of a thorough research exercise and the outcome of collaborative efforts supported by UNDP's Parliamentary Development Initiative in the Arab Region (PDIAR). This study, which complements previous activities directly addressing the knowledge gap in governance in the Arab region, aims at providing a more comprehensive understanding of Arab legislative institutions, through an in-depth review of the role and functions of upper houses in Arab bicameral parliaments.


The Parliamentary Development Initiative in the Arab Region, which has been UNDP's main regional parliamentary development project since its launch in 2005, has focused its work on the launch and consolidation of regional parliamentary working groups specialized in key governance issues. In 2008, PDIAR launched a new thematic working group which brought together members of parliament, secretaries general and other senior parliamentary officials, and Arab and international experts in a series of workshops aimed at addressing the challenges facing Arab parliaments in terms of their oversight function over the executive. This process resulted in a number of recommendations, including the necessity to understand the dynamics of Arab bicameral parliaments, and the relationships between lower and upper houses particularly when it comes to overseeing the action of the government.

This study is one of several recommendations PDIAR has implemented in the framework of the parliamentary oversight working group. Initially intended to focus on the oversight function only, the

scope of the study was later broadened to also include other parliamentary functions. It provides a comparative review of the constitutional and legal frameworks which regulate the representative, legislative, oversight, and budgeting functions of upper houses in Arab bicameral parliaments, namely those of Jordan, Bahrain, Tunisia, Algeria, Sudan, Morocco, Mauritania, Egypt, Yemen, and Oman. This study, which focuses on the prerogatives of Arab upper houses (senates) in contrast with those of lower houses, also reviews the history, position and functions of upper houses in other parts of the world, with a focus on France, Brazil and South Africa.

Complementing other comparative research commissioned by the Initiative, the present study has relied on these main sources of information:

1. The constitutions of the countries included in the study.
2. The internal regulations of the upper houses covered by the study
3. The working papers and seminar report of the regional seminar organized by UNDP-PDIAR in Beirut on October 16th-17th, 2009 on strengthening the oversight function of Arab parliaments.
4. The General Principles for Strengthening the Legal Framework Regulating the Oversight Tools and Mechanisms in Arab Parliaments, adopted at the regional workshop organized by PDIAR in Rabat on June 18th-19th, 2010.
5. Websites of parliaments and other relevant institutions.



Introduction:
Overview of the Role
of Upper Houses in
the International
Parliamentary
Experience

There are 80¹ bicameral parliaments across the world, out of 262 currently established in 187 countries. The number of bicameral parliaments is on the rise worldwide: in the early 1970s, only 45 countries had bicameral parliaments; today there are 80 countries with bicameral parliaments. The majority of the world's population is represented through this system, adopted by the world's richest countries (except for China and South Korea). This trend became quite popular in Africa in the early 90s, with 15 countries opting for the establishment of a second chamber in their legislatures.

The upper house has historically served to meet two needs: first, the necessity to engage the aristocratic classes in the work of a parliamentary institution that relies on democracy and voting (for example Britain's House of Lords); and second, the need, particularly in federal systems, to ensure the representation of the states in an elected body (as in the United States of America where the congress represents the people and the senate represents the states). This historical background does not, however, suffice to justify the current increase in bicameral parliaments worldwide, since 60% of bicameral parliaments are currently established in non-federal states. The diverse nature of upper houses reflects societies' national will to reconsider the organization of public powers in such a way that takes into account the peculiarities and diversity of the political and social life in the country. So, what are the real reasons behind the establishment of upper houses, and the diversity which characterizes their composition?

1. Source: Website of the French Senate www.senat.fr

I- Reasons Justifying the Formation of Upper Houses

1. HISTORICAL REASONS

Some historical reasons for the creation of upper houses are still valid, especially the representation of states or federations in complex federal systems. However, other reasons may have faded away with the advance of democracy, particularly when it comes to the representation of the aristocratic class (as in Britain's House of Lords). The first model is still valid. Generally speaking, most federations have bicameral parliaments. In the federal system, the upper house reflects the multiplicity of the component states compared to the unity of citizens. In this sense, lower houses cannot, in complex federations, represent the citizens and the states at the same time. Therefore,

upper houses must, through their formation method, create a strong link between the parliamentarians and the entities that need to be represented. The 1788 Philadelphia Convention for the ratification of the constitution represents the historical model that instituted bicameralism in the federal system. At that time, the lower house was chosen to represent -- on an equal footing -- the US citizens in their unity, rights and obligations, while the upper house (Senate) ensured equal representation to all states, thus preserving the rights of the smaller states compared to the larger states. The larger states would gain a bigger share in the lower houses since they are more populated than their smaller counterparts.

Many countries ended up adopting this model, such as Germany, Brazil, Ethiopia and South Africa. In such a model, upper houses serve as the institutional place where the interests of territorial entities are expressed. Therefore, the way the members of these houses are appointed reflects the strong link between parliamentarians and local bodies. In France, senators are elected by indirect universal suffrage,

i.e. by the locally elected bodies. In other countries, such as South Africa, the ties between the parliamentarians and the local administrations seem tighter. The legislative process gives considerable weight to the upper houses in all matters directly related to territorial divisions.

The second model is adopted in socially complex states, where professional and social groups have struggled to establish upper houses to ensure professional representation. According to this theory upheld by Léon Duguit², the upper houses represent the legally recognized professional groups. This is not to mention the fact that some unitary states have sensed the need to represent tribes and traditional forces in upper houses. 60% of bicameral parliaments are established in unitary countries i.e. in non-federal states. So what are the reasons behind bicameralism and to what extent is the upper house legitimate? If the upper house is a duplicate of the lower houses in a given parliament, then what is its *raison d'être*? This other question also naturally poses itself: What does the bicameral system bring to democracy today?

Bicameral representation was first adopted in unitary and egalitarian states. In a bicameral system, the nation is represented differently from when citizens vote in a direct universal suffrage. In unicameral parliaments, the citizens' common political affiliation overshadows all other affiliations. For the proponents of the bicameral system, bicameral parliaments allow for a more diverse representation of the components of society. Therefore, although the two chambers have one common goal, which is to represent the nation, the upper house usually guarantees that some components of society are also represented. Quite often, lower houses alone may not satisfactorily achieve that purpose.

In unitary states, “national sovereignty”, according to Carré de Malberg³, is indivisible and is represented by citizens who are equal.

2. www.senat.fr

3. www.senat.fr

In this sense, the complexity that characterizes the federal model does not apply here. In his analysis of bicameralism, as enshrined in the French constitution in 1875, Carré de Malberg points out that the Senate and the lower house are similar, and that the two chambers, even if elected differently, must take on a national dimension; they should both stem from the whole nation and shall not be elected by entities benefiting from any type of privilege. Recent changes in unitary states have opened new horizons for the bicameral model: unitary states have inherited the bases of bicameralism from complex states, and recent developments in unitary states have indeed highlighted the link between the upper house and the territorial divisions, and have also brought federalism and decentralization closer together. Bicameralism, in other words, ensures the legitimate representation of decentralized divisions and federal states.

The French Senate is elected indirectly by local government bodies. However, the senate's mission is not only to defend the interests of these local bodies; it also has a legislative role and its powers equal those of the National Assembly. Bicameralism therefore has some limits and risks in unitary states; indeed, a society which aims at ensuring the representation of its various groups and components in an upper house can easily be seen as promoting "communitarism". What is then the political advantage of diversifying the nation's representation methods? If the unitary state is not complex, then what is the point of representation through two chambers in unitary states? Is the unicameral system truly not sufficient?

In answer to these questions, it is important to note that forming upper houses in unitary states is not driven by a legal need but by a political advantage. Bicameral representation of the nation is not crucial but beneficial, as it allows for a better representation of all constituents of the nation. There is not one unique or ideal way to represent a nation because any system of representation is likely to be imperfect

and arbitrary as it has a direct impact on the outcome. Any change in the electoral system (majority, proportional or mixed) or in the division of constituencies inevitably impacts the results.

2. CURRENT REASONS

In bicameral systems, it is often easier to guarantee that representation is both acceptable and efficient. Obviously, bicameralism is a form of representing the nation through methods which are different from those used in unicameral systems. It provides additional opportunities for different ideas and orientations to express themselves in the country. For this reason, upper houses must be appointed differently from lower houses. However, the desire to represent the nation's diversity must neither put national will at risk of division nor slow down the legislating process or bring about inefficient public authorities.

In fact, there seems to be some consensus on the idea that bicameral parliaments express the will of the nation more genuinely. The focus of the debate is rather on the impact of having two chambers on the speed of legislative process. For the proponents of bicameralism, it is undoubtedly better to take all the needed time to ratify laws than to hastily enact them and then be forced to amend them. A slow legislative process in bicameral systems does not necessarily hinder parliamentary processes but highlights areas of disagreement among various representatives of the society. Thus, bicameralism may serve to avoid the adoption of policies which do not reflect the will of the nation.

3. CONCLUSION: REAL BENEFITS OF BICAMERALISM TODAY

The advocates of bicameralism stress that this system not only allows for the diversification of the points of view represented in parliament,

but also increases the effectiveness of the representative and legislative functions. Elected by indirect suffrage for longer terms, the senators adopt a different view on laws than MPs, one that is more likely to be unbiased towards the government. This is due to the fact that electoral laws seek to generate a majority that can rule through the government it forms. The upper house however is not burdened with such a concern, and thus can examine matters from a different perspective than that of the lower house. Furthermore, upper houses strengthen the legislative process with their second in-depth reading of laws and policies, and their role in overseeing the implementation of these laws.

Bicameralism, as its advocates emphasize, allows for more efficiency and balance. The more diversified representation of different components of society makes the parliament more representative. Below are some examples of the various groups that are represented in some upper houses.

- **Representation of professions:**

The professional chambers and the workers' representatives elect 2/5 of councilors in Morocco. In Tunisia and Egypt, the upper houses include representatives of particular professional categories, such as workers, wage earners, and farmers. In Slovenia, the Senate includes 4 representatives of business owners, 4 representatives of employees and 4 representatives of the self-employed.

- **Representation of traditional elites:**

In some African countries, senates include representatives of the traditional forces and tribes that are kept out of the lower houses despite their influence. This applies to Botswana and Lesotho, where two thirds of the members are traditional leaders. Another example is Zimbabwe's senate.

- **Representation of the political and cultural elites and competent cadres:**
This is the case in Bahrain, Jordan and Oman, as the present study will show.
- **Representation of ethnic, linguistic and religious groups:**
Minorities in many countries are not represented in lower houses, but in senates, through institutional arrangements that make such a representation possible, as it is the case in Burundi for example.
- **Representation of migrants:**
In France, 12 senators represent the French citizens living abroad compared to 6 senators in Italy and 3 in Mauritania.

II. Diversity of Upper Houses in the World

1. DIVERSITY IN THE FORMATION METHOD

The formation method of upper houses is perceived as an important criterion of distinction between the two chambers of parliament. While the direct universal suffrage is the most common practice in the formation of lower houses, different methods govern the formation of upper houses:

- **Election:** Upper houses entirely elected in 40% of the cases through universal suffrage according to the proportional, majority or mixed electoral system (ex: France, Spain, Japan, and Morocco).
- **Mixed method:** Partially elected upper houses with a mixture of elected and appointed members in 25% of the case (i.e. in 20 countries), including Afghanistan, Algeria, Belgium, Egypt, India, Ireland, Italy and Tunisia.
- **Appointment:** Fully appointed upper houses, as in Germany, Bahrain, Canada, the Russian Federation, Jordan, Oman and Yemen.
- **Senators by right:** Upper houses with members by right, such as members of the royal family in Belgium and former Presidents of the Republic in Italy.
- **Nomination:** Upper houses with members named by the lower house as in Belgium, where the house appoints 10 senators, and Mauritania, where 3 members are elected to represent the Mauritians living abroad.

2. DIVERSITY IN SUFFRAGE, RENEWAL OF THE TERM OF OFFICE AND ELECTORAL BASE

- **Direct and indirect suffrage:** Local government representatives or representatives of trade unions and professional organizations elect several upper houses by indirect suffrage (France and Morocco).
- **Renewal of the term of office:** In general, upper houses serve for longer terms than lower houses with their mandate ranging between 4 and 6 years, up to 9 years in some instances, with specific timeframes to renew part of the members. In 19 upper houses, the third or half is renewed according to a specific schedule.
- **Continuity of upper houses:** In general, upper houses enjoy more continuity than lower houses, since the government is generally not entitled to dissolve them.
- **Diversity of the electoral base of upper houses:** Some upper houses' members are elected by elected local bodies (such as in France), or workers and employers (such as in Morocco and Tunisia).

3. DIVERSITY IN THE POWERS OF UPPER HOUSES

a. Legislative powers

- **General overview**

In rare instances, upper houses serve as advisory chambers that do not draft laws but simply express opinions as in Egypt, Yemen, Botswana, Slovenia and Oman. In many instances, upper houses can take legislative initiative and/or amend bills and discuss laws, thus enjoying a considerable weight in the legislative process, as

in France, Belgium, Algeria and Morocco, among others. Below is an overview of the trends in terms of legislative powers enjoyed by some upper houses:

- Two-thirds of upper houses have the right to propose bills; this right, however, does not include fiscal policies and laws that are exclusively prepared and submitted by the government). In 10 upper houses, members are not entitled to submit bills; these include Algeria, Bahrain, Botswana, Lesotho, the Netherlands and Tunisia.
 - 7 upper houses are entitled to propose bills in specific areas. These include the senates of South Africa, Belgium, Brazil, Indonesia, Sudan, and Uzbekistan.
 - In some upper houses, bills cannot be proposed by individual members but rather by a specific number of members (amounting to 10 in Jordan for example).
 - Only 30% of upper houses are entitled to amend laws.
 - 7 houses do not enjoy the right to amend laws, including those of Austria, Egypt, Oman, the Netherlands and Tajikistan.
 - In 33% of modern parliaments, the consent of upper houses is compulsory for the adoption of laws in their final versions. In other instances, however, the lower houses have the final say.
- **Disparities in the legislative power**
The power to legislate varies depending on the nature of the topics at hand. In Germany, the consent of the Bundestrat (upper house) is crucial for the adoption of the Länders' laws (States' Laws). The same is true for Sudan and South Africa in all matters related to the federal states. Interestingly, Belgium's Senate enjoys the same rights as the House of Representatives in 4 fields, namely the core institutional subjects, the international agreements, the cooperation

agreements between the federal government, the groups and the regions, and the special laws on regulating the judiciary. In France, the Senate must approve the constitutional and organic laws even when the National Assembly retains the final decision. In this case, some procedures are required, such as the two-third majority vote and the joint committee composed equally of members from both houses (this applies in France and several other countries).

b. Beyond legislative powers

In addition to the legislative power, the upper houses, either alone or jointly with the lower houses, exercise a wide range of other parliamentary functions:

- **Overseeing the action of the government**

The majority of upper houses are entitled to keep a check on the government's work through their standing committees, by addressing written and oral questions and by setting up enquiry committees. However, they are not allowed to impeach the government, i.e. to submit a vote of no confidence in the government except in rare instances⁴. In addition, many senates operate in presidential or semi-presidential regimes, where the government is not accountable to parliaments (the United States of America, the Philippines, and Russia). In general terms too, the majority in the lower house is linked to the government and does not hold it accountable. For this reason, bicameralism strengthens to some extent the principle of separation of powers, with the elected upper houses operating independently of the hegemony exercised by the executive power.

- **Amending the Constitution**

Upper houses participate in amending the Constitution through an outstanding majority vote. They also oversee the constitutionality of laws and appoint some constitutional judges. For example, the

4. Morocco's House of Councilors is entitled to hold the government accountable through warnings that do not lead to a vote of no confidence

Speaker of the French Senate appoints three members of the constitutional council; the speaker of the German upper house appoints half the members, and the speaker of the Spanish senate appoints one-third of the members. In Italy, the two houses combined appoint one third of the members. Upper houses can resort to the Constitutional Council in Chile, Colombia, Mauritania, Gabon, Morocco, and South Africa. In bicameral parliaments, it becomes harder to amend the constitution, which represents in itself a factor of constitutional stability.

- **Appointing some official cadres**

Upper houses appoint some official cadres either directly or with prior approval. In Bolivia, the upper house directly appoints some categories of judges. In Spain, the King appoints 4 out of the 20 members of the general council of the judiciary. In Russia, the upper house can directly appoint some judges in senior positions. In the US, the Senate must confirm in advance the appointment of ministers, ambassadors, and senior civil servants. The same is true in Brazil and Argentina.

c. Judicial powers

Upper houses are entitled, either alone or jointly with the lower houses, to impeach or try some senior officials. They are allowed to impeach the executive power in the US, Russia and Brazil. Argentina's Senate has the power to try the President of the Republic, the Vice President, government members and the judges of the Higher Judicial Council. In Bolivia, Chile, Colombia and Kazakhstan, the Senate is allowed to lift immunity off the Public Prosecutor and the judges of the Higher Judicial Council.

Chapter One:
Arab Bicameral
Parliaments

1

I. Insights into Arab Parliaments

Three indicators can be gauged to gain some insight into Arab parliaments from a bicameral perspective.

1. BICAMERAL OR UNICAMERAL SYSTEM

Each of the 22 Arab states adopts different models of unicameral or bicameral parliaments that differ in their formation as well as in their legislative and oversight powers. A brief overview reveals that

- 9 unicameral parliaments are entirely elected by direct secret suffrage in Lebanon⁵, Iraq⁶, Syria, Kuwait⁷, oPt (the Palestinian Legislative Council), the Comoros Islands, Somalia, Libya and Djibouti.
 - One unicameral parliament is entirely appointed by the head of state (the King) in Saudi Arabia.
- Two unicameral parliaments are partially appointed by the head of state (the Sheikh or Emir) and partially elected in the United Arab Emirates and Qatar.

There are 10 bicameral parliaments as follows:

- 4 parliaments with entirely elected lower houses and entirely appointed upper houses⁸ such as in Jordan, Bahrain, Oman (Consultative Council) and Yemen⁹.
- 3 parliaments with two entirely elected chambers, although using different systems (direct and indirect suffrage) such as in Morocco, Mauritania and Sudan.
- 3 parliaments with entirely elected lower houses and partially

5. Article 22 of the Lebanese Constitution provides for the establishment of a senate upon the election of a parliament on a national, non-confessional basis. But this senate is yet to be established. Article 48 of Iraq's Constitution stipulates that the federal legislative power shall consist of the Council of Representatives and the Federation Council, but the latter has not seen the light yet.

6. Article 48 of Iraq's Constitution stipulates that the federal legislative power shall consist of the Council of Representatives and the Federation Council, but the latter has not seen the light yet.

7. Article 80 of the Constitution of the State of Kuwait considers as ex-officio members the ministers who are not elected members of the National Assembly.

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elected and partially appointed upper houses with one third of members appointed by the head of state such as in Tunisia, Algeria and Egypt.

The table hereunder shows the distribution of parliaments by their houses (unicameral or bicameral).

8. This designation includes the Senate, the House of Counsellors, the Consultative Council, the Advisory Council, the Council of States and the State Council.

9. A constitutional amendment providing for the election of half of the members of the Consultative Council is currently discussed in Yemen.

