

# Reforming the Budget Formulation Process in the Brazilian Congress

by  
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*This article provides a view of the Brazilian congressional budgetary process and how it contributes to preventing the budget from effectively determining public spending. Particular elements include revenue estimation, presentation and approval of amendments, sectoral committee involvement, and institutional technical advice.*

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## 1. Introduction

Although the hyperinflationary period the country experienced until 1994 has ended and fiscal responsibility has improved, there are still many obstacles that prevent the federal budget law from reflecting national priorities – defined by mid and long-term plans – while taking into consideration aspects of efficiency, efficacy and effectiveness when allocating public spending. A chronic problem, usually neglected by the authorities because of political issues and because its effects are not visible in the short term, is the prevalence of a certain leniency in the control of recurrent expenditures. Brazilian society does not yet understand that any decisions implying increases in recurrent expenditure, now and in the future, would hinder capital expenditure. It is also not understood that capital expenses represent a wider offer of goods and public services that would generate gains in efficiency to the economy while improving its infrastructure and bringing social benefits to the population. While not being able to control the expansion of recurrent expenditures, and given the country's fiscal restrictions, the government ends up underspending on its present and future investments to the detriment of public spending quality.

The credibility of the budget law depends on its adherence to reality, respecting the federal government's fiscal restriction and promoting the most efficient expenditure allocation possible within this restriction. This adherence did not exist at the peak of the hyperinflationary period, when the buying power of the same budgetary appropriation for expenditures was six times greater at the beginning of the year than at the end. In this sort of environment, it made sense to consider the budget law as a “piece of fiction” and to control only the disbursement of funds. With the end of the three-digit annual inflation, it is necessary to search for another explanation for the budget law's low efficacy as a tool for determining federal government spending, as observed in the last 14 years.

This article analyses some of the problems that prevent the Brazilian federal government's budget law from assuming the role that it is supposed to have, namely to predetermine the amount and allocation of federal government spending with a high adherence level. Unless this goal is obtained, the country will continue to suffer from budget laws that do not adhere to fiscal reality, as well as from the more dangerous (although necessary) consequence: the impoundment (presidential budget implementation decrees)<sup>1</sup> of approved appropriations at the beginning and throughout the budget execution year. During the high inflation period and until the mid 1990s, the impoundments were only a cash control mechanism, but since 1995 they have also become a commitment control mechanism. However, impoundments fundamentally impose strong restrictions on expenditures approved in the budget law, with the objective of achieving fiscal results for the financial year.

The comparison between budget formulation practices in the Brazilian Congress with those in developed countries (the ones that are useful as comparative tools) is somewhat tainted because most of these countries have a parliamentary government system. In these countries, the parliament's revision of budgetary proposals from the executive

branch is normally very limited, since it is unnecessary (in many parliamentary countries, there is not even a budget committee in the legislative branch's administrative structure). Regarding presidential regime countries, the most common comparison is with the practices adopted by the United States Congress. Comparison with other developing countries is hindered by the fact that, especially in Latin America, the participation of parliament in the budgetary process is still at an early stage in terms of its capacity to alter budgetary proposals in an independent way and with the use of competent technical staff.

Another factor that creates difficulty for international comparison of the legislative budgetary process relates to the different levels of budgetary complexity in several countries. The Brazilian budgetary law is probably one of the most detailed. Standard classifications usually found in budget laws of developed countries (i.e. organic, functional, economic, by programmes, by projects or activities – as well as the source of resources) are found in the Brazilian budget law in an excessively detailed way. Besides these classifications, there are also some *sui-generis* attributes in the Brazilian budget, such as the budgetary sphere, the primary balance identifier, the application modality, and the use identifier. Because of this excessive detailing of the budget expenditure, the Brazilian Congress ends up getting involved in the definition and alteration of programmatic details that should otherwise be restricted to a technical analysis only.

