

# The Role of Legislature in Budget in Accordance with the Iraqi Constitution and Budget Management Law

By

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## Abstract

This study aims at identifying the role of the Iraqi Legislature in the budget process as it is presented in the Constitution of Iraq (2005) and the Financial Management Law (2019). It presents the extent of the Legislature's participation in the process. It attempts at showing the powers granted to the Iraqi Legislature in the budget process formation and assessing the nature of such powers by comparing them to powers given to corresponding bodies in other regional and international countries. The study also discussed the shortcomings in the nature of the participation.

**Keywords:** budget, constitution, law, legislature, executive, approval, debates.

## 1 Introduction

It is known that a well-planned budget is of a great importance for a country to draw, define and implement its financial policies, and manage its resources in order to finance its social and economic projects and programs. Given this importance, constitutions give a great importance to such issue and define roles of the different competent authorities involved in the matter. Constitutions generally specify the role of the legislature as well as its relationship with the executive authority. However, the role and the powers of the legislature regarding the public budget are usually stated in both constitutions and budget system laws. Although such role and powers vary substantially from a country to another, the legislature should have effective supervision over the formulation and implementation of budget by the executive authority.

The norm is that the public budget approval goes through many stages, beginning with preparing the budget and estimating revenues and expenditures by the competent ministry and it should be approved by government, then referring it to the legislative authority to obtain its approval, and finally adopting it in its final form to be used in various government agencies. It can be said, therefore, that the budget, due to its great political and economic importance, places great responsibility on the legislature when discussing its provisions. The power of approving the budget by the legislature comes from the fact that it is the representatives of the people.

## 2 What is a Budget

It necessary to get a good grasp on the notion of the budget before discussing the role of the legislature in it, and therefore, here are some definitions of the term *budget*. A budget as defined by [Anthony and Herzlinger \(1975\)](#) is "a plan expressed in quantitative, usually monetary terms". [Horngren et al. \(2009\)](#) define it as "the quantitative expression of a proposed plan of action by management for a specified period and an aid to coordinating what needs to be done to implement that plan". [\(Kim et al., 2015\)](#), however, define the public budget as "a layout of the government's financial plans on how to spend its revenues". According to [Idris et al. \(2021\)](#), the budget is "a contract between citizens and state, showing how resources are

raised and allocated for the delivery of public services” and it is “a central policy document of government, showing how annual and multi-annual objectives will be prioritized and achieved”.

From the previous definitions, it can be said that public budgets show how and how much money is going to be made and spent over a certain period of time (usually a year) in the future. Budgeting, therefore, is important because it is supposed to provide a tool that helps governments in balancing the available resources and the expenses in order to promote the country development through achieving the desired economic goals of the budget period.

### **3 The Budget and the Legislature**

It is stated that parliaments recently become more involved in budget issues (Posner & Park, 2008). That involvement in the budget debates and supervision is critical in enhancing the democratic governance since elected members are expected to approve and formulate laws and initiatives that serve the best interest of the people to the most possible degree. In general, the main role of the legislature is to discuss the draft budget provided by the government and to authorize the implementation of that budget. However, the legislature can be involved in other activities in that regard. In general, the legislature intervenes in budget processes in three times during the fiscal year (Lienert, 2013b). These three times are when reviewing the draft budget for the purpose of authorizing and approving it, when approving a supplementary budget, and when reviewing the execution of the budget at the end of the year. Lienert (2013b) also mentions that the legislature in some countries may also get involved into pre-budget debates as well as midyear review of budget. The pre-budget debates usually take place in the middle of the preceding year to provide legislature with information in order to be familiar with the “fiscal policy intentions” of the executive and also to come up with suggestions in regard to the financial targets as well as the spending ceilings that the executive should take as guidelines when preparing the draft budget.

This study is interested in discussing the Iraqi Legislature’s involvement in the various mentioned stages. That includes the pre-budget debates, approving supplementary budgets, midyear review of the budget, reviewing the execution of the budget and all related matters. All that, of course, is tackled here in light of the budget’s legal framework in Iraq.

### **4 Legal Framework of Budget**

It is already mentioned that budgets are of great importance and that is why constitutions in many countries specify a whole chapter to discuss the budget issues. The Basic Law of Germany, for example, specifies a whole chapter to talk about financial issues. In that chapter, there are detailed articles which handle the role of the legislature in approving the budget, budgetary emergencies, interim budget management, decreasing and increasing the expenditures, borrowing of funds, etc.

