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The Legal System of Qatar Shura Council

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Introduction

The scholarly literature on the legislative branch of political systems often disregard the Middle East region and specifically the Gulf countries (Iran, Iraq and the GCC states). The traditional approach, based on the classical political science division of executive authority between presidential, semi-presidential and parliamentary systems, and the focus on the representation criteria makes any analysis of this complex region of a revolutionary republic (Iran), a reconstituted republic (Iraq since 2003), and a group of Arab monarchies with very distinct traditions and governance styles and political cultures, difficult. These countries' governance systems feature a variety legislative practices and different degrees of accountability and balance between the legislative and the executive branches of government, and certainly some work better others, but they do not as a rule enjoy consolidated or semi-consolidated democratic systems. The fact that the Gulf region has remained, broadly speaking, in the grey zone of the hybrid political regimes, without a clear definition of the attributions granted to the legislative/shura/consultative councils, has made this project necessary in order to explore and understand what is the actual role, function and performance of the elected and appointed chambers in this particular region and under what institutional structures do they function.

Scholars attribute to the legislative chambers three main roles within the political systems:

1. Linkage, representation, debate and legitimation;
2. Oversight and control, mainly on the executive branch;
3. Policy making.

Bearing in mind these commonly accepted attributes, the objective of this project is to use comparative elements to analyze the different case studies that compose the Gulf region in the three roles, and to address the following questions:

Which is the primary role of the councils within the political system in the Gulf region?
Which grade of autonomy the councils have regarding the executive branches of government?
How influential the councils can be in the policy making process?
What makes a legislative body efficient?
How representative and accountable they are?
What is the perception from the civil society about the role and performance of the councils?

To fill the gap in the literature, this 'Majlis in the Gulf' project gathered a distinguished group of scholars and specialists from within the region, equipped with the necessary methodological and comparative tools, to discuss and assess the role, function and performance of every one of the legislative/consultative chambers in the Gulf region. The project was initiated within the Gulf Studies Center at Qatar University, led by Dr Luciano Zaccara, and supported at its launch by the Konrad Adenauer Foundation (Gulf Office). The project has reached the publication phase of the wide-ranging research generated by

its participants with the support and collaboration of the al-Sabah Programme in International Relations, Regional Politics and Security at Durham University.

The results of the many debates and discussions, and the findings of our team will be captured and disseminated in a new monograph series – *The Shura Councils in the Persian Gulf Sub-region* – jointly published by the Qatar University Gulf Studies Center and the al-Sabah Programme at Durham University. These publications will be available free of charge through the two universities' websites for interested parties to consult and download.

The coordinators of this project and the publications series would like to thank the authors for their participation in this project, as well as the unyielding support of the Gulf Studies Center directors, Drs Mahjoob Zweiri and Abdullah Baabood, and the rest of the team, Arwa Kamal Eldin Gaf Abbas, Farah Anwar AlQawasmi, Ashleen Williams, Amjed Rasheed and Juline Beaujoun. Without them and their input this project and monograph series would not have been possible.

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Introduction: The Political System in the State of Qatar and the History of the Shura Council

Similar to other GCC countries, the State of Qatar is an Emirate (or hereditary monarchy) where the Ruler accesses to power by succeeding his father or brother, and the people has no role in the election or selection of the Ruler. The Executive is the sole source of rule and political decision-making in the State of Qatar. It shall be vested in the Emir who appoints the Prime Minister and forms the government by virtue of an Emiri decree.¹ Prime Minister and the ministers will then be collectively and individually accountable to the Emir for executing the government's public policy and performing their duties and authorities respectively.² The Emir, for his part, may dismiss the Prime Minister and the ministers. Also, many of the Council resolutions must be submitted to him for ratification and publication, such as ratifying the regulations and resolutions which are issued by the Council to execute the law, ensuring internal security, maintaining public order, approving of economic projects and means of execution, protecting national interests abroad, and governing international relations and foreign affairs.³

With respect to the Judiciary, which evolved from a Sharia judiciary to a regular judiciary and then to a judicial system unit supervised by the Supreme Judiciary Council, the Emir plays an important role whereby he appoints the president of the Supreme Judiciary Council. According to the Judiciary law, this Council provides its opinion regarding the appointment, promotion, transfer, secondment and retirement of judges. Such key decisions will be influenced by the president appointed by the Emir⁴. In addition to this, the Emir has the power to suspend any judge from service as per the Judiciary Law and by an Emiri decree, for reasons pertaining to the public interest.⁵

The Shura Council, for its part, has never constituted a parliament or a public authority that is equal to the Executive. It was rather established to assist the Emir in performing his powers through non-binding recommendations. In fact, before the 1960s, Qatar did not have an official assembly called the Shura Council. The first reference to the establishment of this Council was in the statement of Qatar Ruler in 1963,⁶ titled "Explanatory Statement on the Comprehensive Approach to the State Progress". The said statement was broadcast to the Qatari people on April 28, 1963 and published in the Official Gazette, issue (3) of the year 1963. The statement indicated that "among the priority reforms that have been considered from all aspects and will materialize in the near future, in line with our circumstances and context, is the establishment of a higher consultative council to represent the opinion leaders in the country and discuss main issues pertaining to the State public policy from all political, economic and social aspects. This Council will submit its recommendations about the enactment of laws and the implementation of

¹ Article 118 of the permanent constitution of the State of Qatar

² Article 123 of the permanent constitution of the State of Qatar

³ Hassan Al-Sayed, Qatar's Constitutional and Legal System, Chapter 2 of Policy-Making In A Transformative State, the case of Qatar, Edited by M. Evren Tok, Lolwah Alkhater and Leslie A. Pal, Palgrave Macmillan, 2016pp; 39 – 40. *See also* the Emir Decision No. 29 for the year 1996, regarding decisions of the Council of Ministers which are submitted to the Prince for approval and issuance. Published in the Official Gazette No. 12 for the year 1996.

⁴ Hassan Al-Sayed, *ibid*, p. 40.

⁵ Clause (5) of Article 63 of the Law No. 10 for the year 2003 regarding the issuance of the judiciary authority Law 6 (1972 – 1960) Sheikh Ahmad Ben Ali Ben Abdullah Al Thani, Governor of Qatar (1960-1972)

measures that will help advance the country. The council will also discuss the citizens' petitions and grievances and advise on draft laws before their publication".⁷

This explanatory statement, issued by the Ruler of Qatar and broadcast to the Qatari people, was the result of protestations and claims, including a petition submitted by 107 Qatari students, workers and merchants in March 1963, calling on the government to make reforms. The most important issues raised by the petition were the following: "Eliminating social stratification and fighting chaos, neglect and tyranny", ensuring that "justice equally applies to all categories of people without exception, including the royal family", calling on the "government to officially acknowledge labor unions and the right to adhere to international unions", stressing the right of "people's ad-hoc committees to declare or suspend a strike", "electing a municipal council representing all categories of people", "engaging the people by informing them of projects undertaken by the government", "appointing a committee formed by loyal citizens to supervise the export of oil", and calling on the "government to disclose its annual budget to the public"⁸.

This petition submitted by Qatari students, workers and merchants in 1963 was the result of numerous factors including the unfair distribution of oil revenues, as oil exports since 1949 have returned great privileges to the royal family and distinguished it from other social classes. On the other side, the majority of the Qatari people had turned to jobs in the oil company, which gave birth to a category of laborers with claims and rights. In addition to this, the education in Qatar and scholarships abroad gave rise to some youth associations, such the Talia Club, Al Jazira Social Club and Al Adwaa Band, which performed cultural and theatrical activities addressing local and Arab issues. Furthermore, the presence of an English advisor and non-Arabs in the police and general security commandment was a key factor that stirred up protests and claims. All these events took place at a time where pan-Arabism, nationalism and the resistance to colonization were in full force across the Arab world, which influenced the Arab youth including Qatari. These protests and claims were met with arrest several of suspension and the said claim were met with arrest and suspension of several scholarships; the explanatory statement was issued as a response to the issues raised in the petition.⁹

In February 1964, British political analyst met with the ruler and vice ruler in Al Rayyan Palace to discuss local affairs. The ruler provided an overview of the proposal to establish a consultative council and the concept of having a senate composed of royal family members and another council composed of members from outside the royal family. This meeting was shortly followed by a draft proposal to establish the senate, prepared by the-then legal advisor to the government, Dr. Hassan Kamel.¹⁰

⁷ See the Ministry of Justice, Department of Legal Affairs, Qatar Laws (1085-1961), volume 6, p. 1085-3261

⁸ The petition was formed of 35 articles, and the articles mentioned in this research are the following: Article 33, Article 5, Article 11, Article 34, Article 15, Article 16, Article 18, Article 32. Regarding the petition and its articles, *see*: Kawari Succession, Knowing Eye, The Ignorance triangle: oil, development and democracy, Knowledge Forum, Beirut, 2011, Page 159 and following: also *see*

Anita L. P. Burdett, Records of Qatar (1961 – 1965), 1963, Archive Editions, 1997, P: 55-56, *see* Hassan Al-Sayed, Factors Influencing the Effectiveness of Qatari Shura's Councils within the Relevant Governing Legislation, International Law Review, vol: 2018, 2,3 P:197.

⁹ Ali Khalifa Al Kawari, Development of loss or loss of development chances", Arab Unit Studies Center, Beirut, 1996, p: 165, *see* also Hassan Alsayed, Factors Influencing the Effectiveness of Qatari Shura's Councils within the Relevant Governing Legislation, *ibid*, p: 202.

¹⁰ The meeting was on February 27, 1964. *See* Records of Qatar, *ibid*, volume 1964, page 13

In May 1964, the law was issued¹¹ and the Shura Council of Qatar was established, presided by the Ruler (the Speaker) and having among its members the vice Ruler (as vice Speaker) and 15 members of the Royal Family. According to the law, the council had key functions to perform, such as addressing public policy issues referred by the government to the council for discussion, submitting recommendations regarding the enactment of laws, and considering petitions and grievances submitted by the citizens to the Ruler or vice Ruler. A decree was also issued to nominate the 15 council members from the royal family. The Shura Council would convene every Monday of the first three weeks of every month, in the White Palace on Al Rayyan Street. Since its establishment in May 1964, it held numerous meetings described as “unfruitful”;¹² and therefore, it ceased to convene by the end of the same year. Any observer of the legislations issued at that time would notice that up until the end of 1964, the legislations issued were in the form of “laws”, whereas starting from the year 1965 and through 1970, the legislations issued were in the form of “decree-laws”, which are legal instruments issued when the Shura Council does not convene.¹³

In 1970, the Provisional Basic Law (the Constitution of 1970) was issued, confirming the establishment of the Shura Council to assist the Ruler and the Council of Ministers in performing their duties. The Constitution stipulated the functions of the Shura Council which were the same as the functions stipulated in the 1964 incorporation law, with one additional financial function namely to discuss the budget of the major public projects. The Constitution also previewed two types of members for the Shura Council: 20 elected members, ex-officio ministers, and several members appointed by the Ruler. A few weeks after the issuance of the 1970 Constitution, the law on the organization of general elections to the Shura Council in Qatar was issued, and a group of Qataris started organizing the run-up to the elections. However, the entire process was suspended and the 1970 Constitution provisions regarding the Shura Council were never applied.

