Parliamentarians Guide

NB:

THIS IS A DRAFT COPY. IT IS EXPECTED THAT MEMBER COUNCILS / SENATES WILL REVIEW IT CAREFULLY AND COME UP WITH IMPROVEMENTS AND AMENDMENTS THAT WILL MAKE THE BOOK WORTHWHILE FOR ITS USERS.

General Secretariat
2016

A GENERAL INTRODUCTION

The Association of Senates, Shura and Equivalent Councils of Africa and the Arab World, ASSECAA, is unique in the sense that it comprises two closely neighboring and, yet, significantly diverse groups of States of Africa and the Arab World. Indeed, the Statute of the Association declares that Member Councils are committed to cooperate and work together towards promoting bicameralism and promoting democratic values as their shared interests and objectives. The anticipated higher level of cooperation and permanent partnership require greater degree of mutual- acquaintance and appreciation, in addition to the more natural bond of brotherhood and neighborliness that would continue to keep the peoples of the two regions permanently together in this part of the world.

This Handbook aims to contribute towards enhancing the existing level of mutual awareness of Parliamentarians of ASSECAA Member Councils to a more advanced degree of mutual acceptance transcending linguistic,cultural and religious differences.

Towards this end, the Handbook is designed in a way that can progressively lead the users to a more comprehensive knowledge about the Councils. This may be clearer as the users move from one chapter to the other and derive logically interrelated sets of basic data on the basic features of the Councils, including their respective national contexts.

The Handbook consists of five chapters addressing different subject matters. The first Chapter sheds some light on the global context to be appreciated as a factor that will unavoidably continue to influence patterns of social and political developments everywhere in the world including Africa and the Arab world.With the overall global picture as its background, Section 2 of the same Chapter introduces the Member Councils within the more specific African and Arab regional setting. Hopefully, this particular section will keep on reminding the users of the Handbook that there are always certain natural differences which may wisely be recognized and utilized as sources of strength and beauty for the Association.

The numerical size, composition and terms of membership of the Councils have been described with the rationale by which the countries chose to follow such approaches in structuring their respective second houses. The Third and Fourth Chapters provide modest accounts of the functions and working procedures by which the Councils are guided functioning within their respective national contexts. Finally, the Fifth Chapter provides concluding remarks with the focus on the expected benefits of the Handbook for the Parliamentarians of the Member Countries.

HOW TO USE THE HANDBOOK

It is well known that handbooks usually are different from ordinary books written to serve purely academic purposes. This Handbook is, therefore, primarily intended to serve the practical needs of Parliamentarians of ASSECAA Member Councils to acquire basic information at least sufficient to understand and appreciate each other's national peculiarities and to explore real and existing opportunities for cooperation and collaboration within the institutional structures of ASSECAA. To this end, the following guidelines are provided with the hope that they may enable the users to derive the maximum possible benefits from the Handbook.

First of all, one may keep in mind that the Handbook is neither strictly technical nor exhaustive in scope. The frequent reference to the constitutions or basic laws of the countries should not mislead us to look at the document as a strictly legal or constitutional treatise. It was just unavoidable that such sources have to be referred to as they are unavoidably necessary to identify the origin and current status of the Member Councils. Thus, the Handbook may be utilized with the maximum possible freedom from any form of technical inhibition.

It is equally important to keep in mind that the Handbook is not also intended to give a comparative account of the Member Councils. Since each of the Councils is born out of its respective national history and context, there will be no ground to make any form of comparison. It, therefore, needs to be very clear from the outset that any reference within the scope of this Handbook, to any of the Councils or its mode of functioning does not necessarily indicate any form of preference or ranking as compared to any of its peers. Far from this, such references are only intended either to illustrate certain points or indicate certain patterns of institutional developments.

Furthermore, users may still have to pay extra- attention to some of the explanations regarding the rationale with which the ASSECAA Member Countries have chosen to adopt any of the institutional mechanisms in designing their respective upper houses. It is known that mere description of the institutions may not be very helpful to understand its objectives or significance in the absence of adequate explanation for pursuing any of the options in designing the structures of the Member Councils. We have found is advisable that certain explanatory notes be included in the appropriate places of the Handbook at least by way of indicating the raison d'être for adopting any of the approaches in designing the institutional set ups or functional domains of the councils. But it should also be acknowledged that such elab-

orations have not been provided as much as necessary primarily for lack of access to the more reliable official sources such as minutes of constitution drafting or ratifying bodies which can be available only in the countries concerned. One can only apologize for the apparent limitations in this respect.

Last, but not least, it is worth noting that, contrary to the more conventional practice, the concluding Chapter is not intended to lead the readers to certain concluding point of view which is supposed to originate from the discussion in the earlier chapters. Instead, it is designed to summarize what users of the Handbook are expected to achieve after going through its successive chapters. Thus, it may help to make sure that users attain at least two interrelated objectives including first- acquisition of good knowledge of the Councils, its functional domains and working procedures. The second equally important objective is evoking interest towards more extensive and deeper understanding of the Councils through independent endeavors of the Parliamentarians. of ASSECAA Member Councils. For this very purpose, the following section provides certain general guidelines where to look for more details as part of such endeavors. To this effect, the following section provides some guidelines where to look for more details.

WHERE TO LOOK FOR MORE DETAILS

Upper houses, like most other organs of governments, depend on constitutions for their very existence and determination of its respective spheres of responsibilities. This means that Constitutions of Member Countries are the ones that need to be more frequently resorted to for securing greater details. The Appendix attached at the end of the Handbook provides the list of the Constitutions. Furthermore, specific provisions of the relevant national constitutions are some times quoted as part of the footnotes by way of enabling the users to take note of it without necessarily going through the entire provisions. Although these modes of citations are not common for that matter within the limited scope of handbooks, it appears justified by the more important practical needs of the Parliamentarians to find such specific references readily available.

As a rule, institutions, the mandate of which is constitutionally defined may not be arbitrarily abolished or unduly tempered with by unconstitutional means. Thus, governments are not supposed to interfere, among others, in the activities of the upper houses. Otherwise, the constitutional systems would

lose its independence from undue political interferences.

Where necessary, constitutions may be amended or even reformed wholly or significantly. But both amendments as well as reforms require resort to the procedures provided by the constitutions for these purposes. Thus, one may derive more details on the different aspects of ASSECAA Member Councils going through the entire provisions of the constitutions including those provisions, where available, which could be introduced through amendment processes.

It is known that some of ASSECAA Member Countries are operating federal or certain variant of quasi federal political arrangements. Some of them have provided space for the constituent states or provinces to adopt subnational constitutions, albeit subject to the supremacy of the national constitutions. For instance, Ethiopia's Kililoch (the States) have their respective Kilil or State Constitutions. In South Africa, West Cape has chosen to adopt its provincial constitution. Such constitutional instruments need to be consulted wherever applicable to have a more complete picture of the systems under which the Member Countries concerned.

The constitutions of most ASSECAA Member Countries do permit the upper houses to adopt certain regulatory instruments to regulate its functions. Accordingly, like the lower houses, the Member Councils have their respective rules of procedure. Unfortunately, it has not been possible to secure official copies of most of these instruments, save whatever the internet sources could provide in variety of fragmented forms. The Handbook is enriched with materials available in these forms. Thus Honorable Parliamentarians of the Member Councils may consult the rules of procedures of the Councils as much as necessary to acquire more details.

Secondary sources including books, journal articles and the like may also serve to look for more detailed explanation about the Councils. In utilizing such sources, one has to keep in mind academics write from independent and peculiar disciplinary perspectives based on their own personal judgments. For the purpose of parliamentarians who need to understand the Member Councils for practical purposes, these works may be used as sources of some supplementary information. In order to assist the users in this respect, a list of select references is provided at the end of the Handbook.

CHAPTER ONE

THE WORLD-WIDE TREND AND THE ROLE OF ASSECAA

1.1.Introduction

This section of the Handbook is intended to provide a brief background to the topics which will be addressed in the forthcoming chapters. The world-wide trend of development that has led to the current 'internationalization' of democracy and democratization has been indicated to serve as a starting point. Similarly the Handbook refers to the new interest being demonstrated regionally, particularly in Africa, including the Arabic Speaking North Africa and Sub Saharan Africa, towards a collective engagement on issues related to democratization and good governance. Both global and regional trends of development are referred to, in this context, only by way of highlighting the current importance of issues related to bicameralism and other aspects of the democratization processes. Meanwhile, this section of the Handbook also unmistakably stresses that the primary responsibility for promoting bicameralism and related interests still remains to be within the domestic jurisdictions of the individual countries. With these remarks as its background, the Chapter will highlight the share of responsibility of ASEECAA in promoting bicameralism as defined by the constitutive instruments of the Association.

1.2 The World-wide Trend

In the international surface, there is an emerging global order that seems to demand universal democratization of nations regardless of cultural, linguistic, racial and religious differences. As the world had witnessed the' Universal Declaration of Human Rights' immediately after the end of World War II, the Post Cold War World present seems to be offered the new idea of globalization of democracy as one of supposedly universal values of all nations and peoples.

It is worth noting that the United Nations had endorsed the idea of 'universalization' of democratic values and principles during the leadership of Dr Boutros Boutros-Ghali, the Secretary General that coincidently happened to come from Africa and the Arab World. In his historic Report to the UN General Assembly, Dr Boutros- Ghali had alerted the international community that cultural or ideological differences could no longer be excuse for not promoting democracy as a universal global value. In the meantime, the then UN Secretary General had also made it clear that global or regional actors may support and complement efforts of Member Countries but could not and should not act as substitute for the individual countries concerned. The Report described expectations of the Organization in the following terms:

"The United Nations is, by design and definition, universal and impartial. While democratization is a new force in world affairs, and while democracy can and should be assimilated by all cultures and traditions, it is not for the United Nations to offer a model of democratization or democracy or to promote democracy in a specific case. Indeed, to do so could be counter- Productive to the process of democratization which, in order to take root and to flourish, must derive from the society itself…"

The UN Report seemed to impress upon Member States as to the urgency of the need to cope up with the emerging global standard. On the other hand, the UN was clear that the individual countries could still maintain their respective cultural peculiarities by adapting the world wide global values to their specific local circumstances.

1.3 ASSECAA and Its Global Significance

ASSECAA is a bi-regional organization exclusively devoted to encourage and support the development of bicameralism in Africa and the Arab World. It has emerged at the historic moment in which bicameralism has attracted wider global interest, including Africa and the Arab World.

But it is also worth noting that the trend of development in these two closely neighboring regions has exhibited certain unique features in terms of adapting the global idea of bicameralism and democratization to the local realities. Indeed, the rate of originality and open-mindedness is demonstrated by the approaches followed in designating and promoting ASSECAA's Member Councils.

By so doing, such countries seemed to have registered success, on the one hand, in ensuring the continuity and preservation of their long standing local institutions while, on the other, benefiting from the world wide trend of modernization of governing institutions through their own self-regulated democratization processes.

In several African and Arab countries, such patterns of democratization and modernization have been being demonstrated, among others, by the wise decisions of the national leaderships of the Member Councils to establish and strengthen the second houses with considerable and still growing mandate to serve their peoples both as guardians of the long standing domestic values and, at the same time, as torch-bearers of their countries' self –initiated commitment to cope up with global changes and expectations. This trend of development has attained by is broader global significance by the emergence of ASSECAA as an embodiment of this particular commitment to ensure both continuity and change in Africa and the Arab World.