Many countries, however, has what is known as “budget system laws” to handle the issues of the budget and the roles of the competent bodies in it which include the role of the legislature. A budget system law (BSL) is defined by Lienert (2013b) as the “formal expression of the rules that govern budgetary process and decision making of the legislature and executive.

### **5 The Legal Framework of Budget in Iraq**

Budget system laws, along with constitutions, local government finance laws and tax laws, usually constitute the legal framework for public finance systems. In Iraq, both the Constitution and the Financial Management Law form the legal framework of the budget. Let us, here, have a quick identification and historical presentation of them before discussing the legislature and its role in the budget process.

## **5.1 A quick history and identification**

### **5.1.1 Constitution 2005**

Before the American Occupation of Iraq in 2003, the country was governed by an interim constitution. However, during the transitional period, the Transitional Administrative Law (TAL) was signed by the Iraqi Governing Council later in 2004. A permanent constitution was supposed to be drafted which led to the emerge of a permanent constitution and that is the Constitution of Iraq (2005).

### **5.1.2 Financial Management Law 2019**

The Financial Management Law (2019) comes under what is known as the budget system law comes under what is known as the budget system law. It comes as a replacement of the Financial Management Law that has been issued during what is known as the *Transitional Period* in 2004.

## **5.2 Legislature in the Constitution of Iraq**

As it is known that the government system in Iraq has changed and, according to Article 1 in the Iraqi Constitution, the government system is now representative and that the state form is federal. This entails fundamental changes in various fields including changes in the form of the legislative power. The Constitution of Iraq assigns a chapter with 17 articles (Article 48 to Article 64) to talk about the legislative power. Article 48 of the Constitution states that the “legislative power” in Iraq is bicameral. It consists of two councils, namely the Council of Representatives as well as the Federation Council. The following fifteen articles (Article 49 to Article 64) are assigned to talk about the Council of Representatives as the first legislative constituent of the legislative power and the last article (Article 65) talks about The Federation Council as the other constituent. The members of the Council of Representatives are elected by the people where a member represent 100.000 Iraqi people. At least, a quarter of the members should be women. The Federation Council, on the other hand, should consist from representatives from regions and other governorates that are not included in a region. The formation of that Council is regulated by a law enacted by the Council of Representatives.

## **5.3 The budgetary powers of the Legislature in the Iraqi Constitution**

As it is mentioned earlier, the Constitution states that the legislative powers are represented by the Council of Representatives and the Federation Council. However, the active participation in the public budget issues, as per the Articles of the Constitution, seem to be limited to the Council of Representatives. It can be said, however, that the Constitution grants the Council of Representatives great powers in regard to approving as well as reviewing the execution of the public budget.

The Constitution of Iraq provide the broadlines of the Council of Representative in regard to the budget approval process. The budget approval usually refers to the process when the executive’s estimation of revenues and expenditures is submitted to the legislature to be discussed and voted for (Schick, 2002). In that regard, the Constitution in Article 62 Section 1 stated that the government should submit the draft general budget as well as the closing account to the Council of Representatives to be approved. Therefore, the Council of Representatives is responsible for approving the draft general budget. This, of course, includes the power to

reduce the amounts of public expenditures, as well as the right to transfer expenditures between the sections and chapters of the draft general budget. In addition, the Council of Representatives may only suggest to the Council of Ministers to increase such expenditures if such increase is deemed to be necessary. These powers are stated in Section 2 of the same article, Article 62. The submission of the final accounts also indicates the role of the Council of Representatives in the supervision process on the execution of the budget by the executive. The Constitution, however, provide no indication in regard to the participation of the Legislature in the pre-budget debates.

It is obvious from what is shown above is that the Constitution of Iraq grants the Council of Representatives great powers in the case of the public budget. The Council is responsible for approving the public budget, and has the right to make transfers between the chapters and sections of the budget and to reduce the total amounts. The Council also can suggest to the Council of Ministers an increase in the total expenditures when necessary. The restrictions regarding the increase in expenditures, however, is reasonable. [Schick \(2002\)](#) refers to the tension between the individual interest of the members and the collective interest of the institution legislatures face when it comes to the budget issue and hence the restrictions. Such tension can result in an unbalanced budget, hence the necessity of restrictions in regard to the increase in expenditures.