Table 1: Distribution of Arab Parliaments by Houses

Country	Unicameral Parliament			Bicameral Parliament			
	Entirely Elected	Partially Elected	Entirely Appointed	Upper House			Lower House
				Entirely Elected	Entirely Appointed	Partially Appointed	Entirely Elected
Algeria						X	X
Bahrain					X		X
Comoros Islands	X						
Djibouti	X						
Egypt ¹⁰						X	X
Iraq	X						
Jordan					X		X
Kuwait	X						
Lebanon	X						
Libya	X						
Mauritania ¹¹				X			X
Morocco				X			X
Oman					X		X
oPt	X						
Qatar		X					
Saudi Arabia			X				
Somalia	X						
Sudan				X			X
Syria	X						
Tunisia						X	X
UAE		X					
Yemen					X		X

2. DIVERSITY IN THE ELECTION/APPOINTMENT METHODS

The partially or entirely elected parliaments are elected either by direct or indirect secret suffrage.

- Lower houses or unicameral parliaments entirely elected by direct secret vote exist in 15 Arab countries, namely Jordan, Bahrain, the Comoros Islands, Djibouti, Sudan, Syria, Somalia, Iraq, Kuwait, Lebanon, Libya, Egypt, Morocco, Mauritania, and Yemen in addition to Qatar and Egypt (two-thirds of the Advisory Council in each).
- The houses partially or entirely elected by indirect secret vote are elected by local government bodies or professional associations. These houses operate according to the following regulations detailed hereunder:
 - Algeria (National Council): two-thirds of the house members are elected by an electoral college grouping representatives of the regions and the local government entities.
 - Tunisia (Chamber of Councilors): One-third of the house members are elected by an electoral college including representatives of local councils as well as municipal advisors. One-third are elected by a nationwide electoral college grouping employers, farmers and workers.
 - Sudan (Council of States): The upper house is elected by an electoral college comprising representatives of the local councils of states.
 - Morocco (House of Councilors): The upper house is elected by an electoral college including representatives of the local government, trade and labor unions and professional associations.
 - Mauritania (Senate): The senate is elected by an electoral college with representatives of the Republic's territorial groups.

10. Article 87 of the Egyptian Constitution entitles the President of the Republic to appoint not more than 10 members of the People's Assembly.

11. The Mauritanian senate elects 3 members as representatives of the Mauritanians living abroad.

- The power to partially or entirely appoint parliaments: The head of state (king, prince, sheikh, or president of the republic) is entitled to appoint members. In addition to entirely appointed houses in several Arab countries (Jordan's Senate, Bahrain's Shura Council, Saudi Arabia's Consultative Council, Oman's State Council and Yemen's Consultative Council), the head of state generally appoints part of the members of several partially elected houses such as the National Council of Algeria, the Advisory Councils of Egypt and Qatar, the Chamber of Councilors of Tunisia, and the Federal National Council of the UAE.

3. DISTINCT MODELS OF LEGISLATIVE AND OVERSIGHT POWERS

Arab parliaments are entrusted with a varied set of legislative and oversight powers that range from a purely advisory role (e.g. Oman) and the absence of legislative and oversight powers, to a comprehensive legislative and oversight role as enshrined in the Constitutions and parliamentary bylaws (e.g. Morocco, Jordan, Lebanon...). Arab parliaments can therefore be classified into three models:

- **Houses stripped of any legislative or oversight power:** Their role is limited to expressing opinion as well as examining and submitting recommendations and proposals. They include Oman's Consultative Council and Council of the State, Saudi Arabia's Consultative Council, and Yemen's Consultative Council. In its joint sessions, the Council of Oman can issue recommendations (Article 3 of the bylaws). The bylaws of Saudi Arabia's Consultative Council bear no reference to the Council's legislative or oversight functions, but refer to submitting recommendations and reporting. Article 125 of Yemen's Constitution entrusts the

Consultative Council with expressing opinions and conducting studies¹².

- **Houses with limited or restricted legislative and oversight functions:** This category includes the UAE Federal National Council, Sudan's Council of States, Tunisia's Chamber of Councilors, Algeria's National Council, Egypt's Advisory Council and its counterpart in Qatar.
- **Houses with extensive legislative powers:** Similar to most western democratic regimes, this category includes the National Assemblies in Lebanon, Kuwait, Syria, Iraq, oPt, Egypt's People's Assembly, Morocco's parliament with its two chambers, and finally the National Assemblies of Mauritania, Yemen and Sudan.

a. Houses without any legislative or oversight powers

These houses and their presidents are entirely appointed by the head of state. They do not enjoy any parliamentary power in terms of proposing laws, endorsing or amending the government's bills or monitoring the government's work. These houses are expected to express their opinion on matters referred by the head of state and conduct studies and issue recommendations, even if, for instance, Yemen's Consultative Council holds joint meetings with the House of Representatives at the request of the President of the Republic to discuss development plans, agreements and treaties on defense, alliance, peace and truce (Article 127 of the Constitution). With respect to follow up, and not oversight, Article 31 of the bylaws of Oman's Consultative Council allows the Council, when need be, to summon any minister to make a statement on some matters that fall within the competence of his ministry for discussion and exchange of opinions. Article 15 of the bylaws of Saudi Arabia's Consultative Council compels members who wish to take the floor during a sitting to request so in writing. Also, Article 28 requires every member who

12. The Council exercises the limited and specific powers it is entrusted with during joint meetings with the House of Representatives.

wishes to express his opinion about any issue referred to any of the committees to do that in writing to the Speaker.

b. Houses with limited or restricted legislative and oversight powers

In Tunisia, members of the House of Councilors are not entrusted with wide legislative powers (such as the right to propose laws). The legislative initiative is vested in the Chamber of Deputies and the President of the Republic (Article 28 of the Constitution). Similarly, the powers of Sudan's Council of States are inferior to the National Assembly's even though the bicameral national legislature exercises its functions in joint sessions presided over by the Speaker of the National Assembly (Article 83). However, any member of the two houses is entitled to propose a law, and this also applies to Algeria's National Council.

The Advisory Council of Egypt, on the other hand, has relatively fewer legislative powers. It approves the proposals on amending the Constitution as well as the peace treaties and all treaties conducive to changes in State territory (Article 194). In the UAE, the Federal National Council (Article 90) considers the draft annual federal public budget but cannot withdraw confidence from the government. In general, the members of these houses (except for Sudan's Council of States) are partially appointed (one third or more) by the head of state.

c. Houses with almost identical legislative powers in bicameral parliaments

The Constitutions of 7 Arab countries state that the legislative power is vested in a bicameral parliament, namely in Jordan (Article 62), Algeria (Article 98), Bahrain (Article 51), Sudan (Article 83), Morocco (Article 36), Tunisia (Article 18), and Mauritania (Article 46). Other constitutions have granted the legislative powers to the

lower house, as in the Egypt's constitution (Article 86), and Yemen's Constitution (Article 62), which entitles the House of Representatives, in its capacity as the state's legislature, to decide on laws and approve the State's public policy and development plan.

As shown above, there are 10 Arab bicameral parliaments; three of them have a purely advisory role:

- The Council of the State in the Sultanate of Oman does not exercise any legislative or oversight power.
- The Advisory Council in the Arab Republic of Egypt is entrusted with very limited legislative powers confined to approving proposals on amending the Constitution as well as bills complementing the Constitution and the treaties altering the State's territory. Besides, the Council's opinion and not consent, is sought in some matters (Articles 194 and 195 of the Constitution). With respect to oversight, Article 201 of the Constitution stipulates that "the Prime Minister, his deputies, ministers and other members of the government shall not be answerable to the Advisory Council." However, this Council enjoys extensive powers in overseeing media outlets and appointing their directors.
- The Consultative Council in the Republic of Yemen exercises advisory powers including submitting studies, expressing opinions, offering guidance, and overseeing the media and the performance of the local authorities. As provided for in Article 125 of the Constitution, it shall nominate, jointly with the House of Representatives, candidates for the presidency and ratify socioeconomic plans, treaties and agreements on defense, alliance, reconciliation, peace, and borders. This Council does not exercise any oversight powers.

1. KEY INFORMATION ON UPPER HOUSES

The table below (Table 2) provides some key facts on Arab bicameral parliaments. Here are a few additional observations to complement this information:

- Different designations are given to Arab upper houses: Majlis al Aayan or Senate (Jordan); Majlis al Shura or Consultative Council (Bahreïn and Yémen) or Consultative Assembly (Egypt); Majlis al Moustasharin or Chamber of Councilors (Tunisia and Morocco); Majlis al Umma or National Council (Algérie); Majlis al Wilayat or Council of States (Soudan); Majlis al Dawla or State Council (Sultanate of Oman); Majlis al Shouyoukh or Senate (Mauritanie).
 - Upper Houses were recently formed in the Arab world. With the exception of Jordan's Senate established in 1946, at the beginning of the independence era, and Egypt's Consultative Assembly in 1980, all the other upper houses were formed in the 90s or later.
- The election/appointment methods of upper houses vary considerably. Four upper houses are entirely appointed by the head of state; they are the senates of Jordan, Bahrain, Oman, and Yemen. Three upper houses are partially elected and partially appointed; they are the senates of Tunisia, Algeria, and Egypt. Three others are entirely elected by indirect suffrage, and include Sudan, Morocco, and Mauritania.
 - The term of office in all 10 upper houses ranges between 4 and 9 years and is renewable every two or three years.
- Upper houses have fewer members than lower houses, except for

II- Arab Bicameral Parliaments

Bahrain's Shura Council, which includes an equal number of members as the Council of Representatives. In many instances, the number of senators is proportional to the number of MPs, and this is the case in Algeria (half), Tunisia (two thirds), and Yemen (almost one third).

- The appointed members of upper houses are most often chosen from the state's political, economic, social and administrative elites: former Speakers or Prime Ministers, former ministers and members of parliament, former ambassadors, and renowned experts. In general, the Constitutions of some states list the categories from which members are chosen (Jordan, Algeria, Bahrain, and Oman ...), although the head of state has the final say.
 - Members of upper houses are supposed to be older than MPs, with the required age most often set at 40 years of age in Jordan, Tunisia and Yemen and 35 years as in Mauritania, Bahrain and Egypt.
 - States and territorial divisions enjoy the widest level of representation in upper houses. This is true in Sudan, Tunisia, Morocco, Algeria, and Mauritania. In Mauritania, the upper house includes representatives of the Mauriticians living abroad. In addition, the Chambers of Councilors in Morocco and Tunisia group representatives of professional chambers, while Egypt's Advisory Council includes representatives of farmers and workers (they account for at least one-third of the members).
 - Upper houses are represented in the International Parliamentary Union, the Arab Parliamentary Union, and Regional Parliamentary Unions (e.g. The Consultative Council of the Maghreb Union). They exercise parliamentary diplomacy with the Arab and international parliaments.
- Different designations are given to Arab upper houses: Majlis al Aayan or Senate (Jordan); Majlis al Shura, Shura Council,

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Consultative Council or Advisory Council (Egypt, Bahreïn and Yémen); Majlis al Moustasharin or House/Chamber of Councilors (Tunisia and Morocco); Majlis al Umma or National Council (Algérie); Majlis al Wilayat or Council of States (Soudan); Majlis al Dawla or State Council (Sultanate of Oman); Majlis al Shouyoukh or Senate (Mauritanie).

13. Appointed by the head of state (king, president, emir or sultan ...)
14. Renewed by half every three years
15. Renewed by one third every three years

Table 2 – Arab Bicameral Parliaments

Country	Upper House Denomination	Year of Establishment	Election/Appointment Method ¹³	Term of Office (years)	Number of Members	Minimum Age of Members
Algeria ¹⁴	National Council	1996	2/3 elected by indirect election; 1/3 appointed	6	144	40
Bahrain	Shura Council	1992	Entirely appointed	4	40	35
Egypt ¹⁵	Advisory Council	1980	2/3 elected by direct election; 1/3 appointed	6	132	35
Jordan	Senate	1946	Entirely appointed	4	55	40
Oman	State Council	1997	Entirely appointed	4	58	40
Morocco ¹⁶	House of Councilors	1996	Entirely elected (Indirect election)	9	270	-
Mauritania ¹⁷	Senate	1996	Entirely elected (Indirect election)	6	56	35
Sudan	Council of States	2005	Entirely elected (Indirect election)	5	50	21
Tunisia ¹⁸	Chamber of Councilors	2002	2/3 elected by indirect election; 1/3 appointed	6	126	40
Yemen ¹⁹	Consultative Council	1994	Entirely appointed	4	111	40

16. Renewed by one third every three years

17. Renewed by one third every two years

18. Renewed by half every three years

19. A constitutional amendment was recently introduced in Yemen, providing for the election -- instead of the appointment -- of half of the members of the 111-member Consultative Council. The number may change.

III- The Position of Upper Houses in the State's Constitutional and Political System

1. THE POSITION OF PARLIAMENT

The position of upper houses in the State's constitutional and political system is part of the parliament's position in this system. Examining the overall position of parliaments in the constitutional and political systems of the Arab countries, as shown in the studies presented to the Regional Workshop on Strengthening the Oversight Function of Arab Parliaments²⁰, shows that the parliament enjoys a "modest standing" in the political system in the 14 states covered by the studies²¹, compared to the hegemony exercised by the executive power specifically the presidency (i.e. the president of the republic, the king or the emir).

20. Source: Working papers presented during the regional workshop held in Beirut on 16 and 17 October 2009 under the theme "Strengthening the Oversight Function of Arab Parliaments: Improving the Legal Framework." For more information, visit the website www.arabparliaments.org

21. The states include: Lebanon, Iraq, oPt, Syria, Jordan, Egypt, Algeria, Morocco, Mauritania, Tunisia, Bahrain, Kuwait, UAE, and Yemen.

The majority of these countries adopt a presidential, monarchist, hereditary or semi-presidential regime where the parliament falls too low in the State's constitutional hierarchy. In all these states, the executive power engages with the parliament in taking legislative initiative (if any) and promulgating decrees having the force of law in particular instances. In addition, the political and cultural environment prevailing in many of these countries does not allow for the emergence of an independent and democratic legislature because of the one-party hegemony and the adopted electoral systems. But these studies have revealed, on the other hand, that the autonomy of many parliaments in managing their own affairs varies depending on the nature of the regime, the vitality of the MPs' democracy, the evolution of parliamentary life, the role of political parties and CSOs (Lebanon and Kuwait...) and the activism of a minority facing a hegemonic majority. In light of the parliament's overall standing in

the political system, the role of upper houses can be gauged through a number of objective indicators that determine the importance and weight of upper houses in the political system, namely the upper houses' powers and position in the Constitution, their formation method, their financial, administrative, and security autonomy, their role at the international level, and their relation with the executive and the judiciary.

2. THE POSITION OF UPPER HOUSES

a. Position in the constitution compared to the lower houses

Generally speaking, the Constitutions of the studied countries provide for bicameral legislatures in Jordan (Article 62), Algeria (Article 98), Bahrain (Article 51), Sudan (Article 83), Morocco (Article 33), Tunisia (Article 18), and Mauritania (Article 46). In parallel, the Constitutions of Egypt (Article 86) and Yemen (Article 62) stipulate that the lower house is vested with the power to legislate.

In the Constitution of Yemen, the Consultative Council is not mentioned in the chapter related to the legislative authority but only in the section on the presidency of the republic. The Egyptian Advisory Council is mentioned in the Seventh Chapter of the constitution (new provisions) which was added following the 1980 referendum on the amendment of the Constitution, and gives the council the responsibility to ratify, jointly with the People's Assembly, development strategies, treaties and agreements (Article 4, paragraph e).

While the upper houses in Egypt, Yemen and Oman basically play an advisory role, some upper houses enjoy similar powers as the lower houses (Bahrain, Morocco, and Mauritania) -- in terms of initiating laws, ratifying the public budget and withdrawing confidence from the government (Morocco).

Other upper houses have weaker legislative and oversight powers compared to lower houses (Tunisia, Algeria and Sudan). In Tunisia, the Chamber of Councilors neither exercises oversight functions nor is entitled to propose laws. In Sudan, the Council of States' legislative powers revolve around decentralization. In Algeria, the right to propose bills is vested in the Prime Minister and members of the national people's assembly (Article 119).

In addition to this difference in roles and positions, there are also differences in the procedures followed by the government in dealing with the two chambers of the same parliament. Some constitutions require the government to introduce bills into any of the two houses (Mauritania and Morocco), while some others stipulate that the bills shall, by priority, be submitted to the lower house, which shall refer them to the upper house after consideration (Algeria, Bahrain, Jordan). On the other hand, in case of disagreement after a second reading of the bill by the two houses, Mauritania entitles the government to ask the National Assembly to definitively rule on the issue. Some constitutions reserve the right of the Speakers of upper houses to chair the joint meetings between the two houses (as in Bahrain and Jordan). In Tunisia, the new President of the Republic is sworn in before the two houses convening under the presidency of the Speaker of the lower house (Chapter Four of the Constitution). The Speaker of the lower house heads the joint meetings (Sudan, Yemen and Egypt).

The partial or entire appointment of the members of upper houses that do not enjoy identical powers as lower houses, especially in terms of oversight functions -- from asking questions at the very least to withdrawing confidence from the government at the most -- undoubtedly reduces their weight in the country's political system (Yemen, Egypt, Oman, Tunisia and Algeria).

b. The upper house's autonomy in regulating its own affairs

According to all constitutions and bylaws, both houses shall have regulations on the conduct of their affairs (Sudan, Article 96; Oman, Article 1; Algeria, Article 89; Egypt Articles 228, 234 and 247; Morocco Article 171), maintain order within the house and in its vicinity (Bahrain, Article 95; Jordan, Article 110; Mauritania, Article 85; and Morocco, Article 91), appoint the employees of the General Secretariat, and ensure the independence of the house's budget vis-à-vis executive power (Bahrain, Article 171; Algeria, Article 89).

In parallel to, and also in sharp contrast with this autonomy enjoyed by most upper houses, the executive does intervene in the work of upper houses. For instance, Bahrain's King appoints the Speaker of the Shura Council and decrees the appointment of its Secretary General. The same applies to Oman's State Council. In addition, many bylaws of upper houses provide for the right of the President of the Republic to promulgate decrees that have the force of law in agreement with the concerned committees (Morocco, Article 75) or during non-sitting periods (Algeria, Mauritania, Jordan, Sudan, and Tunisia). In addition, Tunisia's bicameral legislature (Chambers of Deputies and Councilors) can mandate the President of the Republic -- for a limited period of time and for a specific purpose -- to promulgate decrees that have the force of law.

Financial autonomy is provided for in the bylaws and regulations. Under Article 138 and following of the bylaws of Bahrain's Shura Council, the Plenary Session and the Financial and Economic Affairs Committee shall ratify the budget of the financially autonomous Council. Article 234 of the bylaws of Egypt's Advisory Council stipulates that the Council has its own budget. The single line budget shall be included in the state's budget. The Council shall manage its own accounts (Article 239). Algeria's National Council enjoys

financial and administrative autonomy (Article 89). The same is true for the Council of States in Sudan (Article 96). All members of upper houses enjoy parliamentary immunity that protects them from prosecution because of their opinions.

c. Exercise of parliamentary diplomacy

In general, upper houses, similarly to lower houses, exercise different forms of parliamentary diplomacy. They form friendship committees with other parliaments (Morocco, Article 195), while senators elect their representatives to regional and semi-regional parliaments (Mauritania, Article 78 - Algeria, Article 78). Speakers of upper houses send invitations to parliaments in other countries (Egypt, Article 254). In Bahrain, this mission is entrusted to the Kingdom's joint Department for Regional and International Parliamentary Conferences (Article 8).

d. Appointment powers of upper houses

Some constitutions and bylaws empower upper houses to appoint judges of Supreme Courts or senior employees in state-owned institutions. They also grant them a role in impeaching members of the executive. These powers and roles include:

- Appoint the judges of the Constitutional Court: Sudan (appointment approved by the two-third majority).
- Recommending candidates for the presidency jointly with the House of Representatives (Yemen, Article 4, paragraph E).
- Exercise the right to own official media outlets (Egypt, Article 116).
- Elect the senators who are members of the Supreme Court of Justice (Mauritania, Article 79).