After that, Sheikh Khalifa acceded to power in 1972 and he introduced substantial reforms to the Provisional Basic Law and called it the Amended Provisional Basic Law (1972). In this amended version, the provisions pertaining to the Shura Council were maintained, with changes solely affecting the elections process: It was decided that, for a short period of one year, the Shura council members will be elected through the same process outlined in the 1970 Constitution, then through direct, general secret ballot. Twenty members were appointed, mostly consisting of merchants and dignitaries. Contrary to the 1964 Council, the new structure did not include members from the royal family. An Emiri Decree was issued to call the Council to convene.¹⁴ However, after the decided period of one year, elections did not take place and the council mandate was extended until the present time. The Constitution was then amended to increase the number of the Shura Council members to 35,¹⁵ and to make it possible for the members to raise questions to the

¹¹ Decree No. 5 for the year 1964, published in the Official Gazette No. 4 for the year 1964

¹² See Article 26 of the Law No. 6 for the year 1964 regarding the establishment of the Shura Council.

¹³ Decree No. 81 for the year 1972 following a convocation for the meeting of the Shura Council.

¹⁴ See Article 41 of the amended temporary bylaws, the amendment was applied in 1996 by virtue of a decision issued by the Prince of Qatar under No. 34 for the year 1996, published in the Official Gazette in No. 13 for the year 1996

¹⁵ See Article 41 of the amended temporary bylaws, the amendment was applied in 1996 by virtue of a decision issued by the Prince of Qatar under No. 34 for the year 1996, published in the Official Gazette in No. 13 for the year 1996.

competent minister to inquire about any specific matter relating to the issues raised to the Council.¹⁶

In 1998, the-then Emir of the State of Qatar, Sheikh Hamad Bin Khalifa Al Thani pointed out at the opening of the Shura Council ordinary session that the time was ripe to develop a permanent constitution for Qatar to replace the provisional one of the year 1972. He stated that the main focus of this Constitution will be to have a parliament elected by direct, general ballot, so that the rule lies in the hand of the people. In 2003, a public referendum was held regarding the Permanent Constitution of the State of Qatar. The results showed that the majority of the eligible voters approved of this Constitution. In 2004, the Permanent Constitution of the State of Qatar was issued and entered into force in 2005. At this stage, all eyes were fixed on the Shura Council, which shall consist, according to Article 77, "of forty-five members thirty of whom shall be elected by direct, general secret ballot". However, Article 150 of the Constitution provided that "the provisions pertaining to the current [appointed] Shura Council shall remain in force until a new Council is elected", which echoes the provisions of the Provisional Basic Law (1972) stipulating the appointment of the Council members for the first year, then their election in subsequent years. As a result, elections have been constantly delayed, under the pretext that democracy should be phased in. Thirty years have passed by and the Provisional Basic Law was actually revoked; however, the provisions regarding the Shura Council in the Permanent Constitution of the State of Qatar (2004) were never practically enforced, and the Shura Council is still practicing its role as stipulated in the 1972 Constitution, with appointed members and limited functions.

In 2011, the former ruler of Qatar, Sheikh Hamad bin Khalifa, confirmed that the Shura Council elections will be held in the second half of 2013, but this did not happen. However, in the same year (2013), Sheikh Hamad handed power to his son Sheikh Tamim, who became the Emir of the State of Qatar. Sheikh Tamim recently announced at the opening of the 49th session of the Shura Council that October 2021 will witness the Shura Council elections¹⁷.

To convey a clear picture of the Shura Council and its efficiency, this study tackles its establishment, structure, internal regulations, and legislative and supervisory role.

1 The Shura Council Structure

The structure of the Shura Council varied according to the legislations governing its role. In the first law that governed its role in 1964, all the members were from the royal family. When the first constitution was issued in 1970, it provided that the Shura Council will be formed of two types of members - the elected members and the ex-officio members, i.e. ministers. Afterwards, the 1972 Constitution provided that members are appointed for a limited period of time, and afterwards the Council should move the elected member model. The Permanent Constitution, for its part, provided for two types of members: two-thirds elected and one-third appointed.

¹⁶ See Article 60 of the amended temporary bylaws, the amendment was applied in 1975 by virtue of a decision issued by the Prince of Qatar under No. 11 for the year 1975

¹⁷ State of Qatar, the Shura Council, the speech of His Highness the Emir at the opening of the forty-ninth session of the Shura Council on November 3, 2021

The Shura Council structure throughout these different timeframes is detailed below.

1.1 Shura Council Structure of 1964

The Law No. (6) of 1964 stipulated the establishment of the Shura Council to be presided by the Ruler (the Speaker) and to have among its members the vice ruler as vice Speaker and 15 members appointed by virtue of a decree from among the royal family¹⁸.

The decree No. (5) of 1964 set the number of the council members at 15 from the royal family. Through the names listed in the Decree, we see that it has established a sort of balance between the different branches of the Al Thani family tree, according to their political influence at that time. The majority of seats were assigned to the Al Kassem family branch, followed by the Al Ahmad family branch. The assignment of a generous number of seats to these branches results from the fact that their ancestors were highly influential at the time of the State incorporation; therefore, the representation of such branches in the Council will maintain stability within the same family and ensure its satisfaction with the Council decisions.¹⁹

It is to be noted that the Assembly did not include members from the dignitaries, merchants or workers, despite their earlier claims and protests. The-then legal advisor to the government, Dr. Hassan Kamel, announced the Ruler's approval of "establishing a consultative council composed of royal family members" and "similar to the House of Lords". He hoped "the time would come where a parliament will be formed in Qatar" but said "the Ruler and vice Ruler were not ready for it yet". Could it be that the Ruler and vice Ruler considered the membership of merchants and workers as gains achieved through the public protests of 1963 and therefore feared that such submission would yield more public participation from time to time? Limiting the membership to the royal family may also reflect the perception of the Ruler, vice Ruler or Al Thani family at that time, that they alone were concerned with the public affairs and political decision-making, excluding other Qatari families and tribes.

In all cases, that council was far from being effective or operational, and it only lasted for a few months, as it had not convened since 1965 and until the 1970 Constitution was issued.

1.2 Shura Council Structure according to the 1970 Constitution

Article (44) of the Provisional Basic Law (the 1970 Constitution) stipulated the following:

"The Council shall be composed as follows:

- 1) Twenty members are elected as indicated in these Internal Regulations.
- 2) Ministers

¹⁸ See Article 2 and 3 of the Law No. 6 for the year 1964, relevant to the establishment of the Shura Council

¹⁹ Hassan Alsayed, Factors Influencing the Effectiveness of Qatari Shura's Councils within the Relevant Governing Legislation, *ibid*, p: 201.

The Ruler may issue a decision to appoint no more than three members, if he deems necessary for the public interest.”

The foregoing article outlines three categories of members: first, the elected members; second, the ministers; and third, the members appointed by the Ruler.²⁰ These three categories are detailed below:

1.2.1 The elected members

The Constitution set the number of elected members at 20 and outlined their election process along 10 electoral constituencies. Electorates in each constituency votes for four members meaning the total candidates chosen by the public are 40. These are the winners at the first round of elections. The second round follows but does not involve the public. Alternatively, in each constituency, the Ruler chooses two of the four candidates who won in the first round. By doing so, he selects 20 of the 40 winning candidates to be council members. Article (47) of the 1970 Constitution set a criterion that the Ruler should consider during the selection process: “Members should be renowned opinion leaders in different fields in the country.”

The method used to select the members of the Shura Council does not rely on the public votes directly. On the contrary, the accession to membership depends on the Ruler's choice. This method may have a moral impact on the member and undermine his decisions or opposition to the government actions.

On the other hand, the 1970 Constitution and the law No. (9) of 1970 on the organization of general elections to the Shura Council identify the requirements that should be satisfied by the voter and the candidate running for the council membership. Article (1) of this law limited the right to vote to male citizens only, while this was not a requirement for candidates running for council membership. Furthermore, Article (12) of this law states that every individual whose original nationality is Qatari and fulfills other conditions as stipulated in the Constitution - such as to have completed 24 years of age and not be convicted of a crime involving a breach of honor- shall be entitled to stand as a candidate for elections of the Shura Council.

1.2.2 The Ministers

Article (44) of the 1970 Constitution stipulated that ministers shall be members of the Shura Council. According to Article (33) of the Constitution, the government is formed of 11 ministries. Therefore, the number of ministers will be equal to one-third the number of elected members. It is to be noted that an elected member of the Shura Council may be appointed as minister. In this case, he will be both an elected and ex-officio member. Ministers may only accede to the Shura Council membership as of the date of their appointment as ministers. The Constitution also stipulated that ministers should attend the council sessions whenever the agenda included items relevant to their ministries. This

²⁰ In Shura Council Structure according to the 1970 Constitution, *see* also Hassan Alsayed, Factors Influencing the Effectiveness of Qatari Shura's Councils within the Relevant Governing Legislation, *ibid*, pp: 203 - 205.

implies that ministers may only attend the sessions when the agenda includes items relevant to their ministries.

1.2.3 Members Appointed by the Ruler

The Constitution has made it possible for the Ruler to appoint three members at most, if this serves the public interest. The Explanatory Memo of the 1970 Constitution clarifies the reasons why the Ruler was granted the authority to appoint several members (three at most), by referring to the low number of the elected members. Such low number is of course proportionate to Qatar's population but does not allow the persons with the required qualifications to accede the Council. Therefore, the appointments aim to fill the shortage in the parliamentary committees, especially since qualified members might miss their chance of acceding to the Council if they were to be elected through general ballot.