CHAPTER TWO
THE MEMBER COUNCILS

2.1. INTRODUCTION

This section of the Handbook will shed some light on some important aspects of the Councils currently defining membership of the Association. The regional distribution of the membership is considered to appreciate the level at which cultural and historical consideration have to be recognized within the membership. The size of membership of the Councils is looked at in order to appreciate the relative weight of the Councils, in each of these countries, as compared to the lower houses. Moreover, designations utilized to identify the Councils reconsidered with a view to tracing the meaning attributed to each of them within their respective local national contexts.

2.2. THE COUNCILS

The composition of the Association is still limited to the upper houses that have formal membership in accordance with basic laws of the Association. Unforgettably, ASSECAA was born as a result of the agreement which secured the approval of twenty four Senates, Shura and Equivalent Councils of Africa and the Arab World in Rabat, Kingdom of Morocco, from 6th to 7th June 2002. The point is that ASSECAA's membership is limited to the upper houses and consultative councils of those African and Arab countries that resolved to work together and cooperate towards the growth of bicameralism in their respective countries.

2.3. REGIONAL DISTRIBUTION

Out of the twenty four Upper houses that attended the historic Rabat Meeting of 6th and 7th June 2002, 13 were from Africa and 11 from the Arab World. The latter may again be classified into two comprising those that represented Arabic speaking North Africa and Arab nations of the Middle East. In effect, therefore, the Councils representing the North African countries may rightly be designated as both Arab and African at the same time. In this sense, it may also be correct to consider the Councils from North Africa as a cultural and geographical intersection between Africa, South of the Sahara, and the Arab nations of the Middle East. When considered from this perspective, it may not be exaggeration to recognize ASSECAA as an institutional bridge between African, South of the Sahara and both sections of the Arab world. As will be more clear under Chapter three , that describes the various functional domains of the Councils, these spheres of intersection between the two regions seem to be quite promising to keep the peoples of the countries increasingly together due to the necessities produced by the overwhelming pressure of globalization.

2.4. DESIGNATION

Most of the Member Councils share two specific designations including Senate and Shura Councils. The former seems to have its origin in Western democracies whereas the latter seems to be historically connected with the Islamic political traditions of the Arab World. More interestingly, both designations seem to have, sometimes been applied for purposes not significantly associated with either the Western or the Arab Islamic / traditions. In the context of the Member Councils, it may be advisable not to assume any meaning or conceptual interpretations by looking only into the presumably historical origins of such designations.

Some of the Member Councils use their own unique designations. For instance Algeria and Morocco designated their respective upper houses as Council of Nation and Council of Mustashreen (literally Councsellors) respectively. These and others that follow this peculiar pattern need to be understood strictly with reference to the specific meanings attributed to these designations in the countries concerned. In other words, no meaning should be assumed without reference to the usage locally acceptable.

The very divergence of the designations, including the meanings attributed to each, may suggest that ASSECAA is endowed with some unique opportunity to utilize the diversity of its Membership as an asset and source of beauty at the inter-regional level.

CHAPTER THREE

COMPOSITION OF THE COUNCILS

3.1. INTRODUCTION

The more conventional practice in many countries is to make sure that persons with higher degree of reputation, rich experience and even statesmanship take part in the workings of upper houses. The numerical size of each council is considered to appreciate its relative significance within the governance structure of each country. More importantly, the selection procedures are briefly summarized with a view to shedding some light on the relative independence of the councils in relation to other organs of government.

3.2 Size

The more common global practice is to limit the size of the upper houses to somewhere around half of the size of the lower house. By and large, the numerical size of the upper houses is less than half of the size of the lower houses in eleven countries including Algeria, Burundi, DRC, Ethiopia, Lesotho, Liberia, Mauritania, Namibia, Nigeria, South Africa and Zimbabwe. This seems to be relatively more consistent and more fit to the worldwide practices. But there are still six countries where the size of the upper houses is more than half of the size of the lower houses. These include Congo Kinshsa, Cameroon, Equatorial Guinea, Gabon, Jordan and Oman. In fact, Oman still represent the most extreme case as

the size of the upper house is only one member less than the size of the lower house. In any case, although one still has to guard against hasty conclusions, it seems clear that the upper houses have secured not only the consent but also the confidence of governments even in those countries where there have not yet been lower houses. Yet, one needs also to be more realistic in view of the deep historical values, that still deserve to be respected, and the radical turns of events to which most of the countries of the regions have been exposed since recent years. This is to say that the constitutions are fairly free of such restrictive influences, although, as far as the practice is concerned, it requires realistic and unrelenting efforts to make the legally recognized values and principles part of the actual realities of the countries concerned.

Such encouraging trends obtaining almost in all countries, concerning the second houses, sometimes even in places where there is no lower house, ASSECCAA Member Councils seem to be exceptionally opportune to play a historical role as guardians in the progress towards good governance and rule of law

3.3 SELECTION OF THE PARLIAMENTARIANS

The Composition of the member Councils seem to be a manifestation of the purposes which each council is expected to serve within its respective peculiar national contexts. A good portion of the Member Councils obtains their Members through the relatively more recent electoral techniques. However, despite this overall feature, the electoral processes seem to follow diverse working mechanisms. There are several countries where members of the upper houses are selected, wholly as well as partly, through the different appointment methods, although the practice in the greater number of countries is to act subject to certain eligibility criteria pre-determined by the national constitutions. This Chapter of the Handbook will focus on certain few African and Arab countries presumed to fairly represent the general patterns followed in determining the selection of Parliamentarians of the Councils.

Among the member countries, Ethiopia, Saudi Arabia, Algeria, Morocco, Nigeria, DRC, Gabon and South Africa have largest second houses in volume as compared to other members[1]. These countries follow different styles while selecting members. All members of Ethiopian House of Federation, both senates, i.e. DRC and Gabon and Morocco's Majlis Al-Mustacharin are indirectly elected. In the case of Ethiopia indirect election is conducted by the country's nine State Councils. But in case of DRC such election is conducted by the Provincial Assemblies.

1-The Ethiopian House of Federation is the biggest house having 153 members elected indirectly. Saudi Arabia's Majlis Al-Shura is the second largest house after Ethiopia with 151 members. Algeria's Council of the Nation, Morocco's House of Councilors, Nigeria's National Council, DRC's Senate, Gabon's Senate and South Africa's National Council of Provinces are composed of 144, 120, 109, 108, 102 and 90 members respectively.

The Shura Council of the State of Qatar consists of forty-five members fifteen of whom are appointed by the Emir from among the Ministers or other persons found fit to shoulder the responsibility. The remaining thirty Members of the Shoora Council are to be elected directly by the people. It is worth noting that the majority of the Members of the Council are subject to direct electoral processes.

Meanwhile, the eligibility requirements include variety of concerns and expectations including; besides being of Qatari nationality, fluency in spoken and written Arabic and not less than thirty calendar years at the time of the candidacy for Shoora Council Membership. Gender or difference on the basis of sex is not a bar against one's eligibility for membership in the Council. But a personal track record showing previous conviction by a competent court of law for an offence involving immoral behavior or dishonesty may be a good ground for disqualification until such a person is cleared through a legally acceptable rehabilitation process.

The Kingdom of Saudi Arabia has established the Shura Council (officially designated as Majlis Al Shura) by its constitution[2]. Accordingly, the Shura Council Law has established a council consisting of a Speaker and One hundred and fifty members wholly appointed by the King "from amongst scholars, those of knowledge, expertise and specialists"[3] . But the more interesting aspect is that after Royal Order issued on 11 January 2013, women shall be represented in the Council at the minimum level of 20% of its 151 members, i.e. 30 women. Moreover, the eligibility criteria further requires that candidate for membership of the Shoora Council should be of Saudi nationality, not only by descent but also by 'upbringing', a person well known for uprightness and competence and not less than 30 years of age[4].

The kingdom of Morocco is one of those countries of Africa and the Arab World that preserves the long standing monarchial system of governance. In this respect, the Moroccan system is similar to the ones obtaining in the above considered three countries. But the governance structure in Morocco is significantly inclined to a clear- cut design of constitutional monarchy.

Thus, the legislative authority of the State is fully bestowed upon the Parliament which consists of the two Houses, including the House of Representatives (Majlis al- Nuwab) and the House of Counselors (Majlis al -Mustashareen.)[5] As is more broadly described under the next Chapter of the Handbook, both Houses do share the legislative authority in addition to their respective domain of exclusive responsibility.

The Council of Counselors is unique with respect to its relative numerical size and the length of the duration of

2- Art. 68 of the Constitution of the Kingdom of Saudi Arabia

3- Art. 3 of Shoora Council Law of Saudi Arabia

4- Ibid. Art. 44, Shoora Law of Saudi Arabia

5-Articles 36 and 45 of the Constitution of Kingdom of Morocco

Membership of the Counselors[6] . As indicated in the introductory section of this chapter, the more common practice in many countries is to limit the number to about one half of the total membership of the lower houses. The Council of Counselors of Morocco consists of 120 members thereby constituting one of the largest as compared to its equivalents globally. The Counselors are elected to serve for a period of six years. This is much greater than the durations applicable in most of the upper houses of Africa and the Arab world.

The methods of selection appear to be a mixture of models obtained in different countries. Thus, several Regions of the Kingdom are authorized to send representatives constituting 3/5 of the total number of members of the Council. To this end, the counselors coming from the Regions should be elected, by certain electoral colleges, made up of "elected members of trade chambers as well as members elected at the national level by an electoral college consisting of 'wage earners' representatives." The remaining 2/5 of the members are to be elected spreading over certain periods of time.72 members elected at the Kingdom's regional level, who represent the subnational administrative areas (collectivitiés territoriales) while 20 members elected in each region by a single electoral college made up of all those in the relevant region that have been elected to the following professional associations: the agriculture associations, the commerce, industry and services associations, the arts and crafts associations and the marine fisheries associations; 8 members elected in each region by an electoral college made up of those elected from the most representative employers' professional organizations. Finally, 20 members elected nationally by an electoral college made up of employees.

Accordingly this portion of the total membership should regularly be renewed every three years, ensuring that such number of seats that shall be drawn by lot during the first and second renewal processes.

Comparatively speaking, Jordan is the other Middle Eastern Arab country where a system of constitutional monarchy is maintained with considerable institutional innovations. Here, the Upper House is organized with the more commonly used designation bearing the name "Senate". Yet, its composition exhibits somehow unique method of selection. On the one hand, the King still retains the prerogative to appoint and accepts resignation of the Speaker and Members of the Senate [7]. On the other hand, there is a constitutional restriction not to select the senators out of certain classes of persons including "Present and former Prime Ministers and Ministers, persons who had previously held the office of Ambassador, Minister Plenipotentiary, Speaker of the Chamber of Deputies, President

6- Art. 38 of the Constitution of Kingdom of Morocco

7- Art. 36 of the Constitution of Hashemite Kingdom of Jordan

and judges of the Court of Cassation and of the Civil and Sharia Courts of Appeal, retired military officers of the rank of Lt. General and above, former Deputies who were elected at least twice as deputies, 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."[8] In other words, the eligibility requirement leaves very little room for both the King and the electorate. But, still, the fact that membership is made open only to such distinguished persons may be explained by the extra-ordinary influence which Upper Houses may have under the appropriate circumstances. Article 65 of the Constitution provides that the term of office of Senators shall be four years. The appointment of members shall be renewed every four years. Senators whose term of office had expired may be reappointed for a further term.

So far, we have gone through practices of ASSECAA member countries where the Upper Houses are functioning alongside the long standing monarchial or equivalent systems of governance both in the Middle East and North Africa. Now, we proceed to look into the relatively more recent systems under which the Upper Houses are established to develop within structures characterized by certain parliamentary and/or presidential models. As far as ASSECAA member countries of the Middle East are concerned, Yemen seems to portray this particular pattern of constitutional and institutional development. Since recently, Yemen has witnessed radical political and constitutional developments. To begin with, the re-unification of the country that came after the end of the Cold War has offered this ancient and culturally rich Arab nation that unique opportunity to embark on a new and highly promising nation- state building process. Yet, the conflict that uncovered itself since recently has also constituted a new challenge to engage in protracted peace -building undertaking. As a result, the very constitutional foundation of the country has been under radical reform process.

