

IILHR MEMO  
ON  
CONSTITUTIONAL PROVISIONS RELATED TO THE AUTHORITIES OF  
UPPER AND LOWER LEGISLATIVE HOUSES

I. APPOINTMENT RESPONSIBILITIES OF BOTH HOUSES

A. Germany

1) President

According to the German constitution, only the lower house, paired with representatives elected by state legislatures under a system of proportional representation, may elect the president. The lower house, together with the elected delegates, forms the Federal Convention whose sole purpose is to elect the Federal President. The delegates elected by the state legislatures may or may not be legislators themselves, and are often esteemed local citizens.

V. THE FEDERAL PRESIDENT

Article 54 (Election)

- (1)The Federal President is elected, without debate, by the Federal Convention. Every German is eligible who is entitled to vote for the [lower house] and who has attained the age of forty.
- (2)The term of office of the Federal President is five years. Reelection for a consecutive term is permitted only once.
- (3)The Federal Convention consists of the members of the [**lower house**] and an equal number of members elected by the representative assemblies of the [German states] according to the rules of proportional representation.
- (4)The Federal Convention meets not later than thirty days before the expiration of the term of office of the Federal President or, In the case of premature termination, not later than thirty days after this date. It is convened by the President of the Bundestag.
- (5)After expiration of the legislative term the period specified in paragraph 4, first sentence, begins with the first meeting of the Bundestag.
- (6)The person receiving the votes of the majority of the members of the Federal Convention is elected. If such majority is not obtained by any candidate in two ballots, the candidate who receives the largest number of votes in a further ballot is elected.
- (7)Details will be regulated by a Federal law.

## 2) Impeachment

### Article 61 (Impeachment before the Federal Constitutional Court)

- (1) The [**lower house**] or the [**upper house**] may impeach the Federal President before the Federal Constitutional Court for willful violation of the Basic Law or any other Federal law. The motion for impeachment must be brought forward by at least one-fourth of the members of the [lower house] or one-fourth of the votes of the [upper house]. The decision to impeach requires a majority of two-thirds of the members of the [lower house] or of two-thirds of the votes of the [upper house]. The prosecution is conducted by a person commissioned by the impeaching body.
- (2) If the Federal Constitutional Court finds the Federal President guilty of a willful violation of the Basic Law or of another federal law it may declare him to have forfeited his office. After impeachment, it may issue an interim order preventing the Federal President from exercising the powers of his office.

## 3) Other appointments

Article 62 The Federal Government consists of the Federal Chancellor (Prime minister) and the Federal Ministers.

### Article 63 (Election and appointment of the Federal Chancellor (PM))

- (1) The Federal Chancellor (PM) is elected, without debate, by the [**lower house**] on the proposal of the Federal President.
- (2) The person obtaining the votes of the majority of the members of the Bundestag is elected. The persons elected must be appointed by the Federal President.
- (3) If the person proposed is not elected, the [lower house] may elect within fourteen days of the ballot a Federal Chancellor (PM) by more than one-half of its members.
- (4) If there is no election within this period, a new ballot shall take place without delay in which the person obtaining the largest number of votes is elected. If the person elected obtained the votes of the majority of the members of the [lower house] the Federal President must appoint him within Seven days of the election. If the person elected did not receive this majority, the Federal President must within seven days either appoint him or dissolve the [lower house].

### Article 64 (Appointment of Federal Ministers)

- (1) The Federal Ministers are appointed and dismissed by the Federal President upon the proposal of the Federal Chancellor.
- (2) The Federal Chancellor and the Federal Ministers, on assuming office, take before the [**lower house**] the oath provided in Article 56.

## **B. Egypt**

## C. Nigeria

## D. South Africa<sup>1</sup>

### STATE INSTITUTIONS SUPPORTING CONSTITUTIONAL DEMOCRACY

#### Establishment and governing principles

**181.** (1) The following state institutions strengthen constitutional democracy in the Republic:

- (a) The Public Protector.
- (b) The South African Human Rights Commission.

[Para. (b) amended by s. 4 of the [Constitution Second Amendment Act of 1998](#).]

- (c) The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.
- (d) The Commission for Gender Equality.
- (e) The Auditor-General.
- (f) The Electoral Commission.