- Appoint members of the Constitutional Council (Morocco, Article 314): The Speaker of the House of Councilors shall appoint three members of the Constitutional Council either from within or outside the upper house.
- Try members of the government: the Senate of Jordan, presided by the Senate's Speaker, the High Tribunal shall consist of eight members, three chosen from among the senators and five from among the judges of the highest civil court (Article 57 of the Constitution).

In short, despite their aforementioned administrative and financial powers, upper houses differ, for many reasons, from one country to another and are inferior to lower houses in all parliaments except in Morocco, Mauritania and Bahrain.

Chapter Two:
The Representative
Function of Upper
Houses in Arab
Parliaments

2

As mentioned in the foreword, upper houses were initially intended to represent states in federations and particular social classes in parliament. Interestingly, upper houses in elected Arab parliaments fulfil these two functions, especially in terms of representing states and trade unions.

I- The Constitutional Recognition of the Representative Capacity of Upper Houses

The Constitutions of 8 Arab countries identify upper houses as part of the legislature. Article 62 of Jordan's Constitution provides for a bicameral National Assembly consisting of a Senate and a House of Representatives. Article 51 of Bahrain's Constitution provides for a bicameral National Assembly composed of a Council of Representatives and a Shura Council. Article 18 of Tunisia's Constitution entitles the people to exercise legislative power through the Chambers of Deputies and Councilors. Article 98 of Algeria's Constitution states that the legislative power is exercised by a bicameral parliament composed of the National People's Assembly and the National Council. Article 83 of Sudan's Constitution provides for a national legislature composed of a National Assembly and a Council of States. The same is true for the upper houses

in Morocco (Article 36) and Mauritania (Article 46). Oman's parliament, composed of a Consultative Council and a State Council as per Article 58 of its bylaws, is stripped of any legislative capacity. But in Egypt, Article 86 of the Constitution entrusts the People's Assembly with the power to legislate and keep a check on the executive's work. Article 62 of Yemen's Constitution identifies the lower house as the state's legislature.

The election or appointment method is seen as a key indicator of the representative function of upper houses. When gauged by this indicator, upper houses are classified as follows:

- 4 upper houses entirely appointed by the head of state in Jordan, Bahrain, Oman, and Yemen.
- 3 upper houses with one third of members appointed by the head of state in Tunisia, Algeria and Egypt.
- 3 entirely elected upper houses in Morocco, Sudan and Mauritania.

Arab upper houses appear to be more often appointed than elected. Nevertheless their elected members usually represent the country's territorial divisions and states or specific social groups. Hence, the elected members of upper houses do enjoy a representative capacity similar to their elected counterparts in lower houses.

1. REPRESENTATION OF STATES AND TERRITORIAL DIVISIONS

States and territorial divisions are represented in many upper houses as follows:

- **Tunisia:** Every state is represented by one or two members depending on its population. The member or members are elected at the regional level from amongst members of the elected local groups (Article 19 of the Constitution).
- **Algeria:** Two thirds of the National Council's members are elected

II. Election / Appointment Method

among and by the members of the People's Communal Assemblies and the People's Malaya Assembly (Article 101 of the Constitution).

- **Sudan:** The Council of States includes 2 representatives of every state elected by the state legislature (Article 85 of the Constitution).
- **Morocco:** 3/5 of Councilors are elected in each region across the Kingdom by an electoral college grouping representatives of local groups (Article 38 of the Constitution)
- **Mauritania:** Senators are elected by the Republic's territorial districts (Article 47).

The upper houses of Jordan, Bahrain, Oman, Egypt and Yemen do not observe a specific criterion for territorial representation.

2. REPRESENTATION OF SOCIAL CATEGORIES IN UPPER HOUSES

a. Elected members of upper houses

The elected members of upper houses represent specific social groups and are elected in the following countries:

- **Tunisia:** One third of the councilors are elected nationwide from amongst employers, wage earners and farmers, and are nominated by the related professional organizations. Seats are distributed equally across the various sectors (Article 19 of the Constitution).
- **Egypt:** Two thirds of the senators are elected by direct secret suffrage; half of them from amongst workers and farmers.
- **Morocco:** 2/5 of Councilors are elected by electoral colleges

composed of the elected members of professional trade chambers in every region and by an electoral college grouping representatives of wage earners at the national level (Article 38 of the Constitution)

- **Mauritania:** Senators elect 3 representatives of Mauritians living abroad.

b. Appointed members of upper houses

- **Jordan:** The Senate consists of not more than one-half of the number of the members of the House of Representatives. Its members are chosen from among current and former prime ministers and ministers, ambassadors, ministers plenipotentiary, speakers of the House of Representatives, sresidents and judges of the Court of Cassation and of the Civil and Sharia Courts of Appeal, retired military officers of the rank of lieutenant general and above, former deputies who were elected at least twice, and other similar personalities who enjoy the confidence of the people in view of the services rendered by them to the Nation and the Country (Article 63 of the Constitution).
- **Bahrain:** Appointed by a royal order, members of the Shura Council shall be Bahraini nationals of no less than 35 years of age. They shall be experienced or must have rendered distinguished services to the nation (Article 52 of the Constitution).
- **Tunisia:** The President of the Republic shall appoint one-third of Councilors from among national and competent figures (Article 19 of the Constitution)
- **Algeria:** The President of the Republic shall appoint the remaining third from among national and competent figures in the scientific, cultural, economic and social fields.

- **Oman:** The members of the State Council shall be selected from amongst ministers, former undersecretaries, former ambassadors, former senior judges, senior retired officers renowned for their competence and experience, university professors, notables, businessmen, figures who have offered important services to the nation and whoever the Sultan deems fit for appointment (Article 12 – Bylaws of the Council of Oman).
- **Egypt:** The President of the Republic shall appoint the remaining third heedless of any criteria (two-thirds of members are elected) (Article 196 of the Constitution)
- **Yemen:** A decree by the President of the Republic shall form a Consultative Council from experienced and qualified specialists in order to expand the base of participation through consultation and to make use of national expertise and qualifications (Article 125 of the Constitution).

Accordingly, the appointed members are predominantly former state cadres and figures who are the most favored by the head of state who usually retains the final say in the selection process. It is the president who orders the appointment of members in the absence of any specific selection mechanism. Interestingly, there is no mention of the representation of women, minorities and marginalized groups in the upper houses.

- 1- Members of the lower houses in bicameral parliaments are elected by direct secret suffrage by electoral colleges grouping all those eligible for vote. The members of upper houses, are, for the most part, appointed either entirely (Jordan, Bahrain, Oman and Yemen) or partially (one third of members in Tunisia, Algeria and Egypt). There are three upper houses with members entirely elected by indirect suffrage (Sudan, Morocco, and Mauritania). For this reason, lower houses are perceived as more inclusive and more representative of citizens.
- 2- The head of state chooses the appointed members of upper houses from among national competent figures, i.e. practically from the most favored upper social classes.
- 3- The elected members of upper houses either represent the country's territorial divisions and states (Sudan, Algeria and Mauritania²²) or other social categories, such as the states, unions of employers, farmers and wage earners (Tunisia), the local government, professional groups and representatives of wage earners (Morocco). In Egypt, at least half of the elected members shall be chosen from amongst workers and farmers. In other words, the elected members enjoy a true representative capacity.
- 4- The election method of lower and upper houses diverge. All members of lower houses are elected by direct secret universal suffrage at the national level. In comparison, different methods govern the election of the members of upper houses. In Egypt, two thirds of the Advisory Council members are elected by direct secret suffrage on the basis of electoral constituencies. In Sudan,

III. Comparison of the Representative Capacity in the Two Houses of Parliament

22. The elected Senators elect three members to represent the Mauritians living abroad

23. A constitutional text providing for a bicameral parliament that exercises legislative power

24. Appointed by the head of state

25. The Senate elects three senators to represent the Mauritians living abroad

the members of the Council of States are only elected by the legislature of every state. The representatives of states in Algeria's National Council, Tunisia and Morocco's Chambers of Councilors and Mauritania's Senate are elected by indirect suffrage by the local entities in every province or governorate. The representatives of professional trade organizations in Tunisia and the representatives of wage earners in Morocco are elected at the national level.

Table 3: Indicators gauging the representative function of upper houses

House	Constitutional Text ²³	Election/Appointment ²⁴	Represented Groups		Representative Capacity of Lower Houses
			States	Social Categories	
Algeria National Council	X	One-third appointed	X	X	Entirely elected
Bahrain – Shura Council	X	Entirely appointed	-	X	Entirely elected
Egypt Advisory Council	-	Two-third elected One-third appointed	-	X	Entirely elected
Jordan - Senate	X	Entirely appointed	-	X	Entirely elected
Mauritania ²⁵ – Senate	X	Entirely elected	X	-	Entirely elected
Morocco House of Councilors	X	Entirely elected	X	X	Entirely elected
Oman – State Council	-	Entirely appointed	-	X	Entirely elected
Sudan – Council of States	X	Indirect election	X	-	Entirely elected
Tunisia – Chamber of Councilors	X	One-third appointed	X	X	Entirely elected
Yemen – Consultative Council	-	Entirely appointed	-	X	Entirely elected

Chapter Three:
The Legislative
Function of Upper
Houses in Arab
Parliaments

3

The constitutions of the Arab countries examined in this study grant upper houses extensive legislative powers (Algeria, Bahrain, Jordan, Mauritania, Morocco and Tunisia,), powers restricted to a specific field, such as decentralization-related legislations (Sudan), or almost insignificant powers (Egypt and Yemen). Other Arab upper houses are stripped of any legislative powers (Oman).

I. The Legislative Powers as Provided for in the Constitution

1. UPPER HOUSES RECOGNIZED AS A COMPONENT OF THE LEGISLATURE

In the seven²⁶ constitutionally enshrined bicameral parliaments, laws are promulgated only when approved by both houses (Jordan – Article 91, Bahrain – Article 70, Tunisia – Article 28, Algeria – Article 98, Sudan – Article 91, Morocco – Article 45 and Mauritania – Article 56). These constitutions provide for the legislative powers of every house; the procedures followed in each and the role of the head of state in ratifying the laws are detailed below:

- **Jordan:** the Constitution grants the two houses equal powers and procedures. No law shall be promulgated unless passed by both houses and ratified by the King (Article 91). The draft law shall be first referred to the House of Representatives then to the Senate.
- **Bahrain:** no law shall be promulgated unless approved by both houses or by the National Assembly and ratified by the King (Article 70). Bills shall be first referred to the Council of Representatives (Article 81).

26. Jordan, Bahrain, Tunisia, Algeria, Morocco, Mauritania and Sudan. The upper houses of Oman, Egypt and Yemen are not perceived as part of the legislative power in these countries.

- **Tunisia:** the Chambers of Deputies and Councillors shall exercise legislative power (Article 28). Bills initiated by the President of the Republic shall be submitted to the Chamber of Deputies or to both houses.
- **Algeria:** the legislative power shall be exercised by a bicameral parliament (Article 98), with the constitution specifying the lawmaking fields.
- **Sudan:** the National Legislature shall enact laws at the national level (Article 91). The constitution specifies the law enactment powers of the National Legislature, the National Assembly and the Council of States. The Council of States' legislative powers are limited to decentralization related laws.
- **Morocco:** legislation shall be voted on by parliament (Article 45). The right to propose laws shall be granted to the Prime Minister and the members of parliament (Article 52). Bills shall be referred to one of the two houses (Article 52) and successively debated by the relevant committees in both houses. The Constitution entitles the two houses to follow the same procedures.
- **Mauritania:** Laws are voted by parliament (Article 56). The government and members of parliament have the right of amendment (Article 62). The government shall refer the bill to any of the two houses, and then the bill shall be debated and later adopted by the house which receives it first. The house presented with a bill ratified by another house shall debate the text as it is submitted to it. (Article 63).

The upper houses of Oman, Egypt and Yemen are not constitutionally perceived as a component of the legislative authority, but here are some clarifications on the procedures in place:

- **Oman:** The Council of State is entitled to review the bills (i.e. to express its opinion) before taking relevant measures. But this does not apply to the laws that, for reasons related to the public interest, shall be directly referred to the Sultan (Article 18 of the bylaws). The Council is also allowed to prepare studies and express opinion.
- **Egypt:** While the People's Assembly exercises the legislative power and approves the state's public policy and public budget (Article 86), the Advisory Council's approval shall be required only for the proposals of amending one or more articles of the constitution, draft laws complementary to the constitution, treaties of peace and alliance and all treaties conducive to changes in State territory or related to sovereignty rights (Article 194). The Council shall be consulted about the draft development strategy, draft laws and public matters referred by the President of the Republic (Article 195). Its opinion is not considered binding.
- **Yemen:** During a joint meeting with the House of Representatives (Article 125), the Consultative Council shall name the presidential candidates, ratify the socioeconomic development plans as well as the treaties and agreements on defense, alliance, reconciliation, and examine all other matters raised by the President of the Republic for discussion during the joint meeting. The Council shall also conduct studies and offer guidance to the president.

Conclusion to this section

The following comparative remarks can be made after examining the legislative function of upper houses from a constitutional perspective:

1. The upper houses have the right to take legislative initiative are those of Jordan, Bahrain, Morocco, Mauritania, and Sudan (on matters related to federal states).
2. Both houses can be the first to receive draft laws from the government in Tunisia, Morocco, and Mauritania. In Sudan this

- depends on the area of jurisdiction.
3. The draft laws are first referred to the lower house in Jordan, Bahrain and Algeria.
 4. Some houses exercise limited legislative powers that do not include ratification of the international agreements (Tunisia). Some enjoy very restricted powers (Egypt and Yemen) limited to the ratification of the agreements that affect the state's territory.
 5. Oman's Council of State does not enjoy any legislative power. Its role is limited to reviewing bills and expressing opinions. Its opinions are not binding to the executive.

2. THE LEGISLATIVE INITIATIVE ACCORDING TO THE CONSTITUTION

Five upper houses are constitutionally entitled to propose laws, namely Jordan, Bahrain, Sudan, Morocco, and Mauritania. The upper houses of Tunisia and Algeria are not granted this right.

- **Jordan:** Senators and MPs are constitutionally entitled to propose bills (Article 95) provided that they are signed by 10 members or more (Article 95).
- **Tunisia:** The Councillors are not entitled to propose laws. The right to submit a bills is solely vested in the President of the Republic and the members of the lower house (Article 28).
- **Algeria:** The Constitution entitles only the Prime Minister and the members of parliament to initiate laws (Article 19). The members of the National Council are constitutionally denied this right.
- **Sudan:** The legislative initiative is limited to the jurisdiction of every house (National Legislature and its two houses, National Assembly and Council of States – Article 91).

- **Morocco:** Both the Deputies and Councillors have the right to propose laws (Article 32).
- **Mauritania:** Initiating laws falls within the parliament's jurisdiction (National Assembly and Senate – Article 61).

The members of the upper houses of Egypt, Oman and Yemen are not entitled to take legislative initiative.

Table 4: Indicators of the Legislative Function of Upper Houses according to the Constitution

Country	Exercise of Legislative Power	Referral of Bills to Any of the Houses	Referral of Bills to the Lower House First	Right to Propose Laws
Algeria ²⁷	X	-	X	-
Bahrain ²⁸	X	-	X	X
Egypt	-	-	X	-
Jordan ²⁹	X	-	X	X
Mauritania	X	X	-	X
Morocco	X	X	-	X
Oman	-	-	-	-
Sudan ³⁰	X	X	-	X
Tunisia ³¹	X	-	X	-
Yemen	-	-	-	-

Source: Constitutions of the compared countries

27. In Algeria, bills shall be first submitted to the National People's Assembly.

28. Proposals shall be submitted to the government. The latter shall turn them into bills.

29. Proposals shall be submitted to the government. The latter shall turn them into bills.

30. The Council of States exercises legislative powers according to its jurisdiction (decentralization).

31. In Tunisia, bills initiated by the President of the Republic shall be introduced into the Chamber of Deputies or into the two houses. The Chamber of Deputies shall ratify the text first before referring it to the Chamber of Councilors.

The bylaws of upper houses define the legislative powers they are entrusted with and their implementation procedures. All bills shall be examined, regardless of whether they are tabled to the upper house directly by the government or by the lower house or are submitted by the members to the competent committee. This procedure is common to all upper houses.

1. THE POWER TO AMEND BILLS

- **Jordan:** The Senate shall introduce the amendments it deems fit to the bills that originate in the House of Representatives. It may approve or reject bills or make additions or omissions (Articles 19 to 74). If the Senate disapproves a bill as enacted by the House of Representatives, its Speaker shall return the bill to the House of Representatives for reconsideration. A series of procedures shall be initiated in the bicameral parliament, ending with a joint session presided over by the Speaker of the Senate. The bill shall be ratified by a two-third majority of attending members, noting that the senators account for less than half of the members of the House of Representatives. The Senate shall not introduce any amendments to agreements and treaties. It shall either accept or reject them or postpone the expression of its opinion.
- **Bahrain:** The Shura Council (the competent committee and the members) shall amend the bills submitted by the government. It may accept or reject them or make additions or omissions (Articles 97 and following). Every member may suggest the amendment, addition or omission he deems fit (Article 104). The Council shall

II. The Legislative Function as Provided for in the Constitution

approve or reject any bill only after it is examined by the competent committees (Article 113). The Council may approve, reject or postpone its examination of international agreements and treaties, but shall not amend their texts.

- **Tunisia:** The Chamber of Councilors shall examine the bills referred by the President of the Republic or ratified by the Chamber of Deputies (Article 9). The Councilors shall submit their amendments and observations in writing to the Speaker of the Chamber, who shall refer them to the competent committees for consideration (Article 10). The Chamber of Councilors shall introduce amendments to bills, in which case the government shall form a joint committee composed of equal members from both houses to rule on the points of disagreement (Article 17).
- **Algeria:** The Speaker of the National Council shall bring before the standing committees every text that falls within their competence for examination and expression of opinion (Article 32). The National Council shall discuss the text voted by the National People's Assembly (Article 39) and the members of the National Council may submit their observations in writing (Article 63). The Speaker is responsible for referring them to the competent committee, which may, in its complementary report, put forth justified recommendations in light of its conclusions and the observations of the members of the National Council. In case of disagreement with a bill ratified by the lower house, a joint committee composed of equal members of each house shall be resorted to (Article 40).
- **Sudan:** Bills shall be referred to the Council of States, taking account of the Council's jurisdiction (Article 51). The Council may amend bills.
- **Egypt:** Every member may suggest the amendments he or she

deems fit. The amendment proposal shall be submitted in writing to the Speaker of the Council, who shall refer it to the competent committee for consideration (Articles 74 and following). The Speaker of the Council shall refer the bill that the Council has amended as suggested by the competent committee to the Constitutional and Legislative Committee. The same provisions shall apply to the suggestions by the members of the People's Assembly.