Consequently, this Chapter can relate both the last and the emerging practices as enshrined in the Constitution of the Republic of Yemen, as amended on February 20, 2001 and the new draft Constitution of Yemen which is already under review albeit not yet in force. According to the former, Majlis al -Shura (the Consultative Council) had to be composed of one hundred eleven members wholly appointed by the President. The constitutionally defined eligibility criteria include, among other things, attaining the age of forty and having no simultaneous membership in the House of Representatives.

The new Constitution of Yemen of 2015 has introduced several new designs apparently necessitated by the proposed transition from a system which has essentially been unitary to one that is supposed to be substantially federal. Thus, like most federal countries, Yemen will

8- Ibid Art. 64 of the Constitution of Hashemite Kingdom of Jordan

have a bicameral federal parliament to be called al- Jami 'at al Wat'ania (National Assembly) and to be composed of two houses that include Majlis al – Nuwab (Council of Representatives) and Majlis al Ittiahdi (the Federal Council). The Federal Council will be composed of eighty four Parliamentarians selected from the six Regions and the two Cities, Sana' and Aden. Each of the Regions will send twelve representatives whereas each of the two Cities will have six representatives in the new Federal Council.

As far as the method to be followed for selecting Members of the Federal Council is concerned, Article 141 of the new Yemen Constitution requires that they should be elected through direct electoral process. Further, Article 149 provides a list of fairly long eligibility requirements for candidacy to run for the seats in the Federal Council. These include, among several others, attainment of the age of thirty, educational attainment not less than secondary school, not currently serving in the military and security establishments and residency for not less than one year in the Region or City which he/she aims to represent in the Federal Council. While these new propositions do suggest the emergence of a more empowered second house, its concrete benefits will still be determined by the Constitution which needs not only formal authorization but also real sustainability amidst the ongoing overall transformation of the country.

Members of Senates and Equivalent Councils in ASSECAA Member countries, in Africa south of the Sahara, are selected largely through certain modes of electoral processes. Here too, there are significant exceptions. For instance, the way members of the Council of Chiefs of Botswana are selected offers an interesting indigenous model of representation in a deeply diverse social milieu. While recognizing the significance of such peculiarities, the systems evolving in the more conventional ways equally deserve adequate attention.

The Senates of Nigeria and Burundi utilize significantly different grounds of representation of the sub-national interests. Likewise, Ethiopia's House of the Federation and South Africa's National Council of Provinces follow distinct approaches that seem to be informed by the need to accommodate the different forms and, in instances, territorially concentrated local diversities and interests. We will see the modes of selection of these four countries.

The candidates in Burundi for senatorial position should be of Burundian nationality, thirty-five years old as clearly stipulated under Art. 179 of the country's Constitution[9] . In addition to such

9- This Article declares that '' The candidate to the elections of the Senators must be of Burundian nationality, being already thirty-five years old at the moment of the elections, [and] enjoy all their civil and political rights. The candidate to the senatorial elections must not have been convicted for a crime or misdemeanor of common law to a penalty determined by the electoral law.
The electoral law specifies equally the time period after which a person condemned in the sense of the preceding paragraph may recover their eligibility since the execution of the sentence.

conventional eligibility requirements applicable to the individual candidates, there are certain rules determining the number of senators each of the Provinces may send and the ground on which such candidates may be selected at that provincial level. Accordingly, the Burundian Senate should consist of two delegates from each Province, elected by electoral colleges which are composed of the Communal Councils representing the different ethnic groups in the country. More interestingly, in addition to such ethnic –based delegates coming from the Provinces and three additional persons representing the Twa community, the Constitution of Burundi requires that "the former Heads of State" of the country to be included into the list of the incumbent Senators[10]. More importantly the minimum representation of women in the Senate which is at least 30% is given recognition under the very Constitution.

The rationale for this arrangement seems to be the need, on the one hand, to reflect the local ethnic based diversity and, on the other, to ensure continuity of the nation building process through uninterrupted engagement of the country's senior leadership, despite changing political circumstances. The Senate of Burundi, therefore, seems to be recognized as the most suitable organ of government to address such lofty national objectives in the real practice.

Nigeria is demographically the largest and still surviving Federation in the African Continent. The Nigerian Senate is composed of members elected from the several Senatorial Seats throughout the Federation. Accordingly, each State of the Federation is divided into three Senatorial districts. For the purpose of coping up with the fast changing realities of the country, the National electoral Commission is authorized to review the division of States and that of the Federation into Senatorial districts at intervals of not less than ten years.

More importantly, it is worth noting that each State of the Federation is represented by equal number of Senators regardless of the demographic size of the States[11]. The rationale for this constitutional rule is extremely important. The States of the Federation are represented by varying number of deputies the house which is the main law making organ. Had the same approach been followed in determining the number of seats of the States in the Senate, the States that are demographically smaller would have been exposed to the so called "majority tyranny" in both federal houses. The constitution, cognizant of the real risk attached to the 'number- blind' alternative, has given such more protective option towards accommodating the demographically smaller States of the Federation. Given the significant share of responsibility of the Senate, in several domains including the legislative sphere, equality of

10- Art. 180 of the Burundi Constitution

11- Art. 48 of Nigerian Constitution

representation of the States in the Senate seems to counter balance the possible hegemony of the demographically larger States in the National Assembly.

Ethiopia is the second demographically largest Federation in Africa. The House of the Federation is the organ of the Federal Government which is equivalent to the Senates and similar bodies in the other federal countries. Here, the groups locally identified as 'Nations, nationalities and Peoples' are the ones represented in the House of the Federation as clearly indicated under Art. 61(1) of the FDRE Constitution. By way of complying with the principle of equality of peoples, each Nation/ Nationality is entitled to be represented by one Member of the House. Then, by way of accommodating the interest of the demographically larger Nations/ Nationalities, the Constitution still permits such groups to be represented by one additional representative for each one million of its population[12]. In effect, therefore, each State of the Federation is represented in such a way that each of the nations/ Nationalities of the Federation will always be represented in the House of the Federation.

In real practice, the bulk of Ethiopia's ethno-national groups are numerically smaller. Had it not been for the principle of equality designed to accommodate the interest of such groups, the House would have been automatically controlled by the demographically larger groups jeopardizing the very survival of the federal system. On the other hand, given the relative advantage of the smaller groups as represented equally and in their collective ethnic identities, the other aspect of the arrangement which permits the numerically larger groups to be represented by one additional representative for each one million of its population seems to be a room for allaying the fear of such groups regarding decisions of the House on several critical matters which will be related in detail in the next chapter.

Although not so designated, Post Apartheid South Africa is the other most important federal or quasi- federal country in Africa. The South African Parliament consists of the National Assembly and the National Council of Provinces. The Constitution is explicit with respect to the objective to be attained through the National Council of Provinces. Thus, it has been unequivocally declared that "The National Council of Provinces represents the provinces to ensure that provincial interests are taken into account in the national sphere of government." [13]

To this end, the Council is composed of "a single delegation from each province consisting of ten delegates".[14] On the other hand, the ten delegates representing each Province is composed of , among others, the Premier of the province or, his representative, and others designated as "permanent" and "special" delegates so identified based on several interesting grounds which may require

12- Art. 61(2) of the FDRE Constitution

13- This assertion is clearly stipulated under Art. 42(4) of South African Constitution

14- See Art. 60 of South African Constitution

greater details beyond what could be included in this Handbook. Meanwhile, it is still pertinent to take note that such amount of attention has been accorded during the constitution making process with a view to making sure that provincial and other sub national interests are duly accommodated through the Upper Chamber designated, in the South African context, as the National Council of Provinces.

The Handbook has identified those institutional designs which seem to be fairly accepted manifestation of the larger picture about upper houses of Africa and the Arab World. As the Chapter deals with one of the most critical aspects of the Councils, it appears that we have shown such options which seem to be common preferences in designing upper houses in Africa and the Arab World.

3.4. TERMS OF MEMBRSHIP

By the term " terms of membership"in this context, we intend to refer to such conditions historically associated with certain administrative or executive actions that used to be taken either for curbing the role of representative institutions or restraining the activities of persons delegated to serve the interest of the Public.

Our overall survey of ASSECAA Member Councils has shown that there is progress, almost everywhere in Africa and the Arab World, towards adapting democratic practices. The constitutional reforms and amendment processes in most of these countries have shown that the current trend is more towards open mindedness and receptiveness to democratizing institutions.

During the terms of the office, parliaments in most ASSECAA Member Councils are not subject to arbitrary termination of their tenures. They only leave office upon death, conviction in flagrant delicto and end of terms of membership.

This may be further appreciated by looking at the length of duration of their services.Thus, the duration service in countries such as Algeria, Congo and Mauritania extends to a period of six years. In other cases such as Ethiopia and Swaziland, Members of the Councils remain in office for five years. The practices in some of the remaining countries vary between three and four years.

The other interesting new development is the increase in the rate of participation of women in Member Councils. Thus, the number of women Parliamentarians of some countries such as Ethiopia and Zimbabwe has reached 49 and 38 receptively. Proportionally, the rate of participation of women increased to 41.86, 24.24 and 23.08 percent of the total number of Parliamentarians of the Member Councils of Burundi, Lesotho and Namibia respectively. In other cases, the rate of involvement has shown progressive increase particularly in Saudi Arabia, Oman and Morocco. By and large, ASSECAA has witnessed a remarkable rate of growth regarding the rate of participation of women in many of its Member Councils.

CHAPTER - 4

FUNCTIONAL DOMAINS OF THE MEMBER COUNCILS

4.1. INTRODUCTION

This section of the Handbook will consider the scope of powers and responsibilities of the Member Councils. The Councils, by and large, are presumed to have increasingly expanding responsibilities covering several important functions. In some of these countries, the move to bicameralism has been necessitated by the increasing need to accommodate local diversity on ethnic, cultural or linguistic grounds. Where second houses are put in place, usually involving constitutional reforms, it appears that the parliamentary structures become more representative and accommodating to the diverse sub-national interests.

Upper houses are largely expected to provide room for accommodation of local diversities and interests in the larger society. Given the primary role of the lower houses as guardians of representative democracy based on individuals' citizenry rights, the upper houses seem to play a protective role to safeguard for collective interests of numerically smaller social groups and communities which otherwise could be exposed to what some people describe as "majority tyranny".

Largely speaking, the more conventional functional areas seem to include, on the one hand, a consultative role and, on the other, participatory functions within the broader legislative and supervisory functions of the parliaments. But, when considering practices of the individual councils, the large scale of diversity that exists among the ASSECAA Member Councils would make it necessary to understand and appreciate each Council strictly within its unique national context.

4.2.CONSULTATIVE AND RELATED RESPONSIBILITIES

In the Arab World, the term 'Shura' denotes a form of consultative role which some selected personalities play by way of assisting the ruler on matters affecting the interest of the wider public. It has its origin in the long standing Islamic legal and political tradition which requires the leaders to heed the "shura' i.e. consultation of those endowed with the knowledge that can lead to equity and all-inclusive satisfaction of the people. The tradition of Shura is so deeply entrenched that it still has considerable currency in several Arab countries.

The consultative role of some of ASSECAA Member Councils seems to be indicative of its still surviving influence in our contemporary times. In countries such as Saudi Arabia, Qatar, Bahrain and Oman, the responsibilities of the Member Councils seem to indicate the significance of the principle of

Shura in the modern Arab World.