(2) These institutions are independent, and subject only to the Constitution and the law, and they must be impartial and must exercise their powers and perform their functions without fear, favour or prejudice.

(3) Other organs of state, through legislative and other measures, must assist and protect these institutions to ensure the independence, impartiality, dignity and effectiveness of these institutions.

(4) No person or organ of state may interfere with the functioning of these institutions.

(5) These institutions are accountable to the National Assembly, and must report on their activities and the performance of their functions to the Assembly at least once a year.

#### *PUBLIC PROTECTOR*

#### Functions of Public Protector

**182.** (1) The Public Protector has the power, as regulated by national legislation—

- (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;
- (b) to report on that conduct; and
- (c) to take appropriate remedial action.

(2) The Public Protector has the additional powers and functions prescribed by national legislation.

(3) The Public Protector may not investigate court decisions.

(4) The Public Protector must be accessible to all persons and communities.

(5) Any report issued by the Public Protector must be open to the public unless exceptional circumstances, to be determined in terms of national legislation, require that a report be kept confidential.

#### Tenure

**183.** The Public Protector is appointed for a non-renewable period of seven years.

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<sup>1</sup> See [http://en.wikisource.org/wiki/Constitution\\_of\\_the\\_Republic\\_of\\_South\\_Africa/Chapter\\_9](http://en.wikisource.org/wiki/Constitution_of_the_Republic_of_South_Africa/Chapter_9) (last visited May 29, 2009).

*SOUTH AFRICAN HUMAN RIGHTS COMMISSION*

**Functions of South African Human Rights Commission**

- 184.** (1) The South African Human Rights Commission must—
- (a) promote respect for human rights and a culture of human rights;
  - (b) promote the protection, development and attainment of human rights; and
  - (c) monitor and assess the observance of human rights in the Republic.
- (2) The South African Human Rights Commission has the powers, as regulated by national legislation, necessary to perform its functions, including the power—
- (a) to investigate and to report on the observance of human rights;
  - (b) to take steps to secure appropriate redress where human rights have been violated;
  - (c) to carry out research; and
  - (d) to educate.
- (3) Each year, the South African Human Rights Commission must require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment.
- (4) The South African Human Rights Commission has the additional powers and functions prescribed by national legislation.

[S. 184 amended by s. 4 of the [Constitution Second Amendment Act of 1998](#).]

*COMMISSION FOR THE PROMOTION AND PROTECTION OF THE RIGHTS OF CULTURAL, RELIGIOUS AND LINGUISTIC COMMUNITIES*

**Functions of Commission**

- 185.** (1) The primary objects of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities are—
- (a) to promote respect for the rights of cultural, religious and linguistic communities;
  - (b) to promote and develop peace, friendship, humanity, tolerance and national unity among cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association; and
  - (c) to recommend the establishment or recognition, in accordance with national legislation, of a cultural or other council or councils for a community or communities in South Africa.
- (2) The Commission has the power, as regulated by national legislation, necessary to achieve its primary objects, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning the rights of cultural, religious and linguistic communities.
- (3) The Commission may report any matter which falls within its powers and functions to the South African Human Rights Commission for investigation.

[Sub-s. (3) amended by s. 4 of the [Constitution Second Amendment Act of 1998](#).]

- (4) The Commission has the additional powers and functions prescribed by national legislation.

**Composition of Commission**

- 186.** (1) The number of members of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities and their appointment and terms of office must be prescribed by national legislation.
- (2) The composition of the Commission must—

- (a) be broadly representative of the main cultural, religious and linguistic communities in South Africa; and
- (b) broadly reflect the gender composition of South Africa.

*COMMISSION FOR GENDER EQUALITY*

**Functions of Commission for Gender Equality**

- 187.** (1) The Commission for Gender Equality must promote respect for gender equality and the protection, development and attainment of gender equality.
- (2) The Commission for Gender Equality has the power, as regulated by national legislation, necessary to perform its functions, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality.
  - (3) The Commission for Gender Equality has the additional powers and functions prescribed by national legislation.