Since the adoption of the 1988 Constitution, the legislative branch in Brazil once again shares the budget formulation process with the executive branch, and completely exercises its constitutional right to alter the draft budget, even to the detriment of good budgetary practices or the federal government's fiscal capacity. This article analyses issues related to the pressure from federal congressmen for the inclusion of new appropriations in the budget law, which tends to happen without deeper analysis of the public policies or prioritisation of the most relevant ones. To avoid these deficiencies and to transform the budget law into an instrument for planning and allocating public spending, this article proposes the improvement of the budget formulation process in the federal legislative branch through four primary measures. The first two are related to the macro-fiscal situation, and the last two to the quality of public spending.

- Respect for the spirit of the constitutional text in relation to public finances, which does not foresee the possibility of the legislative branch re-estimating the revenue included by the executive branch in the draft budget.
- The imposition of stricter financial and quantitative restrictions on amendments proposed by individual congressmen and by State representations, as a condition for the introduction of the mandatory nature for the execution of these amendments.
- The analysis and voting of the draft budget law by permanent thematic committees in the House and the Senate, in their respective fields of competence, while reserving to the congressional budget committee the responsibility to co-ordinate, systemise, impose limits, and consolidate the analysis process.
- The merging into a single body of the House and Senate units of technical experts in the budgetary field, at the same time providing the technical expertise of Congress with some autonomy from political pressure.

Since it is outside the scope of this article, another fundamental issue in the legislative branch's budget formulation process will not be discussed – namely the fiscal arrangement in the Brazilian federation. In addition to the criticism that there is an excessive concentration of revenue collection at the federal level, the respective competence of each government level in

several areas of the expenditure side is not established in a clear way. Because of these two factors, congressmen feel motivated to seek federal resources to support the financing of practically any activity, even when State and local levels should supply the financing.

Each of the four measures proposed above will be analysed in a specific section of this article (Sections 3 to 6). But to develop the arguments in the right context, a brief description of the budget examination process in the National Congress will be given first, focusing on the measures mentioned above.

## 2. Examination of the draft budget in the National Congress

Under the terms of Article 166, §1, of the 1988 Federal Constitution, the Planning, Public Budget and Control Combined Committee (CMO) of the National Congress is responsible for examining and voting the draft laws relating to the pluriannual plan (*Plano Plurianual*), the budget guidelines law (LDO, *Lei de Diretrizes Orçamentárias*),<sup>2</sup> the annual budget law (LOA, *Lei Orçamentária Anual*) and the additional credits.<sup>3</sup> Since 1988, the structure, composition, direction and procedures of the CMO have been regulated by several National Congress resolutions (regarded as law).<sup>4</sup> Forty senior members compose the CMO (30 House members and 10 Senators), with an equal number of substitutes represented according to party proportionality. Each year, Senators and House members, as well as the political parties with higher representation in Congress, alternate in the main CMO positions.

The CMO organises itself into four permanent subcommittees, containing five to ten members each. These subcommittees specialise and deepen the assessment in their areas of competence: inspection and budgetary execution control, revenue evaluation, projects with possible irregularities, and amendment admissibility. The examination process in the CMO obeys definite deadlines and special rules and restrictions regarding amendments and approval procedures. The CMO conducts the expenditure examination process in two cycles: first, the CMO divides the draft budget law (PLO, *Projeto de Lei Orçamentária*) into ten thematic areas on which sectoral rapporteurs report; then a general rapporteur consolidates the sectoral reports. The CMO voting takes place first among House members and then among Senators, and any report will be considered rejected if members of one of the houses do not approve it.

The CMO arranges for public hearings with executive branch authorities so that they can present the premises and parameters used for the PLO formulation. Besides having all its processes open to public scrutiny, the CMO promotes public hearings with representatives from civil society entities or authorities from the other two branches of government. The CMO also organises regional public hearings in some States, with its members presenting the draft budget to local political leaders and authorities so that they can discuss the need for federal spending in their States.

An innovation was established by Resolution No. 1/06-CN, in place since the beginning of 2007, whereby the CMO votes a revenue report (prepared by the Revenue Evaluation Subcommittee) before examining the budget expenditures. This change seeks to make known *ex ante* the revenue availability Congress will be working with for accepting parliamentary amendments.<sup>5</sup> However, Resolution No. 1/06-CN allows a second revenue re-estimate up to ten days after the conclusion of sectoral reports, if there have been alterations in the forecasted macroeconomic parameters or in the tax legislation since the original submission of the draft budget to Congress.