Indeed, the scope of Consultative role of the Councils varies from one country to another. By and large, their responsibilities show two important institutional prerogatives. On the one hand, it suggests that the Councils are duly empowered to give their consultations on several policy issues. Secondly, consultative role also seems to impose a prior duty, on the the decision making organs of the government, to seek the opinions and consultations of the Councils on those matters concerning which they are entitled to be consulted and to be heard. Since the matters that fall within the consultative mandate of the Councils usually relate to basic needs of the society for good governance and more stable future, the prerogative of the Member Councils to be consulted and heard has some important implications.

The role of the Majlis al- Shura of Kingdom of Saudi Arabia seems to indicate the growing influence of its consultative role. To begin with, the mode of power distribution in the kingdom follows a unique approach. The three 'organs' of government are assigned different responsibilities including two conventional that include executive and judicial powers whereas the third one is designed to be 'organizational power' instead of the usual legislative domain[15] . The functional domain of the Majli-al shoora is presumed to be within the power of the government to discharge the organizational responsibility.

Thus, the Council is explicitly authorized by the Constitution to 'discuss laws and regulations, including on its possible revision' and 'submit its opinion to the king[16]. In other words, the basic mandate to the Council is the 'right' or power to be consulted and have the limited authority to have its consultations be referred to the decision making Cabinet.

4.3. PARTICIPATION IN LEGISLATIVE PROCESSES

Almost everywhere in the world, the conventional practice is that the lower houses are primarily responsible for making legislation within the scope of power of governments concerned. Legislations are made involving democratic proceedings in which decisions are made through voting procedures. In such proceedings, there are some public expectations which are widely recognized as legitimate concerns of certain sections of the society. Given the potential effects of the conventional democratic proceedings based on voting, there could unavoidably be certain social groups and interest groups that may be adversely affected resulting their relative numerical disadvantage. By way of preventing such unintended consequences, it is common to confer

15- See Art. 44 of the Constitution of the Kingdom of Saudi Arabia

16- See Art. 17 of the Shoora Council

certain degree of power upon the upper houses to play a role in the legislative processes. The extent to which this particular practice is being followed by some of ASSECAA Member Councils is discussed below.

Most of the countries represented in ASSECAA by the Member Councils do allow the councils to play varying degree of legislative role. Thus, the Shoora Councils of the state of Qatar has inherent legislative power, in addition to its mandate to "approve the general policy of the government as well as the budget". Article 61 of State of Qatar mandates the Council with legislative power:

The Legislative Power is exercised by the Advisory Council in the manner specified in this Constitution.

The Advisory Council assumes the Legislative Power, approves the State's public budget and exercises the function of "watchdog" over the Executive Power, according to the manner stipulated in this Constitution.[17]

The Countries which are either fully federal particularly Nigeria, and somehow quasi- federal, for instance South Africa, permit the second houses to play more aggressive legislative power. Thus, the Senate of Nigeria has such authority not clearly subordinate of the House of Representatives. The cumulative reading of Art. 4(1) and 47 of Nigerian Constitution will support this assertion. While the former states that '' [t]he legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation, which shall consist of a Senate and a House of Representatives; the latter informs as Nigerian Legislature consists both chambers by clearly stating '' [t] here shall be a National Assembly for the Federation which shall consist of a Senate and a House of Representatives.''

In South Africa, the National councils of Provinces (NCOPs) is explicitly authorized to 'consider, pass, amend, propose amendments to or reject any legislation…' provided that such bills fall within those portions of the Constitution relating to the interests of the Provinces, constitutionally entrenched bill of rights and very nature of the Post Apartheid State and non-racial and subject to the supremacy of the Constitution. The NCOPs are mandated this power by the very Constitution of South Africa. As indicated under Article of 42(1) of the Constitution, NCOPs are organs that make the South African Parliament alongside the National Assembly. The rationality for this clearly demarcated scope of intervention by the Council in the national legislative process seems to be the need to ensure permanent protection of the interests of the several Provinces of the country as provided under Art. 42(4) of the Constitution. Accordingly, they exercise legislative authority of the na-

17- See Article 67 of the Constitution of State of Qatar

tional sphere of government is vested in Parliament, as set out in section 44, of the provincial sphere of government is vested in the provincial legislatures, as set out in section 104; and of the local sphere of government is vested in the Municipal Councils, as set out in section 156.[18]

4.4. PARTICIPATION IN CONSTITUTIONAL AMENDMENT AND INTERPRETATION PROCESSES

As is well known, Constitutional amendment processes are highly sensitive activities. Given the special status of Constitutions, including status of being supreme laws in several countries, its amendments too involve certain extraordinary processes. In countries that have bicameral parliamentary structures, the upper houses are found important checking mechanisms for preventing exclusion of certain voices or interests in the amendment processes. Federal countries are widely known for practicing bicameralism as one of their distinguishing features. Here, Constitutional amendment exercises involve not only the upper houses of the federal but also certain organs, mostly legislative, sub-national (regardless) of their specific designations including states, provinces, cantons and the like) governments. In unitary countries too, upper houses play significant role in constitutional amendment processes.

In some of ASSECAA Member Countries, the Member Councils are authorized to take in such processes in the ways and manners described below. The practice in Nigeria, Ethiopia and South Africa, once again, deserve considerable attention. In each of these countries, the Member Councils are expected to safeguard the interests of the sub-national regional and communal interests. Accordingly, the amendment of any section of the Constitutions requires the participation of not only the upper houses but also the legislative organs of the States, Regional States and Provinces respectively. Amendments that relate to the provisions regulating either rights or interests of the States/ provinces or nations/ nationalities, in the case of Ethiopia, does require extraordinary procedures defined by the Constitutions.[19] Besides, the Ethiopian Constitution stipulates two kinds of Constitutional amendments i.e., amendment of all rights and freedoms specified in Chapter three of the Constitution, Art. 105 and 104 on one hand and the amendment of all provisions of the Constitution other than those specified in sub-Article 1 of Article 105 on the other hand. While the former involves stricter procedures the latter is somehow not as serious as the former. The rationale is, understandably, to ensure that the Constitution is not to be altered through unilateral acts of either any of the two national houses or the governments of the States or Provinces.

In Ethiopia, the House of the Federation is granted the authority to interpret

18- See Art. 42 of South African Constitution

19- See Art. 104 of the FDRE Constitution

the Constitution, with a consultative or supplementary role of the Council for Constitutional Inquiry. The system is designed in such a way that constitutional disputes and other forms of misunderstandings that may arise between two or more States of the Federation, or among the several nations/nationalities or with respect to the constitutionally entrenched individual and collective rights of citizens and the like could receive not only the mere technical interpretation of the Constitutions but also the politically sensitive aspects of such issues that necessarily need understanding of the spirit and long term objectives of the constitutional system as a whole. The Nigerian Constitution has also required the majority vote i.e, two-third majority.[20] In the case of South Africa as well the Constitution obliges the bills amending the Constitution should be supported by overwhelming majority.[21]

20- Article 9 of the Nigerian Constitution

21- Art. 74 of the Constitution of South African clearly indicates this assertion:
1)-Section 1 and this subsection may be amended by a Bill passed by :
a)-the National Assembly, with a supporting vote of at least 75 per cent of its members; and
b)-the National Council of Provinces, with a supporting vote of at least six provinces
2)-Chapter 2may be amended by a Bill passed by :
a)-the National Assembly, with a supporting vote of at least two thirds of its members; and
b)-the National Council of Provinces, with a supporting vote of at least six provinces.

4.5. PARTICIPATION IN TREATY MAKING PROCESS

International treaties relate to the basic interests and transactions of the countries in their relation with other countries, in some cases in their relations with international and regional organizations. In practice in some countries where the second levels of government play active role in sectors that necessarily involve frequent transactions with other countries, say trade and trans-boundary security matters, their participation in international treaty making processes have become unavoidable. In fact the practice In Nigeria, which is relatively the oldest African Federation, is to involve the States in treaty making activities, on matters that fall within the concurrent or exclusive jurisdiction of the States, so that the outcome of the relationship to be so established will not be contrary or detrimental to the interests of the States. According to Article 12 of the Nigerian Constitution the federations can entered into treaty with any country after the treaty in case has enacted into law by National Assembly where the Senate has a say. The Senate still plays its part at the different stages of the treaty making process as a guardian of the interests of the States of the Federation. Similarly, the National Council of Provinces of south Africa does play its constitutionally defined role in the treaty making activities of the national

government to the extent that the subject matters involved are relevant to the Provinces in a way that require certain protective participation of the Council. In any case, the trend of current political developments indicates greater recognition and accommodation of ethnic, cultural and regional diversities in most African and Arab countries. National Council of Provinces jointly with National Assembly approves the international agreement as defined under Art. 231(2) of the South African Constitution. Sooner or later, it seems unavoidable that second houses play a role in the international relations of the countries with a view to reflecting and protecting the several local interests of the countries concerned.

4.6. Consultative role, Oversight and Control

There can be no democratic system of government without transparency and accountability. The primary responsibility in this field falls squarely on the Shoulders of parliament. Through its core oversight function, parliament holds the government to account on behalf of the people, ensuring that government policy and action are both efficient and commensurate with the needs of the public. Parliamentary oversight is also crucial in checking excesses on the part of the government.

ASSECAA member countries have also a means to check the government accountable and transparent. As component of parliament second houses play a tremendous role controlling the government and its action because the delegated people's sovereignty lies with them. The control or oversight takes different forms, including monitoring, supervisions, debates, questions, interpellations, reports. Bahrain's Shura Council has the right to hear the ministers' report as a body making of the National Assembly[22] Every member of the Shura Council may direct to the ministers written questions of a specific subject or topic in enquiry of the matters falling within their competencies, and to enquire about a matter unknown by such member, or to verify the occurrence of an incident that such member has become aware of. The government may, by itself or on the occasion of a question directed to one of its ministers, request the discussion of a certain subject concerning the general policy of the state to obtain the opinion of the council thereon or to give data in regard thereto. Bahrain's National Assembly has even power to call vote of confidence in Prime Minister.[23]Citizen's grievance such as petition shall be submitted to the National Assembly. Then National Assembly shall set up, among its annual standing committees,

22- See Art. 68 of the Bahrain's Constitution
23- Ibid, see Art. 69

a special committee to deal with petitions and complaints submitted to the Assembly by citizens. The committee shall seek explanation thereon from the competent authorities and shall inform the person concerned of the result. A member of the National Assembly shall not interfere with the work of either the Judicial or the Executive Power. [24]

Burundi's Senate may discuss about the government's action and policy. Senators ask oral or written questions to the government members to get some information about their activity. A weekly session shall be dedicated in priority to senators' questions and to the government's answers. The Government shall provide the Senate with all the explanations requested about its management and its actions. The two chambers meet to receive a message from the President of the Republic, impeach the President of the Republic in case of high treason by a resolution taken by two-thirds of the members of the National Assembly and of the Senate and Evaluate, every six months, the implementation of the program of the government.

In Gabon, Parliament votes on laws, consents to taxes and controls the action of the executive power. The Prime Minister, after deliberation of the Council of Ministers, engages the responsibility of Government before the National Assembly, by posing the question of confidence, either on a declaration of general policy, or on the vote of a text of law. The National Assembly puts to issue the responsibility of the Government by the passing of a motion of censure. Such a motion can only be receivable if it is signed by at least one-quarter of the members of the National Assembly.