- **Morocco:** The House of Councilors may amend bills (Article 226). Bills shall be referred to the competent committees. The bill may not be discussed or voted on before its referral to the competent committee (Article 222). Only written amendments shall be accepted (Article 235). In case of disagreement between the two houses on a bill or on the amendments suggested by either one of the two houses, the government shall call a meeting of the joint committee, as per Article 58 of the Constitution.
- **Mauritania:** The government and the senators shall propose amendments and minor changes to the texts debated by the Senate (Article 51). Only written amendments shall be considered and only those relevant to the text shall be approved. All the standing committees shall receive the bills that fall within their area of competence (Article 16).
- **Yemen:** The Consultative Council shall exercise its limited and specified legislative powers during meetings held jointly with the House of Representatives and presided over by its Speaker.

2. THE POWER TO PROPOSE LAWS

Some upper houses are entitled, in accordance with their bylaws, to propose laws, although the exercise of this right is governed by some

conditions and mechanisms. Other upper houses are denied this right. The paragraphs below shed light on the case of the ten upper houses:

- **Jordan:** 10 or more senators may propose bills. The Speaker of the Senate shall refer every proposed bill to the competent committee. The latter shall submit its recommendations after considering the bill. The Senate shall forward every proposal it approves to the government that shall turn it into a bill. The bill shall be submitted to the house during the same legislative session or in the following one (Article 20).
- **Bahrain:** the members of the Shura Council may propose laws. Well-worded and specific laws shall be brought before the Speaker of the Council alongside a note explaining the constitutional texts related to the proposal, its key principles and intended objectives (Article 92).
- **Tunisia:** the President of the Republic and the members of the Chamber of Deputies shall initiate laws (Article 28 of the Constitution). The Councilors shall not propose laws.
- **Algeria:** The right to initiate laws is vested in the Prime Minister and members of the National People's Assembly in accordance with Article 119 of the Constitution. Stripped of the right to take legislative initiative, the National Council shall debate the text voted by the National People's Assembly (Article 59).
- **Sudan:** in line with the Council's jurisdiction, representatives or any of the Council's committees may, at their own initiative, propose a bill that falls within the competence of the Council (Article 51). In this event, the Speaker of the Council shall refer the bill to the competent committee. The latter shall prepare its report in light of which the appropriate procedures shall be taken.

- **Oman:** the Council of State does not have any legislative capacity. Its members are not entitled to propose laws.
- **Egypt:** consistently with its prerogatives, any standing committee shall examine any of the issues provided for in Article 194 of the Constitution and put forth the suggestions it deems fit. The committee shall submit its report to the Advisory Council (Article 63). The Speaker of the Council shall inform the President of the Republic, the Speaker of the People's Assembly and the government of the report and the relevant deliberations (Article 66). In other words, the right to propose laws is vested in the committees and the Council, and not in individual members.
- **Morocco:** Any councilor may propose a bill (Article 196). The House's bureau shall consider every text submitted by any of the members as a bill to be distributed then referred to the concerned committee for examination (Article 197). The author of the bill is requested to present it (Article 200).
- **Mauritania:** Senators may propose laws (Article 25). Proposed bills shall be brought before the competent committee for consideration. Proposed bills pertain to the areas specified in the Constitution and the statutes.
- **Yemen:** The Consultative Council shall not propose laws. Its legislative function is restricted to ratifying the social and economic plans, treaties and agreements jointly with the House of Representatives (Article 4).

3. LAW RATIFICATION MECHANISMS IN ARAB UPPER HOUSES:

Upper houses follow similar law ratification mechanisms irrespective of whether the draft law is directly referred to the upper house,

initially adopted in the lower house or proposed by a member of the house. The mechanism is usually as follows:

- Once notified of the submission of a bill or draft law, the Speaker refers it to the competent committee which studies it and prepares its report. Every member of the house shall receive a copy of the bill (Jordan – Article 19, Algeria – Article 32, Tunisia – Article 12). If the house is not in session, the Speaker shall call upon the standing committees according to their agenda (Algeria – Article 33).
- The committees usually examine bill and summon the concerned minister or the author of the proposal to listen to their views and standpoints.
- The committee shall introduce the amendments it deems fit to the bill.
- Members of the house who are not members of the committee in charge of examining the text should ask the permission of the speaker or the committee chair to participate in the deliberations. They usually do not have the right to vote.
- The committee shall submit its report on the bill to the Speaker. The relevant documents shall be attached to the report.
- The Speaker shall refer the committee's report to the plenary session.
- The Speaker shall set a date for the session reserved for discussing the bill and the committee's report.
- The bill shall be discussed article by article. The debate shall start with a reading of the initial text, the report of the competent committee and the suggested amendments (Bahrain – Article 103).

- The bill is approved, rejected or amended following deliberations in accordance with the bylaws of every house.

Note: The upper house shall return to the lower house every rejected or amended bill previously ratified by the lower house. The two houses shall resolve their disagreements.

Some disparities in the mechanisms:

- **In Sudan**, the first reading of the bill shall take place in the plenary session. The Minister of Parliamentary Affairs, the minister or the Speaker shall, as a first step, read out the title of the bill. The bill may, at the suggestion of one of the representatives, be referred to the competent committee that shall decide on its validity.
- **In Mauritania:** The Speaker shall announce in a plenary the bills and proposals that shall be referred to the competent committee (Article 25).
- **In Morocco:** The bills and proposals referred to committees shall be announced during the first plenary sitting (Article 196).
- **In Bahrain:** The draft law shall be forwarded to the plenary sitting before its referral to the committee for notification (Article 97).

III. Procedural Law Ratification Mechanisms in the Two Houses Of Parliament

1. PRIORITY REFERRAL OF BILLS TO ONE OF THE HOUSES

According to the constitutions of many countries, bills submitted by the government are first referred to the lower house for examination, amendment and ratification. The upper house then works on the text submitted by the lower house. In some cases, constitutions do not specify which house should receive bills first.

In some bicameral parliaments, like those of Algeria, Bahrain and Jordan, bills are first to be submitted to the lower house.

In some other parliaments, there is no specific sequence and bills can first be submitted to either the lower or upper house. In Sudan, the choice is made depending on the jurisdiction of each house. In Morocco, the choice is open; in Mauritania, financial laws are submitted, by priority, to the National Assembly; in Tunisia, the bills proposed by the President of the Republic are submitted to the lower house or to both houses at the same time, but the text is first ratified by the lower house.

2. COMPARISON OF THE LAW RATIFICATION PROCEDURES IN THE TWO HOUSES

The Constitutions and bylaws of bicameral parliaments provide for the procedures that each house must follow when ratifying laws. These procedures differ depending on each house's position on the bill or proposal that needs to be ratified.

a. First case:

the upper house approves the text as adopted by the lower house without any amendment, omission or addition. In this case, the Speaker of the upper house shall refer the bill to the Prime Minister who shall forward it to the head of state for ratification.

b. Second case:

The two houses disagree over the text. Constitutions have generally attempted to resolve such disputes as follows:

- **Jordan:** If the Senate does not approve the bill as ratified by the House of Representatives, the Speaker of the Senate shall return it to the House of Representatives for reconsideration (Article 64). If the House of Representatives approves the bill as sent by the Senate, its Speaker shall forward the text to the Prime Minister who shall refer it to the King (Article 65). If the House of Representatives rejects the text suggested by the Senate, the Speaker shall refer the bill to the competent committee. If, for the second time, the Senate disapproves the decision of the House of Representatives, the two houses shall hold a joint session to discuss the divisive articles, in which case the bill shall be ratified by a two-third majority of members attending the joint session (Article 67).
- **Bahrain:** The Speaker of the Shura Council shall return to the Council of Representatives -- for reconsideration -- any bill disapproved by the Shura Council but approved by the Council of Representatives (Article 82 of the Constitution). If the Council of Representatives approves the bill ratified by the Shura Council, the Speaker of the Shura Council shall refer it to the Prime Minister, who shall submit it to the King (Article 83). If the Council of Representatives rejects the Shura Council's opinion, it shall return the bill to the latter for reconsideration. If the two houses disagree twice on any bill, the National Assembly shall

convene to discuss the divisive articles. The National Assembly shall take its decision by the two-third majority of members present.

- **Tunisia:** The Chamber of Councilors shall refer to the President of the Republic and inform the Speaker of the Chamber of Deputies of the amendments it has introduced to the text ratified by the lower house. At the government's suggestion, a joint committee of members chosen equally from both houses shall be formed to prepare an identical text agreed upon by the government. The Speaker of the Chamber of Deputies shall refer the identical text to the President of the Republic for signature. If the joint committee fails to agree on an identical text, the Speaker of the Chamber of Deputies shall refer the bill ratified by the Chamber to the President of the Republic, which means that the Chamber of Deputies retains the final word). (Article 33 of the Constitution).
- **Algeria:** A committee of equal representation from both houses shall meet at the request of the Prime Minister to resolve any disagreement between the two houses. The government shall submit the text to the two houses. If the disagreement persists, the text shall be withdrawn (Article 120 of the Constitution).
- **Sudan:** Any bill passed by the National Assembly shall be referred to a standing inter-chamber committee for scrutiny and decision on whether it affects the interests of the states. Should the committee decide that the bill affects the interests of the states, the bill shall be referred to the Council of States. Should the Council of States introduce any amendments to the bill by a two-third majority or pass it as is, the bill shall be sent to the President of the Republic for his assent without being referred to the National Assembly (Article 5 of the Constitution).
- **Egypt:** The Speaker of the People's Assembly shall refer any

dispute that may arise between the two houses to a joint committee. The committee shall submit its final text to the two houses. Should the suggested text be disapproved by either house, the two houses shall discuss the matter during a joint meeting chaired by the Speaker of the People's Assembly and attended by the majority of members of each house at least. If the committee does not reach agreement on one text, the two houses may approve, during their joint meeting, the text endorsed by either one of them. The vote shall take place without discussion (Article 194, paragraph 3 of the Constitution).

- **Morocco:** If the disagreement persists after two readings in each house (or one reading if the government proclaims the matter to be urgent), the government may call a meeting of the joint committee. The latter shall propose an identical text. The government may submit the committee's text to both houses for ratification. If the committee fails to propose an identical text or if the two houses fail to ratify the text as suggested by the committee, the government may refer the bill or proposal to the House of Representatives as modified in the light of amendments reached during parliamentary debates and taken up by the government. In this case, the text shall be approved by the absolute majority of the House's members (Article 58 of the Constitution).
- **Mauritania:** In case of disagreement between the two houses, the bill may be referred, after one reading by each of the two houses, to a joint committee that shall propose an identical text on the controversial provisions. The text may be referred to both houses for ratification, in which case no further amendments shall be accepted. If the committee fails to propose a common text or if the text is not ratified by both houses, the government shall, after a new reading by the two houses, ask the National Assembly to rule on the matter (Article 66 of the Constitution).

IV. Comparison of the Legislative Powers of the Two Houses of Parliament

This comparison is restricted to seven parliaments, namely those of Jordan, Bahrain, Tunisia, Algeria, Sudan, Morocco and Mauritania. The parliaments of Oman, Egypt and Yemen are not included due to their restricted or almost non-existent legislative role. Oman's Council of State is an advisory body which does not have any legislative power. In Egypt, the legislative power is vested in the People's Assembly (Article 86 of the Constitution) and in Yemen in the House of Representatives (Article 62 of the Constitution). The houses of the 7 aforementioned bicameral parliaments exercise legislative powers that are either identical or vary, sometimes in favor of lower houses:

- **Jordan:** the legislative powers are identical.

No law shall be promulgated unless passed by both houses and ratified by the King. (Article 91 of the Constitution), bearing in mind that bills shall be first referred to the House of Representatives. In case of disagreement, the two houses shall hold a joint meeting. The decision shall be taken by the two-third majority of members present. As a result, the House of Representatives gains precedence with the Senate consisting of not more than one-half of the number of the lower house (Article 63 of the Constitution).

- **Bahrain:** the legislative powers are identical. No law may be promulgated unless enacted by both the Council of Representatives and the Shura Council or the National Assembly and ratified by the King (Article 70 of the Constitution), bearing in mind that bills shall be referred first to the Council of Representatives. If the disagreement persists between the two houses over a given text, the National Assembly shall meet to discuss the divisive articles.

The National Assembly shall take its decision by the majority of members present. The two houses have an equal number of members.

- **Tunisia:** the Constitution grants the Chamber of Deputies more legislative powers than the Chamber of Councilors. The right to initiate laws is vested in the President of the Republic and the members of the Chamber of Deputies and priority is given to the bills presented by the President of Republic (Article 28 of the Constitution). The budget ratified by the Chamber of Deputies, but not by the Chamber of Councilors before December 31st shall be submitted to the President of the Republic for signature. The Chamber of Deputies alone shall approve the international treaties and agreements (Article 32 of the Constitution). If the two houses disagree over a given legal text, a joint committee composed of members from both houses shall be formed. The committee shall refer any solution it reaches to the Chamber of Deputies that shall rule on it. But if the committee does not reach a solution, the Speaker of the Chamber of Deputies shall refer the bill ratified by the Chamber to the President of the Republic for signature (Article 33 of the Constitution).
- **Algeria:** Like in Tunisia, the Algerian Constitution vests the National People's Assembly with broader legislative powers than the ones entrusted to the National Council. The PM and the members of the National People's Assembly have the right to initiate laws (Article 119 of the Constitution). Bills shall be first submitted to the National People's Assembly then to the National Council for ratification (Article 120 of the Constitution). The National Council shall debate the text voted by the National People's Assembly. In case of disagreement, a committee composed of equal representation of the two houses shall meet, and if the disagreement persists, the text shall be withdrawn.

- **Sudan:** the legislative power is vested in three bodies, namely the National Legislature, the National Assembly and the Council of States. Each of these bodies has legislative powers clearly stipulated by the Constitution. The Constitution entrusts the National Assembly with wider legislative powers than the Council of States. The latter has crucial powers in matters related to decentralization and the affairs of the states.
- **Morocco:** The two houses have identical legislative powers. The Prime Minister and the members of parliament are entitled to propose laws. Bills shall be referred to the bureau of one of the houses of parliament (Article 52 of the Constitution). The two houses shall successively debate bills or proposals in order to reach consensus (Article 58 of the Constitution). If the dispute persists between the two houses, the government may submit to the House of Representatives the bill or proposal that shall be ratified by absolute majority.
- **Mauritania:** The two houses have the same legislative powers. Laws are voted by parliament (Article 56 of the Constitution) and the legislative initiative belongs jointly to the government and the members of parliament (Article 61 of the Constitution). A draft bill shall be submitted to either one of the houses, except for the finance bills that shall be first submitted to the National Assembly. The right of amendment is vested in the members of parliament. If the two houses disagree on a given text and the joint committee fails to propose an identical text, the government may request the National Assembly to rule conclusively (Article 66 of the Constitution).

V. The Legislative Powers of the Heads of States

In addition to their right to take legislative initiative, the head of state and the government may exercise legislative powers through decrees-laws. The constitutions entitle heads of state to return laws to the parliament, where they will be voted on by absolute majority. This practice is common to many bicameral parliaments as shown below:

1. THE RIGHT TO REQUEST A SECOND READING OF A DRAFT LAW

- **Jordan:** The King shall return to the House, within a six-month deadline, any law that he does not see fit for ratification coupled with a statement showing the reasons for withholding his ratification. If passed for the second time by the two-third majority of the members of the House of Representatives and the Senate, the law shall be promulgated (Article 93 of the Constitution).
- **Bahrain:** The law shall be considered to have been ratified and shall be promulgated by the King if a period of six months from the date of its submission by the National Assembly to the King has expired without the King returning it to the National Assembly for reconsideration. If returned by the King during this period, the law shall be reconsidered and approved by a two-third majority (Article 35 of the Constitution).
- **Algeria:** The President of the Republic may request a second reading of the voted law within 30 days, in which case the law shall be approved by the two-third majority of the members of the National People's Assembly (Article 127).

- **Sudan:** The National Assembly shall approve, by the two-third majority of the members of both houses, any bill returned by the President of the Republic within thirty days. The bill shall be then considered promulgated (Article 108).
- **Egypt:** If the President of the Republic objects to a bill ratified by the People's Assembly, he shall return it to the People's Assembly within 30 days. If the Assembly ratifies the bill by the two-third majority, the bill shall be considered a law and shall be promulgated.
- **Morocco:** The King may request a second reading of a bill by the parliament. If the bill is ratified again by a two-third majority of members of both houses and the King still finds it questionable, then he may choose to submit it to a general referendum by royal decree (Article 69).
- **Mauritania:** The President of the Republic shall, within 30 days, request a second reading of a bill previously approved by the parliament. The president shall promulgate the law if ratified by the majority of the National Assembly's members (Article 70).
- **Yemen:** The President of the Republic has the right to request a review of any bill approved by the House of Representatives. He shall return the bill to the House of Representatives within thirty days of its submission. If the House approves the bill by the majority of its members, the president shall promulgate the law within two weeks (Article 112).

2. THE RIGHT TO ISSUE DECREE-LAWS

- **Jordan:** If the National Assembly is dissolved or is not in session, the Council of ministers shall, with the King's approval, issue provisional laws that admit no delay. These laws shall be placed

before the Assembly on its first session. The Assembly may approve, amend or reject these laws provided that this does not affect existing contracts or acquired goods.

- **Bahrain:** Should necessity arise for urgent measures to be taken while the National Assembly is not in session or is dissolved, the King may issue decrees that have the force of law. Such decrees shall be laid before the National Assembly within one month of their promulgation if the parliament is in session or within one month at its first sitting (Article 38). If they are not referred to parliament or are not ratified by the latter, decrees cease to have the force of law.
- **Tunisia:** The Chambers of Deputies and Councilors may authorize the President of the Republic, within a specific time limit and for a specific purpose, to promulgate decrees that shall be either ratified by the lower house or by both houses at the elapse of the set deadline (Article 28 of the Constitution). When the parliament is in recess, the President of the Republic shall issue decrees to be ratified by the lower house or both houses as need be (Article 31 of the Constitution).
- **Algeria:** The President of the Republic can legislate by ordinance in case there is a vacancy of the National People's Assembly or in the inter-session periods of the parliament. The President of the Republic shall submit the texts he has enacted to each of the two houses on its first session for approval. The ordinances that are not approved by the parliament shall be considered void. The President of the Republic may legislate by ordinance in case of a state of exception defined by Article 93 of the Constitution. Ordinances shall be taken during cabinet meetings (Article 124 of the Constitution).
- **Sudan:** Should the National Legislature not be in session, the President of the Republic may, on an urgent matter, issue a

provisional order having the force of law. Such provisional order shall be submitted to the appropriate chamber of the National Assembly as soon as it is convened. If any of the houses rejects the order or if the latter is not approved during the parliamentary session, it shall lapse with no retrospective effect (Article 109 of the Constitution).

- **Egypt:** the President of the Republic shall, when needed and in exceptional cases, and on the authorization of the People's Assembly, issue resolutions having the force of law. The resolutions shall first be submitted to the People's Assembly after the end of the authorization period. If disapproved by the house, they shall cease to have the force of law (Article 108).
- **Morocco:** The government may, for a limited period of time and for a defined purpose, be empowered to take, by decree, measures normally falling within the purview of laws. Decrees shall become effective immediately after their publication and shall be submitted, for ratification, to the parliament (Article 45 of the Constitution). During the recess periods, the government may, in agreement with the concerned committees in both houses, adopt ordinances that shall be submitted for ratification during the following regular session of the parliament (Article 55 of the Constitution).
- **Mauritania:** The government may, with the agreement of the President of the Republic, ask the parliament's authorization to pass ordinances for measures which are normally in the domain of the law. These ordinances shall be passed in the Council of Ministers and require the approval and signature of the President of the Republic. They come into effect as soon as published, but shall become void if the bill of ratification is not presented to Parliament before the date set by the enabling law (Article 60 of the Constitution).