Before amendments to the PLO can be proposed, the CMO plenary must vote a preliminary statement, presented by the general rapporteur but subject to amendment by congressmen. The preliminary statement is a document that self-limits the intervention of the National Congress in the draft budget, expanding the restrictions regarding the cancellation of appropriations imposed by Article 166 of the Constitution, by the LDO and by Resolution No. 1/06-CN. This Resolution maintained the obligation for the preliminary statement to include the definition of the value of a financial quota for amendments by individual congressmen in accordance with the norm since 1995. The preliminary statement defines the criteria to be used by general and sectoral rapporteurs to cancel appropriations, with the purpose of creating a “source bank” for the approval of amendments.<sup>6</sup>

Once the preliminary statement has been voted, a deadline is set for presenting amendments to the PLO. Before sectoral rapporteurs examine the amendments, they can be judged inadmissible by the Amendment Admissibility Subcommittee of the CMO. The amendment must follow the admissibility requirements set out in the Constitution, the laws and the rules of procedure, which include a check for compliance with the pluriannual plan and the LDO, and must also respect the norms contained in Resolution No. 1/06-CN and in the preliminary statement.

The amendments can be individual or collective. Resolution No. 1/06-CN increased the number of individual amendments that each congressman can present from 20 to 25. Individual amendments are appropriation amendments, meaning that they propose the inclusion of new expenditures; the annulments they present are merely a formality, since there are difficulties of an operational nature (annulments could be juxtaposed), and congressmen avoid the political onus of reducing proposed appropriations. To prevent these difficulties, at approval time the resources that compose the rapporteur’s “source bank” replace the originally proposed annulment in the amendment. These sources originate from the re-estimation of budget revenues carried out by the CMO or from the cancellation of a specific appropriation in the PLO (an LDO-mandated reserve existing exclusively for allocation by the legislative branch during budget formulation).

The collective amendments are made by State representatives from both houses or by a committee.<sup>7</sup> Resolution No. 1/06-CN introduced a new modality of amendment, called “virement”, for the State representations and committees. Different from the “appropriation” amendment, the virement amendment can only be effective with the annulment of an appropriation proposed in the draft budget and specified in the amendment, other than the specific congressional reserve.

The amendments from State representatives are presented by at least three-fourths of the House members and two-thirds of the Senators belonging to a specific State (or the Federal District), and limited to 18 to 23 amendments according to the size of the representation. Resolution No. 1/06-CN requires that these amendments have a structuring character or refer to large-scale projects of collective interest, excluding the approval of amendments with generic description or that can result in transfers to more than one federative or private entity during budget execution.

The committee amendments, approved by their respective plenary, are an initiative of the permanent sectoral House and Senate committees and concern actions that are of national or institutional interest and are related to their areas of responsibility. Resolution No. 1/06-CN mandates that the number of amendments per committee is dependant on the number of thematic sub-areas linked to each committee. The larger committees will

present up to eight amendments – five appropriation amendments and three virement amendments. Resolution No. 1/06-CN extends to committee amendments the same restrictions imposed on State representation amendments, namely the need to specify only one public or private entity as beneficiary.

The sectoral rapporteurs of each of the ten thematic areas examine the expenditure programming of the budgetary units under their responsibility, as well as the amendments that propose new expenditures in their areas. The resources released by the cancellation of part of the PLO programming – as authorised by the preliminary statement – coupled with resources transferred from the general rapporteur, are grouped by source of revenue and used for the approval of the amendments.<sup>8</sup> Assessed only in this phase, the individual amendments follow a simplified examination process, with the sectoral rapporteur introducing technical corrections when necessary. At the end, the CMO plenary votes each sectoral statement, approving all individual amendments.