The above shows the lack of public representation in the formation of the Shura Council according to the 1970 Constitution, as it granted the Emir, and not the people, the final say in selecting the elected members of the Shura Council. Furthermore, the Council included ex-officio members from the Executive (ministers). Additionally, the Constitution granted the Emir the power to appoint a number of members.

Despite the lack of public representation, these provisions remained a dead letter, as the text of the 1970 Constitution relating to the Shura Council was not put into effect, and the Law on the organization of general elections to the Shura Council was not implemented.

1.3 Shura Council Structure according to the Amended Temporary Basic Law of 1972

The 1970 Constitution was only several months old when Qatar gained its independence. This was followed by a coup d'état led by the Deputy Emir against the Emir, after which he took the reins of the State. These events required the amendment of the 1970 Constitution, and the amendments affected the provisions pertaining to the Shura Council structure. Contrary to the 1970 Constitution, the amended text previewed one type of members: those appointed by the Emir. Moreover, the Preamble to the Amended Provisional Basic Law of 1972 stipulated that the "principle of appointment, which shall be applied to the first Shura Council in the country, is a principle generally applicable in all countries with recent constitutional systems, especially during the first phase of the application of these systems."

When justifying the principle of appointment in lieu of elections, the-then Emir of the State of Qatar, Sheikh Khalifa bin Hamad Al Thani replied to a question asked by a journalist, stating: "Here, we do not wish to take a leap into the unknown and adapt the experiences of others. We believe in an evolutionary path. The main concept in democracy is participation, and that is what we are attempting to achieve. We select members of the Shura Council among persons of competence and expertise, as they do represent the people's interests and opinions. The Council holds discussions that inform us on how to rectify our way of running the State affairs, while striving to answer the people's demands. After a certain period time, the Shura Council is bound to accumulate parliamentary

expertise and traditions. Only by doing so, by practicing the game of democracy, will we be able to move forward to an advanced level of this experience"²¹

It was decided, under the Amended Provisional Basic Law (1973), that the Shura Council is formed by members appointed for one year only, after which public elections were to be held by direct secret ballot. However, before the said year ended, an Emiri decision was issued in 1973, extending the Council mandate for three additional years, meaning that appointment remained the method used to select the Council members.²² In 1975, with the hopes and ambitions aimed towards a law for electing Shura Council members, another decision was issued, extending the Shura Council mandate for six additional years²³. As more successive extensions followed, 30 years have passed by and the Council is still formed of appointed members. Moreover, the Amended Provisional Basic Law was revoked and Article (46) thereof, stipulating the election of members, was not put into effect and never saw the light of day.

The main change made to the Shura Council structure was by amending Article (41) of the Amended Provisional Basic Law to increase the number of its members from 20 in 1972 to 30 members in 1975 appointed by Emiri decision. In 1996, one year after HH Sheikh Hamad bin Khalifa Al Thani took the reins, Article (2) was amended, increasing the number to 35 members appointed by Emiri decision.

It is noteworthy that there is no specific duration- e.g. 3 or 4 years - for the membership of the Shura Council. The duration is rather left to the discretion of the Emir. The Shura Council has undergone, from 1972 to our present day, only five core changes to its structure: in 1975, 10 new members were added (percentage change around 33%); in 1990, 18 members were replaced and the mandate of the remaining members was extended (percentage change over 60%); in 1995, seven members were replaced and the mandate of the remaining members was extended (percentage change around 30%); in 1996 five new members were added, raising the total number of Council members to 35 (percentage change around 15%); and in 2004, 15 members were replaced and the mandate of the remaining members was extended (percentage change around 40%).

Regarding the membership duration, we take the example of the current [appointed] Shura Council members. Ten out of the 35 members (i.e. around 30%) have been members for 26 years, 7 have been members for 21 years, 17 have been members for 12 years and one member replaced his deceased father and has been a member for 2 years.

Regarding the categories represented in the Shura Council, the Shura Council, contrary to the 1964 structure, has not included any member from the ruling family since 1972.

From studying the decisions of appointing members in the Shura Council, since its establishment in 1972 until 2017, the year in which the last decision was issued to renew

²¹ Ministry of Information, collection of press interviews with HRH Sheikh Khalifa bin Hamad Al Thani, Emir of Qatar, February 1972 – December 1989, Doha, press interview given to the Lebanese magazine Al Hawadeth, February issue, 1973, page 8.

²² Decision of the Emir of Qatar No. 1 of 1973 to amend certain provisions of the Amended Provisional Basic Law, issued on 25/4/1973 and published in issue No. 5 of the Official Gazette of 1973.

²³ Decision of the Emir of Qatar No. 7 of 1975 to amend certain provisions of the Amended Provisional Basic Law, issued on 9/12/1975 and published in issue No. 7 of the Official Gazette of 1975.

and appoint members of the Shura Council, we can observe how the members of the Qatari Shura Council were selected²⁴.

In 1972, tribalism was not the most prominent basis for appointing members of the Council, as it was taken into account that they would have a status in society, in fulfillment of what was stipulated in Article (43) of the amended Provisional Basic Law (the previous constitution), which stated that the selection of members of the Shura Council is to be of people of opinion (experienced people) and competence in various fields.

In 1972 Council, five out of 20 members were members of the Qatar Chamber of Commerce before their appointment as members of the Shura Council. They are: Abdullah Abdul-Ghani Al Abdul-Ghani, Haydar Suleiman Haider, Ali Khalifa Al-Hitmi, Marzouq Al-Shamlan, and Yusef Jassim Al-Darwish, in addition to other members classified in this category, such as Abdulaziz Ahmed Al-Baker, Muhammad Saeed Nasrallah, Mubarak bin Abdulaziz Al-Dulaimi, and others. The basis for choosing from the category of merchants weakened with the years at the expense of strengthening the other basis, which is the tribal basis

This can also be observed when new members are appointed to the Council, replacing the former member with another member of the same tribe, and often the son or brother of the former member is appointed to replace his father or brother. For example, when Ali bin Khalifa al-Hatmi was not renewed, his son Moqbel bin Ali al-Hatmi was appointed as his successor in 1995, Khalifa bin Ali bin Khalifa al-Hatmi was replaced in 2017 by his brother, and in 2004 Nasser Suleiman Haidar replaced his brother Haidar Suleiman Haidar as a member of the Council, and Ahmed bin Khalifa bin Mitab al-Rumaihi won membership in the Council in 2014 to succeed his deceased father Khalifa bin Mitab al-Rumaihi.

Although the tribal basis is the essential basis in choosing most of the appointed Shura Council members, the membership of some members was built on other foundations that do not deviate from the same tribal path, represented in the regional basis, skin color, or sectarian affiliation.

It is noted in the membership renewal that took place in 2017 that the size of the tribe in terms of number of its members in Qatar was taken into consideration. This can be observed with two tribes: Al-Murra and Al-Hawajir. Although there are no published statistics on the number of members of the tribes and families in the State of Qatar, it is known to the Qataris that both tribes are large tribes, and therefore this may be the reason for choosing two people for each of them in the council.

No Qatari woman has been appointed to the Shura Council for 45 years, since the establishment of the Shura Council in 1972 until 2017. In that year (2017) four women were appointed, who are: Dr. Hessa Sultan Al-Jaber, Dr. Aisha Yousef Al-Mannai, Dr. Hind Abdulrahman Al-Muftah, and Ms. Reem Mohammed Rashid Al-Mansouri. It is noted that the appointment of these women came to add a female component to the council and they were not chosen on a tribal basis.

The four appointed women have higher academic levels and valuable career backgrounds. Dr. Hessa Sultan Al-Jaber is an academic and she is the first Minister of

²⁴ For how the members of the Qatari Shura Council were selected *see*: Hassan Al-Sayed, Will the tribe be the basis for determining the electoral districts for the prospective Qatari Shura Council? Political Studies, Arab Center for Research and Policy Studies, 29th of March 2921, pp: 2-4.

Communications and Information Technology since the formation of the new cabinet in 2013; Mrs. Reem Al-Mansouri is the Assistant Undersecretary at the Ministry of Transportation and Communications; Dr. Aisha Al-Mannai is the Dean of the College of Sharia and Islamic Studies at Qatar University as well as a member of the Arab Parliament ; and Dr. Hend Al-Muftah is a Qatari academic and former Vice President of the Doha Institute for Graduate Studies for Administrative and Financial Affairs.

The presence of women in the Shura Council may raise a question about the possibility of women representing the tribe in the council. It is noticed in the 2017 renewal that some women being from certain tribes did not preclude the presence of another male member of the same tribe in the Council.

1.4 Shura Council Structure according to the Permanent Constitution (2004)

The Permanent Constitution of the State of Qatar was issued in 2004 and came into effect in 2005. Upon examination of this Constitution, it appears that the core difference with the Amended Provisional Basic Law (1972) resides in the provisions related to the Shura Council, namely its structure and functions.

The new Constitution did not stipulate the selection of all Shura Council members by direct secret ballot. In fact, Article (77) of the Permanent Constitution of 2004 stipulates that “the Shura Council shall consist of forty-five Members, thirty of whom shall be elected by direct, general secret ballot; and the Emir shall appoint the remaining fifteen Members from amongst the Ministers or any other persons. The term of service of the appointed Members shall expire when these Members resign their seats or are relieved from their posts”. Therefore, the Constitution previews two categories of members: the elected and the appointed. Contrary to the 1970 Constitution, which stipulated that ministers shall be ex-officio members of the Shura Council, as previously mentioned, the Permanent Constitution (2004) left the matter of appointing the members to the Emir, as he has the power to appoint ministers or other persons as members of the Council.

Furthermore, contrary to the provisions of the 1970 law on the organization of general elections to the Shura Council, the Permanent Constitution (2004) did not stipulate that elections are limited to males; in fact, Article (34) thereof confirmed that "citizens are equal in general rights and obligations" and Article (42) confirmed that "the State guarantees the right of citizens to candidacy and elections, as per the Law". Women had previously participated in Central Municipal Council elections and had run for Council membership. This indicates that it is not the State intention to exclude women from exercising their political rights.

Although no law on the elections to the Shura Council according to the Permanent Constitution (2004) has been issued, we can raise several issues related to the legislative rules governing elections as stipulated in the Constitution or the Law on the acquisition of Qatari nationality.