Chapter Four:
The Oversight
Function of Arab
Upper Houses

4

I. Powers and Tools as Enshrined in the Constitution

1. POWERS OF THE PLENARY SESSION, THE COMMITTEES AND THE MEMBERS

Some Arab Constitutions confer on parliaments a number of powers and oversight tools, including the ones entrusted to upper houses, to keep a check on the work of the executive. From a parliamentary oversight perspective, these houses can be classified into three models as follows:

a. First Model

This model groups upper houses with little or no oversight function over the work of the executive power. It includes four upper houses, namely the State Council in Oman, the Consultative Council in Yemen, the Advisory Council in Egypt and the Chamber of Councilors in Tunisia. From an oversight perspective, the role of these houses is limited to expressing opinion, submitting (non-binding) suggestions and recommendations, seeking information from public administrations, and even summoning ministers to an “exchange of opinion.” These houses can set up standing and ad hoc committees tasked with examining, consulting and issuing recommendations. These houses (such as Egypt’s Advisory Council) may also listen to statements made by the Prime Minister and the ministers at their request without exercising any oversight function.

In Oman, the Constitution calls for the establishment of the State Council but does not define its powers (Chapter five, Article 58). In Yemen, the establishment of the Consultative Council comes under The Presidency of the Republic chapter, and not under the chapter on the legislative authority. Article 125 of the Constitution provides

for the formation of the Consultative Council entrusted with advisory powers and other prerogatives of legislative nature to be solely exercised during joint meetings with the House of Representatives. None of these powers, however, includes oversight. In addition, Article 62 of the Constitution stipulates that “the House of Representatives is the legislative authority of the State.” In Egypt, Article 86 of the Constitution states that “the People’s Assembly shall exercise the legislative power and shall exercise control over the work of the executive authority.” Article 194 of Chapter 1 of Section 7 defines the Advisory Council’s powers that do not include any oversight function. Article 201 stipulates that “the PM and the ministers shall not be answerable to the Advisory Council.” In Tunisia, the Constitution, in its second chapter on the legislative power, bears no reference to the oversight functions of the Chamber of Councilors. The latter’s role is limited to legislating within specific and restricted mechanisms and conditions.

b. Second Model

This model includes the upper houses that are constitutionally authorized to inquire and question ministers without impeaching the government. It groups five houses, namely the Senate in Jordan, the Council of States in Sudan, the Senate in Mauritania, the Shura Council in Bahrain and the National Council in Algeria. This model is undoubtedly more advanced than the former, as it comprises a number of oversight tools. The powers and oversight tools are not the same, however, for all houses falling under this model, and are detailed below:

- **The Senate in Jordan:** Jordan’s Constitution entitles every senator to address questions or interpellations to the ministers concerning any public matters (Article 96). The Senate is also involved in trying ministers.
- **The Council of States in Sudan:** Sudan’s Constitution authorizes

every national minister to make a statement before the Council of States (Articles 102-104). It also allows the Council's members, within their powers, to address questions to the national minister or ask any national minister to make a statement on any subject (notifications) especially on the effective implementation of decentralization and the transfer of powers (Article 91, paragraph 4).

- **The Senate in Mauritania:** The Constitution empowers Mauritania's Senate to ratify the finance bills and control the administration of the State budget and supplementary budgets (Article 68). Under Article 69, one session per week shall be reserved by priority for questions by members of the Senate to the government. Article 72 compels the government to provide the parliament with all the required explanations about its management and acts. The National Assembly may challenge the responsibility of the government (Article 74). However, Article 75 allows the Prime Minister to ask the Senate to approve a declaration of general policy. The Senate is entitled to set up enquiry committees and convene interpellations (recent amendment in 2008).
- **The Shura Council in Bahrain:** Article 91 of the Constitution entitles every member of the National Assembly to put questions to the ministers with a view to clarifying matters falling within their competence. Article 93 entitles the National Assembly to summon the competent minister to attend a session when a matter relating to his ministry is being debated. The same article consecrates the right of the minister to attend the sessions of the Shura Council, while Article 66 holds every minister liable for the work of his ministry before the Council of Representatives (and not the Shura Council). However, the Shura Council shall, during a joint meeting with the Council of Representatives, (Article 67) vote on non-cooperation with the Prime Minister, a complicated mechanism that governs the final decision to impeach the Prime

Minister. The Council may have been granted this right to ensure balance between the Council of Representatives and the Shura Council vis-à-vis the executive power.

- **The National Council in Algeria:** Article 130 of the Constitution stipulates that “the parliament may open a debate on foreign policy upon a request made by the President of the Republic or one of the speakers of the two houses. The debate may end up, in that case, with a resolution of the Parliament with its two chambers convened together, to be sent to the President of the Republic.” The two houses shall also approve all the agreements and treaties (Article 131). In addition, the Constitution grants the National Council, as well as the National People’s Assembly, the right to question the government (Article 133), address written and oral questions, open debate in light thereof (Article 134) and form enquiry committees (Article 161). The National People’s Assembly alone is empowered to impeach the government (Article 135).

c. Third Model

This model, which only includes Morocco’s House of Councilors, represents a quantum leap compared to the other two models. Article 42 of the Moroccan Constitution requires ministers to attend the sessions of both houses and the meetings of their committees. Ministers can also commission their own assistants. Parliamentary commissions of enquiry may be formed as well. Article 56 states that one session per week shall be, by priority, reserved for questions from the members of the house to the government.” Article 77 entitles the House of Councilors to move motions of censure or warnings against the government -- two tools seldom put at the disposal of upper houses worldwide.

The Moroccan Constitution has tightened the conditions governing the use of these tools. In a recent study³², Dr. Mhammed Malki has

32. The Legal Framework of Parliamentary Oversight over the Government – A study presented at the regional workshop held in Beirut on 16 and 17 October 2009.

stated that “in the case of Morocco, it is absolutely to use these oversight tools. Therefore, one can conclude with all certainty that the provisions detailed in Chapter 77 are totally void.” However, the Moroccan House of Councilors enjoys, albeit in theory, but certainly constitutionally, the right to impeach the government. The House of Councilors also has the right to impeach individual members of the government (Article 89).

2. COMMON AND LESS COMMON OVERSIGHT TOOLS

The following oversight tools are provided for in the constitutions of the compared Arab countries. Some are common to several upper houses; others are only found in one or a few of them:

- **Parliamentary Committees (ad hoc committees, sub-committees, committees of inquiry, and special committees):** standing committees and other types of parliamentary committees represent a key component of the parliamentary institution. For this reason, constitutions have provided for the establishment of permanent and temporary committees. Some constitutions have even specified their number:
 - Article 95 of Sudan’s constitution states that each chamber shall, in accordance with its internal regulations, establish standing, special, and ad hoc committees. The two chambers may form inter-chamber standing or ad hoc committees for specific matters that are of concern to the two chambers. The Constitution authorizes the committees to ask any national minister to deliver a statement on any matter of concern (Article 104) and to propose a bill (Article 106).
 - Article 30 of Tunisia’s constitution stipulates that the Chambers

of Deputies and Councilors shall elect from among their members standing committees that shall pursue their activity even when the legislature is in recess. In addition, every house shall elect special committees.

- Article 42 of Morocco’s constitution stipulates that Ministers may attend the meetings of committees. In addition to the standing committees, parliamentary committees of enquiry may be established.
- Standing committees are also provided for in the constitutions of Algeria (Article 117), Jordan (Article 95), Bahrain (Article 92) and Mauritania (Article 64).
- **Oral/written questions:** they are provided for in the constitutions of Jordan, Bahrain (written only), Algeria, Sudan, Morocco and Mauritania.
- **Interpellations:** they are provided for in the constitutions of Jordan, Algeria and Mauritania (recently).
- **Hearing sessions** for ministers and senior civil servants can be convened in the parliaments of Sudan, Mauritania, Morocco, Bahrain and Algeria.
- **Commissions of enquiry** can be established in Mauritania and Morocco.
- **Resolution** following debate on foreign policy and ministerial statement are provided for by the constitution of Algeria.
- **“Non-cooperation with the Prime Minister”** is an oversight tool provided for in Bahrain, and this motion should be jointly submitted by both houses of parliament.
- **Motion of censure and warnings** to impeach the government is a

tool available in Morocco. It is also possible for the parliament to impeach individual members of the government.

- **Financial oversight** is exercised by the upper houses of Jordan, Bahrain, Algeria, Morocco and Mauritania.

The table hereunder sheds light on the tools available to the upper houses, and clearly provided for by the constitution:

Table 5 – The Constitutionally Enshrined Oversight Tools in the 6 Upper Houses

Country	Standing Committees	Questions	Interpellations	Hearing Sessions for Ministers	Enquiry Committees	Regulations	Motion of Censure/ warnings	Non-Cooperation with the PM	Impeachment	Financial oversight
Algeria	X	X	X	X		X ³³				X
Bahrain	X	X		X				X ³⁴		X
Jordan	X	X	X	X ³⁵						X
Mauritania	X	X	X	X	X					X
Morocco	X	X	-	X	X		X		X	X
Sudan	X	X	-	X						

33. Following a debate of the foreign policy during a meeting of the two houses of parliament

34. By a two-third majority during a joint meeting of the parliament

35. The Senate's bylaws provide for the power to hold hearing sessions for ministers

1. OVERSIGHT POWERS OF THE PLENARY SESSION, THE COMMITTEES AND THE MEMBERS

In line with the constitutional provisions, the bylaws of Arab upper houses detail the powers and tools that upper houses can use to exercise their oversight function.

a. Standing Committees

The bylaws of upper houses regulate the tools, mechanisms, activities, procedures and meetings of all parliamentary committees. Upper houses have standing committees that exercise oversight and/or undertake legislative and advisory activities. The number of standing committees varies from one house to another depending on the regulations and bylaws in force.

The number of standing committees in Arab upper houses is set as follows:

Upper House of	Number of Standing Committees	Reference (Article)
Yemen	13	40
Egypt	10	33
Algeria	9	16
Jordan	7	11
Tunisia	7	27
Sudan	7	9
Morocco	6	48
Bahrain	5	21
Mauritania	5	8
Oman	--	--

II. Oversight Powers and Tools Provided for in the Bylaws of Upper Houses

These committees study the bills and proposals automatically referred by the Speaker and may, as part of the exercise of their functions, convene a hearing session for ministers, civil servants and experts on the subjects under study. The committees are equally entitled to seek and obtain information from government sources (Egypt, Article 52; Mauritania, Article 18; Tunisia, Article 36; Jordan, Article 21; Sudan, Articles 42 and 58; and Morocco, Article 58). Councilors and senators can be members of one standing committee only (Morocco, Article 51; Tunisia, Article 31 and Algeria, Article 27). In some houses, members can join two standing committees (Bahrain, Article 23). In addition, many bylaws provide for the establishment of a committee responsible for following up on and implementing the decisions, recommendations and proposals of the Council (Yemen, Article 37) and for the establishment of ad hoc and special committees (Bahrain, Article 21; Sudan, Article 56; Mauritania, Articles 12-8; and Tunisia, Article 27). This Committee may also prepare proposals on important issues (Egypt, Article 53) or issue recommendations on the abolition of federal laws (Sudan, Article 55). In Jordan, senators can become members of any committee by a secret vote in compliance with the maximum number of members a committee can consist of (15 members in the case of Jordan) (Article 12). They can also take part in the activities of any committee provided they do enjoy the right to vote.

b. The plenary

The bylaws of a few upper houses grant specific powers to the plenary. For instance in Oman, the State Council can prepare studies, submit proposals, review bills and make recommendations to the government (Article 18). In Yemen, the Consultative Council expresses opinion and provides guidance on matters raised by the President of the Republic (Article 3). In Sudan, any minister may -- at his own initiative or at the Council's request-- make a statement before the Council on matters related to his ministry (Article 46).

Studying and following up on the citizens' submissions and petitions (Jordan, Article 88; Mauritania, Article 81 and Sudan, Article 38) is another oversight tool.

Interestingly, some upper houses have been given responsibilities that fall neither under legislation nor under oversight as it is commonly exercised. This may be seen as a way to compensate for their non-existent or very restricted legislative or oversight roles. For instance, they are entitled to oversee media outlets and the action of local government authorities and civil society (Yemen, Article 17; Egypt, Articles 116-120). Sudan's Council of States is also empowered to rule on the objections to oil contracts (Article 49), ratify the appointment or dismissal of the judges of the Constitutional Court (Article 50) and oversee the National Reconstruction and Development Fund (Article 38).

Upper houses may also form enquiry commissions (Mauritania, Article 12; Morocco, Article 71) and ad hoc committees (Jordan, Article 17; Bahrain, Article 21). Ministers are entitled to attend the sessions of Jordan's senate (Article 36). The upper house can lift immunity off the members (Jordan, Article 100; Algeria Articles 80-83; Bahrain, Article 197) and receive submissions and petitions (Jordan; Article 88). Bahrain's upper house has the right to express opinions (without taking any decision) on international treaties and agreements (Article 124), consider the treaties provided for in Article 37 of the Constitution (Article 125), and discuss the budget (Bahrain, Article 137 and following). The upper house can raise written and oral questions as well as questions followed by a debate (Mauritania, Articles 68-76).

c. Members of Upper Houses:

The oversight Prerogatives of individual members of upper houses include:

- The right to address questions and interpellations (Jordan, Article 76; Sudan, Article 41; Bahrain, Article 126) and comment on the incoming papers and letters (Bahrain, Article 50).
- The right to raise public issues for debate (Sudan, Article 40); the member may also raise any issue related to the public matters within the timeframes determined in the agenda (Jordan, Article 75). Five members or more may ask the house to discuss any of the public issues (Jordan, Article 76). Any member can request the adjournment or the closing of the debate (Jordan, Article 38).
- Any specific issue may be discussed if three members request so (Bahrain, Article 51). Ten members can request that the sitting be held on an earlier date (Bahrain, Article 47).
- A member is entitled to attend the meetings of the committees of which he is not member (Algeria, Article 36; Bahrain, Article 35 and Jordan, Article 15) without enjoying the right to vote. All bylaws have provided for the right to attend meetings only after the approval of the committee's chair. However, some bylaws prohibit non-members from taking part in the debate.

2. PARLIAMENTARY OVERSIGHT TOOLS PROVIDED FOR IN THE BYLAWS OF UPPER HOUSES

- **Questions:** Jordan, Bahrain, Algeria (written and oral), Sudan, Morocco and Mauritania.
- **Interpellations:** Jordan, Algeria and Mauritania.
- **Proposals and recommendations:** Oman, Egypt, Yemen and Sudan.
- **Submissions and comments on incoming papers:** Jordan, Sudan, Mauritania, and Bahrain.

- **Summons for ministers to attend the committees' meetings and request for information from public administrations:** Jordan, Bahrain, Tunisia, Algeria, Sudan, Oman, Egypt, Morocco, Mauritania and Yemen.
- **Debate of a public issue:** Jordan, Bahrain, Algeria, Sudan, Egypt, Morocco, and Mauritania.
- **Motions of censure and warnings:** Morocco.
- **Non-cooperation with the Prime Minister:** Bahrain (jointly with the Council of Representatives with a two-third majority)
- **Commissions of Enquiry:** Mauritania, Algeria and Morocco.
- **Discussion of the government's public policy statement:** Mauritania, Morocco, and Algeria.
- **Impeachment:** Morocco.
- **Financial oversight:** Jordan, Bahrain, Morocco, Mauritania, and Algeria.

3. COMMON TOOLS AND LESS COMMON ONES

Table 6 highlights the oversight tools provided for in the bylaws of Arab upper houses: some tools are common to all houses or to more than one or are restricted to one house. For instance, issuing a resolution on the government's program and foreign policy is only peculiar to Algeria's National Council. The motions of censure and warnings³⁶ as well as impeachment are tools only common to Morocco's House of Councilors, while the parliamentary vote on non-cooperation with the Prime Minister is only enforced in Bahrain's Shura Council and Council of Representatives.

36. Morocco's House of Councilors is entitled to submit motions of censure and warnings. These two tools are not available to any other upper house

Table 6: Oversight Tools Provided for in the Bylaws of Arab Upper Houses

Upper House	Petitions	Proposals ³⁷	Standing committees ³⁸	Debates ³⁹	Questions ⁴⁰	Interpellations ⁴¹	Enquiry committees	Financial oversight
Algeria			X	X	X	X	X	X
Bahrain			X	X	X			X
Egypt		X	X	X				
Jordan	X		X	X	X	X		X
Mauritania	X		X	X	X	X	X	X
Morocco			X	X	X		X	X
Oman		X	X					
Sudan	X	X	X	X	X			
Tunisia			X					
Yemen		X	X	X				

Source: Bylaws of Arab upper houses

37. Including recommendations, proposals, expression of opinion, decisions

38. The standing committees, be they existing or likely to be established (joint committees, special committees)

39. Debate in plenary sessions: In Morocco, the House of Councilors is entitled to debate the government policy (Article 269).

40. Some houses adopt different types of questions. Questions can be written, oral followed by a debate (Mauritania), and topical (Morocco).

4. CONDITIONS GOVERNING THE USE OF PARLIAMENTARY OVERSIGHT TOOLS IN UPPER HOUSES

The use of oversight tools in most upper houses is often constrained by a number of terms and conditions detailed as follows:

a. Standing committees

- Each member is entitled to join one standing committee only (Morocco, Article 51; Tunisia, Article 31; and Algeria, Article 27).
- Every request addressed to ministers to attend committee meetings shall be submitted through the Speaker of the house.
- Councilors/senators may attend committee meetings even when they are members or other committees, pending the approval of

the committee's chair. However, non-members can neither intervene in the debate nor vote, and can only participate in the discussion upon the request of the committee (Bahrain, Article 35).

b. Questions and interpellations

- **In Morocco**, the bylaws of the House of Councilors entitle every councilor to ask oral questions (Article 285). A councilor who wants to ask an oral question shall submit a written request to the Speaker who shall transfer it to the government. The question should be about a specific topic or issue (Article 288). If the House's bureau finds that the oral question is of a personal or local nature, it may turn it into a written question (Article 292). In coordination with the heads of the parliamentary groups, the bureau may classify oral questions into questions that may or may not be followed by a plenary debate (Article 293).
- **In Jordan**, a senator who wants to address any question to a minister shall submit it to the Speaker in writing provided; the question needs to be concise and not prejudicial to the public interest (Article 77). Only the senator who has prepared the question has the right to address it the minister then can respond to the reply only once (Article 80). In Morocco, oral questions are transferred to the government, and answers should be delivered within a maximum of 20 days (Article 288).
- **In Bahrain**, every member of the upper house may send written questions to ministers but only one member can sign one question (Article 126), and the question can be addressed to only one minister. It shall be concise and decently worded, and should not include any comment. If the question does not meet the required conditions, the house's bureau may discard it (Article 127). A member may not submit more than one question per month (Article 130) and the subject must be different from those currently being treated in committees (Article 129).