*AUDITOR-GENERAL*

**Functions of Auditor-General**

- 188.** (1) The Auditor-General must audit and report on the accounts, financial statements and financial management of—
- (a) all national and provincial state departments and administrations;
  - (b) all municipalities; and
  - (c) any other institution or accounting entity required by national or provincial legislation to be audited by the Auditor-General.
- (2) In addition to the duties prescribed in subsection (1), and subject to any legislation, the Auditor-General may audit and report on the accounts, financial statements and financial management of—
- (a) any institution funded from the National Revenue Fund or a Provincial Revenue Fund or by a municipality; or
  - (b) any institution that is authorised in terms of any law to receive money for a public purpose.
- (3) The Auditor-General must submit audit reports to any legislature that has a direct interest in the audit, and to any other authority prescribed by national legislation. All reports must be made public.
- (4) The Auditor-General has the additional powers and functions prescribed by national legislation.

**Tenure**

- 189.** The Auditor-General must be appointed for a fixed, non-renewable term of between five and ten years.

*ELECTORAL COMMISSION*

**Functions of Electoral Commission**

- 190.** (1) The Electoral Commission must—
- (a) manage elections of national, provincial and municipal legislative bodies in accordance with national legislation;
  - (b) ensure that those elections are free and fair; and
  - (c) declare the results of those elections within a period that must be prescribed by national legislation and that is as short as reasonably possible.

(2) The Electoral Commission has the additional powers and functions prescribed by national legislation.

### **Composition of Electoral Commission**

**191.** The Electoral Commission must be composed of at least three persons. The number of members and their terms of office must be prescribed by national legislation.

#### *INDEPENDENT AUTHORITY TO REGULATE BROADCASTING*

### **Broadcasting Authority**

**192.** National legislation must establish an independent authority to regulate broadcasting in the public interest, and to ensure fairness and a diversity of views broadly representing South African society.

#### *GENERAL PROVISIONS*

### **Appointments**

**193.** (1) The Public Protector and the members of any Commission established by this Chapter must be women or men who—

- (a) are South African citizens;
- (b) are fit and proper persons to hold the particular office; and
- (c) comply with any other requirements prescribed by national legislation.

(2) The need for a Commission established by this Chapter to reflect broadly the race and gender composition of South Africa must be considered when members are appointed.

(3) The Auditor-General must be a woman or a man who is a South African citizen and a fit and proper person to hold that office. Specialised knowledge of, or experience in, auditing, state finances and public administration must be given due regard in appointing the Auditor-General.

(4) The President, on the recommendation of the National Assembly, must appoint the Public Protector, the Auditor-General and the members of—

- (a) the South African Human Rights Commission;

[Para. (a) amended by s. 4 of the [Constitution Second Amendment Act of 1998](#).]

- (b) the Commission for Gender Equality; and
- (c) the Electoral Commission.

(5) The National Assembly must recommend persons—

- (a) nominated by a committee of the Assembly proportionally composed of members of all parties represented in the Assembly; and
- (b) approved by the Assembly by a resolution adopted with a supporting vote—
  - (i) of at least 60 per cent of the members of the Assembly, if the recommendation concerns the appointment of the Public Protector or the Auditor-General; or
  - (ii) of a majority of the members of the Assembly, if the recommendation concerns the appointment of a member of a Commission.

(6) The involvement of civil society in the recommendation process may be provided for as envisaged in [section 59 \(1\) \(a\)](#).

### **Removal from office**

**194.** (1) The Public Protector, the Auditor-General or a member of a Commission established by this Chapter may be removed from office only on—

- (a) the ground of misconduct, incapacity or incompetence;
- (b) a finding to that effect by a committee of the National Assembly; and

(c) the adoption by the Assembly of a resolution calling for that person's removal from office.

(2) A resolution of the National Assembly concerning the removal from office of—

(a) the Public Protector or the Auditor-General must be adopted with a supporting vote of at least two thirds of the members of the Assembly; or

(b) a member of a Commission must be adopted with a supporting vote of a majority of the members of the Assembly.

(3) The President—

(a) may suspend a person from office at any time after the start of the proceedings of a committee of the National Assembly for the removal of that person; and

(b) must remove a person from office upon adoption by the Assembly of the resolution calling for that person's removal.

## II. WHICH DRAFT LAWS SHOULD GO TO THE UPPER HOUSE?

### A. Germany

#### 1) Pensions for public employees

Article 74a+

(Concurrent legislative power of the Federation, remuneration and pensions of members of the public service)

(1) Concurrent legislative power shall further extend to the remuneration and pensions of members of the public service whose service and loyalty are governed by public law, insofar as the Federation does not have exclusive power to legislate pursuant to item 8 of Article 73.