1.4.1 Regarding Electoral Constituencies

A constituency is a geographic scope under which a citizen may exercise their political rights, such as the right to elections and candidacy. Large States are often divided into several constituencies to avoid voting and counting complications,²⁵ and to allow voters to familiarize with the candidates and choose only those who are worthy.²⁶ Article (79) of the Constitution stipulates that “The electoral constituencies into which the State is divided and the districts thereof shall be determined by a decree.” Consequently, the Constitution left the matter of dividing the constituencies to the Executive, as decrees are legislative instruments issued only by this branch, which arouses fears that the Executive abuses its powers if needed. Dividing the country into constituencies is a tool that allows its owner to empower their loyal candidates to win the elections, by fragmenting the opponent's constituencies to become scattered, weak minorities. The Constitution did not grant the power to divide the constituencies to unbiased and independent bodies, such as the Judiciary, and did not assign any independent body to supervise the elections.²⁷ Furthermore, the Constitution does not present any standards or rules to comply with when dividing the State into constituencies, for the sake of fairness and equality. It also does not contain any provisions that require reviewing the constituencies from time to time to avoid potential inequalities resulting over time due to population growth in certain constituencies.

The Shura Council elections law and the decree of constituencies have not yet been issued. However, in some of his meetings, Brig. Gen. Salem Saqr al-Marsi, a member of the Supreme Committee for the Preparation of the Shura Council Elections, said that "there is a keenness to choose an electoral system in Qatar that guarantees real representation of Qatari society and its regions in accordance with the Constitution" and he also drew attention to the fact that “the electoral domicile of the electorate is not related to their actual residency”, “and that each constituency will be represented by one member and that the constitution provides for the division of district”). He stressed that there will be “30 electoral districts covering 30 regions”. "There will be no registration process but a committee called the Election Commission will register all those who have met the conditions and determine their constituency ", he said.²⁸

These expressions, which were mentioned in the speech of a member of the Supreme Committee to prepare for the Shura Council elections, expand the possibility of dividing districts according to the tribe basis.²⁹

1.4.2 Periodicity of Elections

The periodicity of elections, i.e. electing the parliament for a specific term to be renewed periodically, allows to revert back to the people from time to time, to identify their desires and will, so that the parliament remains the true expression of the people’s evolving

²⁵ Othman Abdul-Malik Alsaleh, previous reference, P. 519.

²⁶ Hasan Sayyid, *Waqafat Dusturiyah*, Arab Institute for Research and Publishing, Beirut, 2008, P. 120 – 121.

²⁷ Abdo Saad et al. previous reference, P. 62.

²⁸ See: The Next Shura Council will have a Supervisory Authority, *Al Watan Newspaper*, Qatar, January 1, 2021,

²⁹ Hassan Al-Sayed, Will the tribe be the basis for determining the electoral districts for the prospective Qatari Shura Council?, *ibid*, pp: 4-5.

aspirations.³⁰ This periodic renewal allows the people to supervise their representatives. Article (81) of the Qatari Constitution stipulates that: "The term of the Shura Council shall be four calendar years commencing from the date of the first meeting; and the elections of the new Council shall be conducted during the last ninety days of the aforementioned term." Did the Constitution adopt this main component of the parliamentary system by setting the term for the Shura Council membership at four years regularly renewable?

Although this Article fixes the legislative term of the council at four years, it added specific provisions that undermine the practical enforcement of such term, such as: "where the elections are not held at the expiry of the term of the Council or delayed for any reason whatsoever, the term of the Council shall remain intact until a new Council is elected. The legislative term shall not be extended save for necessity and by decree provided that the said extension shall not exceed the period of one legislative term". This addition threatens the principle of elections periodicity, as it perpetuates the previous Council when elections are not held or when they are delayed for any reason whatsoever, without even specifying the time period for such perpetuation or revoke it when the reasons for it are no longer valid; in other words, the Constitution authorizes the perpetuation of the Council indefinitely. Furthermore, Article (81) presents additional shortcomings other than periodicity, as it also allows the Emir to extend the term of the expired Shura Council, for one legislative term, for necessity, without indicating the nature of said necessity. However, we must clarify that the Council perpetuation and the term extension are two different cases. The Council perpetuation is the result of delays in holding or completing the elections, and the Constitution does not specify any time period for such perpetuation; whereas the term extension is for necessity and is limited in time (not exceeding one legislative term, i.e. four years). Despite this difference, both cases lead to the same result, i.e. continued Council membership and the non-election of members by the people, which breaches the periodicity principle.

1.4.3 Nationality Requirement for Voters and Candidates

Article (34) of the Constitution stipulates that "the Citizens of Qatar shall be equal in public rights and duties" and Article (42) states that "the State shall ensure the right of citizens to elect and be elected in accordance with the law". Although the two foregoing Articles guarantee the right to elect and be elected for all citizens alike, without differentiation between original and naturalized Qataris or their descendants, the Law No. (38) of 2005 on the Acquisition of the Qatari Nationality³¹ expressly stipulates that naturalized Qataris are prohibited from exercising these rights, as Article (16) of the aforementioned Law stipulates that "Naturalized Qataris shall not be entitled to participate in elections or nominations or be appointed in any legislative body." The Constitution conferred to the provisions of this nationality Law a constitutional capacity³², thus promoting them to the same level as the Constitution, and ensuring they prevail over the constitution provisions in case of inconsistency.

³⁰ We use the terms "Nation" and "People" are interchangeably used in this memo, despite the jurisprudential differences between them.

³¹ Published in the Official Gazette, issue No. 12 of 2005.

³² See Article (41) of the Qatari Constitution.

On another hand, the Constitution requires, in Article (80), for the Shura Council member to "be a holder of an original Qatari nationality". When referring back to the nationality law, to determine what is meant by "original Qatari nationality", we notice that this expression is non-existent in the law. Upon consulting scholars, professors in private international law³³ define citizens, holders of an original nationality, as those born to a citizen father, regardless of whether the father is an original or naturalized citizen. Therefore, according to their opinion, citizens present on the Nation's land since ancient times for many generations and their descendants are included in this concept (i.e. those known as Qatari nationals and their descendants). It also includes children of naturalized persons born after their father's naturalization, on the grounds that the Qatari nationality is the first nationality to be acquired at their birth, regardless of the type of the father's nationality (original or acquired), and therefore they can be elected as members in parliaments or legislative councils. Upon examination of the Qatari legislation, we find that it did not take into consideration the opinion of international law professors regarding the children of naturalized citizens born after their father's acquisition of the Qatari nationality. The legislation does not consider them original Qataris, as Article (2) of the nationality law stipulates that "Those born to a naturalized Qatari father in Qatar or outside Qatar shall be deemed to be a naturalized Qatari."³⁴ Consequently, not only did it deprive the children of naturalized Qataris of the rights to elect and be elected, but it also imposed the same requirement on all their descendants, regardless of the ramifications and the generations, as the son of a naturalized Qatari is considered naturalized, and as such, each of his children will be considered naturalized as well, indefinitely throughout all generations. This widens the scope of citizens ineligible to elect and be elected over time and through the generations.

The Shura Council is currently structured according to the Amended Provisional Basic Law, meaning that the members are appointed. No elections were held and therefore the term of the same appointed Council was extended. The justification used for delaying the elections was the need to issue a law on elections and other related legislations. However, this justification is no longer acceptable 11 years into the Permanent Constitution (2004)³⁵. In 2011, the-then Emir of Qatar, Sheikh Hamad bin Khalifa Al Thani, promised in his address to the Shura Council that the year 2013 would bring Shura Council elections. However, the year 2013 went by without elections, but rather an Emiri decision to extend the term of the Shura Council until 2016 was issued and on that year, yet another new Emiri decision was issued, extending the term of the appointed Council once more until 2019.

2 Internal Regulations of the Shura Council

In this section, we will discuss the internal regulations of the Shura Council by understanding how the Speaker, his Deputy, the Observers and the Council Bureau and

³³ See Ahmad Dhaen Al-Samdan, Original Kuwaiti Nationality, Kuwaiti Journal of Law, issue No. 3, twentieth year, P. 22-23, Hisham Sadek, Nationality, Citizen and Foreigners Status, Dar El Maaref, Cairo, volume 1, P. 3172, Dr. Chamseddine El-Wakil, Brief on Nationality and Foreigners Status, Dar El Maaref, Cairo, P. 140, Dr. Kamal Fahmi, Fundamentals of Private International Law, P. 169, Brief on Nationality and Foreigners Status, P. 164, Dr. Rashid Alanezi, Kuwaiti Nationality, Kuwait, fifth edition, 2005, P. 213.

³⁴ Article (2) of the new Law No. 38 of 2006 on the Acquisition of Qatari Nationality.

³⁵ According to the Prime Minister and Minister of Foreign Affairs at the time, Sheikh Hamad bin Jassim bin Jaber Al Thani, during the opening of the NHRC building in December 2010.

committees are selected as well as how the Council meetings are held and how decisions are voted on.

2.1 Speaker and Deputy Speaker of the Shura Council

The Council Speaker handles important powers such as representing the Council in its contact with other authorities, presiding over the sessions, managing deliberations, giving permission to speak, maintaining order in the session and generally supervising the Council work and various branches. The Deputy Speaker handles all of the Speaker's powers in his absence.

In the 1964 council, the Speaker and his Deputy were appointed ex-officio, as Articles (1) and (2) of Law 6 of 1964 on the Establishment of the Shura Council underlined that the Ruler is the Speaker of the Shura Council and the Deputy Ruler is the Deputy Speaker.

However, according to the 1970 Constitution, the Shura Council is formed of elected members, ex-officio members and members appointed by the Emir, if required. Article (49) of the 1970 Constitution reiterated that the Speaker and his Deputy shall be elected from amongst the elected members during the council first ordinary session. The rationale behind having the Speaker and his Deputy elected from amongst the elected members is that the Council was supposed to be a parliamentary council representing the people and should thus be chaired by a person elected by the People. The foregoing Article also stipulated that the election of the Speaker and the Deputy Speaker is to be done by secret ballot and by relative majority for a term of one year, with the possibility to re-elect the same Speaker and his Deputy. However, the Shura Council as previewed by the 1970 Constitution never saw the light, as we have previously indicated.

However, according to the 1972 Constitution, the Speaker and Deputy Speaker of the [appointed] Council are elected from amongst the members by secret ballot and by relative majority during the council first ordinary session. The Speaker and his Deputy may be re-elected.

