

## **The Budget: A Proposal on its Rite of Passage**

### **Background**

During the first Parliamentary Session held from May 8 – July 28, 2008, one of the main issues of contention between the National Council and the National Assembly was on the passing of the budget. The National Assembly contended that the budget, once passed by them did not require the same to be passed by the National Council. On the other hand, the National Council argued that the budget, also being a Bill, must follow the same rite of passage as any other Bill as provided in the Constitution. This proposal is aimed at finding a solution that is acceptable to both Houses since the deadlock has to be broken in the larger interests of the democratic process that is being initiated in the country.

### **The National Council Argument**

The National Council argued that the budget should be treated as a Bill and therefore follow the same rite of passage as any other Bill, with both Houses exercising equal powers based on the following Constitutional clauses:

*13.2 “Money Bills and financial Bills shall originate only in the National Assembly whereas any other legislative Bills may originate in either House”.*

*13.5 “Where a Bill has been introduced and passed by one House, it shall present the Bill to the other House within thirty days from the date of passing and that Bill may be passed during the next session of Parliament. In the case of Budget and Urgent Bills, they shall be passed in the same session of Parliament.*

*14.2 “There shall be a Consolidated Fund into which shall be deposited all public monies not allocated to specific purposes by law and from which expenditure of the State shall be met”.*

*14.3 “Public money shall not be drawn from the Consolidated Fund except through appropriation in accordance with the law”.*

These clauses clearly stipulate that money from the Consolidated Fund can be appropriated only in accordance with law and since all laws must be passed by Parliament, it may be concluded that the budget must be passed by both Houses. The only proviso is that the Budget, being a Money Bill, can originate in the National Assembly. Since the Constitution, apart from this proviso of the origin of Money Bills, does not recommend a different procedure for adoption of Money Bills, the Budget has to be adopted by both Houses as any other Bill.

### **The National Assembly Argument**

The National Assembly, meanwhile, argued that the annual budget was not the Bill cited in Article 13.5 above and therefore, the endorsement of the National Council was not required based on the following clauses:

*14.8 “The annual budget, with a report on the budget of the previous fiscal year, shall be presented to the National Assembly by the Finance Minister”.*

*14.9 “Where the budget has not been approved by the National Assembly before the beginning of the fiscal year, the preceding budget on current expenses shall be applied until the new one is sanctioned. Revenues shall be collected and disbursements made in accordance with the law in force at the end of the preceding year. However, if one or more parts of the new budget have been approved, they shall be put into effect”.*

These two clauses clearly stipulate that the annual budget will be presented only to the National Assembly which is the House empowered to approve it. There is no mention of the National Council and it may therefore be concluded that the Council has no role in the approval of the budget.

### **Cause of Impasse**

It is clear that the arguments of both the Houses are valid in so far as one particular group of clauses of the Constitution is read in isolation of the other, which is basically what the two Houses did. The impasse occurred because of the ambiguity in our understanding of the terms “Budget Bill” and “Annual Budget”. The Constitution does not offer any definition of the two terms and for all practical purposes, they are the same - the summary or plan of the intended revenues and expenditures of the government; the Budget Bill is what converts the Annual Budget into law but in terms of content they are essentially the same. Because of this ambiguity, the National Council treated the budget as the “Budget Bill” cited in Article 13 while the National Assembly treated it as the “Annual Budget” of Article 14. It stands to reason, therefore, that if the two Houses could come to a common understanding of how the two are defined, then the deadlock could be broken – what is defined as the Budget Bill may follow the procedure stipulated in Article 13 and the Annual Budget may be approved by the National Assembly in accordance with Article 14.