(2) Federal statutes enacted pursuant to paragraph (1) of this Article shall require the consent of the [upper house].

(3) Federal statutes enacted pursuant to item 8 of Article 73 shall likewise require the consent of the Bundesrat, insofar as for the structure and assessment of remuneration and pensions, including the rating of posts, provision is made for criteria or minimum or maximum rates other than those provided for in federal statutes enacted pursuant to paragraph (1) of this Article.\*\*

\*\*Article 73 (Exclusive legislative power, catalogue)

8. the legal status of persons employed by the Federation and by Federal bodies-corporate under public law;

#### 2) Bills

Article 76 (Bills)

amended 15 November 1968 and 12 May 1969

- (1) Bills are introduced in the [lower house] by the Federal Government, by members of the [lower house] or by the [upper house].
- (2) Bills of the Federal Government shall be submitted first to the [upper house]. The [upper house] is entitled to state its position on these bills within six weeks.
- (3) Bills of the [upper house] shall be submitted to the [lower house] by the Federal Government within 3 months. In doing so the Federal Government shall state its own views.

### 3) Legislative procedure

Article 77 (Legislative procedure)  
(Amended 15 Nov 1968)

- (1) Federal laws are adopted by the [lower house]. Upon their adoption, they shall, without delay, be transmitted to the [upper house] by the President of the [lower house].
- (2) The [upper house] may, within three weeks of the receipt of the adopted bill, demand that a committee for joint consideration of bills, composed of members of the [lower house] and the [upper house], be convened. The composition and the procedure of this committee are regulated by rules of procedure adopted by the [lower house] and requiring the consent of the [upper house]. The members of the [upper house] on this committee are not bound by instructions. Where the consent of the [upper house] is required for a law, the demand for convening this committee may also be made by the [lower house] or the Federal Government. Should the committee propose any amendment to the adopted bill, the [lower house] must again vote on the bill.
- (3) Insofar as the consent of the [upper house] is not required for a law, the [upper house] may, if the proceedings under paragraph 2 are completed, enter a protest within two weeks against a law adopted by the [lower house]. This period begins, in the case of paragraph 2, last sentence, on the receipt of the bill as re-adopted by the [lower house], in all other cases on the receipt of a communication from the chairman of the committee provided for in paragraph (2) of this Article to the effect that the committee's proceedings have been concluded.
- (4) If the protest is adopted by a majority of the votes of the [upper house], it can be rejected by a decision of the majority of the members of the [lower house]. If the [upper house] adopted the protest by a majority of at least two-thirds of its votes, the rejection by the [lower house] requires a majority of two-thirds, including at least the majority of the members of the [lower house].

### 4) Federal Statutes

Article 78 (Passage of federal statutes)

A bill adopted by the Bundestag is deemed to have been passed if the Bundesrat consents to it, does not make a demand pursuant to Article 77, paragraph 2, does not



enter a protest within the time limited by Article 77 paragraph 3, or withdraws such protest, or if the protest is overridden by the Bundestag.

#### 5) Amendments to the constitution

Article 79 (Amendment of the Basic Law) As amended March 27, 1954.

- (1) The Basic law [constitution] can be amended only by a law which expressly amends or supplements the text thereof. With respect to international treaties the subject of which is a peace settlement, the preparation of a peace settlement or the abolition of an occupation regime, or which are designed to serve the defense of the Federal Republic, it shall be sufficient, for the purpose of a clarifying interpretation to the effect that the provisions of the Basic Law [constitution] are not contrary to the conclusion and entry into force of such treaties, to effect a supplementation of the Basic Law [constitution] confined to this clarifying interpretation.
- (2) Such a law requires the affirmative vote of two thirds of the members of the [lower house] and two-thirds of the votes of the [upper house].