The minutes of the first Shura Council session held on 1 May 1972 show that three members nominated themselves for the position of Speaker. The ballot results were as follows: 11 votes for Abdulaziz bin Khalid Al-Ghanem, eight votes for Ali bin Khalifa Al Hitmi and one vote for Ali bin Mohamed Al-Badi. As a result, the Council elected Abdulaziz bin Khalid Al-Ghanem as Speaker by secret ballot and by relative majority.³⁶

Furthermore, the minutes show that four members nominated themselves for the position of Deputy Speaker, and the results were as follows: 10 votes for Ali bin Khalifa Al Hitmi, eight votes for Abdulaziz Abdullah bin Turki, one vote for Khalifa Al Rabban and one vote for Abdulaziz Ahmed Al Baker. As a result, Ali bin Khalifa Al Hitmi was elected Deputy Speaker by secret ballot and by relative majority.³⁷

The run-up for the position of Speaker and Deputy Speaker that took place during the first ordinary sessions was a one-time event; for the following terms, the former Speaker and Deputy Speaker would be the only ones to nominate themselves without any competition, thus acceding to the position by acclamation. This was also the case when the

³⁶ The Shura Council, session minutes, first annual ordinary session (1/5/1972 – 25/6/1973), Doha, P. 14.

³⁷ Previous reference, P. 15.

Council members changed, which leads to the question: Does the fact that only one member of the Council has ever been nominated, since the Council second session of 1973 and to date, prove that the Emir is the one who decides who presides over the council?

According to the 1972 Constitution and since its establishment, the Shura Council has witnessed four speakers only: Abdulaziz bin Khalid Al-Ghanem (1972-1990), Ali bin Khalifa Al Hitmi (1990-1995), Mohammed Bin Mubarak Al Khulaifi (1995 – 2017) and Ahmed Bin Abdullah Al Mahmood (2017 - Present).

According to the Permanent Constitution of 2004, Article (93) stipulates that the Council shall, in its first session convened, elect a Speaker and Deputy Speaker from amongst the members and for a duration of one term. However, given that the Shura Council consists of 30 members elected by the people by direct, general secret ballot, and 15 members appointed by the Emir,³⁸ the foregoing Article, unlike the 1970 Constitution, does not specify whether or not the members appointed by the Emir may run for the Speaker position. Additionally, given that the position of Speaker is of great importance, as it may impact the voting results in the Council since the Speaker has the casting vote in case of a tie³⁹(he would have two votes in addition to his moral influence on the Council and its sessions and deliberations), the candidature of the members appointed by the Emir will undermine the Legislature in favor of the Executive, especially that these members should be ethically bound to the Emir for being the one who appointed them and thus may revoke their membership, noting that some of these members are ministers,⁴⁰ meaning their votes are often weighted in favor of the Executive.

Although we agree that the running for Speaker by the appointed members is inadmissible as it contradicts the spirit of the Constitution, which granted the Shura Council certain powers to oversee the Executive and hold the ministers accountable, this was not stipulated expressly, and thus opens the door for appointed members to run for Speaker.

2.2 The Observers

The Council includes two observers who are also members. Observers are elected during the same session where the Speaker and his Deputy are elected. The internal regulations of the Shura Council outline the powers of Observers, which include keeping the records of members' attendance, recording – by order of request – the names of members requesting to speak during the session and recording voting results. Observers sit on the same bench as the Speaker and Deputy Speaker, to their left and right respectively. During the first session of the Shura Council in 1972, four persons presented their candidature for the position of Observer: Abdulaziz bin Turki, Yousef Darwish, Abdulaziz Al Baker and Misnad bin Saad Al-Misnad. Both Abdulaziz bin Turki and Yousef Darwish were elected by the majority of votes.⁴¹

³⁸ Article (77) of the Constitution.

³⁹ Article (100) of the Permanent Constitution stipulates that “the resolutions of the Council shall be passed by absolute majority of the attending Members save in cases that require special majority; and in case the votes are equal, the Speaker shall have casting vote”.

⁴⁰ See Article (77) of the Constitution.

⁴¹ See the meeting minutes of the second ordinary meeting of the first term of the session on 8 May 1972.

2.3 The Council Bureau

Article (49) of the Amended Provisional Basic Law (1972) stipulates that “the Shura Council shall have a bureau consisting of the Speaker, the Deputy Speaker and the observers. The Council shall have a general secretariat to provide the Council with necessary staff”. This text is the exact same of Article (53) of the 1970 Constitution.

The internal regulations of the Shura Council outline the powers of the Council Bureau, namely: supervise the recording of the meeting minutes, examine the annual draft budget of the Shura Council and its balance sheet before their submission to the Council for approval, nominate delegations representing the Council in Qatar and abroad, follow up on the work of commissions and directly supervise the General Secretariat of the Shura Council.⁴²

The Permanent Constitution of the State of Qatar (2004) reiterated the need to have a bureau within the council, but replaced the observers with committee chairmen. Article (95) stipulated that “the Council shall have a bureau consisting of the Speaker, his deputy and chairs of committees, and it shall have a general secretariat to assist the Council in the discharge of its functions.”

2.4 The Council Committees

Council Committees are responsible for conducting extensive studies on the topics presented to the Council. When a proposal is raised at the Council, such as a draft law, it will be referred to the ad-hoc committee for examination. The committee should then prepare a report on the matter before it is opened for discussion in the Council. The Amended Provisional Basic Law (1972) stipulated that the Shura Council forms its own committees, as Article (57) therefore stated that "the Shura Council shall form committees from among the members as may be necessary for the performance of its functions. Such committees may discharge their tasks during the recess of the Council in preparation for submission to the Council at the session.” This is the same text found in the 1970 Constitution, confirmed in Article (64) thereof. The internal regulations of the Shura Council confirm the formation of five permanent committees:

- a) Committee of Legal and Legislative Affairs
- b) Committee of Financial and Economic Affairs
- c) Committee of Services and Public Utilities
- d) Committee of Domestic and Foreign Affairs
- e) Committee of Media and Cultural Affairs

The regulations confirm that each committee shall be formed of at least five members, provided that each member of the Council participates in one committee at least and two committees at most.⁴³ Currently, efforts are being made to include in the agenda of the second meeting – immediately after opening the term of the session – an item for the formation of the Council Committees. When it is time to address this item, expression of wish forms are distributed and Council members signal their wishes to join a certain committee. Then, the Council Secretary reads out the member names of the five permanent

⁴² Article (13) of Law No. (6) of the year 1979 on Internal Regulations of the Shura Council.

⁴³ Article (15)/b of the Internal Regulations of the Shura Council

committees, according to the wishes presented by the members. At this stage, the Speaker requests the Council to provide its opinion on the committee formation and it is adopted in case of approval.⁴⁴ The Committee may, when exercising its powers or discussing a topic, ask for the assistance of one or more Council experts or staff.⁴⁵

The Committee must submit a report for each topic referred to it, within thirty days at most as of the referral date, unless the Council decides otherwise.⁴⁶ The importance of these reports lies in the fact that they include comprehensive information regarding the referred topic, in addition to the Committee's opinion thereon, the grounds on which it based its opinion and the minority's opinion, if requested.⁴⁷

In practice, when a draft law is referred by the Council of Ministers, the Shura Council reviews it and refers to the memo of the General Secretariat of the Council of Ministers. The Speaker then asks the Council members: "Do you approve of referring the draft law to the ad-hoc Committee (name of the Committee) to examine it and submit its report to the Council?" If the member approve, the draft law will be referred to the ad-hoc committee.

Committees receiving referrals often meet immediately after the Shura Council session, to examine and discuss the referred draft law. The proposal is often examined in one session, but might require more sessions sometimes when the attendance of a representative from the relevant government entity is required. The Shura Council meeting minutes show that the recommendation made often by the ad-hoc committee is to approve of the draft law as referred by the Council of Ministers, without or with insignificant amendments.

For its part, the Permanent Constitution of the State of Qatar (2004) confirmed that the Council sets up its own committees, but granted a two-week delay to do so, versus one week in the 1972 Constitution.

2.5 Council Meetings

The Shura Council shall convene in Doha. Ever since the first Shura Council was formed in 1964, The White Palace on Al-Rayyan street was elected as its headquarters. Since then, the Council convenes at this same location. Article (11) of the Law on the Establishment of the Shura Council of 1964 stipulates that the Emir may call the Council to convene in any other location, and that meetings in other than the legal locations will be deemed illegal and their outcomes will be considered de facto null and void. These provisions were confirmed by the 1970 and 1972 Constitutions. Additionally, Article (92) of the Permanent Constitution of the State of Qatar (2004) stipulates that "The Council shall hold its meetings in its seat in Doha City; however, the Emir may call the Council to convene in any other location."

The Shura Council meetings must be held during the annual term of the session, noting that the term of the ordinary session is at least eight months per year, often starting in November and ending by the end of June of the following year. However, according to

⁴⁴ Excerpt from the minutes of the second session of the 35th annual term, on 20/11/2006. See the minutes of the second session of the 26th annual term, on 8/12/1997.

⁴⁵ Article (24) of the Internal Regulations of the Shura Council

⁴⁶ Article (30) of the Internal Regulations of the Shura Council

⁴⁷ Article (31) of the Internal Regulations of the Shura Council

the Permanent Constitution (2004), meetings start during the month of October of every year.⁴⁸ The annual terms of the session shall begin upon convocation by the Emir, through a decree, and shall end by Emiri decree as well. Outside the annual term of the session, the Council may meet in extraordinary sessions, upon a request by the Emir or a majority of the members. Shura Council meetings held outside the annual term of the session, shall be considered null and void along with any recommendation made during these meetings.

According to the Shura Council Internal Regulations, the Council convenes on Monday of every week, at precisely 9 a.m. Upon examination of numerous meeting minutes of the Council which indicate the times on which sessions start and end, it is noticeable that their sessions over the past years often do not exceed 30 minutes. This shows that the members do not discuss draft laws or ad-hoc committee reports, but merely approve of them.

The Shura Council sessions are public and they require a quorum of the majority of the Council members. Upon examination of the meeting minutes, we often find that the vast majority of the members do attend the meetings, therefore there is no issue of lack of quorum. Decisions are made and recommendations are adopted in the Shura Council by the majority of the present members. Votes are made by show of hands and if the majority cannot be identified, votes are made by roll call.