- **In Algeria**, if the reply of the government to an oral question initiates a debate, a request for a debate in the plenary should be submitted by 30 members (Article 75). The same procedure applies to Mauritania's Senate where written questions shall be raised by one senator, be concise and respectful of the minister's person (Article 68). Only the oral questions submitted at least 8 days prior to the sitting shall be put on the agenda (Article 71). Jordan's Senate applies the same conditions to interpellations.

c. Warnings and motions of censure

In Morocco, warnings shall be coupled with a list detailing the names of the signatories and shall involve at least two-thirds of the house's members (Article 271). No member of the house can sign more than one motion at a time. The signatures can neither be changed nor withdrawn once the motion is referred to the Speaker (Article 272). The motions of censure shall, on the other hand, be signed by at least one third of the house's members. The councilor may not sign more than one motion at a time (Article 277). No signatures can be added or withdrawn when the motion is deposited (Article 279). The motion has to be approved by a two-third majority (Article 282), but should the House of Councilors ratify a motion of censure, no other motion shall be submitted before a period of one year has elapsed (Article 283).

d. Resolution on the government's program

This tool is available in Algeria's National Council where the resolution needs to be signed by 20 members (Article 72). The House of Councilors of Morocco is requested to discuss the government's program, but the debate shall not lead to a vote of no confidence (Article 269).

The bylaws of Arab upper houses provide for a number of mechanisms and procedures that allow these houses to oversee the government's actions. In general, these procedures and mechanisms are restrictive and are most often seen as closer to conditions than procedures. While the same tools may exist in most upper houses, their usage is usually submitted to different conditions that vary from somewhat flexible to highly restrictive. The paragraphs below provide examples of the procedures adopted in some Arab upper houses:

1. REQUESTS TO OPEN A DEBATE: THE CASE OF EGYPT'S ADVISORY COUNCIL

Articles 102-106 of the bylaws of Egypt's Advisory Council provide for the procedures that govern the requests for debate as follows:

- At least 20 of the Council's members may ask for a general subject to be discussed in a general debate in an attempt to enquire about the government's policy, gather information, and exchange opinions;
- The request for debate needs to be submitted in writing to the Speaker of the Council, with the subject clearly and accurately formulated;
- The Council's bureau shall put the request for plenary debate on the agenda of the next sitting;
- The Speaker shall close the debate when all members who have requested to intervene have taken the floor. The debate shall be

III. Oversight Mechanisms and Procedures in Arab Upper Houses

closed when at least two proponents and two opponents have taken the floor (Article 160);

- The Speaker of the Council shall ask the opinion of the members as soon as the debate ends (Article 161);
- The members' suggestions and recommendations are transferred to the relevant committee for its opinion.
- The government shall be notified of the proposals and recommendations approved by the Council in view of their implementation.

2. WRITTEN QUESTIONS: THE CASE OF BAHRAIN'S SHURA COUNCIL (ARTICLES 126-130)

- Every member can address a written question to the ministers on a specific topic. The question shall be decently worded and shall not be related to personal interests.
- The Council's bureau may discard any question that does not meet the above conditions.
- The question shall be addressed from one member to one minister. One member can ask only one question per month.
- The minister is required to reply in writing within 15 days.
- During the question time, the member may declare his/her satisfaction, thus closing the debate or express his desire to take the floor, thus exercising the exclusive right to react or make a comment.

3. ORAL QUESTIONS: MAURITANIA'S SENATE (ARTICLE 70 ONWARDS)

- Every senator who would like to address an oral question to a minister shall refer the question to the Speaker of the Senate who shall inform the government. One senator only shall address a question to one minister.
- Oral questions shall be concise and free of any personal accusation.
- A special record shall be kept of oral questions.
- Thursday's sittings are reserved for oral questions.
- The Speakers shall decide whether or not to put the oral questions on the agenda.
- Only the questions submitted at least 8 days prior to the questions session can be placed on the agenda, and the questions are asked following the order in which they were received.
- The answer is presented by the relevant minister, and the duration of the questioner's response or reaction should not exceed 10 minutes.
- Upon the request of 5 senators, the senate may turn the exchange between the member of the Senate and the member of the government into a general debate.

4. SUBMISSIONS AND PETITIONS: THE CASE OF JORDAN'S SENATE (ARTICLE 88 ONWARDS)

- Every Jordanian citizen has the right to submit a petition or a submission to the house.

- Petitions and submissions shall be signed by the petitioner and shall not include expressions that are disrespectful of persons and entities. Those petitions and submissions that do not meet these terms and conditions shall be kept at the order of the president.
- A special record serves to register the received petitions and submissions.
- The Speaker refers petitions and submissions which abide by the house's rules to the administrative service or competent committee.
- All members of the Senate are entitled to examine petitions and submissions.
- Once a submission or petition is examined and discussed by the relevant committee, it is returned, along the committee's feedback, to the office of the speaker. The latter is responsible for referring it to the relevant government member, granting him/her a one-month period to provide input and feedback.
- The Secretary General or relevant department is responsible for informing the citizens who have submitted the petition or submission of the outcome of their initiative.

5. MOTIONS OF CENSURE: THE CASE OF MOROCCO'S HOUSE OF COUNCILORS (ARTICLES 277-283)

- The motion of censure shall be handed to the Speaker in writing during a plenary session. It includes a list bearing the names of the signatories; the minimum number of members required is one-third of the overall total number (not one-third of those attending the plenary). The list of signatories and the proceedings are published, and the list is considered final as soon as the motion is submitted.

- The house's bureau then sets a date, within a seven-day period, to discuss the motion of censure.
- Once the debate session starts, the motion can no longer be withdrawn.
- The approval of the motion of censure requires the vote of the two-third absolute majority (of the house's members). Once approved by the upper house, the motion results in the government's resignation.
- If the house approves the motion, no other motion can be moved before one year.
- The motion's approval ultimately leads to the government's resignation.

IV. A Comparison of the Powers and Oversight Tools in Bicameral Parliaments ⁴²

1. COMPARING THE TOOLS AT THE LEVEL OF EACH PARLIAMENT – PRELIMINARY REMARKS

As mentioned in the first paragraph of this chapter, four upper houses, namely Oman's State Council, Yemen's Consultative Council, Tunisia's Chamber of Councillors and Egypt's Advisory Council, have no or very limited oversight powers and thus cannot be compared to the oversight function of the lower houses in these countries, bearing in mind that Oman's Consultative Council does not have any oversight power either. The lower houses of Egypt, Yemen and to some extent Tunisia enjoy extensive oversight powers. In Egypt's People's Assembly, the MPs are entitled

to address oral and written questions, conduct interpellations, form standing and enquiry committees, withdraw confidence in the government, submit notifications and hold hearing and enquiry sessions. In Yemen, the House of Representatives is theoretically and legally entrusted with extensive oversight powers: it addresses questions, conducts interpellations, requests information, discusses the government's program, ratifies the budget, is informed of the international treaties and agreements, submits a vote of no confidence in the government and refers ministers to the judiciary for prosecution and trial. In Tunisia, the Chamber of Deputies is entitled to address oral and written questions, form enquiry and standing committees and submit motions of censure to withdraw confidence from the government.

The remaining houses of Jordan, Bahrain, Algeria, Sudan, Morocco, and Mauritania are worth examining in more detail:

42. The information provided herein on the parliaments is taken from the documents submitted to a regional workshop organized by PDIAR in Beirut on 16 and 17 October 2009 under the theme "Towards Reinforcing the Oversight Role of Arab Parliaments: Developing the Legal Framework."

- **The parliament of Jordan**

- The oversight tools which are common to the two houses are questions, interpellations that do not lead to a vote of no confidence, standing committees, commissions of enquiry, plenary debates, submissions and petitions, financial oversight, and the presence of ministers in committee meetings.
- The oversight tools which are specific to the House of Representatives are interpellations that lead to a vote of no confidence, impeachment, withdrawal of confidence, and decisions and proposals.

- **The parliament of Bahrain**

- The oversight tools which are common to the two houses are standing committees, the presence of ministers in committee meetings, requests for plenary debates, questions, financial oversight, oversight over treaties and agreements, and proposals. The two houses hold joint meetings to vote by a two-third majority on recommendations referred to the King in relation to the impossibility of cooperation with the PM.
- The oversight tools which are specific to the Council of Representatives include interpellations, enquiries, votes of no confidence in a minister, and the motion of impossibility of cooperation with the PM supported by the two-thirds majority.

- **The parliament of Algeria**

- The oversight tools which are common to the two houses are standing committees, the presence of ministers in committee meetings, commissions of enquiry, oral and written questions, interpellations that do not lead to a vote of no confidence, financial oversight, plenary debates and international treaties ratification.
- The tools which are specific to the National People's Assembly are motions of censure and votes of no confidence.

- **The parliament of Sudan**
 - The oversight tools which are common to the two houses are standing committees, ad hoc committees, questions, notifications, and the summoning of ministers to make public statements.
 - The tools which are specific to the National Assembly are public summons, ratification of international treaties and agreements, ratification of the public budget, oversight over the executive power, votes of no confidence in the ministers, and commissions of enquiry.
- **The parliament of Morocco**
 - The oversight tools which are common to the two houses are standing committees, commissions of enquiry, questions, motions of censure, impeachment, financial oversight, and the presence of ministers in committee meetings.
 - One tool is specific to the House of Representatives only and it is the vote of no confidence.
 - One tool is specific to the House of Councilors only and it is the motion of warning.
- **The parliament of Mauritania**
 - The oversight tools which are common to the two houses are oral and written questions, interpellations, standing committees, the presence of ministers in committee meetings, commissions of enquiry, petitions, financial oversight and plenary debates.
 - The tools specific to the National Assembly are motions of censure and the vote of no confidence.

2. GENERAL REMARKS ON THE OVERSIGHT TOOLS IN ARAB PARLIAMENTS

The previous comparative review of parliamentary oversight tools

Chapter Five:
The Role of
Arab Upper Houses
in Passing and
Implementing
the National Budget

5

Since the early stages of the parliamentary system, the parliament has played a crucial role in approving the collection of revenues and the appropriation of expenditures⁴⁴ and defining the areas of spending. The parliament is commonly described as weak when stripped of its right to approve the state's budget and financial policy and oversee their implementation. This right has been historically vested in the elected lower houses. The public budget has been always referred, by priority, to the lower houses even in bicameral parliaments where both houses are elected -- a practice that several Arab parliaments observe. This chapter reviews the role of Arab upper houses in approving the public budget and overseeing its implementation.

I. Budget-related Prerogatives as Stipulated in the Constitution

The upper houses in many Arab countries are constitutionally empowered to debate the public budget and oversee its implementation; this is the case in Jordan, Bahrain, Tunisia, Algeria, Morocco and Mauritania. Other upper houses, on the other hand, are constitutionally denied this right, and include Sudan, Oman, Egypt and Yemen. The constitutions of the formerly mentioned countries provide for the following:

- **Jordan:** the constitution of Jordan details the six general principles regulating the debate on the public budget by the National Assembly (House of Representatives and Senate) as follows:
 - The draft public budget is referred to the National Assembly at least one month before the

beginning of the fiscal year.

- The budget shall be voted on item by item
- No public expenditure may be transferred from one line to another except by law
- The National Assembly may reduce expenditures but shall not

44. Check the Magna Carta and the British Royal Family's endorsement of the charter

increase them

- No proposal shall be accepted, during the budget approval process, for the repeal of a new tax or the increase or decrease of taxes approved by the enforced financial laws. No proposals shall be approved for the modification of expenditures or revenues linked to contracts.
- The public budget law shall ratify the estimated revenues and expenditures of the state for every fiscal year. The said law may allocate particular sums of money for more than one fiscal year (Article 112)

Articles 52 and 53 of the Senate's bylaws restate these principles.

- **Bahrain:** The budget law is submitted to the Council of Representatives then to the Shura Council at least two months before the end of the fiscal year. Expenditures can be only increased in agreement with the government (Article 109). The closing of budget accounts reports shall be submitted to the Council of Representatives first, within five months following the end of the previous fiscal year, and they need to be ratified by a decision of the two houses (Article 113). The state's public budget shall be issued by a law, but if the budget law is not promulgated in time, the previous year's general budget is applied until the new one is issued.
- **Tunisia:** the draft budget law is submitted to both the Chamber of Deputies and Chamber of Councilors. If, prior to December 31st, the draft budget is not ratified by the Chamber of Councilors but is approved by the Chamber of Deputies, it shall be presented to the President for signature (Article 28). If the two houses do not ratify the budget by December 31st, the new budget law is implemented by decree via quarterly renewable installments.
- **Algeria:** the parliament shall ratify the financial law within 75 days at most. If the law is not ratified within this time limit, the President

of the Republic shall issue the draft text by ordinance (Article 120). No proposal for the reduction of public revenues or increase of public expenditures shall be accepted unless accompanied by measures for the increase of revenues or decrease of expenditure under another line (Article 121).

- **Morocco:** the finance law needs to be passed by parliamentary vote, along the expenditures needed for the implementation of the development plans. If, by the end of the fiscal year, the budget law is not passed yet or is not promulgated, the government, by decree and in accordance with the budgetary proposals, allocates the necessary funds for the operation of the public services and the exercise of key functions. The same rule applies to the revenues (Article 50). Proposals and amendments introduced by parliamentarians are not acceptable when they involve a decrease in public revenues, an increase in public expenditures or the creation of new budget lines (Article 51).
- **Mauritania:** the parliament needs to approve the finance law. The draft law is first submitted to the National Assembly (Article 61). If the bill is not passed within the specified deadlines, the President of the Republic shall automatically pass it through an ordinance based on the revenues from the preceding year. The parliament is also supposed to control the administration of the State budget and supplementary budgets: a statement of expenses is provided to the Parliament at the end of each six-month period covering the previous semester and needs to be approved by a law. The Audit Office assists the parliament and the government in overseeing the administration of the budget laws.
- **In the upper houses of Sudan, Egypt and Yemen,** the budget approval falls within the competence of the lower houses exclusively. In Oman, this function is entrusted to the executive power only.

In general, the bylaws restate the powers provided for in the constitutions with some additions. Some are of a procedural nature; others are related to the finance committee.

1. FUNCTIONS OF FINANCE COMMITTEES OF ARAB UPPER HOUSES

All bylaws of upper houses⁴⁵ provide for the formation of standing committees, including finance committees. Parliaments give different designations to these committees in charge of the budget and financial matters. The committee is known as the Finance and Economic Committee in Jordan, the Financial and Economic Affairs Committee in Bahrain, the Finance and Economic Affairs Committee in Algeria, the Economic Affairs Committee in Sudan, the Financial and Economic Affairs Committee in Egypt, the Finance, Planning and Development Committee in Tunisia, and Morocco, the Finance and Budgetary Oversight Committee in Mauritania, and the Financial Affairs Committee in Yemen. The bylaws define the powers of these committees as follows:

- **Jordan:** the finance committee examines the draft public budget and supplementary budgets and reviews laws, financial and economic bills and any other law or bill providing for the increase or decrease of revenues and expenditures (Article 11).
- **Bahrain:** the finance committee reviews and makes observations on the social and economic development plans provided for in the national budget and the economic plans. It examines the financial and economic aspects of the actions conducted by ministries and

II. Budget-related Prerogatives as Stipulated in the Parliamentary Bylaws

45. With the exception of the State Council of the Sultanate of Oman. Its Basic Law number 86/97 does not provide for the formation of standing committees.

different departments, in particular the aspects related to the budgets and closing of budget accounts (Article 21).

- **Tunisia:** the finance committee considers matters related to the currency, taxes, commercial exchange, trade, finance, the completion of the national and development plans, the activities of the public institutions and the closing of the state budget (Article 27).
- **Algeria:** the finance committee considers matters related to the financial system, economic reform, budget, tax collection, customs, currency, loans, and insurance scheme (Article 21).
- **Sudan:** the finance committee plans the economic policies and the financial systems that fall within the Council's competence as well as the economic ties between the different levels of power and decentralization-related economic and financial legislations (Article 59).
- **Egypt:** the finance committee examines the bills pertaining to the constitution and those related to financial and economic matters. It also reviews the draft general plan for social and economic development, the budget of the Advisory Council (its own) and the management of its own properties and assets (Article 41).
- **Morocco:** the finance committee's responsibilities include the public budget, financial oversight, currency, exchange, taxes, customs, state properties, ports, dams, aviation, highways, sea transport, post, transportation, housing, social, urban and rural facilities, and environment conservation (Article 48).
- **Mauritania:** the finance committee examines the tax base, tax rate and collection modes. It also oversees the budget implementation, including real estate and registration issues (Article 8).

- **Yemen:** the bylaws of the Consultative Council provide for the formation of a permanent finance committee (Article 40) but do not define its prerogatives.
- **Oman:** the bylaws of the State Council do no mention committees.

2. ROLE OF THE FINANCE COMMITTEES IN DEBATING AND AMENDING THE DRAFT BUDGET

Arab upper houses are empowered to debate and pass the budget in 6 Arab bicameral parliaments, namely Jordan, Bahrain, Tunisia, Algeria, Morocco and Mauritania. The remaining 4 upper houses of Sudan, Oman, Egypt and Yemen do not enjoy this function. Detailed below are the powers of the finance committees in the 6 aforementioned senates:

- **Jordan:** the Speaker submits all bills forwarded from the lower to the upper house, including the draft budget, to the competent committee. The Secretary General provides each member of the house with a copy of every bill introduced in the house (Article 19). The budget law is debated in committee, but there are not any procedures or mechanisms which are particularly applied in the case of the budget law.
- **Bahrain:** the Speaker of the Shura Council forwards the draft budget to the Financial and Economic Affairs Committee upon receiving them from the Speaker of the Council of Representatives. The Committee shall, within six weeks extendable to two weeks, draw up a report on the bases and chapters of the draft budget with a reference to the observations of the Council of Representatives. The Shura Council and all standing committees are required to immediately review the draft budget, and each reviewed chapter

is then referred to the Council. Committees may propose the modification of appropriations in agreement with the government; however, existing an administrative entity or function may neither be abolished nor modified, and no pre-existing law may be amended through the cancellation or modification of budget allocations (Article 143 of the bylaws).

- **Tunisia:** the finance committee handles the draft budget law following the same provisions that govern the other bills.
- **Algeria:** the procedures which apply to all legislation also apply to the draft budget law. However, Article 66 compels the National Council to ratify the finance bill within a maximum period of 20 days from their referral date.
- **Morocco:** the finance committee is required to prepare all the needed reports to facilitate the approval of the draft budget and liquidation laws (Article 69). To this end, the Committee may examine all the documents related to budget expenditures (Article 70). The examination and discussion of the draft finance law abides by the following procedures (Articles 253 – 266). The draft budget law is submitted to the bureau of the House of Councilors within the specified timeframe along with the explanatory statements, documents, and a note clarifying the reasons justifying the proposed financial policies. The House then holds a special session during which the government presents the draft financial law before it is referred to all relevant committee. The Councilors may seek clarification, enquire about complementary documents and request additional information. The draft is also referred to the Finance Committee and the rapporteur may invite members from the relevant committees to participate in debating the budget. All standing committees are required to examine the budget items which are under their jurisdiction and appoint any of their members to participate, in an advisory capacity, in the budget examination

by the finance committee and in plenary debates. The finance committee submits its report and the positions of all committees to the plenary session, where the budget is debated then eventually voted.