The Constitution does not assign a date for submitting the draft budget to the Council of Representatives by the government neither the period to that it takes to being approved. It is, however, worth mentioning that the Iraqi Constitution in Article 57 states that the legislative session of the Council of Representatives must continue if it comes to an end during the discussion of approving the budget. Such session must not end until the draft budget is approved.

#### ***5.4 The budgetary powers of the Legislature in the Financial Management Law***

As it is already noted, the Constitution of Iraq have stated the general role of the legislature in the budgetary issue which is mainly about its participation in approving the budget as well as the final accounts of the preceding year. This part is, however, about the legislature's participation in the budget process as it is stated in the Financial Management Law. The Law has a whole chapter, Chapter 3, that is named "Budget Approval". This chapter is mainly about the role of the Council of Representatives in approving the draft budget. Other chapters include specifics about, say, the role of the Council in the case of additional emergency spending and the in-year reports that should be delivered to the Council by the executive.

##### ***5.4.1 Legislature approving the budget***

The Financial Management Law provides us with more specifics in regard to the role of the Council of Representatives in approving the budget, the date for submitting the draft budget for approval, the period for scrutinizing the budget and the date for approving it. It also indicates the procedures to be followed in the case that the Council of Representatives does not approve the budget.

##### ***5.4.1.1 Submitting the budget to the Council of Representatives***

Constitutions and BSLs usually set up the date in which the executive submits the budget to the legislature. From a country to another, that date varies in term of the number of months from the end of the fiscal year. That usually takes place two to four months before the end of the fiscal years in order to give legislatures enough time to scrutinize the draft budgets. The Iraqi Financial Management Law states that the Council of Ministers must submit the draft budget to the Council of Representatives before mid-October of each fiscal year which starts



in January 1 and ends in December 31. That matches what the Constitution of Tunisia states in that regard by identifying October 15 as the final date for submitting the “draft finance law” to the Assembly of Representatives of the People. That also comes close to what comes in the 2001 Organic Budget Law (LOLF) where the first Tuesday of October is the due day of submitting the draft budget to the French Parliament. In Egypt, the submission of the draft budget to the House of Representatives is required to take place before three months at least from the beginning of the fiscal year. According to the UEA Constitution, the draft budget must be submitted to the Federal National Council before two months at least from the beginning of the fiscal year. Finally, it can be said that the period determined for the submission of the draft budget to the Council of Representatives does not fall from that and it comes within the range of the OECD recommendation that the draft budget should be submitted to the legislature by the executive three months at least before the beginning of the fiscal year (Talukdar, 2020).

#### ***5.4.1.2 Budget Approval and Reversionary Budgets***

Draft budgets are normally approved by the legislature before the beginning of the fiscal year which is required by the laws of several countries. This is also recommended in (Wehner, 2006). Constitutions and BSLs usually confirm that and it is the case in Iraq as it is in many other countries such as France, Germany, Egypt, Kuwait, etc. Besides, such constitutions and laws set some procedures in the case the legislature fails to approve the draft budget before the beginning of the new fiscal year. Usually, continuing with the budget of the previous fiscal year is the most common followed procedure. The Kuwaiti Constitution, for example, states that “the basis of the old Budget shall be adhered to” until the approval of the new budget. The Emirate Constitution states in Article 130 that the previous budget applies and monthly funds that equal one twelfth of the previous budget would be granted temporarily. The Constitution of Jordan authorized the same monthly appropriations to cover the expenditure. According to the Constitution of France Article 47, the executive can bring the provisions of the budget into force by ordinance. It is, needless to say, that constitutions usually provide the time for approving the draft budget some procedure to be followed in the case of failure of such approval.

The Financial Management Law of Iraq states that the budget should be approved before December 31. However, if the Council of Representatives fails to approve the budget by that date, a resolution must be issued by the Minister of Finance that should allow monthly funds that do not exceed one twelfth of the total expenditures of the previous fiscal year until the draft budget is approved. The Law states that the final financial statements of the previous year should be adopted to the basis for the budget of the new fiscal year. Despite the fact that the approval of the Council of Representatives is required for this matter, it does not seem plausible to just adopt the previous budget since some considerations should be made such as change in oil prices which the Iraqi budget heavily depends on. It is true that this gives more power to the Legislature since the previous budget is approved by it. However, the reversionary budget that is based on the new draft budget proposed by the government would be more realistic.