### **B. Egypt**

#### Article 195

The Shoura Council (upper house) shall be consulted in the following:

- 1- Draft public plan for social and economic development.
- 2- Draft laws referred thereto by the President.
- 3- Matters related to public state policy or Arab or foreign affairs policy referred to the Council by the Preesident

The Council shall communicate its opinion in such matters to the President and the People's Assembly.<sup>2</sup>

#### Article 86

The People's Assembly (lower house) shall exercise the legislative power and approve the general policy of the state, the general plan of economic and social development and the general budget of the state. It shall exercise control over the work of the executive authority in the manner prescribed by the Constitution.<sup>3</sup>

### **C. Nigeria<sup>4</sup>**

Part II—Powers of the Federal Republic of Nigeria

- 4.—(1) The 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.
- (2) The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter include in

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<sup>2</sup> [http://www.shoura.gov.eg/shoura\\_en/const\\_pdf/eng\\_const.pdf](http://www.shoura.gov.eg/shoura_en/const_pdf/eng_const.pdf)

<sup>3</sup> [http://www.shoura.gov.eg/shoura\\_en/const\\_pdf/eng\\_const.pdf](http://www.shoura.gov.eg/shoura_en/const_pdf/eng_const.pdf)

<sup>4</sup> Nigerian Constitution, available at <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm> (last visited May 29, 2009).

the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution.

- (3) The power of the National Assembly to make laws for the peace, order and good government of the Federation with respect to any matter included in the Legislative List shall, save as otherwise provided in this Constitution, be to the exclusion of the House of Assembly o States.
- (4) In addition and without prejudice to the powers conferred by subsection (2) of this section, the National Assembly shall have power to make laws with respect to the following matters, that is to say—
  - (a) any matter in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto: and
  - (b) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.

**\*\*Second Schedule Part I: Legislative Powers (partial summary)**

- |                               |  |   |
|-------------------------------|--|---|
| 1. government accounts        | 19. Election to the offices of President and Vice President or Governor and Deputy Governor and any other Office to which a person may be elected under the Constitution | 28. Maritime laws   |
| 2. aviation                   | 20. Exports  | 29. Pensions  |
| 3. arms                       | 21. Evidence   | 30. Police  |
| 4. bankruptcy                 | 22. Criminal records   | 31. Prisons   |
| 5. banking                    | 23. Fisheries  | 32. Public debt   |
| 6. borrowing                  | 24. Immigration and emigration   | 33. communication   |
| 7. census                     | 25. Implementation of treaties   | 34. powers of the National Assembly and the privileges of its members |
| 8. roads                      | 26. Insurance  | 35. taxation  |
| 9. citizenship                | 27. labor  | 36. preservation of archeological sites                               |
| 10. monopolies                |  | 37. trade and commerce  |
| 11. capital                   |  | 38. interstate water supply   |
| 12. copyright                 |  |   |
| 13. currency                  |  |   |
| 14. customs                   |  |   |
| 15. defense                   |  |   |
| 16. diplomatic representation |  |   |
| 17. drugs                     |  |   |
| 18. securities                |  |   |

**\*\*Second Schedule Part II: Concurrent Legislative List (partial summary)**

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|------------------------------|---|
| 1. allocation of revenue     | 8. industrial, commercial or agricultural development     |
| 2. antiquities and monuments | 9. scientific and technological research                  |
| 3. archives                  | 10. statistics  |
| 4. collection of taxes       | 11. university, technological, and post-primary education |
| 5. election law              |   |
| 6. electric power            |   |
| 7. censorship of films       |   |

## D. South Africa<sup>5</sup>

### 44. National legislative authority

1. The national legislative authority as vested in Parliament
  - a. confers on the *National Assembly* (lower house) the power to amend the Constitution;
    - i. to pass legislation with regard to any matter, including a matter within a functional area listed in Schedule 4, but excluding, subject to subsection (2), a matter within a functional area listed in Schedule 5; and to assign any of its legislative powers, except the power to amend the Constitution, to any legislative body in another sphere of government; and
  - b. confers on the *National Council of Provinces* (upper house) the power to participate in amending the Constitution in accordance with section 74; to pass, in accordance with section 76, legislation with regard to any matter within a functional area listed in Schedule 4 and any other matter required by the Constitution to be passed in accordance with section 76; and
    - i. to consider, in accordance with section 75, any other legislation passed by the National Assembly.
2. Parliament may intervene, by passing legislation in accordance with section 76(1), with regard to a matter falling within a functional area listed in Schedule 5 (areas exclusive to the provinces), when it is necessary
  - a. to maintain national security;
  - b. to maintain economic unity;
  - c. to maintain essential national standards;
  - d. to establish minimum standards required for the rendering of services;or
  - e. to prevent unreasonable action taken by a province which is prejudicial to the interests of another province or to the country as a whole.