It is the general rapporteur's duty to consolidate and systemise the sectoral reports and examine the pending requests. It is also his/her duty to evaluate the obligatory expenses, the contingency reserve, and the text of the budget law. The general rapporteur can increase or reduce (up to 10%) the values approved for each collective amendment, but cannot approve an amendment which has been rejected in the sectoral phase. Normally, the general rapporteur uses part of the resources made available by the preliminary statement to balance federal government transfers to States, given the high sensitivity of congressmen to the regionalisation of federal investments. The general rapporteur's final statement, together with the revised PLO (which includes the alterations introduced by the approved amendments), is submitted for discussion and voting by the CMO plenary.

After approval by the CMO, the National Congress meets in plenary to discuss and vote the revised PLO (reported by the general rapporteur). Although no further amendments may be presented at this stage, congressmen can discuss the draft budget one more time and, under certain conditions, request a separate vote on any specific clause. However, approval by the CMO of the revised PLO means that the congressmen overcame the political deadlocks, so that the voting session in the full plenary of the Congress usually occurs in a problem-free way. After processing eventual alterations voted in the plenary and adding the consolidated tables required by legislation, the Congress generates a document with the budget law format and sends it for presidential approval.

### 3. Revenue estimation

Article 166, §3, of the Federal Constitution imposes restrictions on the legislative branch's capacity to alter the draft budget submitted by the executive branch. Besides prohibiting the Congress from introducing modifications in the "personnel and social charges" expenditure group, the constitutional text determines that additional expenditures can only be approved if there is a cancellation of an equivalent amount (Article 166, §3, clause II: "they specify the necessary funds, allowing **only** those resulting from the annulment of expenses"; bolding added). The National Congress cannot alter the total estimated revenues or expenditures established in the PLO. However, since recovering its constitutional prerogative in the budgetary area in 1988, the National Congress has begun to use a controversial tactic to circumvent the Constitution and re-estimate the revenues included in the PLO. In spite of the specific norm cited above, the Congress interprets that the general norm concerning "correction of error or omissions" (Article 166, §3, clause III, line a) applies to the budget revenue estimates.

Therefore, arguing that there are “errors” in the PLO revenue estimates, every year the Congress “corrects” the revenue estimates. Since invariably the “errors” found have been underestimated or missing revenue, the Congress introduces a higher revenue estimate and keeps the difference to finance new expenditures, specified by congressmen in their amendments. Furthermore, expenditure included by the National Congress in the LOA has increased almost every year, positioning itself in values above tens of billions of Brazilian reals<sup>9</sup> (BRL) per year since 2004.

To satisfy congressmen’s escalating pressure to include additional expenditures in the budget law, rapporteurs in charge of evaluating the PLO revenues gradually began to use unprecedented creativity. For example, under the allegation that the forecast macroeconomic parameters – especially the GNP real growth and inflation rates – had been altered, rapporteurs since 2000 have concluded that the macroeconomic forecasts in the PLO were “wrong”. Therefore, every year Congress corrects this “error” by introducing new macroeconomic parameters in the PLO, disregarding the fact that the forecasts were not errors but only changes in the economic agents’ expectations resulting from updated information and the evolution of economic conditions. To make matters worse, rapporteurs do not always apply this correction symmetrically: in 2003, the CMO incorporated new values only for the economic parameters whose effects on revenue were positive, ignoring those changes that would have caused a negative impact on the revenues estimation.

In the past, the general rapporteur, who was ultimately responsible for responding to pressures for the inclusion of new expenditure in the LOA, was also responsible for the revenue estimate revision that financed these expenditures. Resolution No. 1/01-CN of 2001 divided the responsibilities for the analysis of budget revenue by creating a Revenue Evaluation Committee with an independent rapporteur. However, this improvement did not prevent the fact that, each year, higher revenue re-estimates succeeded each other in response to pressures for the approval of amendments and additional expenditure. At the end of the examination process, last-minute re-estimates continued to happen, allowing the general rapporteur to meet last-minute demands.<sup>10</sup> Unfortunately, the 2007 and 2008 processes have shown that Resolution No. 1/06-CN does not prevent the occurrence of re-estimates prepared after the beginning of expenditure assessment and with poor technical support, allowing the need to meet peer pressures to influence these re-estimates.