- **Mauritania:** in addition to the bill ratification procedures followed in the Senate, the bylaws provide for the following budget-related procedures. Every standing committee may appoint one or more of its members to take part in the committee's activities in an advisory capacity when the laws or the appropriations discussed fall within their competence (Article 18). The Finance Committee oversees the entire budget process (Article 22). Modifications involving the increase of any appropriations are not accepted. If the Senate does not ratify the first part of the draft budget law, the draft budget shall be considered as rejected by the house (Article 50).

3. POWER TO RATIFY THE BUDGET IN THE PLENARY SESSION

- **Jordan:** the draft public budget is discussed and approved item by item. The house may reduce expenditures but shall not increase them by suggesting a modification or submitting a separate proposal (Article 52). During the debate of the public budget, proposals involving in the cancellation of an existing tax or the imposition of a new one are not accepted. Similarly, proposals resulting in the modification of expenditures or revenues linked to contracts are not accepted either (Article 53). The procedures governing the debate of draft laws also apply to the draft budget.
- **Bahrain:** the government submits the annual draft budget law comprising the state revenues and expenditures to the Council of Representatives at least two months before the end of the fiscal

year. The draft budget law is then forwarded to the Consultative Council. Any modification to the budget may be introduced in agreement with the government. No existing department or function may be abolished through a repeal or modification of budget appropriations. The closing of budget accounts shall be first presented to the Council of Representatives within 5 months following the end of the fiscal year. The Speaker of the Council of Representatives shall forward the closing accounts to the Shura Council and present his report to its speaker. The ratification of the closing accounts shall be by a decision of both houses (Article 144). The provisions governing the debate of the public budget shall apply to the closing accounts, the additional appropriations and the transfer of funds from one chapter to another.

- **Tunisia:** The draft budget law is submitted to both the Chamber of Deputies and the Chamber of Councilors (Article 28). If, prior to December 31st, the draft budget is not ratified by the Chamber of Councilors but is approved by the Chamber of Deputies, it is presented to the President for signature. If the budget is not passed by either house by December 31st, the draft budget law is implemented by virtue of a presidential decree in quarterly renewable installments.
- **Algeria:** The National Council debates the text voted by the National People's Assembly and ratifies it by the majority of three-fourths of its members. In the event of disagreement between the two houses, the Prime Minister convenes a joint commission meeting with an equal number of members from both houses (Article 120 of the Constitution). The National Council is required to ratify the finance bill within a maximum period of 20 days from its referral date. In case of disagreement between the two houses, the President of the Republic promulgates the text presented by the government by virtue of an ordinance having the force of the finance law (Article 44 of the Constitution). The People's

Assembly and the Committee approve the text within 47 days and 8 days respectively (Article 121 of the Constitution). No proposal that provides for or results in a decrease in public revenues or increase in public expenditures is accepted unless accompanied by a measure involving an increase in state revenues.

- **Sudan:** the Council of States fulfils the following fiscal functions: it oversees the National Reconstruction and Development Fund and rules on the objections submitted by the National Petroleum Commission. No proposals can be made for any modifications that are likely to impose a financial burden on or take off funds from the public treasury or reserve funds. Also, proposals involving the imposition of new taxes or fees or the cancellation or modification of existing ones are rejected.
- **Morocco:** the finance law needs to be passed by parliament. The parliament also approves the expenditures needed for the implementation of development plans. If, by the end of the fiscal year, the budget law is not voted on or is not promulgated, the government, by decree and in accordance with the budgetary proposals, allocates the necessary funds for the operation of the public services and the exercise of key functions. The same rule applies to revenues (Article 50). Proposals and amendments introduced by MPs are not acceptable when they involve a decrease in public revenues, an increase in public expenditures or the creation of a new one (Article 51).
- **Mauritania:** the finance bill is first submitted to the National Assembly, as soon as the November session is convened. If, within 30 days of receiving the bill, the National Assembly has not passed it after a first reading, the government forwards the bill to the Senate; the latter is expected to rule on it within fifteen days. Amendments involving the increase of appropriations are not accepted and such modifications are not put to vote. The

amendments proposed by members of parliament are not accepted if they entail a reduction in public revenues or the creation of public expenses, unless they are accompanied by a bill providing for an equivalent increase in revenues. The bills or amendments are also declared unacceptable if they are related to an issue that falls within the competence of the regulatory authority (Article 62 of the Constitution).

- **Yemen:** the Consultative Council's financial role is weak as it can only ratify the socioeconomic development plans, assess the economic, financial and monetary policies, review the reports of the Central Organization for Control and Audit and present a relevant report to the President of the Republic.

Conclusion

In general, upper houses do not have the same powers as lower houses in passing national budgets and overseeing their implementation. With no doubt, some upper houses such as Morocco's and Mauritania's play a crucial role in ratifying the budget and following up on its implementation. On the other hand, other upper houses do not play any role in this respect (Yemen, Egypt, Oman and Sudan) and the role of some upper houses is closely linked to the lower houses' (Tunisia and Algeria). In all cases, the executive power controls the process of drafting the budget and determining the conditions of its passage.

Chapter Six:
Comparison of Arab
Upper Houses and
Some of their
Counterparts in the
World: Focus on
France, Brazil and
South Africa

6

The diversity which marks the Arab upper houses in terms of the overall constitutional and legal framework which delineates their representative, legislative, oversight and budgetary functions, also marks the upper houses in other regions of the world. Indeed, there is not one unique model of bicameralism or upper houses. However, there are a number of trends when we look at international examples, mainly in the three key parliamentary functions of representation, legislation and oversight.

I. Representative Function of Upper Houses Across the World: Focus on France, Brazil and South Africa

1. GENERAL OVERVIEW

Upper houses in the world either represent the country's territorial and administrative divisions or some constituents of society. Upper houses are predominantly said to represent states and territorial divisions. In addition to this type of representation, upper houses represent professional categories (Morocco and Slovenia), traditional elites and heads of tribes (Lesotho, Botswana and Zimbabwe), ethnic, linguistic and religious components (Burundi, Rwanda, and the Democratic Republic of Congo), and migrants (France, Italy, Mauritania and Senegal...).

Interestingly, 40% of upper houses are elected by universal suffrage following a proportional, majority or mixed electoral system (France, Spain and Japan) compared to 25% of upper houses with partially elected and partially appointed members (Afghanistan, Algeria, Belarus, Belgium, Egypt, India, Italy and Tunisia). There are also some fully appointed upper houses (Germany, Bahrain, Canada, Jordan and Russia). Some houses have members by right (members of the royal family in Belgium, former Presidents of the

The Upper Houses in Arab Parliaments:
Their Representative, Legislative and Oversight
Functions and their Role in the Budget Process

Republic in Italy and the Lords in Britain). In rare instances, members of the upper house elect a number of members: 10 senators in Belgium's senate and 3 members in Mauritania's Senate to represent the Mauriticians living abroad.

In the Arab world, upper houses are classified into different models. Their members are predominantly appointed by the head of state either entirely (Jordan, Bahrain, Oman and Yemen) or partially (Tunisia, Algeria and Egypt). Only three houses have members elected by local representatives (Sudan and Mauritania) or by local government, professional organizations, and trade union representatives (Morocco).

2. REPRESENTATIVE FUNCTION OF ARAB UPPER HOUSES COMPARED TO THEIR COUNTERPARTS IN FRANCE, BRAZIL AND SOUTH AFRICA

In France, Brazil and South Africa, all senators are elected by the local representatives, the entity representing the French living abroad and the councils of states (Brazil and South Africa). The situation of the entirely elected Arab upper houses (Sudan, Morocco and Mauritania) or the partially elected ones (Tunisia, Algeria, and Egypt) is quite similar. The French Senate does not monopolize the right to defend the interests of the territorial collectivities but shares this role with the National Assembly. The senators in Brazil and Sudan defend the interests of the provinces they represent, and no legislation related to these two countries can be passed without the consent of the upper house. Only the Advisory Council of Egypt does not include representatives of the regions or other territorial divisions. Two-thirds of its elected members represent the farmers and workers.

In other words, upper houses predominantly represent the provinces

and territorial divisions in the world whilst securing a limited representation to specific social groups (former presidents of the republic, citizens living abroad, etc.). On the other hand, the Arab upper houses allow for a mixed representation of regions, professional categories and upper social classes that have previously served the interests of the state.

1. GENERAL OVERVIEW

In general, a wide array of legislative powers is vested in upper houses. In very few countries, upper houses play an advisory role; their members do not enact laws but express opinion (Botswana, Togo, Slovenia, Egypt, Yemen and Oman). In most countries, however, upper houses enjoy the legislative power including the legislative initiative, amending bills and engaging in plenary debate of bills. Two-thirds of upper houses are entitled to take the legislative initiative (except for the budget law which usually falls within the competence of the executive). In 10% of the countries (South Africa, Belgium, Brazil, Sudan among others), the legislative initiative is vested in upper houses in specific fields, including policies related to decentralization. In 12% of cases only, upper houses are not entitled to take any legislative initiative (Botswana, Lesotho, Rwanda and Tunisia). In some countries, the right to take legislative initiative is not granted to members individually but to a group of members (10 in Jordan). As for other legislative functions, most upper houses are entitled to amend and debate bills in plenary sessions.

In order to better understand the relationship between the two houses and the issue of balance in terms of legislative powers, the present comparison sheds light on the case of disagreement between the two chambers on a bill during the legislative process. Is the lower house empowered to pass a bill despite its rejection by the upper house? Relevant studies show that in one-third of parliaments, the lower house cannot infringe on the powers of the upper house and that the upper house's consent is compulsory for the ratification of laws. In

II. Legislative Function of Upper Houses Across the World: Focus on France, Brazil and South Africa

many countries, the lower house is empowered to overlook the upper house but within some strict limitations: the lower house's approval by absolute majority, the obligatory recourse to a joint committee composed of equal members from each house, the compulsory cooperation with the upper house in matters related to constitutional and organic laws.

2. LEGISLATIVE POWERS OF ARAB HOUSES COMPARED TO THEIR COUNTERPARTS IN FRANCE, BRAZIL AND SOUTH AFRICA

a. The Senate of France

The French Senate consists of 331 members, including 319 representatives of the territorial divisions and 12 representatives of the French citizens living abroad. The Senate enjoys the same legislative powers as the National Assembly. Like the National Assembly and the government, the Senate has the right to take the legislative initiative and amend bills. The government submits bills to the Senate or to the National Assembly, with the exception of the draft finance law and laws pertaining to social security funding which are systematically sent first to the National Assembly. Bills on territorial collectivities and the entities representing the French citizens living abroad are usually forwarded to the Senate first.

Once they have reached the bureau of the Senate (or the National Assembly), bills are referred to any of the standing committees for consideration. The bills shall be successively debated in both houses for the adoption of one final text. In case of disagreement between the two houses of parliament, a joint committee composed of equal members from both houses is set-up to collaborate on producing one text. This text is then presented to the two houses for ratification. If

the disagreement persists, the government may ask the National Assembly to ratify the text in the version that it deems fit.

The government may seek extraordinary legislative powers. The President of the Republic may return rejected bills for a second reading, and the impossibility of reaching an agreement may result in convening a referendum.

b. The Federal Senate of Brazil

Brazil's Federal Senate consists of 81 members representing the 27 states, with 3 senators from each state. The Senate enjoys extensive legislative powers as its members and committees are entitled to take legislative initiative and amend texts. The same applies to the members of the Chamber of Deputies and the President of the Republic. The bills introduced by the senators and members of parliament shall be discussed in the Senate and Chamber of Deputies respectively. Other bills are first referred to the Chamber of Deputies, to be examined by the committees and debated and ratified in the plenary session. The text is then referred to the Senate for a similar procedure. If rejected by the Senate, the bill is withdrawn. If amended, it shall be returned to the Chamber of Deputies for another reading. The Chamber of Deputies always has the final say.

The President of the Republic may return any rejected bill for a second reading. In this case, the text shall be debated again during a joint meeting of the two houses of parliament presided over by the Speaker of the Senate. If the President of the Republic opposes his/her veto to a text, but both houses are determined to pass it, the veto can be lifted by the vote of the absolute majority of members of both houses. In case the President takes provisional measures having the force of law, the approval or rejection is subjected to the vote of the two houses.

c. The National Council of Provinces of South Africa

The National Council of Provinces consists of 90 members representing 9 states, with 10 members from each state. Every council chooses its 10 representatives, who are usually nominated by the parties represented in the Council. In other words, the members of the Council shall vote according to the directions of council of the province they belong to. Parties may withdraw their confidence in their representative at any time. This affects the voting mechanisms within the National Council, as explained further below.

The National Council of Provinces, the National Assembly, and the government are empowered to take legislative initiative in all matters related to the Bill of Rights and in the issues common to the national and provincial authorities (agriculture, consumer protection, education and tourism) as set out in Article 76 of the Constitution. Except for these two areas, the legislative initiative is exclusively vested in the government and the lower house. The National Council of Provinces is entitled to introduce amendments to all bills but the legislative procedures may differ depending on the subject of the law. If it is related to Article 75 of the Constitution, i.e. if it does not affect the interests of the provinces, different legislative measures shall be taken than when the laws affect these interests (Article 76). Voting within the Council also differs:

- **Legislative procedures when the bills do not affect the interests of the provinces:** The first reading takes place at the National Assembly, the text is then referred to the Council of Provinces and voted on by the members in their individual capacity. In principle, there are 90 votes. If the Council passes the text as approved by the National Assembly, the text shall be referred to the Speaker for promulgation; but if the Council rejects or amends the text, it shall be returned to the National Assembly for another reading, in which case the National Assembly shall have the final say.

- **Legislative procedures if the draft laws affect the interests of the states (Article 76 of the Constitution):** In this case, voting at the upper house is on the basis of the 9 provinces, whereby every province has one vote, bringing the total number of votes to 9. The first reading shall take place in any of the houses and the one that receives the bill first shall examine it, ratify it then refer it to the other house. If the text is approved by the second house as received from the first house, it is submitted to the President of the Republic for promulgation. But if the second house rejects the text, a joint committee composed of equal members is formed to resolve the issue. In the case when the joint committee does not succeed in reaching consensus, the bill is sent back to the National Assembly for approval by the two-third majority of members. This applies only for texts initially submitted to the National Assembly for.

III. Budgeting Function of Upper Houses Across the World: Focus on France, Brazil and South Africa

In the majority of parliaments, upper houses' role includes the ratification of the public budget and oversight over its implementation. Bearing in mind that the government has the exclusive prerogative to prepare and submit the budget law to parliament, there the budgetary prerogatives are similar in the two houses of parliament. The 3 upper houses of France, Brazil and South Africa are no exception.

- **In France**, the Senate has the same powers as the National Assembly in approving the budget and overseeing its implementation, except that the government submits the draft budget to the National Assembly first. The Senate shall, through its Finance Committee, oversee and follow up on the budget implementation, and may obtain all the documents it requests except for those dealing with national security matters. The

Senate is assisted by the Court of Audits which carries out enquiries and provides information to the Committee. The budget process is usually handled with a high sense of urgency.

- **In Brazil**, a standing mixed committee is formed to examine the annual draft public budget and express its opinion on its content and the closing accounts presented annually by the President of the Republic. The Committee proposes amendments to the draft budget law provided that these amendments are consistent with the country's general financial policy. The Committee oversees the budget implementation without obstructing the work of the other committees in the Congress and in both houses. The Senate alone can approve the loans of the executive power. At the request of the senate and the lower house, the Federal Court of Audit conducts

investigations and holds hearings in the departments of the three central powers. The budget approval process is governed by the same legislative procedures as any other bill submitted by the government.

- **In South Africa**, the National Council of Provinces enjoys the same legislative powers as the National Assembly in ratifying the draft budget and overseeing its implementation. The legislative initiative in the financial field is vested in the government (money bills). The same ordinary legislative procedures, those which do not affect the interests of the states apply when the Council debates the draft budget law (Articles 74 and 77 of the Constitution).

The upper houses of the three countries compared above all play a crucial role in debating the national budget and following up on its implementation.

IV. Oversight Function of Upper Houses

Upper houses in international bicameral parliaments enjoy oversight powers that are to some extent identical to those entrusted to the 6 Arab upper houses covered in Chapter 4⁴⁶. Indeed, a review of the three examples of France, Brazil, and South Africa reveal a number of similarities. The most commonly known oversight tools, namely questions, standing committees, petitions, commissions of enquiry, and government debates are found in the French Senate, in the Federal Senate of Brazil, and in the National Council of Provinces of South Africa.

Table 8 – The oversight tools of Arab upper houses compared to some of their international counterparts

Parliament	Questions	Standing Committees	Attendance of Ministers	Enquiry	Financial Oversight	Petitions	Impeachment
6 Arab Houses ⁴⁷	X	X	X	X ⁴⁸	X ⁴⁹	X	X ⁵⁰
France's Senate	X	X	X	X	X	X	X
Brazil's Senate	X	X	X	X	X	X	X
South Africa's National Council of Provinces	X	X	X	X	X	X	

46. Jordan, Bahrain, Algeria, Sudan, Morocco and Mauritania

47. Jordan, Bahrain, Algeria, Sudan, Morocco, and Mauritania

48. Available in four houses except for those of Bahrain and Sudan

49. Available in five Arab upper houses, namely those of Jordan, Bahrain, Mauritania, Morocco and Algeria

50. Only in Morocco

1. OVERSIGHT TOOLS IN THE UPPER HOUSES OF THE PARLIAMENTS OF FRANCE, BRAZIL AND SOUTH AFRICA

Upper houses in most international bicameral parliaments enjoy oversight tools and powers. Some are common in the Arab upper houses; some others are different. For the sake of comparison, light will be shed on the powers and oversight tools provided to three upper houses, namely France's Senate, Brazil's Senate and South Africa's National Council of Provinces.

a. The Senate of France

France's senate enjoys extensive oversight powers. However, these do not include the right to impeach the government or submit a vote of no confidence in its members. The senate is nonetheless requested to ratify ministerial statement on the government's public policy presented by the Prime Minister.

The French Senate is provided with the following oversight instruments:

- The right to enquire and obtain information through questions (oral, written, topical or oral followed by a debate), discuss the government's policy, and hold hearing sessions in standing and ad hoc committees.
- The right to investigate by forming commissions of enquiry, the right to oversee the implementation of financial laws and the enquiries conducted by standing committees in matters related the enforcement of laws, the performance of the public institutions.
- The establishment of assessment bodies, such as the Parliamentary Office for Scientific and Technological Assessment, the Senate's Observatory on Decentralization, the Land Planning and

Sustainable Development Commission, follow up commission for the European Constitution, and the Office for the Assessment of Health and Public Policies.

- The right to oversee the constitutionality of laws and take part in the amendment of the Constitution.
- The exercise of judicial powers that are closely related to parliamentary oversight of the executive power: impeachment of the President of the Republic by the two houses of parliament, the election of the members of the Higher Judicial Council tasked with trying the President of the Republic and the election of 6 members along with the National Assembly in the court that tries ministers.
- The powers of the Speaker of the Senate to appoint members to councils that exercise higher national oversight responsibilities. The Speaker of the Senate appoints
 - Three members of the Constitutional Council
 - One member of the Higher Judicial Council
 - One member of the National Commission on Data Processing and Liberties
 - Three members of the Superior Audiovisual Council
 - One member of the Securities and Exchange Commission
 - One member of the telecommunications regulatory body

b. The Federal Senate of Brazil

Brazil's senate enjoys extensive oversight tools and powers as follows:

- The right to enquire and obtain information through questions, the right to summon ministers to attend meetings and provide information.