### 75. Ordinary Bills not affecting provinces

1. When the National Assembly passes a Bill other than a Bill to which the procedure set out in section 74 (those amending the constitution) or 76 applies, the Bill must be referred to the National Council of Provinces and dealt with in accordance with the following procedure:
  - a. The Council must
    - i. pass the Bill;
    - ii. pass the Bill subject to amendments proposed by it; or
    - iii. reject the Bill.
  - b. If the Council passes the Bill without proposing amendments, the Bill must be submitted to the President for assent.

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<sup>5</sup> South African Constitution, at <http://www.info.gov.za/documents/constitution/1996/96cons4.htm#43> (last visited May 29, 2009).

- c. If the Council rejects the Bill or passes it subject to amendments, the Assembly must reconsider the Bill, taking into account any amendment proposed by the Council, and may
    - i. pass the Bill again, either with or without amendments; or
    - ii. decide not to proceed with the Bill.
  - d. A Bill passed by the Assembly in terms of paragraph (c) must be submitted to the President for assent.
2. When the National Council of Provinces votes on a question in terms of this section, section 65 does not apply; instead
    - a. each delegate in a provincial delegation has one vote;
    - b. at least one third of the delegates must be present before a vote may be taken on the question; and
    - c. the question is decided by a majority of the votes cast, but if there is an equal number of votes on each side of the question, the delegate presiding must cast a deciding vote.

#### 76. Ordinary Bills affecting provinces

1. When the National Assembly passes a Bill referred to in subsection (3), (4) or (5), the Bill must be referred to the National Council of Provinces and dealt with in accordance with the following procedure:
  - a. The Council must
    - i. pass the Bill;
    - ii. pass an amended Bill; or
    - iii. reject the Bill.
  - b. If the Council passes the Bill without amendment, the Bill must be submitted to the President for assent.
  - c. If the Council passes an amended Bill, the amended Bill must be referred to the Assembly, and if the Assembly passes the amended Bill, it must be submitted to the President for assent.
  - d. If the Council rejects the Bill, or if the Assembly refuses to pass an amended Bill referred to it in terms of paragraph (c), the Bill and, where applicable, also the amended Bill, must be referred to the Mediation Committee, which may agree on
    - i. the Bill as passed by the Assembly;
    - ii. the amended Bill as passed by the Council; or
    - iii. another version of the Bill.
  - e. If the Mediation Committee is unable to agree within 30 days of the Bill's referral to it, the Bill lapses unless the Assembly again passes the Bill, but with a supporting vote of at least two thirds of its members.
  - f. If the Mediation Committee agrees on the Bill as passed by the Assembly, the Bill must be referred to the Council, and if the Council passes the Bill, the Bill must be submitted to the President for assent.
  - g. If the Mediation Committee agrees on the amended Bill as passed by the Council, the Bill must be referred to the Assembly, and if it is passed by the Assembly, it must be submitted to the President for assent.



- i. If a Bill referred to the Assembly in terms of paragraph (f) or (h) is not passed by the Assembly, the Bill lapses.

\*\*Schedule 4

**I. Schedule 4 - Functional areas of concurrent national and provincial legislative competence**

**Part A**

- Administration of indigenous forests
- Agriculture
- Airports other than international and national airports
- Animal control and diseases
- Casinos, racing, gambling and wagering, excluding lotteries and sports pools
- Consumer protection
- Cultural matters
- Disaster management
- Education at all levels, excluding tertiary education
- Environment
- Health services
- Housing
- Indigenous law and customary law, subject to Chapter 12 of the Constitution
- Industrial promotion
- Language policy and the regulation of official languages to the extent that the provisions of section 6 of the Constitution expressly confer upon the provincial legislatures legislative competence
- Media services directly controlled or provided by the provincial government, subject to section 192
- Nature conservation, excluding national parks, national botanical gardens and marine resources
- Police to the extent that the provisions of Chapter 11 of the Constitution confer upon the provincial legislatures legislative competence
- Pollution control
- Population development
- Property transfer fees
- Provincial public enterprises in respect of the functional areas in this Schedule and Schedule 5
- Public transport
- Public works only in respect of the needs of provincial government departments in the discharge of their responsibilities to administer functions specifically assigned to them in terms of the Constitution or any other law
- Regional planning and development
- Road traffic regulation
- Soil conservation
- Tourism
- Trade
- Traditional leadership, subject to Chapter 12 of the Constitution
- Urban and rural development
- Vehicle licensing
- Welfare services

