

# Federal Upper Houses and NDC Proposals re the New Federal Council

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Yemen

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# Upper Houses

- + Both unitary and federal systems can have upper houses in their legislatures.
- + Origins go back to old ideas of “estates” (lords, clergy, commoners). Lower house “popular” and upper house often favoured class or property. Upper house terms of office usually longer
- + Upper houses can be weak or very strong. Stronger houses more typical of presidential/congressional regimes. In parliamentary regimes, lower house is “confidence” chamber.
- + Key differences amongst upper houses relate to selection, composition, powers and role. Now review federal experience

# Federal upper houses: selection

- + Direct election by simple plurality (Arg, Braz, Mex 75% of seats, USA) or by PR (Aust, Nig, Mex 25%)
- + Indirect election by state legislatures (Austria, Eth, Ind, Malaysia 37% of seats, Pak, Russia 50%, S.Af 60%, Spain USA until 1912)
- + Appointment ex officio by state governments (Germany, Russia 50% of seats, S.Afr.40%)
- + Appointment by federal government (Canada, Malaysia 63%)
- + Methods left to states (Eth, Switz)
- + Other (Belgium) direct election 60%, indirect election (community councils) 30%, co-option 10%

# Federal upper houses: composition

- + Equal state representation (Arg, Aust, Braz, Malaysia 37% of seats, Mex 75%, Nigeria and Pak 88%, Russia, S. Af, USA)
- + Equal “regional” representation (Canada)
- + Weighted state voting (Germany-4 categories; Switz 2 categories, India 31:1, Austria 12:3,)
- + Additional or special representation for others including aboriginals (Eth, India, Malaysia, Pak)
- + Other: Belgium (40 directly elected, 21 linguistic, 10 coopted), Spain (80% directly elected at sub-state level; 20% indirectly elected by state parliaments)

# Federal upper houses: powers

- + Absolute veto on all legislation with mediation (Arg, Braz, Mex, Switz, USA). Canada legally but not in practice.
- + Absolute veto on legislation affecting state administrative functions (Germany, S.Afr.) or cultural matters (Belg)
- + Suspensive veto (time limited: Malaysia, S. Afr.-normal leg, Spain; override by lower house: Austria, Germany, Belg on some matters)
- + Deadlock resolved by joint sitting (India) or by double dissolution then joint sitting (Australia)
- + Money bills: no veto (Pak) or brief suspensive (Ind, Pak)

# Federal upper houses: role

- + Primarily legislative (Most federations, but extent of role varies)
- + Combined legislative and intergovernmental role (Germany, S. Africa)
- + Constitutional interpretation and inter-state disputes (Ethiopia)

# Observations I: Importance of Parties

- + While federal upper houses are often called “regional” houses, those that are directly elected rarely function in terms of regional interests but tend to reflect political party interests.
- + Indirectly elected upper houses may provide more of a link with state legislatures, but here again, party interests are strong.
- + Even the German model of direct representation of state governments is driven heavily by party politics.
- + Of course, many political parties—in lower and upper houses—may be regionally based.

# Observations 2: Form of Government

- + The strongest upper houses tend to exist in Presidential/Congressional regimes, e.g. the US Senate has more powers than the House of Representatives
- + Parliamentary regimes are based on the government having the “confidence” of the lower house, i.e. a majority, and it can be destabilizing to have a strong upper house that may have a different majority. Thus upper houses in such regimes are often weak.
- + Germany’s integrated federalism brings intergovernmental relations into parliament, but other countries with integrated federalism conduct intergovernmental relations elsewhere.

# Observation 3: Minorities

- + Some federations have special representation for minorities in the upper house. This is one way to give them voice or protection.
- + Other ways include constitutional protection of minority rights (including language and religion), special representation in the lower house, provisions for representative courts, armed forces, police and civil service.

# Observation 4: Democracy

- + Upper houses can strongly favour regional over popular representation, e.g. a vote for a Senator in Wyoming counts as much as 65 votes in California.
- + Majority rule may be frustrated by upper house members representing a small minority, e.g. Brazil
- + On the other hand, giving the smaller states extra weight in the upper house may recognize the “federal compact” and rebalance a federation away from simple majority rule.
- + Having different electoral regimes in the two houses can provides two expressions of the public will (Australia).

## Observation 5: Are Upper Houses Necessary or Useful?

- + Upper houses are often viewed as a basic element of federal design, but not necessarily (Venezuela), or they can be very weak (Canada, Belgium).
- + They can constrain simple majority rule, but also frustrate it. Their powers in this regard can be limited.
- + They can provide a forum for intergovernmental decision-making. This may be part of integrated federalism.
- + They can provide special representation to minorities.
- + They can provide useful, detail legislative review (especially if they are less powerful)

# Belgian Alternative to Upper House

- + “Bell ringing” which deems an issue of vital interest to a cultural community.
- + Such an issue requires a majority of members of both cultural communities plus an overall majority.
- + Yemen is proposing equal representation for North and South in Parliament (lower house), at least during transitional period.

# NDC Conclusions on Federal Council

- Composition not more than half of members of Parliament, equal number from each region. To be elected by PR at level of each region for 4 years (as for Parliament).
- Approval of laws on “States authorities” including Judicial authority, council of ministers, elections, press and laws on fundamental human rights
- Confirmations of elections to the High Judicial Council, the Constitution Court and of appointments of chairs and members of independent bodies, Governor of Central Bank, General Commander of Armed Forces, deputies and assistants, Chair of the General Authority of the Civil Service, the Attorney General, ambassadors (but not chair of Central Audits and Controls Organization)
- ”Suggestions of constitutional amendments”
- In joint meeting with Parliament (forming The National Assembly), shall confirm general policy of the state, general development plan, agreement that impact on borders of the state or unification with another state, alliances, defence, settlement or peace, war and state of emergency, approval of general amnesty, election of the president (if Parliamentary system), approval of constitutional amendments before submission to referendum

# Observations on NDC Conclusions

- + The proposed Federal Council would have no particular role in relation to federal-regional matters. Might make more sense to make it the chamber which would protect vital interests of the South.
- + Its legislative role is minimal. Main role relates to senior appointments.
- + Its role with Parliament, especially on general policy of state, unclear and could result in lack of confidence in government. (Parliament is deemed to grant or withdraw confidence in government)
- + Joint sitting procedure is used in some federations (India, Australia) to break deadlocks, but not as a unified chamber.
- + Its election procedure is only marginally different from that for Parliament so it does not provide an alternative view of regional views.