We must point out a matter of great importance related to the Permanent Constitution of the State of Qatar (2004), as it appears that it requires a majority that is easy to reach, if that is in the interest of the Executive, and it requires a more complex majority if the matter is against said interests. When a decision is in the interest of the Executive, the requested majority is the majority of the members in attendance, which is simple to achieve, in practice, as the requested quorum for conducting Shura Council meetings is 50+1% of the Council members. This means that 23 members need to be in attendance, in order to conduct a valid session out of the 45 members that form the council. If the said quorum is attained, the majority of the members in attendance can be achieved by the approval of 12 members. If HH the Emir wishes to adjourn the Council meetings for a second time, he needs the majority of the members in attendance. Additionally, if he wishes to conclude a peace treaty or a treaty relating to the territory of the State, to the sovereignty rights or to public and private citizen rights, or treaties including amendments of the State's laws, this requires the majority of members in attendance.

However, when the decision goes against the interests of the Executive or against its wishes, the Permanent Constitution of the State of Qatar (2004) requires a majority that is difficult to achieve, in reality, which is the majority of two-thirds of the Council members. This means that 30 out of 45 members must approve, in order to make the decision. This takes a turn for the worse, as one third of the members are appointed, which means that they would vote against any decision that goes against the wishes of the Emir, as they have a moral obligation towards him due to the fact that he is the one to appoint them and to revoke their membership. The Shura Council requires the approval of two-thirds of the Council members to file motions of no confidence against any minister⁴⁹. The Council needs the approval of two-thirds of its members to overrule an objection made by the Emir on the ratification of a draft law approved by the Shura Council⁵⁰. The Council

⁴⁸ Article (85) of the Permanent Constitution of the State of Qatar.

⁴⁹ Article (111) of the Permanent Constitution of the State of Qatar

⁵⁰ Article (106)

needs a majority of two-thirds of its members to reject a decree-law issued while the Council is not in session⁵¹.

3 Legislative Role of the Shura Council

Legislation is a set of general and abstract rules issued by an official entity of the State, to be binding or associated with sanctions if they are violated. Legislation is divided into the Constitution, the Law and regulations. The role of the Qatari Shura Council in regard to legislation covers three aspects: amending articles of the Constitution, issue ordinary legislations, and adopt or reject decree-laws issued while the Council is not in session. We will examine these aspects below.

3.1 Amending Articles of the Constitution

Constitutions from countries around the world allow some articles therein to be amended, according to specific processes that vary depending on the constitutions. The said processes may stipulate that parliaments alone may amend the articles, according to processes and to a majority that are different from what applies when issuing ordinary legislations, while other constitutions may stipulate that amendments must be made by referendum. In Qatar, neither the Constitution of 1970 nor that of 1972 granted the Shura Council a role in amending articles of the Constitution, as only the Emir has the power to do so. Article (67) of the Amended Provisional Basic Law of 1972 stipulates that “the Emir may revise this Provisional Constitution by amendment, deletion or addition if he deems that the higher interests of the State require such revision”. Consequently, under the Amended Provisional Basic Law, the Shura Council was excluded from this legislative role.

However, the Permanent Constitution of the State of Qatar (2004) granted the Shura Council this power, as the Emir or one third of the Council members each have the prerogative to apply for the amendment of one or more of the articles of this Constitution. Therefore, fifteen members of the Shura Council may request the amendment of any articles of the Constitution that are open to amendment⁵². Furthermore, the Constitution granted the Council the right to discuss any amendment of the articles. Consequently, the Council members or the Emir requests the amendment of one or more articles of the Constitution. The amendment must be submitted to the Council for discussion and approval by two-thirds of the Council members.

This role granted by the Constitution of 2004 to the Shura Council may become worthless, as the Constitution stipulates, on the other hand, that no amendment shall be put into force before the approval of the Emir. Thus, no articles of the Constitution may be amended without the Emir's approval, even if the said amendments are unanimously approved by the Shura Council.

⁵¹ Article (70)

⁵² The constitution banned the amendment of provisions specific to the form of rule and its hereditary nature, and the provisions specific to public freedoms and rights unless if it was to grant more rights and guarantees to the citizen. *See* Articles (145) and (146) of the Permanent Constitution of the State of Qatar.

It is noteworthy that the articles related to the Shura Council, pursuant to the Constitution of 2004, have not yet entered into force and that the Shura Council currently cannot suggest nor discuss amendments, as it is still governed by the provisions of the Amended Provisional Basic Law.

3.2 Issuing Legislation

The process for issuing legislations goes through several stages, starting with the suggestion, followed by the draft law discussion, then the approval, the issuing and finally the publication in the official gazette. Neither the Constitution of 1970, nor that of 1972 granted the Shura Council the prerogative to suggest draft laws, limiting this right to the Council of Ministers. Therefore, the role of the Shura Council is limited to discussing draft laws only.

Discussions are a mechanism allowing members of the Shura Council to revise draft laws and uncover any gaps or discrepancies between its items, to be avoided prior to its approval, by making the necessary amendments thereto⁵³. The Internal Regulations of the Shura Council stipulate that discussions take place through general and public deliberations involving all the Council members. Public deliberations are preceded by a study conducted by a Council Committee on the draft law. The committee shall submit its findings to the Council, which shall go through the draft law and the committee's report to express its opinion regarding the relevance/irrelevance or consistency/contradiction of its provisions. By doing so, the voting and endorsement of the draft law are made easier.

According to the regulations, the draft law is discussed over two deliberation cycles; the first cycle of deliberation sessions is usually lengthier and requires more effort than the second cycle of deliberation sessions. The first deliberation cycle is also divided into two phases. The first phase consists of discussing the general provisions of the draft law without entering into the details of each clause, in order to secure the Council initial approval of the draft law. This phase starts with reading the original draft law with the corresponding explanatory notes, if available, and the committee's report inclusive of relevant recommendations and amendments. The right to speak is first given to the rapporteur of the specialized committee, then to the Minister or his representative, then to the members⁵⁴. If the Council grants its initial approval of the draft law, it moves to the second phase of the first deliberation cycle, which consists of discussing the subject of the draft law by looking into the details of its clauses, one by one, by reading each article and considering suggestions and recommendations on the same⁵⁵.

The regulations give each Council member the right to present suggestions regarding the provisions of the draft law, whether for adding, removing or replacing articles. Such suggestions are to be submitted in writing and in clear wording at least 24 hours prior to the discussion session, in order to allow sufficient time for the Committee of Legal and Legislative Affairs to review and advise on the submitted suggestions. However,

⁵³ See "The Importance of Deliberations", Adel Tabtai, op. cit. page 759

⁵⁴ Article (66) of the Shura Council Internal Regulations.

⁵⁵ See Article (66) of Shura Council Internal Regulations; Articles (67) to (72) govern the deliberations process of the second round.

with the Council's consent, members may submit their suggestions right before or during the discussion session⁵⁶.

If the proposed amendments are likely to affect the remainder of the draft law provisions, the Speaker shall adjourn the discussions until the specialized committee completes its review and advises on the same⁵⁷. After discussing each article and the proposed amendments, an opinion is given first on the amendments and then on the entire draft law. At this point, the first cycle of deliberations ends.⁵⁸

The second deliberation cycle shall be limited to discussing amendments proposed by members to the draft law already voted for and endorsed by the Council during the first deliberation cycle. Procedures of discussing amendments in the second deliberation cycle are similar to those of the previous cycle.⁵⁹ Then, a final voting is sought on the draft law. If the council approves of the draft law, the discussion and voting phase ends and a new phase of the legislative process is launched, which is the ratification phase.⁶⁰

Although the Shura Council is supposed to follow the foregoing procedures in discussing draft laws according to the regulations, the case is different on the ground, as the Council only holds one session for deliberations, lasting for 30 minutes at most, after which the specialized committee's report about the draft law is opened for vote. In my opinion, this shortcut is due to the member's ineffectiveness. Most of the Shura Council members are old in age and have been Council members for more than fifteen years. After attending several sessions of the Council as guests, we noticed that many members had not read the session documents or the specialized committee's report, which would negatively affect the discussions, despite being an essential phase of the legislative process.

On another hand, in case the provisions relating to the Shura Council in the Permanent Constitution (2004) are enforced, the Council would have the right to propose laws, discuss draft laws and overrule the Emir's refusal to ratify a draft law. This last power was stipulated in Article (106) of the Constitution, which confirms that if the Emir declines to approve the draft law, he shall return it to the Council along with the reasons for decline within three months from the date of referral. Furthermore, in the event that a draft law is returned to the Council and the Council passes the with a two-thirds majority of all its Members once more, the Emir shall ratify and promulgate it.

At first glance, it is clear from the Article above that the Permanent Constitution of the State of Qatar has granted the Shura Council the right to overrule the Emir's rejection of the draft law in case the Council insisted on ratifying the draft law. However, a thorough look into this provision would change our initial impression, as the Constitution provides for the approval of the "two-thirds" of the Council members in order to overrule the Emir's rejection of the draft law and since many of the members are appointed and not elected, it makes it very hard, if not impossible, to secure the approval of the two-thirds. Article (77) of the Permanent Constitution stipulates that "the Shura Council shall consist of forty-five members, thirty of whom shall be elected by direct, general secret ballot; and the Emir shall appoint the remaining fifteen members from amongst the Ministers or any other persons.

⁵⁶ Article (67) of the Shura Council Internal Regulations

⁵⁷ Article (71) of the Shura Council Internal Regulations.

⁵⁸ Article (69) of the Shura Council Internal Regulations.

⁵⁹ Article (73) of the Shura Council Internal Regulations

⁶⁰ Article (105) of the Council's Internal Regulations describes the mode of voting and confirms the public nature of the vote while authorizing secret ballot as an exception to the general rule if requested by the Government or the competent minister or the Speaker or five members of the Shura Council.

The term of service of the appointed members shall expire when these members resign their seats or are relieved from their posts". According to the foregoing provision, the appointed members account for one third of the total Council members. These members are ethically bound to the Emir for being the person who appointed them. Therefore, it is unlikely that they vote against any matter that he had rejected. The Emir may as well relieve them from their post.

Having said this, even if Article (106) of the Constitution shows that the Emir's ratification is only pro-forma and that the Shura Council may compel him to ratify any draft law if it secures another endorsement of the same, interpreting this Article within the context of other Constitutional provisions reveals that such leverage provided to the Shura Council is in fact weak and that the Emir's ratification is effective.