- The right to enquire by forming commissions of enquiry having judicial powers.
- The right to impeach and try the President of the Republic and his/her Deputy.
- The right to amend the Constitution, which is equally entrusted to the President of the Republic and the Chamber of Deputies.
- The right to resort to the Constitutional Council on the unconstitutionality of laws; the Senate has the exclusive right to suspend in part or full the challenged laws.
- The power to authorize loans.
- The power to confirm the appointment of the members of the Supreme Federal Court and the Supreme Judicial Council as suggested by the President of the Republic.
- The power to confirm the appointment of ambassadors, judges and senior employees.

c. The National Council of Provinces in South Africa

South Africa's Council of Provinces represents the nine provinces which compose the federal state. The Council enjoys broad oversight powers over the executive, although these do not include the right to withdraw confidence from the President of the Republic or the ministers, a right constitutionally vested in the National Assembly. The powers and oversight tools common to the two houses are classified as follows:

- **Oversight powers:**
 - To ratify the constitutional amendment

- To declare war and the state of emergency
 - To receive petitions and proposals from citizens and CSOs
 - To oversee the national aspects of the federal and local authorities
 - To debate and approve the budget in the committees and in the Council’s plenary session
 - To receive annual and periodic reports from all the executive departments and the public national oversight bodies as well as Financial Comptroller General’s reports, the recommendations of the Public Accounts Committee and the reports of the parliament-affiliated entities
 - To oversee the implementation of the laws and the budget and ensure strict compliance with the provisions of the Constitution
 - To hold ministers accountable for their spending of taxpayers’ money and ensure that the declared government policies are implemented without abuse of power
- **Oversight tools:**
 - Reports submitted to the Council by the standing committees having extensive powers
 - Oral and written questions and interpellations
 - Commissions of enquiry
 - Special, joint and ad hoc committees
 - Summons served for ministers, employees, experts and citizens to appear before the Council and the committees and present the documents at their disposal
 - Field visits across the country to seek the opinions and demands of the citizens
 - Plenary debates held in the plenary sessions in the presence of the concerned ministers
 - Debates with the ministers after they make their statements before the Council

2. CONCLUSIONS FROM THE INTERNATIONAL EXPERIENCE REVIEW

The three upper houses of France, Brazil and South Africa enjoy extensive oversight powers which allow them to constantly oversee the work of the executive power. Their parliamentary committees are also empowered to play a remarkable oversight role. The three houses receive a series of reports and information from the executive power agencies and departments and also from other independent bodies and entities. There are no apparent obstacles to the flow and use of this information by the members of upper houses.

The two senates of France and Brazil take part in the appointment of senior judges and members of some high national bodies. The Speaker of the French Senate, for instance, appoints members of the Constitutional Council and high national bodies that oversee the state's strategic choices (the Higher Judiciary Council, the National Commission on Data Processing and Liberties, the Superior Audiovisual Council, the Telecommunications Regulatory Committee, and the Securities and Exchange Commission). Brazil's Senate confirms the nomination of the members of the High Federal Court and the Higher Judicial Council and the chosen ambassadors. Holding the ministers and representatives of the executive power accountable for their actions and activities does not reach the point of withdrawing confidence in the government. Upper houses in the world do not enjoy the power to impeach the government – except in few rare instances.

3. COMPARISON OF THE ARAB AND INTERNATIONAL EXPERIENCES

The Arab experience represents diversified models of upper houses.

Some houses enjoy limited powers that differ from the recognized powers of international upper houses. These include the Consultative Council in Yemen, the Advisory Council in Egypt, the State Council in Oman and the Chamber of Councilors in Tunisia (in relation to parliamentary oversight). The other group of six upper houses includes Morocco's House of Councilors that is entitled to impeach the government through a motion of warning. The upper houses of the six Arab countries (Morocco, Mauritania, Algeria, Bahrain, Jordan and Sudan) are constitutionally authorized to keep a check on the work of the executive and are entrusted with oversight tools, the use of which is most often subject to restrictive conditions.

This study highlighted the oversight tools put at the disposal of some Arab upper houses and that may be common to both experiences (questions, interpellations, standing committees, enquiry committees, petitions...). However, it should be noted that the international experience in practicing oversight and using the tools is easier and rather unconditional. The flow of information to upper houses in the international experience is significantly different from the established practice in the Arab experience (annual and periodical reports and information from CSOs and research centers). The flow of information in the Arab experience is unorganized and intermittent. In all events, it is minimal and modest, subject for the most part to the position of the executive power.

Upper houses in the international experience have their own bodies that provide them with information and allow them to access the core strategies designed by the executive power. In the international experience also, the position of upper houses is no less important than that of the lower houses in the state's political and constitutional system. Even if these houses do not have the power to impeach the government, they are elected; the head of the state does not appoint all the members, as in the case of Bahrain, Jordan, Oman, Yemen; or

part of them as in Algeria, Egypt, and Tunisia.

Finally, each of the Arab upper houses is a model on its own even if the same oversight tools are often available. The formation of these houses reflects in most cases the will of the head of state to ensure some balance with the elected lower house. As previously mentioned, upper houses were formed in the Arab world only recently, coinciding with the progressive advance of the direct secret suffrage to elect lower houses.

Chapter Seven: Conclusions and Recommendations

7

I. Conclusions

There are multiple and diverse parliamentary models in the Arab world. There are 10 bicameral and 12 unicameral parliaments, noting that the constitutions of Lebanon and Iraq do provide for the establishment of an upper house, provisions that have yet to be implemented. In terms of the formation methods, out of the 10 upper houses, 3 are elected⁵¹, 5 are appointed and 5 formed through a mixture of both. The general powers, in parallel, range from the presence or absence of legislative or oversight powers to the impeachment of individual ministers.

These parliaments carry both similarities and differences, but every parliament is a unique model per se even if they could, to some extent, be put in separate categories or groups. Through a close examination of the regulatory texts (constitutions and bylaws), the uniqueness of each parliament has become more apparent.

Upper houses share many legislative powers with lower houses in bicameral parliaments. At the legislative level, the constitutions of seven countries (Jordan, Bahrain, Algeria, Sudan, Morocco, Tunisia and Mauritania) provide for bicameral legislatures compared to three that do not enjoy legislative powers (Oman) or have limited and restricting powers (Egypt and Yemen).

In terms of oversight, 4 houses are not constitutionally authorized to exercise any oversight function (Tunisia, Oman, Egypt and Yemen) compared to 6 houses constitutionally entrusted with this power but at varying degrees. These powers range from the right to enquire and interpellate, to the right to impeach the government (Morocco's House of Councilors). Bahrain's Shura Council can, jointly with the Council of Representatives and by a two-thirds majority, submit a

51. The President of the Republic in Egypt is empowered to appoint 10 MPs in the People's Assembly

recommendation to the King on the parliament's failure to cooperate with the Prime Minister. In addition, the six upper houses have many oversight tools in common. They are all entitled to form standing committees, address questions to ministers, summon them to attend the meetings of standing committees, and put public matters for debate. Three of them are entitled to conduct interpellations that do not end in a vote of confidence in the ministers or the government (Jordan, Algeria, and Mauritania). These tools, irrespective of the conditions that govern their use, remain at the disposal of upper houses to oversee the executive power. Some bylaws consecrate the rights of citizens to file submissions and petitions to the upper houses (Jordan, Sudan and Mauritania).

Upper houses are predominantly more often appointed than elected. Out of ten upper houses, 4 are entirely appointed (Jordan, Bahrain, Oman and Yemen), 3 have one third of members appointed by the head of state (Tunisia, Algeria and Egypt), and 3 are entirely elected (Sudan, Morocco and Mauritania⁵²). In the entirely or partially appointed houses, the head of state chooses the members, even if the Constitutions of some countries (Jordan and Oman) define the categories from which the members shall be chosen. But all the concerned countries leave it to the head of state to choose whomever he deems fit for appointment. The elected members represent, for the most part, the country's administrative and territorial divisions (Tunisia, Algeria, Sudan, Morocco and Mauritania) or social categories and professional organizations. In Tunisia, one-third of members represent the employers, farmers and workers. In Egypt, at least one-third of members are chosen from among farmers and workers. In Morocco, two-fifths of members are chosen by the professional chambers and the workers' representatives. The comparison of the representative capacity of both houses has shown that the members of the lower house are elected nationwide by direct secret vote by electoral colleges grouping eligible voters. The

52. The Senate elects three senators to represent the Mauritians living abroad

members of upper houses are, for their part, either appointed or elected by the local and state councils and/or by professional organizations⁵³.

5 upper houses are entitled to the legislative initiative (Jordan, Bahrain, Morocco, Mauritania, and Sudan in all states-related matters). All upper houses are empowered to debate and amend bills. In four parliaments, bills are first referred to the lower house (Jordan, Bahrain, Algeria, and Egypt). The bylaws of upper houses provide for the referral of bills, as soon as submitted to the house's bureau, to the concerned committees for examination and expression of opinion. In case of disagreement between the two houses, joint committees shall be formed to resolve the conflict. If not, the two houses shall meet and take the adequate decision. In general, the two houses have the same legislative powers even if the lower house often has the final say in the event of disagreement between the two houses. In all countries, the head of state has the right to return laws for a second reading and vote. He is also granted extraordinary legislative powers and may sometimes exercise these powers before obtaining the parliament's approval.

Upper houses also differ in terms of oversight powers. Morocco's House of Councilors and Mauritania's Senate are entitled to form commissions of enquiry. Algeria's National Council is empowered to issue a resolution following a debate of the government's foreign policy or its general policy statement. Morocco's House of Councilors differs from other upper houses in its right to impeach the government by addressing warnings and motions of censure, albeit in theory only since the conditions governing the use of these tools are extremely difficult.

The review of the international experiences and practices has shown that upper houses in other parts of the world enjoy extensive

53. Egypt's Advisory Council is an exception. Two-thirds of its members are elected by direct secret suffrage

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legislative and oversight powers that allow them to effectively participate in lawmaking and receive continuous briefing on the work of the executive power through the flow of reports and information by the bodies of the executive power and the bodies directly affiliated to these houses or entirely independent at the national level. In addition, the houses covered in the comparative study (France, Brazil and South Africa) are entitled to appoint the members of the high national bodies that oversee the state's strategic options and of the higher judicial councils. These three upper houses enjoy a representative capacity which is quite similar to that of the lower houses because they are entirely elected by elected electoral colleges. Upper houses across the world are more frequently elected than appointed, hence their true representative capacity.

II. The Role of Political Parties, Parliamentary Blocs and CSOs in Promoting the Representative, Legislative and Oversight Functions of Upper Houses

Political parties and parliamentary blocs can play a remarkable role in promoting the oversight function of upper houses. In some upper houses, the political parties and parliamentary blocs engage in organizing parliamentary work (the conference of presidents, the coordination unit, the membership of standing committees and the house's bureau) at varying degrees matching their importance and number of members. These bodies prepare the agendas of parliamentary sessions and set the priorities for discussion in plenary. The members of these parties and blocs are proportionally distributed to the standing committees and their presidencies and, as such, are required to promote and reinforce parliamentary action.

Indeed political parties, through parliamentary blocs, enjoy human and financial resources which exceed the capacities of individual MPs. This allows them to conduct special investigations, prepare reports, summon experts and table bills. Thanks to their networks and offices present at the level of electoral constituencies, they can oversee the executive power's implementation of the policies ratified by the parliament and monitor its commitment to carrying out development strategies and action plans as mentioned in the

public budget.

In addition, organized civil society groups can play an influential and efficient role in supporting the examination of bills and overseeing the executive power through the information collected at the level of professional and trade union bodies (syndicates of lawyers, doctors and pharmacists), trade unions, businessmen and private sector

bodies, consumer protection committees, unions of teachers and parents' committees in schools and through civil society and environmental organizations as well as human rights groups. The relation between these entities and the parliament takes on different forms, as follows:

- Meetings with the relevant committees during the examination of bills and proposals and information and data collection to inform the legislating process.
- Updating the enforced laws and legislations and enacting new legislations to bridge the legislative gap in many modern fields.
- Memoranda and petitions submitted to upper houses and ministers on issues of interest to civil society, or to draw attention on issues raised by the public opinion.
- Pressure on MPs to form lobby groups to protect human rights, unveil irregularities within security and judicial authorities and proposing appropriate legislation.
- Reports on government policies or specific issues to inform the members of upper houses.

Media outlets (print, visual, audio) also enjoy a remarkable position in keeping a check on the executive power and unveiling its erroneous practices to the public. Media constitute a cornerstone for parliamentarians in their representative, legislative, oversight and budgeting functions. On the one hand, they supply parliamentarians with the information they unveil, thus providing them with an additional material to confront the government. On the other hand, they convey the positions, comments and criticisms of parliamentarians to the public opinion. The freer these tools are from the hegemony of the executive power and the more open and cooperative the parliament is, the more serious and effective the contribution of mass media is in supporting parliamentary oversight over the work of the executive power and highlighting the laws passed in parliament.

III. Proposals to Promote the Representative, Legislative, Oversight and Budgeting Functions of Upper Houses

1. GENERAL RECOMMENDATIONS

- a. Develop the personal capacities of upper houses in order to help their members to better exercise their representative, legislative, oversight and budgeting powers, in particular by:
 - Establishing a research centre (and a database) to provide parliamentarians with the information they need in their work.
 - Improving the professional capacities of the body and staff that assist the standing parliamentary committees.
 - Helping the executive departments and the public oversight administrations (the central bank, the court of audits and the inspection bodies) to regulate the flow of information to the upper houses and put the information at the disposal of their members.
- b. Training members of upper houses in various areas to enhance their representative, legislative oversight and budgeting performance.
- c. Setting up liaison committees within upper houses to handle the relation with CSOs.
- d. Creating websites for the upper houses to receive the complaints and petitions of the citizens and CSOs and for the exchange of information and opinion.
- e. Providing the necessary means to allow media to fully exercise their functions in parliament and authorize them to broadcast the public sittings.

f. Grant upper houses full autonomy from the executive power (make sure that the members of upper houses are not entirely or partially appointed, ensure that the presidents and secretary generals of these houses are not appointed...).

2. DETAILED PROPOSALS

The following specific measures are recommended to promote the image, role, and functioning of Arab upper houses, and provide them with the means to enhance their representation, legislation, oversight capacities and strengthen their role in the budget process:

a. Representative function

- Favor the election of upper houses instead of their appointment. This could be gradually implemented using the mixed system of appointment and election in the upper houses which are currently entirely appointed by the head of state.
- Expand the base of categories from which members are elected or appointed in order to include women, representatives of non-governmental organizations, professional entities as well as ethnic and linguistic minorities.
- Grant upper houses a representative legitimacy in such a way that they come to represent nationwide territorial divisions, organized social entities or both, instead of representing the will of the head of state only.

b. Legislative function

- Vest some legislative powers in the upper houses that are not presently involved in the legislative work (Oman, Egypt and Yemen).

- Vest the legislative initiative in the members of upper houses currently denied this right (Algeria and Tunisia).
- Ensure equality between the two houses in the referral of bills by the government in such a way that the bills could be introduced in both houses without distinction.

c. Oversight function

The proposals shall take into account the disparate models of upper houses in the Arab world. In general, it is suggested to:

- Entrust Egypt's Advisory Council, Yemen's Consultative Council, Oman's State Council, and Tunisia's Chamber of Councilors with new powers and tools. These powers and tools may be given in two stages starting with the basic tools before reaching the more extensive powers. As a starting point, these houses should be empowered to make enquiries and collect information through questions and interpellations that do not lead to a vote of no confidence, ratify the international treaties and agreements and put general issues for debate.
- Ease the currently imposed conditions on the use of oversight tools in some upper houses, especially when it comes to questions, interpellations, role of the standing committees and commissions of enquiry, and holding the ministers accountable (without necessarily reaching the point of a vote of no confidence in the government).

More specifically, it is suggested to review the parliamentary bylaws in view of fostering a legal environment which strengthens the oversight capacities of Arab upper houses. Reform initiatives may involve:

- Lifting the terms and conditions restricting the use of oversight tools especially in the field of questions, interpellations and debate.

- Diversifying the questions to include oral, written, temporary, topical and urgent questions as well as questions followed by a debate.
- Granting the standing committees more powers especially in terms of holding hearings, summoning ministers and obtaining information.
- Representing parliamentary blocs, each according to its size, in the committees and bodies regulating parliamentary action.
- Holding plenary debates more frequently and easing the conditions governing the process.
- Clarifying bylaws to avoid any ambiguity in the text.
- Shortening the deadlines granted to the government to answer the questions addressed by the members of upper houses.

d. Role of upper houses in the budget process

To enhance the role of upper houses in various stages of the budget process, including its execution, it is proposed to:

- Ease the conditions restricting the upper houses' approval and debate of the budget and the closing accounts.
- Allow upper and lower houses equal timeframes to ratify the budget.
- Engage the upper houses in all stages of the public budget ratification, execution and closing of accounts within a reasonable timeframe.
- Organize the flow of information to the upper houses on the implementation of the budget items (court of audits, think tanks, reports from the Finance Ministry...) so that they can better follow up on the implementation of the budget.

Sources

I. Constitutions of Arab Countries

- Constitution of the Hashemite Kingdom of Jordan and its amendments, 1952
- Constitution of the Kingdom of Bahrain, 2002
- Constitution of the Republic of Tunisia, 2002
- Constitution of the People's Democratic Republic of Algeria and its amendments, 1996
- Constitution of the Republic of the Sudan, 2005
- Basic Law of the Sultanate of Oman, 1996
- Constitution of the Kingdom of Morocco, 1996
- Constitution of Arab Republic of Egypt, 2007
- Constitution of the Islamic Republic of Mauritania, 1991
- Constitution of the Republic of Yemen, 2001
- Constitution of the United Arab Emirates, 1971
- Constitution of the State of Qatar, 2004
- Basic Law of the Kingdom of Saudi Arabia, 1992

II. Bylaws of Arab Upper Houses

- Bylaws of the Senate of Jordan, 1998
- Bylaws of the Shura Council of Bahrain, 2002
- Bylaws of the Chamber of Councilors of Tunisia, 7 November 2001
- 2004 Law number 48 dated 15 June 2004 on regulating the work of the Tunisian Chamber of Deputies and Chamber of Councilors and their relationship.
- Bylaws of the National Council of Algeria, 28 November 2000
- Bylaws of the Council of States of Sudan, 2005
- Bylaws of the State Council of Oman number 86/97 promulgated by decree on the Council's formation
- Bylaws of the House of Councilors of Morocco, 1988
- Bylaws of the Advisory Council of Egypt, 2001
- Bylaws of the Senate of Mauritania, 1992
- Bylaws of the Consultative Council of Yemen, 2002

III. Working Papers

- The working papers presented at the regional workshop on parliamentary oversight organized by UNDP-PDIAR in Beirut on October 16th-17th titled “Strengthening the Oversight Function of Arab Parliaments: Improving the Legal Framework.”
- General Principles and Conclusions of the UNDP-PDIAR Workshops
- General Principles on Developing the Legal Framework to Promote the Oversight Function of Arab Parliaments (Parliamentary Development Initiative in the Arab Region, United Nations Development Programme, 2010)

IV. Websites

- www.arabparliaments.org
- www.arab-ipu.org
- www.assemblee-nationale.dj (Djibouti)
- www.auc.km (The Comoros Islands)
- www.ipu.org
- www.parliament.gov.za (South Africa)
- www.senat.fr
- www.senat.fr/bresil.html (Brazil)