### **Role of National Council**

Before attempting to propose a solution on the budget issue, it may be pertinent to understand the reasons why the National Council was constituted and the role it is expected to play, at least in relation to the matter under discussion. History – the existence of a unicameral House in the pre-Constitution era - and the size of our country, its economy, its polity, suggests that we could have adopted a single house legislature. After all, to a layman, having a bicameral structure only seems to slow down the legislative process. However, this very structure serves to ensure that legislation is not passed in haste, but goes through the due process – through two Houses and two sessions of Parliament – thereby maintaining objectivity and reining in partisanship. Therefore, when the Constitution of the Kingdom of Bhutan adopts a bicameral structure and gives equal powers to both Houses in the lawmaking process, we may deduce that the Constitution sacrifices speed of law making to proper and effective check and balance i.e. it is more important to make good laws slowly than make bad laws quickly.

It may be also pertinent to point out that there are some characteristics of the National Council, that are unique to the Bhutanese legislature, which makes it able to apply such checks effectively and objectively viz:

1. The two houses of Parliament have equal powers in lawmaking, a character not found in many other Parliaments, particularly those based on the Westminster model. Most Upper Houses tend to have curtailed powers particularly in the enactment of laws related to money and budgets. In Bhutan, however, the two Houses are considered to be equal – a character that we share with democracies in the United States and France where the upper house has equal, if not greater, powers than the lower house.
2. The National Council is apolitical with its members being independent and not affiliated to any political party. This allows the Council to rule out political considerations in decision making thereby providing an objective and neutral check to the political National Assembly. This again is very unique feature of the Bhutanese Parliament since almost all other Parliaments tend to have political representation in both houses and this feature, we believe, is designed to limit the ill effects of over politicization.

3. A very important differentiation between the upper house of Bhutan and those of some other countries lies in the **democratic legitimacy** of its members. Generally, countries that have elected members to the Upper house are granted with a bigger role in the legislative functions of the government. The fact that the members of the National Council in Bhutan, besides the five eminent members, are elected directly by the people confers upon them the ultimate democratic legitimacy to review and initiate bills of national importance. The retention of the power to initiate and amend legislation by the National Council system in Bhutan could be a conscious and important departure from the systems practiced elsewhere and reflects the democratic legitimacy of an institution elected on a popular mandate by the people.

These unique characteristics of the National Council have been intentionally crafted by the creators of our Constitution who, having thoroughly analyzed a large number of other Constitutions and studied the pros and cons of various systems, placed great emphasis on the need to have strong and effective check and balance institutions. With the initiation of the democratic process and the adoption of the Constitution, it is now the duty of the Constitutional institutions – primarily, in this case, the Lhengye Zhungtshog, the Parliament and the Judiciary - to ensure that the spirit of the Constitution is understood and reinforced. Any attempt to curtail the check and balance forces provided for in the Constitution would be unwise for the long term stability of the country. We, as the first Parliamentarians of democratic Bhutan, must carry the onus of instituting a strong foundation for democracy and empowering our democratic institutions bearing in mind that we will not be fortunate to always enjoy the kind of leadership that we do today. History and generations of Bhutanese will not forgive us if we fail to strengthen and fortify our democratic institutions to withstand the political ambitions and excesses of crooked leaders, if, such leaders should emerge in the future.

In regard to the matter under discussion, the Constitution in Article 14.5 requires that, *“The Government shall exercise proper management of the monetary system and public finance. It shall ensure that the servicing of public debt will not place an undue burden on future generations”* and likewise, Article 14.6 requires that *“The Government shall ensure that the cost of recurrent expenditures is met from internal resources of the country”*. These clauses are intended to strengthen the economic position of the country and, by extension its very sovereignty, by limiting public debt and reducing dependence on external assistance. If the role of the National Council is removed from the budget approval process, it becomes difficult, if not impossible, to ensure compliance with such Constitutional requirements. It may also be mentioned that while there exist different procedures in different countries for enacting the Budget, we have seen no example where the budget is passed solely by one House – it is mandated to pass both Houses and differences arise only with regard to the extent of powers enjoyed by the two Houses and these are usually defined in the respective Constitutions.