3.3 The Council Role Regarding Decree-Law (*Marsum Biqanun*)

According to the amended Provisional Basic Law (1972), the Shura Council is responsible for discussing the draft laws. However, in case the Shura Council is not in session, the State might be compelled, due to extraordinary events, to issue a law that cannot be delayed until the return of the Shura Council to discuss the draft law. Therefore, the Amended Provisional Basic Law (1972) took into consideration this exception and stipulated that "in cases of extreme urgency that require measures of utmost urgency by issuing laws, and in such cases when the Shura Council is not in session, the Emir may issue pertinent decrees that have the power of law", these are called *Marsum Biqanun* and "such decree-laws shall be submitted to the Shura Council at its first meeting".

The decree-law shall only be issued in case the Shura Council is in recess, during the interval between two ordinary sessions of the Council, i.e. beginning of July to the end of October of every year, and in the event of exceptional circumstances that should be addressed by issuing laws, and cannot be delayed until the return of the Shura Council. However, in practice, it is noticed that most legislations issued by decree-laws were not accompanied by urgent circumstances occurring while the Shura Council was in recess, and that the State could have waited until the first meeting of the Council. Some examples are: the decree-law related to associations and private institutions, the decree-law amending some provisions of the Labor Law, in addition to the decree-law amending some provisions of the Law on Entry, Exit and Residency of Expatriates that were issued in 2020. Most of these came with regulatory and procedural provisions, which makes it difficult to say that there are exceptional circumstances that require urgent measures that cannot be delayed until the return of the Council Shura to convene. Undoubtedly, when issuing such decree-laws, the Shura Council will be dispossessed of exercising its functions, i.e. the discussion of the relevant draft laws.

The following table provides an overview of the number of decree-laws versus the number of draft laws presented to the Shura Council during some of its terms of session.

Ordinary Session	Law	Decree-law
48 th term of session (2019 - 2020)	20	4
47 th term of session (2018 – 2019)	25	2
46 th term of session (2017 – 2018)	22	3
45 th term of session (2016 – 2017)	22	2
44 th term of session (2015 – 2016)	19	0
43 st term of session (2014 – 2015)	26	0

On the other hand, when referred to the Shura Council, the decree-law is submitted to the ad-hoc committee for examination and reporting thereon. The committee report is often concluded by the following expression: “The committee recommends... to approve of the decree-law... promulgating Law ..., as being issued by the higher competent authority while the Council was not in session, to serve a public interest.” On most occasions, the Shura Council has approved unanimously of the decree-law as issued, without discussing it or raising the requirement of having exceptional urgent circumstances leading to issuing the decree-law.

However, unlike the Amended Provisional Basic Law (1972), the Permanent Constitution of the State of Qatar (2004) previewed a wider role for the Shura Council, where it is not only consulted to provide its advice on and non-binding recommendations about the decree-law, but also had the right to reject or amend the decree-law. According to paragraph (2) of Article (70) of the Permanent Constitution, “Such decree-laws shall be submitted to the Shura Council at its first meeting, and the Council may, within a maximum of forty days from the date of submission and with a two-thirds majority of its members, reject any of these decree-laws, or request amendment thereof to be effected within a specified period of time; such decree-laws shall cease to have the power of law from the date of their rejection by the Council or when the period for effecting the amendments has expired”.

Based on the above article, and although the Permanent Constitution authorized the Shura Council to reject or request the amendment of a decree-law, it has limited the Council powers in favor of the decrees, as it has facilitated the approval process but complicated the rejection or amendment process. The Shura Council cannot reject or request the amendment of the decree-laws without the approval of the two-third majority of its members; while in fact, it is difficult to achieve such majority given that one-third of the Council is appointed by the Emir. Furthermore, another challenge was binding the Council to decide on rejecting or amending the decree within 40 days from its submission date, otherwise the decree-law would be considered approved on. These provisions of the Constitution are deferred until the Shura Council is elected; meanwhile, decree-laws are governed by the Amended Provisional Basic Law.

In light of the above, we conclude that the role of the Shura Council is currently limited to the discussion of decree-laws and draft laws and the issuance of non-binding

recommendation; additionally, the Shura Council often approves of draft laws and decrees as submitted by the Council of Ministers.

4 Shura Council Oversight Role

The Shura Council, established according to the Law of 1964 or the 1970 constitution and its amendments of 1972 (the Amended Provisional Basic Law), was not meant to serve as an oversight body or a parliament that hold the Government accountable for the public policy or the ministers accountable for their respective functions. In fact, Article (1) of Law No. (6) of 1964 on the Establishment of the Shura Council stated that “an advisory council under the name of Shura Council shall be established”; in addition, Article (43) of the 1970 constitution, which was reiterated by the 1972 constitution, outlined more explicitly the nature of the Shura Council and its relation to the Ruler and the Executive: “an Advisory Council shall be established to assist the Emir and the Cabinet in performing their duties by its opinion. This council shall be called “Shura Council” and the Shura Council shall express its opinion in the form of recommendations”. This Council was not established as an autonomous legislative branch equal to the Executive. It is rather a body that assists decision makers through non-binding opinions.

The nature of the Shura Council should be taken into consideration when discussing its relation to the Executive. The following sections deal with two aspects of this relation: The first tackles the Government's political liability before the Shura Council, while the second covers the role of the Shura Council regarding the State budget.

4.1 The Government's Political Liability before the Shura Council

The Law of 1964, and the constitutions of 1970 and 1972 lacked provisions governing the government accountability to the Shura Council, and the only provision discussing the political liability was Article (35) of the 1972 Constitution which states that “The Prime Minister and the ministers are collectively responsible to the Emir for the implementation of general state policy, and each one of them is individually responsible to the Emir for the manner in which he carries out his duties and exercises his functions”. Subsequently, the Prime Minister and the ministers are only accountable to the Emir, and unlike the parliamentary system, they are not elected nor nominated from amongst the MPs, but rather appointed by an Emiri Order issued by the Emir who may also accept their resignation or relieve them from their posts. Article (28) of the 1972 Constitution states that “The Emir shall appoint the Prime Minister and Ministers, accept their resignation and remove them from office by an Emiri Order”.

The Shura Council, based on the 1972 Constitution, is responsible for “discussing the public policy in terms of the economic, administrative and political issues referred to it by the Government”. These discussions only cover the issues referred by the Government to the Shura Council. In other words, if the Government does not refer the public policy for discussion, the Council may not discuss it. In all cases, the Shura Council meeting minutes do not show any records of referring the public policy to the Council for discussion. Furthermore, even if the public policy is referred for discussion, the Council functions are limited to giving recommendations and opinions, as paragraph (2) of Article

(51) of the 1972 Constitution clearly states that “the Shura Council may not intervene in works that are within the jurisdiction of the Executive Authority or the Judiciary”.

Based on all the above, we conclude that the Law of 1964, and the constitutions of 1970 and 1972 lack provisions authorizing the Shura Council to carry out oversight function; according to the foregoing legal instruments, the Council may neither question the Prime Minister and the ministers in matters respectively related to the public policy and their functions, nor may it grant or reject confidence to the government. Moreover, these legal instruments do not require from the government to present, upon its establishment, its work program to the Shura Council to grant it confidence, unlike many parliamentary countries.⁶¹

There are four procedures that should be clarified in the following sections.

4.1.1 The Emiri Speech to the Shura Council:

Article (50) of the 1972 Constitution states that “The Emir shall open the annual term of the session of the Shura Council and give a speech including a statement on the conditions of the country, the most important achievements that have been done, and projects and reforms which the State intends to conduct in the new year”. Here, we should clarify that the Emiri speech is not a ministerial program to solicit confidence from the Council or what is known as prior oversight over the government, as in many parliamentary countries. The Emiri speech is a public political statement in which the Emir addresses the public and the Shura Council; the Emir is not held responsible for failure to deliver the projects and reforms outlined in the speech. Based on Article (20) of the 1972 Constitution, “The Emir is the head of state. His person shall be inviolable and he shall be respected by all”; The Emir of Qatar is not held accountable for political matters.

4.1.2 Parliament's Questions

These questions were amended in 1975, as part of the amendments introduced to the 1972 Constitution, giving the Shura Council members the right to ask ministers questions Article (60) of the said constitution states that “A member of the Shura Council may address a point of clarification to the competent minister pertaining to matters presented to the Council. Questions may only be direct by one member to one minister and only the person who raised the question has the right to comment once on the response. If the minister added something new, the member’s right to comment is renewed”.

The Internal Regulations of the Shura Council provided provisions on the right to raise questions; they define “a question” as an “inquiry” raised by a member to clarify any ambiguity or fact related to issues falling under the Council functions”. Among the main provisions that strip the “right to raise questions” from its supervisory value is the verbatim of the aforementioned Article of the Internal Regulations stating “issues falling under the Council functions” instead of “issues falling under the minister's functions”, due to the fact that the minister is not liable to the Shura Council as mentioned before. Moreover, the Shura Council Internal Regulations clearly mention in Article (90) a set of requirements that should be met when raising a question, including that the “questions should not involve

⁶¹ Concerning the ministerial program, *see*: Adel al-Tabtabai, *Constitutional Order in Kuwait*, 2001, p: 972 and onwards.

any interference in the functions of the Executive or the Judiciary”. Whenever a question does not meet these requirements, either totally or partially, the Speaker of the Shura Council may overlook it. Article (95) of the Internal Regulations also undermines the supervisory aspect of the questions raised, stating that "the question ends when an answer is provided", which means that the Shura Council may not turn any question into public deliberations or take any decision pertaining to it within the Council”.

4.1.3 Public Deliberations

Upon a written request signed by at least five members, and upon approval of the Council, certain public issues that fall under the Council functions may be opened for discussion and exchange of views with the competent minister. It is noteworthy that public deliberations have a wider scope than questions, as the latter are only limited to the following components: One Shura Council member raising the question, the relevant minister, the answer and the subsequent comment. However, what weakens the supervisory power of the deliberations is the fact that all what is issued by the Shura Council is limited to being mere recommendations and expressions of wish. Nevertheless, the more deliberations address real matters of interest that appeal to a large segment of people, the more it contributes to changing the situation for the best.

Among the topics that have been discussed recently in the 47th session of the Qatari Shura Council:

- Public discussion on conditions of health services.
- Public discussion on traffic accidents, their causes and how to reduce them.
- Public discussion on the National Plan for Food Security to increase agricultural and animal production.
- Public discussion on education and efforts for development.

On January 11, 2021, the Qatari Minister of Education and Higher Education attended the Shura Council meeting and gave his statement regarding the results of the ministry’s study of the recommendations of the Shura Council and the educational process in the country regarding the request for public discussion submitted by a group of council members.