The government in Morocco is shall be answerable to the King and the Parliament. After the appointment of the Cabinet members by the King, the Prime Minister shall appear before each one of the two Houses, to submit the programme to be carried out. The Prime Minister may engage the responsibility of the Government before the House of Representatives through a vote of confidence regarding a statement on a general policy or a proposal requesting the approval thereof. Confidence shall be withdrawn and a bill rejected only by an absolute majority vote of the Members of the House of Representatives. The House of Representative may put into question the pursuance of the Government's responsibilities by adopting a censure motion. Such a motion shall be acceptable only if signed by at least one -fourth of the members of the House. The censure motion shall be approved by the House of Repre-

24- Id, Art. 75

sentatives only by an absolute majority vote of its members. Voting shall take place three clear days only after the motion has been introduced. The vote for censure shall entail the resignation of the Government in a body. The House of Counsellors may vote warning or censure motions against the Government. The warning motion must be signed by at least one third of the members of the House of Counsellors. It shall be voted by the absolute majority of the members of the House. Voting shall take place three clear days after the motion has been introduced. The text of the warning shall be sent forthwith by the President of the House of Counsellors to the Prime Minister, who shall, within six days, present before the House of Counsellors, the Government's position concerning the reasons which prompted the warning. The government›s statement shall be followed by a debate without a vote. The censure motion shall not be introduced unless it is signed by at least one third of the members of the House of Counsellors. It shall be approved only after a vote by a 2/3 majority of the members of the House.

Qatar's Advisory Council has the right to express wishes to the Government with respect to public matters. If the Government cannot comply with these wishes, it must explain to the Council the reasons thereof, and the Council may respond once on the Government's statement. Each member of the Advisory Council has the right to address questions to the Prime Minister and to one of the Ministers for the clarification of matters within their jurisdiction, and the enquirer only has the right to comment only once on the response. Every member of the Advisory Council has the right to interrogate the Ministers with respect to matters within their jurisdiction.

Shoura Assembly of Egypt is consulted in occasions of Proposals for the amendment of one or more articles of the Constitution, draft laws complementary to the Constitution, draft of the general plan for social and economic development. Moreover, they shall consult on peace treaties, alliances and all treaties affecting the territorial integrity of the State or those concerning sovereignty rights. Draft laws referred to the Assembly by the President of the Republic. Whatever matters referred to the Assembly by the President of the Republic relative to the general policy of the State or its policy regarding Arab or foreign affairs. The Assembly shall submit to the President of the Republic and the People's Assembly its opinion on such matters.[25]

25- See Art. 195 of The Arab Republic of Egypt

CHAPTER 5

THE DECISION MAKING PROCEDURES

5.1. Introduction

So far, we have seen what the Members Councils can and cannot do in the light of their respective national constitutional and institutional mechanisms. To re-emphasize the points discussed thus far, we may take note that the mandate of the Member Councils extends to variety of other functions including, among others, participation in treaty making and constitutional amendment and interpretation processes. This is, notwithstanding the prominent role most of the Member Councils play in the legislative processes.

This process is a form of the state activity intended on the creation (or revision) of the legal norms. The law-making process consists of several stages, i.e, it is a complex process. A state plays the leading role in it. It gives to the norms the force of law and supports their enforcement by force of its bodies. An adopted act is considered as an act of the state. In the act of legislative bodies the people's will is transferred into the will of the state. Being represented by these bodies, the people will exercise their sovereignty. Legislative body is mandated with power of passing all kinds legislations; of limiting or extending rights to citizens. Hence, it is very important to note that the more bills undergo very tight procedures the best to reflect the interests of the society. In democratic society where actual separation of power is exercised between/among governmental bodies, the way bills come into existence is also democratic and participatory.

In most ASSECCAA member countries, especially those which have bicameral parliament, both upper and lower house participate in legislative process. This will open the pave for where both chambers have a greater say in deciding the fate of certain draft legislation on the table which in turn enables the process of democratization and control over the activities of the government.

This Section of the Handbook will proceed to explore and explain the procedures which have to be followed by the Councils to duly exercise the powers and effectively discharge the responsibilities in their functional domains. Thus, the Chapter will shed some light on the procedures to be followed in the law making processes.

For the sake of brevity and focus, the Chapter will focus on the procedures applying in the legislative areas. First, we will consider the legislative process in the Shoora Councils focusing on Bahrain which seems to develop a system apparently of wider comparative relevance to understand the several Arab Member Councils based on the Shura tradition. In order to help users

of the Handbook refer to the original source, excerpts of the Arabic text of the relevant by law of the Shura Council, namely the internal regulatory instrument known as Al- La'ihatul Al Dakhiliyyah Li-Majlis Al- Shura are attached herewith under Appandix II. Hopefully, the procedures applicable in Bahrain may have wider comparative relevance to demonstrate the internal performance of the Member Councils in the Arab world. Second, the common practices of the Non- Shura Councils are elaborated focusing on the system regulating the functions of two African Senates including the Senate of Burundi and the Senate of Nigeria. Although not still fully exhaustive, the Chapter may provide users of the Handbook to obtain an overall picture of the procedures applicable for decision making by the Member Councils in the legislative domain.

5.2. The Procedures to Regulate Law Making Process in the Shoora Councils

By and large, the Member Councils are largely authorized to adopt their respective internal rules of procedures. In some cases, the constitutions carry certain general guidelines on condition that whatever internal codes of conduct or rules of procedure are initiated should still be consistent with these constitutionally defined basic requirements. This Section of the Handbook will briefly presents the procedure applicable in the Shura Council of Bahrain and Saudi Arabia and Morocco's House of Councilors.

To begin with the Constitution of Bahrain declares that legislative power shall be vested in the Amir and the National Assembly in accordance with the Constitution, and the Executive power shall be vested in the Amir, the Cabinet and the Ministers. Judicial decrees shall be passed in the name of the Amir, all in accordance with the provisions of the Constitution.[26]

A bill shall be considered to have been ratified and shall be promulgated by the Amir if a period of thirty days from the date of its submission by the National Assembly to the Amir has expired without the Amir returning it to the National Assembly for reconsideration. If, within the period prescribed in the preceding clause the Amir returns the bill, by a decree stating the grounds therefor, to the National Assembly for reconsideration, then it shall be decided whether such reconsideration should take place during the same or the next session. If the Assembly reconfirms the bill by a majority vote of its members, the Amir shall ratify and promulgate the bill within one month from the date of the reconfirmation. No law may be promulgated unless it has been passed by the National Assembly and ratified by the Amir.

These include the Chamber of Deputies (Majlis Al-Nuwab) and the Con-

26- see Art. 32 of the Constitution of Kingdom of Bahrain

sultative Council. Then a bill may be proposed by the Prime Minister to the Chamber of Deputies which is authorized to accept, reject or amend it. Whatever the decision of the Chamber of Deputies may be, the bill shall still be referred to the Majlis Al Shoora (the Consultative Council) for reconsideration.

On its part, the Consultative Council commences to consider the bill in accordance with its internal regulatory procedures. To begin with, the Council ascertains whether or not the bill is acceptable in principle by making sure, among others, that it is consistent with the relevant provisions of the Constitution. The duty to make this initial assessment is indicative of the extent to which the Council is responsible safeguard the supremacy of constitutional rule upon government actions.

Once the bill is found admissible for re-evaluation by the Consultative Council, it is presumed to be ready for deliberations by Members of the Council. But, prior to that, the Council has to secure opinions of stakeholders and that of the technical committees. For instance, the Council shall invite the several Ministries and other government agencies to submit their viewpoints on the bill or any part thereof fifteen days before the convening of the next session of the Council. Likewise the bill need to be sent to the technical committees for their well-considered opinions. The rationale for this requirement seems to be the need to make sure the final outputs of deliberations of the Councils could be blessed with the confidence and recognition of the wider society.

The procedures applying for regarding legislative activities of the member council may be classified into two, including those adopted by the Shoora Councils and other usually applicable in non-Shoora, more conventional councils. The procedures applying (adopted in Bahrain is found to be of wider comparative relevance to closely understand the functioning of the Shoora Counsels at large.

Once the bill is accepted as one admissible for re-considerations by the consultative council, members are entitled to give their respective opinions on the bill during the deliberations of the Council. In addition, members may submit their opinions in writing provided that such written submissions are made forty eight hours before the commencement of the session.

It is presumed that most of the necessary inputs are incorporated prior to and during the first deliberation of the Council, including communications by stakeholders and reports of the relevant technical communities. Thus, it is not permissible to discuss anything other than the proposed amendments, so far, during the second deliberations of the Council on the bill. It is presumed that the bill is exhaustively considered dur-

ing the first two deliberations, in most cases.

Yet, as a rule, the Council does not adapt a bill save four days after the duly adopted decision of the Council on the bill. Meanwhile, it is still allowed to adopt a decision only few hours after the conclusion of the deliberation during emergencies.

The Constitution of Kingdom of Saudi Arabia has established Shura Council. Article 68 reiterates that '' [t]he Majlis Al-Shoura shall be constituted. Its law shall determine the structure of its formation, the method by which it exercises its special powers and the selection of its members. The King shall have the right to dissolve the Majlis Al-Shoura and re-form it.'' This constitutional proviso has given the council wide variety of powers.

The king may call the council whenever he feels the presence of the council is necessary to pass certain decision in a joint meeting. Shoora Council's resolutions are referred to the King who directs it to the cabinet. If views of both Shura Council and Cabinet agree, the resolutions are issued after the king approval. If views of both councils vary the issue shall be returned back to Shura Council to decide whatever it deems appropriate, and send the new resolution to the king who takes the final decisions.

The council has also a say on international matters. According to Article 70 of the Constitution laws, treaties, international agreements and concessions shall be issued and modified by Royal Decrees. However, before the issuance and modification of the legislation and international agreements are conducted they must be reviewed by the council as one can understood from the reading of Article 18 of the Shura Council Law.

Moreover, Shura Council shall have the jurisdiction proposing a draft of a new law or an amendment of enacting law and study these within the council. Speaker shall submit the Council's resolution of new or amended law to the king.

Like most of parliaments Jordanian parliament is also bicameral; composing of the Senate and a Chamber of Deputies. This parliament or National Assembly has given legislative authority alongside the King by the Constitution. [27] A group of ten senators or more (likewise a group of ten deputies or more) may propose a bill. This proposal is referred to the competent committee of the House of Deputies which examines it. In the first instance, the Prime Minister submits a government bill to the House of Deputies. It must, nevertheless, be examined by both chambers. If either of the assemblies rejects the bill twice whilst the other house accepts it, amended or not, the Senate and the House of Deputies must hold a joint session presided over by

27- See Article 25 and 62 of the Constitution of Hashemite Kingdom of Jordan

the President of the Senate in order to debate the disputed clauses. Approval of the bill depends on a resolution being passed by a two thirds majority of those present from both chambers. If the bill is rejected, it cannot be presented a second time to Parliament during that same session. The laws are ratified by king.

Regarding financial bill, it is to the National Assembly at least one month prior to the applicable financial year. The National Assembly may reduce expenditure if it considers it to be in the public interest, but it may not increase it. Nevertheless, after the close of the budgetary debate, the Assembly may propose a bill for the creation of new expenditures.

During the debate, no proposal shall be accepted for the abrogation of an existing tax or the creation of neither a new one nor any increase or reduction of existing taxes which are prescribed by financial laws in force, and no proposal shall be accepted for amending expenditures or revenues fixed by contract.

In the event that the National Assembly is not sitting or has been dissolved, the Council of Ministers, with the King's approval, has the power to decree provisional legislative measures. These are subject to no deadlines and require no expenditure that cannot be postponed. Such laws have the strength of legislation, provided they are submitted to the National Assembly at the commencement of the next session and that the Assembly passes them, amended or not.