The most perverse consequence of the revenue re-estimation that Congress introduces in the LOA has been the loss of its realism, creating expenses for which there will not be enough revenue. During budget execution, if the bimonthly re-estimation of revenues is below that predicted in the LOA, the Fiscal Responsibility Law (Complementary Law No. 101 of 2000) demands that each governmental branch apply, by internal act and in the necessary amounts, a limitation on the expenditure commitment and cash payment of its entities. In the arrangement established by the Fiscal Responsibility Law, these bimonthly limitations to budgetary and financial execution are necessary to ensure the achievement of the fiscal goal established by the LDO for the financial year. However, the intention was that these impoundments would involve small values to compensate for unexpected variations in the revenue collection *vis-à-vis* the estimated values contained in the LOA. In practical terms, because of the excessively optimistic revenue re-estimation introduced by Congress, early each year the federal government imposes gigantic impoundments which reach tens of billions of Brazilian reals. What was supposed to be an exception became the rule and what was supposed to be marginal became bulk: after several consecutive years of impoundments, they became natural and expected by all the agents involved in the

budgetary process. Worse still, because of the great discrepancy between the approved LOA and the authorised ceilings, the impoundments hinder the good practice of foreseeing expenditures during the exercise, since the sectoral entities are not able to know when and if they can spend all their approved budget.

Besides being unconstitutional, the revenue re-estimates that Congress introduces are unnecessary, since the Constitution establishes a mechanism – called the additional credit – to incorporate in the LOA an eventual excess of revenue collection detected during budget execution. Since it is improbable that the effective collection will correspond exactly to the revenue estimates approved in the budget law, the National Congress authorises the executive branch to incorporate additional revenues into the budget law during budget execution, as well as the new expenditures financed by these revenues. Up to a certain percentage (usually 10%), the executive can incorporate these revenues directly, through a presidential decree. Above that percentage, the executive must send an additional credit solicitation to Congress.

There are some alternative ways of eliminating the strong temptation for Congress to increase the estimated revenues and to incorporate new expenditures during the PLO examination process. Ideally, the spirit of the constitutional text should prevail: in order for an amendment to be approved, Congress must identify an equal amount of expenditure to be cancelled. The possibility of Congress re-estimating revenues is not mentioned. The elimination of the tactic of considering everything as a correction of “errors or omissions” can occur voluntarily, by unilateral decision that auto-limits congressional powers (which would be highly improbable) or by a decision from the Federal Supreme Court in response to a lawsuit disputing the constitutionality of these re-estimations.

A second option would be that a new public finance organic law would determine that the PLO and the LOA should strictly repeat the revenue estimate approved by the LDO (which would need to be more detailed than the present one). Consequently, the National Congress, through amending the LDO project, would still have the “last word” in determining the revenue values to be included in the PLO and in the LOA. However, both phases of the budget formulation process, in the executive branch and in the legislature, would work with the same previously defined revenues, eliminating the possibility of Congress incorporating additional expenditures in the budget based on overestimation of revenue.

A third alternative – in reality a variation of the previous one – would be to institute a revenue “supercommittee”, with representatives from the executive and legislative branches as well as from the private sector. This committee would have the responsibility of defining the revenue values prior to the PLO submission, with the obligation of explaining them in detail in an attachment to the budget guidelines law. This arrangement would respect the Constitution and would encourage the dialogue between the executive, the legislature and civil society, benefiting everyone with increased gains in terms of procedural transparency. Lienert and Jung (2004, p. 241) describe a similar arrangement in Germany, where an independent working group formed by representatives from local and central governments prepares an initial revenue estimate months ahead of the draft budget submission, and then presents a final revenue re-estimate to the budget committee of the lower house (Bundestag) when it meets to discuss the draft budget.