## III. BUDGET AND OTHER ISSUES

### A. Germany

#### Article 110\* (Budget and budget law of the Federation)

- (1) All revenues and expenditures of the Federation shall be included in the budget; in respect of federal enterprises and special assets, allocations thereto or remittances there from need be included. The budget shall be balanced as regards revenue and expenditure.
- (2) The budget shall be laid down in a statute covering one year or several fiscal years separately before the beginning of the first of those fiscal years. Provision may be made for parts of the budget to apply to periods of different duration, but divided into fiscal years.
- (3) Bills within the meaning of the first sentence of paragraph (2) of this Article as well as bills to amend the budget statute and the budget be submitted simultaneously to the [upper house] and to the [lower house]; the [upper house] shall be entitled to state its position on such bills within weeks or, in the case of amending bills, within three weeks.
- (4) The budget statute may contain only such provisions as apply to revenues and expenditures of the Federation and to the period for which the budget statute is being enacted. The budget statute may stipulate these provisions shall cease to apply only upon the promulgation of the next budget statute or, in the event of an authorization pursuant to Article 115, at a later date.<sup>6</sup>

### B. Egypt

#### Article 86

The People's Assembly (lower house) shall exercise legislative power and approve the ... general budget of the state.<sup>7</sup>

#### Article 114

The lower house shall approve the general plan for economic and social development. The manner of the preparation of the plan and of its submission to the [lower house] shall be determined by law.

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<sup>6</sup> German Constitution Article 110, available at <http://www.constitution.org/cons/germany.txt> (last visited May 29, 2009).

<sup>7</sup> *Id.*

## Article 115

The draft public budget shall be submitted to the [lower house] at least three months before beginning the fiscal year. It shall not be considered in effect unless approved thereby.

The draft budget shall be put to vote on a chapter-by-chapter basis. The [lower house] may modify the expenditures contained in the draft budget, excluding those proposed to honour a specific liability of the State. Should the modification result in an increase in total expenditure, the [lower house] shall agree with the government on means to procure resources of revenues so as to re-balance between revenues and expenditures. The budget shall be issued by a law, which may include modification in any existing law to the extent necessary to realize such balance. ...

## Article 116

The approval of the [lower house] shall be considered necessary for the transfer of any funds from one title of the budget to another title, as well as for any expenditure not included in it or excess of its estimates, and this shall be issued by a law.

## Article 121

The Executive Authority shall not contract a loan or bind itself to a project entailing expenditure of funds from the State Treasury in the course of a subsequent period, except with the approval of the [lower house].

## C. Nigeria<sup>8</sup>

Section 81 provides as follows:

- (1) All revenues or other moneys raised or received by the Federation (not being revenues or other moneys payable under this Constitution or any Act of the National Assembly into any other public fund of the Federation established for a specific purpose) shall be paid into and form one Consolidated Revenue Fund of the Federation.
- (2) No moneys shall be withdrawn from the Consolidated Revenue Fund of the Federation except to meet expenditure that is charged upon the fund by this Constitution or where the issue of those moneys has been authorised by an Appropriation Act, Supplementary Appropriation Act or an Act passed in pursuance of Section 81 of this Constitution.

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<sup>8</sup> Nigerian Constitution, available at <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm> (last visited May 29, 2009).



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- (3) No moneys shall be withdrawn from any public fund of the Federation, other than the Consolidated Revenue Fund of the Federation, unless the issue of those moneys has been authorised by an Act of the National Assembly.
- (4) No moneys shall be withdrawn from the Consolidated Revenue Fund or any other public fund of the Federation, except in the manner prescribed by the National Assembly.
  - 1. (1) The President shall cause to be prepared and laid before each House of the National Assembly at any time in each financial year estimates of the revenues and expenditure of the Federation for the next following financial year.