In Morocco, Legislation shall be voted on by Parliament. For a limited period of time, and for a defined purpose, the Government may be empowered by law to take, by decree, measures normally falling within the purview of the law. Decrees shall become effective immediately after the publication thereof; however, they shall be submitted, for ratification, to the Parliament within the time limits set by the empowering law. Should either House be dissolved, such a law shall become void.[28] The right to introduce laws shall equally be granted the Prime Minister and Members of Parliament. Draft bills shall be laid on the table of one of the two Houses.[29] The Government may declare the unsuitability of any proposal or amendment considered outside the purview of the legislative power. In case of disagreement, the Constitutional Council shall take action within a period of eight days upon request of one of the two Houses or the Government.[30] Draft bills and proposals shall be examined by the acting committees whose work shall continue during the interval between the sessions.[31]

The Board of each House shall prepare the agenda of the House. Priority shall

28- See Art. 45 of the Constitution of Kingdom of Morocco
29- Ibid Art. 52
30 - Art. 53
31- Art. 54

be given, in the order defined by the Government, to the discussion of draft bills it introduces and proposed laws accepted by it. One meeting per week shall, by priority, be reserved in each House for the questions of the members of the House and the Government's responses. The Government shall give a reply within twenty days after their receipt of the question.[32] Members of each House, as well as the Government, shall have the right to propose amendments. After the opening of the debates, the Government may object to the examination of any amendment not submitted, beforehand, to the acting committee concerned. If requested by the Government, the House in which the text under discussion was tabled shall take action by single vote on the whole or part of the bill under discussion. Only amendments proposed or accepted by the Government shall be considered.[33]

Any draft bill or proposed bill shall be considered successively by the two Houses of Parliament, with a view to adopting an identical text. The House in which the draft bill is tabled first shall examine the text of the draft bill presented by the Government or the text of the proposed bill on the agenda. A house in which a bill already adopted by the other House is tabled, shall deliberate on the draft referred to it. If a draft bill or a proposed bill cannot be adopted after two readings in each House, or if the Government proclaims that the matter is urgent after only one reading in each House, the Government may call a meeting of the joint committee with equal representation which shall propose a draft on the remaining provisions under discussion. The text drafted by the joint committee may be submitted by the Government to the Houses for adoption. No amendment shall be considered except with the approval of the Government. If the joint committee has not managed to adopt a joint bill or if the bill has not been adopted or if the bill has not been adopted by the two Houses, the Government may submit to the House of Representatives the draft bill or the proposed bill as modified, if necessary, in the light of amendments reached during parliamentary debates and taken up by the Government. The House of Representatives shall proclaim final adoption of the bill only with the absolute majority of its members. Provisions adopted by the House of Representatives in compliance with article 75, paragraph 2, shall be considered as endorsed by the absolute majority of the House. Organic laws shall be adopted and amended under the same conditions. However the draft bill or the proposed bill for an organic law shall not be submitted for discussion or voting at the First House in which it is to be tabled until the end of a ten -day period following its registration. Or-

32- Art. 56
33- Art. 57

ganic laws pertaining to the House of Counsellors shall be put to the vote under the same conditions in both Houses. Organic laws shall not be promulgated until the constitutional Council issues a decision on their conformity with the Constitution. [34]

5.3. THE PROCEDURES TO REGULATE LAW MAKING PROCESS IN THE NON-SHOORA COUNCILS

In the non-Shoora Councils, largely found in African countries, the member Councils do play significant role in the legislative sphere. The Burundi's Inama Nkenguzamateka's (Senate), Congo's Senate, DRC's Senate have certain matters in matters pertaining to law making procedures as one can see it from their respective Constitutions. In these countries and others the senates and equivalent councils will have a say in different stages of law making procedures. This section will try to elaborate some of the law making procedure of some of the ASSECAA member countries from the African continent.

As the body making the parliament, the Burundian Senate, has given the power of Legislation.[35] The senate rule of procedure has also specifies that the senate has a general legislative competence but the Constitution gives it particular prerogatives, regarding organic laws, electoral right, and local authorities (art. 187, al. 1) and 3). This authority ranges from initiation of the bills to the final stage of approval. The initiated bills are simultaneously brought to the Bureaus of the National Assembly and of the Senate. [36] Following the leg of this constitution provision, the senate procedure provides that the text is adopted in first reading by the National Assembly. It is then transmitted at once by the President of the National Assembly to the Senate, which examines it at the request of its Bureau or at least 1/3 of its members, within 7 days from the reception of the draft.

The Senate may either decide that there is no need to modify the bill, or adopt it after having amended it within 10 days at most from the request.

If the bill has been amended, the Senate shall transmit it to the National Assembly which decides, either by adopting, or rejecting all or part of the amendments adopted by the Senate. If the Senate has not ruled within 10 days or if it has given the National Assembly its decision not to amend the draft, the President of the National Assembly shall transmit it within 48 hours to the President of the Republic for promulgation. In case National Assembly adopts new amendment in the second reading the public or private bill shall

34 - Art. 58

35- See Art. 147 of the Burundian Constitution. It reads out that ''[t]he legislative power is exercised by the Parliament, which includes two chambers: the National Assembly and the Senate.''

36 -See Art. 188 of the Burundian Constitution.

be returned to the Senate which comes to a conclusion about the amendment. It may, within 5 days from the date of the referral, either decide to adopt the public or private bill without modification, or adopt it including the modifications.

Furthermore, the President of the National Assembly is required to refer bills already considered by the National Assembly for reconsideration by the Senate. However, presumable for the sake of ensuring speedy decision making process, the Senate has the responsibility to deliberate on the bill and make the decision either to amend or adopt the bill within ten days from the date of reception.

However, if there is a disagreement between the National Assembly and the Senate, the Presidents of the two chambers have to set up a mixed paritary commission which has to propose a text containing a properly reconciled positions.[37] The final text to be submitted by the commission will be reconsidered approved by the National Assembly and the Senate sitting separately.

The lengthy process in Burundi's legislative system seems to be justified by the need to exhaustively accommodate the diverse interests of people that are represented by the several political parties and social groups having seats in the National Assembly or the Senate of the Republic. Legislations that are adopted through all-inclusive deliberative processes are likely to win the wider confidence of people thereby according it a good prospect for smooth implementation of the laws of the country.

The Gabonese parliament which is composed the National Assembly and the Senate, has mandated legislative authority by the Constitution. [38] Bills can be initiated both by government and parliament. [39] These bills are deliberated in the council of Ministers upon the advice of Administrative Court and then filed with the Bureau of one of the two Chambers of Parliament.[40] The bill or the proposal of an organic law can be submitted to deliberation and to vote of Parliament only upon the expiration of a time period of fifteen days after its filing.

However, the bills of the Law of Finance and the bills of revision of the Constitution are filed with the National Assembly first. The bills concerning the local collectivities are filed with the Senate first.[41]

All proposals of law transmitted to the Government by the Parliament and which have been the object of an examination within a time period of sixty days are automatically [d'office] put to deliberation within the Parliament. Then the issue will be brought to the

37- See Art. 191 of the Burundian Constitution

38- Art. 35 of the Gabonese Republic
39 -Art 53 of the Gabonese Constitution
40- Ibid See Art. 54
41- Ibid Art. 54 para. 3

attention of Legislative Committee. The agenda of the Parliament consists of the discussion of bills of law filed by the Government and proposals of law accepted by it. The Government is informed of the working agenda of the Chambers and their commissions. The Prime Minister and the other members of the Government have the right of access and speech in the Chambers of the Parliament and their commissions. They are heard at their demand or that of the parliamentary authorities [instances]. [42]

Any bill or proposal of law is examined successively by the two Chambers of Parliament with the view of adopting an identical text. When, following a disagreement between the two Chambers, a bill or a proposal of law could not be adopted after one reading by each of the Chambers, the Prime Minister has the authority [faculte] to summon the meeting of a mixed commission of the two Chambers, charged with proposing a text about the provisions remaining in discussion.

If the mixed commission is unable to adopt a common text, the Government summons the National Assembly which will decide definitively. If the mixed commission adopts a common text, this latter becomes that of Parliament only if it is adopted separately by each of the Chambers.

Finally the final text will be brought to Constitutional Court for the check constitutionality of the bill under consideration.

The law making process in Nigeria involves a higher level of participation by the Senate of the Federations as we have discussed in the foregoing discussions. As is clear, from Articles 58 and 59 of the Constitution, law making is the responsibility of not only the House of Representatives but also the Senate.[43] As a matter of principle, the National Assembly shall exercise its legislative power with due participation of both the House of Representatives and the Senate and with the assent of the President. Accordingly, this power is exercised by bills passed by both the Senate and the House of Representatives and, except as otherwise provided by subsection (5) of this section, assented to by the President. [44] A bill may originate in either houses. Where a bill has been passed by the House in which it originated, it shall be sent to the other House, and it shall be presented to the President for assent when it has been passed by that other House and agreement has been reached between the two Houses on any amendment made on it.[45]

Where a bill is presented to the President for assent, he shall within thirty days thereof signify that he assents or that he withholds assent. [46] The assent of the president will be barred if s(he)

42- Ibid Art. 57

43- See Art. 4(1) cum 47 of Nigerian Constitution
44- Ibid Art. 58(1)
45- Ibid Art. 58(3)
46 - Ibid Art. 58(4)

again withholds his assent again and the bill is again passed by each House by two-thirds majority, the bill shall become law and the assent of the President shall not be required.[47]

This is more stringently required where the bill, under consideration, is related to financial matters. An appropriation bill and any other bill of proposed for the payment, issue or withdrawal of money from the consolidated revenue fund or any other public fund of the Federations cannot come to force without affirmative decisions of both Houses.[48] In the event where disagreement occurs, the president of the Senate should convene a meeting of the Joint Finance Committee (i.e. a joint committee of the two Houses consistently of equal number of persons from each) with the intentions to "…resolving the differences of the two Houses" regarding the bill. The Joint Finance Committee usually examines such bills and submits well informed recommendations. As such, the two Federal Houses are assisted to reach mutual acceptable decisions on contentious financial bill.

The point is that the Senate of Nigeria is constitutionally empowered to convene the Joint Finance Commission and lead the legislative process to more unifying directions. Given the deep diversity of the local politics and contentious nature of financial bills, the Senate is recognized as the most dependable organ that can guarantee peace and unity of the Federations.

Meanwhile, the mandate of the Member Councils is not only confined to legislative functions. As indicated in chapter four, the member Councils do have several responsibilities which may enable them to play a significant role in the future political development of the countries concerned. The procedures applying to regulate functions of the member councils also extend to the non-legislative responsibilities. Our focus on the law making process is due to the peculiar complexities which law making exercising involve in countries having bicameral houses or legislators. It is our hope that parliamentarians of the Member Councils may find the Handbook as a beginning towards comprehending the procedures in all domains of their respective responsibilities. In order to help the parliamentarians engage in further readings, the following chapter will provide some guidelines prepared for this very purpose.

According to South African Constitution any Bill may be introduced in the National Assembly.[49] The bill may be introduced by a Cabinet member or a Deputy Minister, or a member or committee of the National Assembly, may introduce a Bill in the Assembly. When the interest of National Council of Provinces is at stake the bills are introduced at National Council of Provinces and such bills are only introduced member

47- Ibid Art. 58(5)

48- Ibid see Art. 59

49- See Art. 73(1) of South African Constitution

or committee of the National Council of Provinces.[50] When the bills are submitted to pursuant to Art. 75 (Ordinary Bills not affecting provinces) and 76 (Ordinary Bills affecting provinces), the National Council of Provinces has the power of pass the bill, pass an amended bill and reject the bill.

As we have discussed in the foregoing chapter oversight and control are the very important tools to hold government accountable and transparent. If the government is accountable to its activities and conduct businesses in transparent manner, short and long term policies of such government are implemented without any fierce opposition from the general public. Moreover, it will increase the participation of general public in every activities of government such as development.