An interesting practice in some countries for estimating budget revenue is the mandatory adoption in the draft budget of economic parameters synchronised with the average expectation of the private sector.<sup>11</sup> This practice eliminates any possible suspicion

that the executive could be purposely underestimating or the legislature overestimating the economic parameters with the intention of decreasing or increasing the revenue estimates. In Brazil, all the necessary conditions are in place to allow such practice, since the economic forecast reports prepared by the private sector are solid, numerous and diversified. The Brazilian Central Bank reports monthly through the *Focus Bulletin – Market Report*<sup>12</sup> on private sector expectations regarding economic growth, inflation and exchange and interest rates, among other indicators. The “Average – Top 5” index, which considers the average expectations of the five best classified institutions in terms of the accuracy of their short or medium-term predictions, could become a mandatory standard when formulating the budget, instead of just an informal reference mentioned only when convenient to one of the branches.

Whatever the alternative adopted, the National Congress should not re-estimate revenue when pressured by congressmen, local politicians, private entities or even federal public entities. To avoid this scenario, it is necessary to define the estimated revenues before the legislative branch starts examining the expenditure programming. This was the intention of the framers of the 1988 Constitution when they blocked the possibility of Congress re-estimating the PLO revenues. As with any rational economic agent, before making decisions on expenditures it is first necessary to know how much is available.

On the other hand, if the Federal Supreme Court decides that it is the executive branch’s sole responsibility to define budget revenues, a punishment mechanism could be established when revenue estimates prove to be clearly underestimated. One alternative would be for the public finance complementary law to determine that an amount equivalent to 10% of the difference between the estimated values and the effective collection, notwithstanding any explanatory reasons, should be destined as additional resources for parliamentary amendments in the budget formulation process of the following year.

#### 4. Individual or collective amendments

The ability of congressmen to present individual amendments to the draft budget is a controversial subject which has divided opinions since Congress recovered its democratic prerogatives in this area with the 1988 Constitution. In a political system where the “concrete” demand predominates over political principles in all federative levels, there is strong resistance from a large part of congressmen to any attempt to eliminate this prerogative. Nonetheless, the debate reappears after every public scandal involving the participation of congressmen in the allocation of federal resources. That is what happened in 1993 after the so-called “budget midgets” Parliamentary Investigation Committee (CPI), in 2006 after the “bloodsuckers” CPI, and in 2008 with the “NGOs” CPI.<sup>13</sup> All these CPIs investigated the receiving of bribes by congressmen as a result of amendments they managed to include in the LOA.<sup>14</sup>

Even if the doubtful motivation that sometimes conditions the presentation of individual amendments is set aside, there are problems related to the allocation and the efficiency of public spending determined by this process. These amendments do not reflect priorities established by a national co-ordinated policy to face a specific problem in the country, but rather the interests of individuals who seek to solve local problems. In consequence, a partial perspective of how to face the problem prevails, instead of an integrated analysis reflecting information about the whole national territory. Because of this interest game, in which congressmen take on the role of “federal city councillors” and

fragment the federal government's actions, localities that have more need than others can end up without receiving the attention they deserve from the federal government. On the other hand, localities that receive benefits through amendments may not represent a priority from a national perspective.<sup>15</sup>

In reality, the existence of individual amendments has caught the interest of both the legislative and the executive branches. While congressmen benefit politically from the possibility of sending federal resources to their electoral bases, the executive branch uses the amendments as a mechanism for co-opting the political parties. It takes advantage of the authoritative nature of the LOA to condition the budget execution of the individual amendments that congressmen propose in regard to the executive branch's projects in the National Congress. It is worth highlighting that "pork barrel" amendments also exist in more advanced democracies, although subject to stricter financial limitations and conditions.

Alston *et al.* (2005, pp. 80-82) point out that changes that decrease the president's costs of bargaining, as additional restrictions to individual and collective amendments, tend to generate gains in terms of implementing the president's political agenda, to the benefit of the country. At the same time, the authors fear that the strengthening of the legislative branch in the face of eventual changes in the present rules of budget approval – like the introduction of the obligation to fully execute and pay for the amendments – can cause a loss in governability. In several joint papers (Alston *et al.*, 2005; Alston and Mueller, 2006; Pereira and Mueller, 2004) the authors defend the efficacy of the Brazilian model in place since the 1988 Constitution. Supposedly, in this model the bargaining between congressmen and various governments (votes for political reforms by catering to certain groups' requests, among them the execution of individual amendments) have allowed the approval of the president's political agenda, including important constitutional reforms, at a low cost to the executive branch.