4.1.4 Expression of Wish

The Shura Council Internal Regulations highlighted that each member has the right to express their wish to discuss social or cultural topics, through a request submitted in writing to the Speaker of the Council, along with the reasons thereof. The Speaker may reject the member's wish, in case it falls outside the Council functions. The expression of wish is a non-supervisory tool; it is rather a suggestion made by a member of the Shura Council and referred to the Government. The latter may respond to the requesting member by accepting or rejecting the suggestion. The Internal Regulations do not bind the government to preset justifications for rejecting the suggestion.

Amongst the suggestions made recently by some members:

- Suggestion related to the conditions of retired citizens.

- Suggestion related to the values, principles and morals of society.

We have clarified above the current status quo; however, in case the deferred provisions of the Permanent Constitution of the State of Qatar are enforced, the Shura Council will be authorized to raise questions from a parliament position to the Prime Minister and ministers in matters falling within their functions. One-third of the Shura Council members will be able to pose questions to the ministers, except for the Prime Minister, which will increase the ministers' sense of liability and inform the Council on granting the government confidence. However, the Constitution provisions undermine the practical impact of these tools, due the fact that withholding confidence from a minister requires the approval of the majority, which is nearly impossible to achieve because it represents two-thirds of the Shura Council members.⁶²

4.2 Shura Council Role regarding the State Budget

The State budget represents the forecasted financial plan of the State, which includes an estimate of the revenues to be collected and expenditures to be spent during a financial year. The financial year is the period during which Qatar State budget should be executed; it starts on April 1st and ends on March 31st of the following year. However, from the year 2016 onwards, the financial year is set to start on January 1st and end on December 31st of the following year. The suspended Law of the State Budget identified the purpose of this budget as being “a tool for the State to achieve its targets in all fields, and a key tool to exercise control over its revenues and expenditures”. The State budget is seen as an annual work program for the State which reflects its policy in all fields.

The Ministry of Finance is responsible for preparing the State budget by requesting the ministries and government entities to submit their budget estimates based on a publication that includes technical principles and guidelines, at least five months prior to the start of the financial year. Then, the MoF discusses with the ministries and government entities their estimated revenues and expenditure and submits the final budget draft to the Council of Ministers for approval, which refers it to the Shura Council to discuss it and provide its opinion. Then, the budget draft is submitted to the Emir for ratification. Prior to 2016, the State budget was ratified through an Emiri decision, but starting that year, it is ratified through a law.

The Emiri decision issued to ratify the State budget consists of two articles only! The first article states that “The State budget for the financial year ... is ratified”, while the second article states that “all the competent authorities and entities must implement this decision, each within its functions”, without publishing the budget or any details thereof as an appendix to the said decision. However, regarding the 2016 State budget, issued by virtue of law, it outlines the general revenues and expenditures, the outstanding deficit, and MoF responsibility to close the deficit through funding, in compliance with the State Financial System Law. It is worth noting that the ratification of the State budget pursuant to the aforementioned law requires the presentation of the budget draft to the Shura Council to discuss it and issue relevant recommendations. Article (16) of the State Financial System Law states that “the Council of Ministers refers the main chapters and sectors of the budget draft to the Shura Council for approval, along with the draft law

⁶² See Articles (109), (110), and (111) of the Permanent Constitution of the State of Qatar.

on the ratification of the State budget”, before submitting the same to the Emir for ratification and publication.

According to the Constitutions of 1970 and 1972, the functions of the Shura Council regarding the State budget are limited to discussing the budgets of major projects, representing one chapter of the State budget; the State budget is divided into 4 chapters: Chapter 1: Wages and salaries, Chapter 2: Current Expenditures, Chapter 3: Capital Expenditures, and Chapter 4: Major Projects. Thus, the Shura Council does not review the first three chapters nor the revenues forecasts. In addition to this, the Shura Council discussions of the draft budgets of major projects result in non-binding recommendations only; in practice, the Shura Council often ends up approving of and submitting the budgets of this chapter to the Government as received from it.

Also in practice, the Minister of Finance, or one of MoF senior officials, makes sure to take part in the Shura Council session when the draft budgets of the major projects are discussed. The minister would present to the Shura Council members the factors that positively or adversely impacted the State budget for the year in question, such as the repercussions of the oil prices and the global economic situation, in addition to the total budget and deficit or surplus if any. He also states the total revenues and provisions allocated for the expenses of the four main chapters. Afterwards, the floor will be open for the Shura Council members to discuss any matter with the minister or the present senior officials from MoF. Moreover, the draft budgets of the major projects – which the Shura Council discusses and issues relevant recommendations- will include the ministries and government entities for which the funds are allocated, the amount of funds allocated for the projects, a note on whether the funds are new provisions or ones that are carried forward, estimates of the last financial year, in addition to the budget items of each ministry and government entity for which funds are allocated, and a list of budgeted projects⁶³.

However, according to the Permanent Constitution (2004), the role of the Shura Council will be to discuss all four chapters, and not only the fourth. The Permanent Constitution also authorized the Shura Council to request the amendment of the budget draft, subject to the approval of the Government.

4.3 The Role of the Shura Council regarding International Treaties and Conventions

Article (16) of the amended Provisional Basic Law stated that “The Emir shall conclude treaties by decree and refer them to the Shura Council, accompanied by appropriate explanatory memos. The treaty shall have the power of law after ratification and publication in the *Official Gazette*”. The role of the Shura Council is currently limited to notify on the treaties being concluded, and shall not discuss the treaty or agreement draft nor make any relevant recommendations.

However, the expected role of the Shura Council regarding the treaties, as stated in the Permanent Constitution of 2004, is that the Constitution stated that a concluded treaty shall have the power of law, but identified five treaties that only come into force when

⁶³ For example, *see*: the first extraordinary session of the 26th ordinary term of session of 4 April 1998; and the session of the 17th Shura Council session in its 27th ordinary term of session of 22 March 1999; and the 19th session of the 35th ordinary term of session of 26 March, 2007.

issued as a law. They are: reconciliation treaties, treaties pertaining to the territory of the State, those relating to the right of sovereignty or public or private rights of the citizens, and those that involve an amendment of the laws of the State. Moreover given the fact that the functions of the Shura Council is to discuss and approve of draft laws, these treaties must be referred to the Shura Council

6 Conclusion

The Shura Council in the State of Qatar was not established as an independent public authority or a parliamentary assembly equal to the Executive; but it is rather an advisory body created to assist the Emir and the Council of Ministers in discharging their duties through non-binding recommendations. In fact, Qatar Rulers did not want the members of the Shura Council to draw their powers from the people, and although the members would be elected by the people through direct, general ballot according to the Amended Provisional Constitution of 1972, and that the appointment of the Council members was only a temporary measure for a period of one year, after which elections would be held, the elected council has never seen the light. However, the appointment of members is not the only problematic issue, as there is also the lengthy tenure of the members, which can reach 26 years. As a result, the Shura Council lacks effectiveness, which is evidenced by the short meetings held, never exceeding half an hour, which shows that the members do not read the session documents and adopt the draft laws as submitted by the Council of Ministers without presenting any significant recommendations.

As for the Permanent Constitution of (2004) which granted the Shura Council certain legislative powers, this Council has never materialized because the provisions on the Shura Council call for electing its members. However, the Emir stated at the opening of the forty-ninth session of the Shura Council that the month of October 2021 will witness the elections.

Here, it would be worth noting the concerns raised by some people regarding the elected Shura Council in Qatar, especially in light of Kuwait experience with the National Assembly, arguing that the latter caused constant and worsening political conflicts between the Legislature and the Executive, and holding it responsible for the growth slowdown of development in Kuwait. Against this background, some call for avoiding a similar experience that could lead to a similar situation.

However, such claims are exaggerated for sure, as any attempt to compare the Qatari and the Kuwaiti Councils will reveal the extent of difference between the two. For example, regarding the structure of the Council, the Kuwaiti National Assembly comprises of 50 elected members and other ex-officio members (i.e. ministers); however, the percentage of the ex-officio members does not constitute an obstacle to reaching a majority when deciding on important issues such as enacting a legislation or withdrawing confidence from a minister. However, the Qatari Shura Council, according to the Constitution of 2004, consists of 45 members; 30 elected and 15 appointed by the Emir who may also relieve them from their posts. This appointed one-third of the Council represents, in practical terms, an obstructive proportion to the work- but also to the role- of the Shura Council, given that the majority required to decide on important issues is two-thirds of the total members!

Furthermore, the difference between the two councils is not limited to their structure, but has to do with the powers granted to each of them. For instance, as far as the oversight on the Government goes, the Qatari Shura Council may not raise questions to the Prime Minister or abstain from dealing with him, while in the Kuwaiti National Assembly, such options are possible. Moreover, no question may be addressed to a minister without the consent of two-thirds of the members in Qatar, while in Kuwait, any member of the National Assembly can individually pose a question to any minister⁶⁴. As for withdrawing the confidence from a minister, it cannot take place in Qatar without the consent of two-thirds of the members constituting the Shura Council, i.e. 30 members, a majority that is nearly impossible to achieve in practice, given that one-third of the Council is appointed, while the majority required to withdraw confidence from any minister in the Kuwaiti case is the majority of the elected members⁶⁵, because ex-officio members do not participate in the vote and therefore the majority can be achieved in practice.

Despite the limited role of the future, elected Shura Council, it does not mean that we should not call for its establishment; because it is, in all aspects, a better version than the current one, especially that the people will have a say in choosing two-thirds of its members for a period of 4 years, and the latter's votes will not be hijacked by the person who appointed them. Before the end of the 4-year tenure, new elections will be held to bring fresh blood to the Council, with fresh ambitions, ideas and visions, contrary to the appointed Council where the members' tenure is indefinite. As for other powers, unlike the elected Council, the appointed Council may not question or withdraw the confidence from any minister, nor may it propose laws; its functions are limited to reviewing the chapter of the State budget relevant to major projects. Therefore, the envisioned Shura Council is considered better than the appointed Council, and achieves the purpose of moving towards a Council with wider parliamentary powers. Moreover, holding elections and observing their periodicity, and holding public sessions of the Shura Council in presence of elected members will inevitably have a positive impact on the freedom of expression and might revive oversight and transparency.

⁶⁴ See Article 100 of the Constitution of Kuwait

⁶⁵ See Article 100 of the Constitution of Kuwait