Citizens participate directly in checking the actions of the government directly by petitions or indirectly through their elected representatives. Second houses or upper houses play a pivotal role in over sighting the action of the governments. They are mandated by constitutions and their rules of procedures to call the government actionable for its activities.

Bahrain's Constitution mandates the National Assembly to supervise the action of government this is clearly indicated under Art 72:

Upon a request signed by at least five members, any subject of general interest may be put to the National Assembly for discussion with a view to securing clarification of the Government's policy and to exchange views thereon. All other members shall also have the right to participate in the discussion. Furthermore, the National Assembly shall at all times have the right to set up committees of inquiry or to depute one or more of its members to investigate any matter within the Assembly's competence as prescribed in the Constitution. Ministers and all Government officials must produce testimonials, documents and statements requested from them. The Assembly shall set up, among its annual standing committees, a special committee to deal with petitions and complaints submitted to the Assembly by citizens. The committee shall seek explanation thereon from the competent authorities and shall inform the person concerned of the result.

This constitutional principles have paved the way for shura council to highly supervise the action of government according to the rules stipulated for this purpose.Every member of the Shura Council may direct to the ministers written questions of a specific subject or topic in enquiry of the matters falling within their competencies, and to enquire about a matter unknown by such member, or to verify the occurrence of an incident that such member has become aware of. A question may

50- Ibid see Art. 73(3,4) and 76

not be signed by more than one member, and it may not be directed to more than one minister.

A question must be signed by the submitter thereof, written clearly and concisely as far as possible, subject-specific, concerning a matter of public significance and not concerning a special interest of the questioner or his relatives till the fourth degree or one of his principals. The question must be limited to the matters sought to be enquired about with no comment thereon, and shall not include inappropriate statements or statements that insult or compromise the dignity of persons or bodies or that adversely affect the highest interest of the country. The question shall not be concerning matters not falling within the competency of the minister to whom the same is being directed, and shall not include the request or demand of information or statistics not related to the subject of the question. If a question is not in compliance with these terms, the council bureau may eliminate the same upon on the referral of the chairman, while informing the questioning member of such action.

In Burundi as well the parliament votes the law and controls the action of the government. The National Assembly and the Senate may inform themselves about the activity of the Government by way of oral or written questions addressed to the members of the Government. During the session, one sitting [séance] per week is reserved by priority to the questions of the Deputies and of the Senators and to the answers of the Government. The Government is required to provide the National Assembly and the Senate all the explanations that are asked from it on its administration and on its acts. The National Assembly can present a motion of censure against the Government with a majority of two-thirds of its members. It can be dissolved by the Head of the State. A motion of defiance can be voted by a majority of two-thirds of the members of the National Assembly against a member of the Government who shows [accuse] a manifest failure in the administration of their ministerial department or who performs acts contrary to moral integrity or probity or who, by their conduct, disturbs the normal functioning of the Parliament. In this case, the member of the Government presents his resignation obligatorily. The National Assembly and the Senate have the right to constitute parliamentary commissions given the charge of inquiring on specific subjects of the governmental action.

Qatar's Shura Council has the right to forward proposals relative to public matters to the government. If the government is unable to comply with such aspirations, it must give its reasons to the Council. The Council may comment only once on the government's statement. Every member of the Shura

Council may address a point of clarification to the Prime Minister and to any of the ministers pertaining to matters within their jurisdiction; only the person who raised the question has the right to comment once on the response. They can also address an interpellation to ministers on matters within their jurisdiction. An interpellation may not be made unless it is agreed on by one-third of the members of the Council. Such an interpellation may not be discussed until at least ten days from the date of submission, save in urgent circumstances and provided the minister agrees to the reduction of this period. Every minister is responsible to the Shura Council for the performance of his ministry, and a minister may not be subjected to a vote of confidence save after an interpellation addressed to him. The vote of confidence shall be discussed if the minister so desires, or upon a request signed by fifteen members. The Council may not issue a resolution in this respect until at least ten days from the date of the submission of the request or expression of desire and a motion of no confidence in the minister shall be passed by a two-thirds majority of the members of the Council.

In Egypt every member of People's Assembly shall be entitled to address questions to the Prime Minister or to any of his deputies or the Ministers or their deputies concerning matters within their jurisdiction. The Prime Minister, his deputies, the Ministers and the persons they delegate on their behalf shall answer the questions put to them by members. The Minister shall be responsible for the general policy of the State before the People's Assembly. Each minister shall be responsible for the affairs of his ministry. The People's Assembly may decide to withdraw its confidence from any of the Prime Minister's deputies or from any of the Ministers or their deputies. A motion of no confidence should not be submitted except after an interpellation, and upon a motion proposed by one tenth the members of the Assembly. The Assembly shall not decide on such a motion until after at least three days from the date of its presentation. Withdrawal of confidence shall be pronounced by the majority of the members of the Assembly.

Omani Majlis Al Shura can put Ministers to interpellation. Upon a request signed by at least fifteen members of Majlis Al Shura, any of the Services Ministers may be subject to interpellation on matters related to them exceeding their competences in violation of the Law. The Majlis shall discuss the same and submit its findings in this regard to His Majesty the Sultan. Moreover, the Services Ministers shall provide an annual report to Majlis Al Shura on the implementation stages of the projects related to their Ministries. The Majlis may invite any of them to provide a statement on some matters within the competences of his Ministry, and to discuss the same with him.

CHAPTER – SIX

Conclusion

This final section provides some insights on the expected which users in particular Honorable members if the councils may drive from the handbook. It seems obvious that it is not a concluding chapter as is the case in other books or monographs.

The handbook has utilized an approach which is somehow unique. Contrary to what one would expect it has not been designed to provide information on functions and operational procedures of ASSECAA in own institutional capacity. In the same way the handbook is not focused on describing one particular upper house. In between this conventional styles it is attempted to provide an overview on all ASSECAA member councils. This requires to explore the common features of the Councils regarding different subject matter. Moreover it has also been found necessary to identify the more galaring areas of variations in the intuitional structure and functional modalities of the councils. The handbook has focused on what appear to be areas of similarities without overlooking the variations wherever available. The rationale for pursuing this approach is the need for maximizing the benefit of the handbook from the perspectives of its prospective users.

Thus, the objectives of the Handbook would be attained if the prospective users derive at least the following benefits after going through the preceding chapters.

One of such benefits is to raise the level of awareness of the parliamentarians about ASSECAA Members Councils in general. As is known the Member-Councils come from different countries having their respective socio-cultural traditions and political histories. The Councils need to know each other at least to the extent necessary to grasp and appreciate their common features and differences. Adequate knowledge of the similarities as well as the variations would have practical benefits for the parliamentarians.

It would help to build capacity, for the individual parliamentarians and their respective councils to cooperate to the maximum possible. Such cooperation may further contributes to enhance the institutional capacity of ASSECAA towards attaining its objectives. On the other hand mutual awareness would also help to overcome the usual inhibitions that come as a result of differences in cultural and historical terms. Such differences can be obstacles only where there is no natural know ledge, mutual awareness and mutual appreciation. This Handbook is expected to help parliamentarians to overcome obstacles of cooperation that could result from lack of such awareness.

The second benefit of this Handbook is creating opportunity to evoke interest for the parliamentarians to explore and know each other, at more advanced levels, and expand the scope of their future cooperation among the Member councils. As is known we live in era of globalization. The Member Councils come from two neighboring regions including Africa and the Arab would. The fact of neighborhood itself dictates the need for mutual support and cooperation. In addition to this natural factor globalization has created strong pressure towards greater openness and mutual accommodation. ASSECAA Member Councils have the potentiality to serve as building –locks to wares grater level of mutual acceptance and strategic partnership among African brevity and modest objectives may have significant benefits for the parliament Arians build greater degree of confidence and optimism concerning the features prospect Afro-Arab relationship.

More importantly, ASSECAA Member Councils represent peoples of their respective countries. This dimension would suggest that ASSECAA has a unique potentiality to accelerate the pace of progress towards people to people relationship among African and Arab countries. The Handbook may therefore have this additional benefit for the parliamentarians to promote the interest of peoples of their respective countries.

APPENDIX - I

CONSTITUIONS OF AFRICAN AND ARAB COUNTRIES REPRESENTED IN THE ASSOCIATION BY THE MEMBER COUNCILS

1.Constitution of The People's Democratic Republic of Algeria 1989 (Amended By the Constitutional Revision of 1996)

2.Constitution of The kingdom Of Bahrain 23rd Rabie Al-Thani, 1393, 26th May, 1973

3.Constitution of Botswana Arrangement of Sections , [Date of Commencement: 30th September, 1966]

4.Burundi's Constitution of 2005

5.Democratic Republic of The Congo's Constitution of 2005 With Amendments Through 2011

6.Congo's Constitution of 2001

7.The Arab Republic of Egypt Draft Constitution 2013 New Constitutional Document after Amending the Suspended 2012 Constitution

8.Constitution of the Federal Democratic Republic of Ethiopia FDRE 21st Day of August, 1995.

9.Constitution of The Gabonese Republic, Adopted on 26 March 1991, Amended on 22 April 1997

10.Constitution of Lesotho Adopted In 1993, Amended 1996, 1997, 1998, 2001

11.The Constitution of The Hashemite Kingdom of Jordan, January 8, 1952 (Up To Date As of 2012)

12.Madagascar's Constitution of 2010

13.Mauritania – Constitution,

{Adopted on: 12 July 1991} { ICL Document Status: 12 July 1991}

14.Morocco Constitution Adopted 13 September 1996

15.The Constitution of The Republic of Namibia, Amendment Act, 1998 And Act, 2010

16.Constitution of The Federal Republic of Nigeria 1999

17.Oman's Constitution of 1996 With Amendments Through 2011

18.The Permanent Constitution of The State of Qatar 0 / 2004

19.Saudi Arabia's Constitution of 1992 With Amendments Through 2005

20.Constitution of The Republic of South Africa, 1996

21.Constitution of The Republic of Sudan (Entered Into Force 1 July 1998)

22.The Constitution of The Kingdom of Swaziland Act, 2005

23.The Constitution of The Republic of Yemen, Amended Via A Public

Referendum – Held on February 20, 2001

24.Constitution of Zimbabwe 2013.

APPENDIX II

EXCERPTS OF BYLAWS OF THE MAJLIS AL-SHOORA OF BAHRAIN

Article (92)

Law proposals are submitted by council members to the chairman thereof, worded and specific as far as possible, and accompanied by an explanatory memorandum that includes determining the constitutional texts concerning the proposal and the basic principles relied on and the objectives achieved thereby. A law proposal may not be signed by more than five members.

Article (93)

The council chairman may inform the submitter of the proposal in written form of the proposal's violation of the constitution, its non-compliance to the required form, or the presence of provisions included by the articles thereof in valid laws, and may ask him to correct or withdraw the proposal.

If the member insists on his opinion, he shall submit a written memorandum to the council chairman, containing his point of view, within one week from the date of his being informed. The chairman shall present the matter to the council bureau.

The chairman shall inform the member in written form of what the bureau resolves in this regard. If the member

insists on his point of view within one week thereof, the chairman shall present the matter to the council.

Article (94)

The chairman shall refer the law proposal to the competent committee to give opinion in the idea thereof, and the committee may take the opinion of the submitter of the proposal prior to setting out its report in regard thereto. The committee shall prepare a report presented to the council including opinion to permit, reject or suspend consideration of the proposal. The committee may advise the council to reject the proposal for reasons concerning the subject in general. If the council agrees to consider the proposal, it shall refer the same to the government to set out a draft bill therefore.