This thesis was suggested by Santos *et al.* (1997, p. 92) and proposed by Bezerra (2001, p. 185). The latter pointed out that, in a "complex system of asymmetrical and mutual dependence amongst congressmen, private agents and federal, State and local authorities", congressmen's prestige and power is founded in the recognition by the leadership and the public of their capacity and strength to act at another level of relations. Additionally, they have the "moral obligation" of assuring certain benefits to the inhabitants of the localities that they represent. Moreover, Pires (2005, pp. 51-54) demonstrated the direct relationship between favourable votes for the government and the execution of individual amendments during the 1999-2002 legislature. However, a paper by Limongi and Figueiredo (2005, p. 758) caused a controversy when it concluded the exact opposite. Analysing the data related to the 1996-2001 period, the authors proved that it is not possible to establish a causal relationship between individual budget amendment execution and votes, since political criteria such as party affiliation explain both variables.

In the years following the 1988 Constitution, there were only individual amendments, with no restriction as to quantity or to the amount of money that congressmen could request. In 1988, 2 660 amendments were presented for the 1989 PLO; the number increased to 11 180 in 1989, to 13 358 in 1990, and reached the peak of 71 543 amendments in 1991 (of which 18 944 were approved).<sup>16</sup> Henceforth – aware of the impossibility of submitting more than 70 000 amendments to a minimally structured examination process – congressmen approved Resolution No. 1/91-CN, which limited to 50 the number of amendments by each legislator, without value limitations. Consequently, in the following years the number of

amendments dropped to 22 611 in 1992, 13 924 in 1993 (when the preliminary statement established a limit of 25 amendments per congressman) and 23 216 in 1994.

The last decrease in the number of individual amendments occurred after the “budget midgets” CPI, when the CMO was restructured. In the debate prior to adopting Resolution No. 2/95-CN, a reasonable number of congressmen – cognisant of the investigation’s final report – defended the extinction of individual amendments. However, many congressmen did not accept restriction of what they believed was their right to propose amendments to draft laws submitted to Congress. To the disappointment of both groups, an intermediary solution prevailed in the political negotiations, and Resolution No. 2/95-CN simply limited the presentation of individual amendments to 20 per congressman.

The value of the financial quota per congressman has increased significantly since 2001, when the quota of BRL 1.5 million – in place since 1995 – became BRL 2 million. In 2003, the quota was increased to BRL 2.5 million, to BRL 3.5 million in 2004, to BRL 5 million in 2006, to BRL 6 million in 2007, to BRL 8 million in 2008, and finally to BRL 10 million in 2009. These recent increases broke up the initial concept of the financial quota, which intended to allocate in total an amount equivalent to 1% of the federal government’s net current revenues with this amendment modality. Since then, each LDO has determined that the PLO fiscal table treats this value as a primary expenditure, in the budget’s contingency reserve, for appropriation by Congress during the examination of the PLO. In the PLO for 2009, this value was equivalent to BRL 4.5 billion which, divided by 594 congressmen, would mean a financial quota of around BRL 7.6 million each and not the BRL 10 million adopted.

During the debate on Resolution No. 2/95-CN, congressmen saw the collective amendments as successors of the individual amendments. The greatest advantage of collective amendments – which were conceived to promote major interests from the States, regions or sectoral committees – was supposedly the fact that they were free of doubtful motivations, since they would have to be the object of formal negotiation between congressmen (with a minimum quorum). Unfortunately, as time went by, collective amendments started to suffer the same evils as individual amendments. This mischaracterisation began in the smaller State representations, where it was easier to divide the number of allowed amendments per congressman and partly ignore the governor’s pleas, so that each State representation amendment would represent a specific congressman’s interest. As time went by, other State and regional representations copied this practice, with congressmen dividing themselves into subgroups that “owned” a specific amount of amendments. In the end, congressmen disfigured a tool that had been intended to prevent doubtful negotiations on federal budgetary funds between themselves, local governments and private groups.