#### ***5.4.1.3 Legislature Scrutinizing Budget***

Draft budgets are scrutinized in the period between the executive’s submission of the draft budget to the legislatures and its approval which usually takes two to four months. As Lienert (2013a) indicated, it may take a longer period that may reach eight months in countries like the United States or Sweden which is considered to be an indication of the strong powers of the legislature in that matter as well as the complexity of the process of the budget approval.

It is mentioned earlier that the Parliament of France has seventy days to scrutinize the draft budget submitted by the government as per the Constitution. According to the Constitution of Germany, the Bundesrat has a period of six weeks to comment on the draft budget.

The Iraqi Council of Representatives has at least two months and a half from the submission of the budget till its approval.

#### **5.4.2 *The Financial Management Law and the pre-budget debates***

It is already indicated that legislatures can be involved in pre-budget debates that may take place in the middle of the preceding year. It is a matter of importance since those debates may result in providing suggestions about financial targets and spending ceilings. The importance also lies in familiarizing legislatures with the fiscal policy intentions of the executive. However, the Financial Management Law does not state any legislative powers in that regard.

Mostly, the legal frameworks of budget in Arab countries does not include provisions in this regard. However, in countries like France, for example, the Organic Budget Law states that a pre-budget report submitted to the parliament before the end of June each year (Moretti & Kraan, 2018).

The limitation of the participation of the Council of Representatives in the pre-budget debates forms a setback in its role of oversight on the budget process. Therefore, the Council should participate effectively in such debate to guarantee a more balanced and effective budget.

#### **5.4.3 *The Financial Management Law and the after-approval activities***

The role of the legislature should not end with approving the budget law (Decullier et al., 2005). It should go beyond that to monitoring the performance of the executive and being provided with reports of the budget execution. Such powers are also granted to the legislature by constitutions. The Basic Law of Germany Article 114 states that the final account of the preceding fiscal year including the revenues and expenditures as well as the debts and assets from the competent ministry should be submitted to the Bundestag and the Bundesrat. An annual report should also be submitted to the Bundestag and the Bundesrat by the Federal Court of Audit. The French Parliament have the power to monitor the execution of the budget with the assistance of the Cour des Comptes (Court of Audit). The legislature in Egypt is granted the same power where the competent body, the Central Auditing Organization, should submit the final account of the budget to the House of Representatives within six months from the end of the preceding fiscal year. Along with that, the House of Representatives receives the annual report and the observations on the final account of the audit body, the Central Auditing Organization. The National Assembly in Kuwait, by terms of the Constitution, receives the annual report of the preceding year's financial administration within four months from the end of that year. The Union National Assembly in UAE is granted the same powers where it receives the final accounts of the financial administration within four months from the end of the previous fiscal year.

In this regard, the Financial Management Law in Iraq states that the executive, represented by the Ministry of Finance, should submit budget execution reports every four months to the Council of Representatives. The Council also receives an annual report that is prepared by the Federal Department of Financial Supervision.

#### **5.4.4 *More legislative oversight***

In the case of emergency, the Financial Management Law affirms that the Council of Representative must approve the additional expenditures. It also states that the Minister of Finance to submit a quarterly report to the Council of Representatives on how the emergency reserve funds are used. Such intervention by the legislative authority in Iraq indicates its active participation in the budget process.

## 6 Conclusion

It is established that the involvement of legislatures in the budget process is crucial. The study indicated that the legislature in Iraq, represented by the Council of Representatives, is granted active participation in the budget process. Aside from the pre-budget debates, the Iraqi Constitution and the Financial Management Law ensure that the Council's participation goes beyond the budget approval to the supervision of its execution passing by interventions in the case of emergencies. From what is presented in the study, it is clearly obvious that the participation of the Council of Representatives in the budget approval. In the process of approving the budget, the Council have the power to transfer between the chapters of the budget, decrease the expenditures and suggest their increase, and more. Occasional reports and a final report are submitted to the council. The only setback is that the Council does not participate in the pre-budget debates. Despite this last setback, it can be confirmed that the Council has a great role in the budget process.

The study explains the various provisions in the legal framework of the budget that is related to the powers of the Iraqi Legislature in the process. Such powers are presented in the context of powers granted to legislatures in other Arab and foreign countries. Comments in regard to the powers of the Iraqi Legislature are presented in the context.

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