For each law proposal submitted by one of the members and rejected by the council, it may not be submitted again by any member within the same commencement term.

Article (94 duplicate)

Every member who submits a law proposal, before the competent committee prepares its report in regard to his proposal referred thereto, may request the council chairman in written form to postpone the consideration of the proposal by the competent committee, once, and for a duration not exceeding thirty days of the submission date of adjournment, with his justifications therefore. The proposal submitter may request to proceed in the study of his proposal during such period, otherwise the request of adjournment submitted thereby is deemed a withdrawal of his proposal in accordance with article (15) hereof.

Article (95)

If one of the committees approves a law proposal in increase of expenses, or decrease of revenues, from what is stated in the public budget of the state, it shall refer the same to the committee of financial and economic affairs or its bureau to give opinion thereon. In such cases, the report of the original committee shall include the committee of financial and economic affairs of its bureau.

Article (96)

The chairman shall present to the council draft bills submitted by the government or proposed by the members and worded by the government in accordance with article (94) hereof in the first next session to the session at which the same has arrived, for consideration of the referral thereof to the competent committees, unless the government demands consideration of the proposal on urgent basis, or the council chairman believes that the same is urgent, whereby the chairman shall refer the same to the competent committee immediately, and the council is informed of this in the first next session with a distribution of the proposal on members, along with the agenda of such session.

Article (97)

If a proposal or a draft bill is submitted in connection to another proposal or draft bill presented to one of these committees, the chairman shall refer the same to such committee and inform the council of this in the first next session.

Article (98)

If multiple proposal or draft bills are submitted in regard to a single subject or topic, the earliest thereof is deemed the original and the others are deemed an amendment to the original.

Article (99)

If the competent committee enters amendments affecting the wording of a draft bill, it may, prior to forwarding its report to the council, refer the same, after the approval of the council chairman, to the committee of legislative and legal affairs or its bureau, to give its opinion in the wording of the draft bill and the coordination of its articles and provisions during the period determined by the council chairman. The committee shall refer in its report to the opinion of the committee of legislative and legal affairs or its bureau.

Article (100)

At the beginning of each ordinary commencement term, committees shall resume its investigation and study of draft bills available thereat by themselves automatically without the need of a new referral thereto.

On the occurrence of a ministerial change, the Prime Minister may request the Council Chairman to postpone the consideration of all or some of such proposals by the council's committees, for a duration not exceeding thirty days, so that the government would prepare for the discussion thereof, or take the resolved constitutional procedures for the amendment or return thereof.

In regard to reports of draft bills and the suggestions thereof, which the council has commenced the consideration thereof in a previous commencement term, the consideration of the same shall be resumed according to the status on which they were, unless the council resolves the return thereof to the committee based on the request of the government in accordance with the provisions of the previous article.

Article (101)

The Council Chairman shall inform the Prime Minister, within the fifteen days following the opening of the first commencement term of every legislative chapter, of the draft bills not adjudicated by the previous council.

If the government does not ask the Council Chairman to continue consideration of the said proposals initially submitted thereby, within two months of the notification date thereof to the Prime Minister, such proposals are deemed non-existing.

If the government demands the consideration thereof, the council shall refer the same to the competent committee, whereby the committee may deem the opinion concluded by the prior committee sufficient, should it had already prepared a report in regard thereto.

Article (102)

The council shall discuss draft bills during a single conversation. Nevertheless, a second conversation may be held in accordance with the provisions mentioned herein.

Article (103)

The discussion of draft bills shall begin by recitation of the original proposal, the report of the competent committee and the amendment included therein, unless the council deems it sufficient to distribute some or all of such documents with the recording thereof within the representation. The word at the time of discussion of the proposal shall be given to the committee resolver, then to the government and then to the members.

Conversation begins by the discussion of the general principles and bases of the proposal in total. Should the council disapprove the proposal in principle, such disapproval is considered a rejection of the same.

If the council approves the proposal in principle, it shall proceed further to the discussion of its articles one by one after reciting each article and the suggestions submitted in regard thereto. Opinion shall be taken on each article separately, and then opinion shall be taken on the proposal in entirety.

Article (104)

On consideration of a draft bill, every member may suggest amendment by addition to, deletion from or division of articles of in regard to the amendments presented. An amendment shall be submitted in written form at least forty eight hours prior to the session at which the articles included by such amendment are to be considered, so that the same is circulated among the members.

By approval of the council, an amendment submitted immediately prior to or during the session may be considered. The council's decision in consideration or rejection of the same is taken without discussion after hearing the proposal submitter, if there is a place therefore. If the council approves the consideration of such amendments, the same shall be presented by the chairman to the council, and he may resolve the investigation of the same immediately or the referral thereof to the competent committee for the investigation thereof and preparation of a report in regard thereto.

Article (105)

The competent committee shall be informed of the essential amendments submitted by the members prior to the determined session for the consideration of the proposal before the coun-

cil for the investigation thereof. The resolver shall explain the opinion of the committee thereabout during discussion in the session. The amendment proposal shall be determining and worded.

The government and the committee resolver may request the referral of the amendment, proposed during the council's session, to the committee. Such request shall be satisfied if the amendment proposal was essential and has not been previously considered.

Article (106)

If the council resolves to refer the proposed amendment to the committee, it shall submit its report at the time determined by the council. If such amendment has an effect on the remainder of the proposal's articles, the consideration thereof is adjourned till the committee completes its work in regard thereto. Otherwise, the council may continue the discussion of the remainder of the articles. The amendment are deemed as if not existing, and shall not be presented for the discussion thereof, should the submitters thereof waive the same without being adopted by one of the members.

Article (107)

After completion of the discussion of an article and the amendments submitted in regard thereto, opinion shall be firstly taken on amendments, whereby the chairman shall being with the amendments of widest extent and which are the farthest from the original text, then opinion is taken on the article in its entirety.

Article (108)

If the council resolves a sanction in one of the articles in amendment of an article previously approved thereby, it may revert back to the discussion of the same. The council may, upon the request of the government, the committee or one of the members, resolve the re-discussion of an article previously approved thereby should new reasons arise therefore, prior to the end of conversation regarding the proposal.

Article (109)

The council may, before taking final opinion of the draft bill, and if amendments were made on its texts during the session, refer the same to the competent committee to give its opinion in conjunction with the committee of legislative and legal affairs or its bureau for the wording and coordination of the provisions thereof. The committee to which the proposal is being referred shall submit its report on the time determined therefore by the council.

After that, no discussion may be held regarding the proposal except a discussion concerning the wording thereof.

Article (110)

A second conversation shall be held regarding some articles of the draft bill if a written request therefore is submitted to the council chairman by the govern-

ment, committee chairman, its resolver or at least five members, before the session or the time appointed for taking final opinion on the draft bill. It shall be explained within the request the article or the articles required to be re-discussed and amended along with the reasons and justifications for such amendment, and the reasons and justifications for the amendment and the proposed wording for the articles required to be amended.

Article (111)

In the second conversation, discussion may not be held in other than the proposed amendments which the request has been submitted in regard thereto pursuant to the previous article, then opinion is taken after discussion of the articles proposed to be amended according to their order within the proposal. After this, final opinion shall be taken on the proposal.

Article (112)

The provisions in regard to the amendments submitted in the first conversation shall apply to the amendments submitted during the second conversation.

Article (113)

The council may not approve or reject any subject before it is considered by the competent committee or committees in light of the reports submitted in regard thereto, subject to the special provisions therefore mentioned herein.

Article (114)

Final opinion may not be taken on a draft bill before the expiry of at least four days from the end of conversation in regard thereof. In urgent cases, and by approval of the council, final opinion may be taken on a proposal in the same session at which the same has been approved, after at least one hour of the end of the consideration thereof, unless the majority of council members decide otherwise.

Article (115)

Any person who has submitted a draft bill may return the same by a written request to the council chairman, even during the discussion thereof, wherein such case, the council shall not proceed in the consideration thereof unless if the same was signed by another member or members, or one of the members has requested to proceed in the consideration thereof by a written request submitted thereby to the council chairman.

Article (116)

The law proposals submitted by members whose membership has ceased shall be revoked accordingly, unless if signed by another member or members, except the law proposals which were previously approved by the council and which the council has already resolved the referral thereof to the government for the set out thereof as a draft bill, wherein such case, the wording thereof shall proceed and the same

shall be referred to the parliament.

Article (117)

The law proposals which are returned back by the submitters thereof or which are revoked pursuant to the provisions of the previous article may not be re-submitted during the same commencement term of the original submission thereof.

Article (118)

All law proposals are revoked by the end of the legislative section, except the law proposals which were previously approved by the council and which the council has already resolved the referral thereof to the government for setting out the wording thereof. The committees shall resume the consideration of law proposals referred thereto in a previous commencement term, unless the submitters thereof request, in written form, the withdraw thereof during thirty days from the beginning of the new commencement term, and whereby the chairman shall inform the committees of such request.

Article (119)

Should a proposal or a draft bill consist of one article, it shall be sufficient to recite and discuss the same, then to take final opinion thereon at once.

Article (120)

If the King appeals against a draft bill that has been approved by both the Shura Council and the Parliament and rejects the same in accordance with article (35) of the constitution, the chairman shall inform the council of the appeal against the draft bill and the reasons of such appeal. The council shall convene an urgent session for this purpose, and the Prime Minister or whoever is acting on his behalf may give a statement in this regard. The council shall refer such appeal and the data concerning the same in the same session along with the report of the parliament in this regard to the committee of legislative and legal affairs for the study of appealed against proposal, the principles and texts subject of the appeal, the constitutional and legislative reasons thereof as per the conditions and cases. The report of the committee of legislative and legal affairs shall be presented to the council for the consideration thereof on urgent basis. For the approval of the proposal, it must be approved by the majority of the members of both the Shura Council and the Parliament or the National Council.

Law Decrees

Article (121)

The council chairman shall refer law decrees that are issued in implementation of the provisions of article (38) of the constitution, and referred thereto by the Head of Parliament, to the competent committees to give their opinion thereon, and which shall have priority within the council and the committees over any other proceedings.

Article (122)

No suggestions may be submitted in amendment of the texts of any law decree that is issued in accordance with the provisions of article (38) of the constitution.

Article (123)

The procedures for the discussion of the draft bills provided hereunder shall apply in regard to law decrees. The council shall vote on such decrees in approval or rejection thereof.

The council's resolution in disproval of the law decree is passed by majority of the council members, and such resolution shall be published in the official newspaper.International Conventions and Agreements

Article (124)

The chairman shall inform the council of the conventions and agreements that are entered under decrees in accordance with the provision of the first paragraph of article (37) of the constitution, supported by the governmental statement accompanying the same. Such statement shall be recited in the first session with depositing the convention or agreement at the council secretariat.

After being informed of the parliament's ending of consideration of such convention or agreement, the council may give the comment it deems appropriate in such regard, without taking a decision in regard to such convention or agreement itself.

Article (125)

The chairman shall refer to the competent committee the conventions and agreements provided for under the second paragraph of article (37) of the constitution, for the investigation thereof and the submission of a report in regard thereof to the council, whereby the council may approve or reject the same, or postpone the consideration thereof, but it may not amend the texts thereof. In case of rejection or postponement, the Council Chairman shall inform the Prime Minister of a statement that includes the texts or provisions contained by the convention or agreement, and which have lead to the rejection or postponement thereof.

Political Affairs

Questions

Article (126)

Every member of the Shura Council may direct to the ministers written questions of a specific subject or topic in enquiry of the matters falling within their competencies, and to enquire about a matter unknown by such member, or to verify the occurrence of an incident that such member has become aware of. A question may not be signed by more than one member, and it may not be directed to more than one minister.

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