Having said that, it must be borne in mind that the National Council is by and large a House of Review to provide effective checks to political excesses, if any, of the National Assembly and the Executive. The ruling government, represented by the Lhengye Zhungtshog and the National Assembly, is responsible for formulating policies and plans during their term in power and they carry the onus of governance for that term. To this end, the budget is an important tool that enables the government to translate its vision into reality. In order to successfully formulate and implement their plans and programs, the National Assembly must also be equipped with the appropriate powers to determine the optimal distribution of resources that best facilitates successful achievement of their goals. The National Council carries no such electoral responsibility and therefore, it is not fair for the Council to enjoy veto powers over the government’s plans and budgets.

### **Proposed Solution**

Therefore, while proposing a suitable procedure for the approval of the budget, it must be done within a framework that enables the government to exercise adequate controls over the country's limited financial resources but also allows the National Council to ensure that those limited resources are utilized in a way that best safeguards the long term interests of the country and the people. The following then is proposed as a mechanism that takes into consideration the concerns of the two Houses without compromising the principles of the Constitution.

The budget is broken up into the "Annual Budget" and the "Budget Bill" – this division actually is only a matter of convention since as mentioned earlier, the two are fundamentally the same. The Annual Budget is presented to and approved by the National Assembly alone while the Budget Bill follows the regular procedure recommended for any other Bill with the proviso that it originates in the National Assembly while the National Council plays its normal legislative role in the adoption of the Bill but does not comment on the Annual Budget.

The Annual Budget shall be defined as "the plan of intended revenues and expenditures of the government that reflects the priorities of the nation" and shall include the following:

1. Budget Policy – that deals with, among others, gross domestic product, fiscal deficit, external debt, balance of payments, foreign exchange reserves, inflation, etc.;
2. Overall Budget Estimates for the Year – Resources and Expenditure statement showing domestic revenue, grants, current and capital expenditure, resource gap, subsidies, borrowings, etc.;
3. Resource allocation framework;
4. Schedule of Expenditure Budget for Central Agencies, Dzongkhags and Gewogs – will contain only total expenditure broken down into capital and current;
5. Annual Financial Statements of Preceding Years – showing expenditure, resources, grants, debt, fiscal balance;
6. Revised budget estimates for preceding year including supplementary budgets;
7. Sector wise budget allocations for the Year – will contain detailed budget allocations broken down by activity;
8. Fiscal projections for succeeding years;
9. Reports on Trust Funds and State Owned Enterprises
10. Extraordinary heads of expenditure, if any.

Once the Annual Budget is approved by the National Assembly, in order to seek legal authorization for the withdrawal of funds required to finance the budgetary plan, the Annual Budget is converted into the Budget Bill which shall be defined as the "instrument that gives legal authority to the Government to appropriate expenditure from the Consolidated Fund and shall incorporate all the demands for grants as well as the expenditures charged on the Consolidated Fund". However, to prevent excessive interference from the National Council on the government's plans, the Budget Bill shall include only the following:

1. Budget Policy – that deals with, among others, gross domestic product, fiscal deficit, external debt, balance of payments, foreign exchange reserves, inflation, etc.;
2. Overall Budget Estimates for the Year – Resources and Expenditure statement showing domestic revenue, grants, current and capital expenditure, resource gap, subsidies, borrowings, etc.;
3. Resource allocation framework;

4. Schedule of Expenditure Budget for Central Agencies, Dzongkhags and Gewogs – will contain only total expenditure broken down into capital and current;
5. Reports on Trust Funds and State Owned Enterprises.
6. Extraordinary heads of expenditure, if any.

**Notes:**

Additional demands for expenditure, over the amounts specified in the Budget Bill, shall be requested by the Ministry of Finance through a Supplementary Budget Bill to be approved by Parliament.

The Annual Budget will be presented to the National Council, during the presentation of the Budget Bill, but the Council will exercise its legislative powers only on the Budget Bill.

**Next Steps**

This proposal, adopted by the National Council, is being submitted for the consideration and endorsement of the National Assembly, following which it may be submitted for Royal Assent. However, the same may also be returned to the Council with modifications/objections.