Table 1 shows the evolution, by amendment modality, of the number of amendments submitted as well as their approved values since the introduction of the Brazilian *real*.

The data show the increasing legislative greed for the inclusion of new expenditures in the LOA. From 1995 to 1999, the average annual inclusion of new expenditure by the Congress was BRL 3.4 billion; from 2000 to 2004, the average increment became BRL 7.3 billion and reached BRL 14.4 billion in the period from 2005 to 2009. The individual amendments gradually lost importance, in the period analysed, in terms of approved value, because – differently from other kinds of amendments – the congressmen’s individual quota has always restricted them financially. The increase in the importance of State

**Table 1. Number of amendments presented and approved values (BRL million)**  
Draft budgets (PLO: Projeto de Lei Orçamentária) from 1995 to 2009

Draft budget	Individual		State representation		Regional representation		Permanent committee		Total	
	Number of amendments	Value (BRL million)	Number of amendments	Value (BRL million)	Number of amendments	Value (BRL million)	Number of amendments	Value (BRL million)	Number of amendments	Value (BRL million)
PLO 1995	23 216	4 082	429	1 193	0	0	0	0	23 645	5 275
PLO 1996	10 403	862	279	1 608	28	252	110	169	10 820	2 891
PLO 1997	10 348	845	271	1 574	27	118	108	274	10 754	2 811
PLO 1998	8 533	866	245	2 048	26	154	121	464	8 925	3 532
PLO 1999	7 572	866	272	2 323	–	–	120	600	7 964	3 789
PLO 2000	8 334	880	275	3 256	24	224	112	1 334	8 745	5 694
PLO 2001	8 478	1 178	408	4 311	25	238	125	1 470	9 036	7 197
PLO 2002	7 642	1 178	426	5 444	10	75	123	1 733	8 201	8 430
PLO 2003	6 904	1 185	427	6 047	10	78	133	1 769	7 474	9 079
PLO 2004	7 278	1 483	508	3 756	10	75	144	839	7 940	6 153
PLO 2005	7 600	2 076	508	6 139	10	113	150	1 620	8 268	9 948
PLO 2006	7 943	2 964	508	5 767	10	123	160	2 003	8 621	10 857
PLO 2007	8 151	3 533	508	8 665	10	175	153	2 997	8 822	15 370
PLO 2008	8 998	4 743	482	8 755	0	0	139	2 688	9 619	16 186
PLO 2009	8 712	5 928	537	9 407	0	0	146	4 126	9 341	19 461

Source: Brazil (2007), *Technical Note (Joint) No. 11/2007*, CMO Secretariat; and Greggianin (2005), “O Processo de Apreciação Orçamentária no Congresso Nacional: Subsídios para a Reforma Orçamentária”.

representation amendments is noticeable, and in 2009 the approved value was eight times higher than in 1995. There is also a noticeably rapid growth of the value of committee amendments, which in the beginning represented only 10% of the total approved amendments but are now responsible for more than 20% of the expenditure added to the LOA.

Unfortunately, the high increase in the amount of money approved by collective amendments does not reflect a planned decision to have them prioritised over time, due to greater representation or capacity to propose sectoral and regional policies. On the contrary, this growth is mostly due to a change in the original proposition that collective amendments should become an instrument for the implementation of national public policies, since congressmen progressively started using these amendments as a tool to circumvent the limitations imposed on individual amendments. By proposing generic actions, which the executive agencies will detail during budget execution, the collective amendment becomes similar to a group of individual amendments, with the difference that there is no restriction on its approved value. It is possible for several congressmen, acting in co-ordination, to individually appropriate part of the approved values.<sup>17</sup> Resolution No. 1/06-CN tried to control this practice, imposing many restrictions regarding the presentation of collective amendments, such as requiring that the benefitting entity be specified.

Worst of all, while the individual amendments were subject to a financial limit, the representation amendments had never suffered that limitation. With no financial restriction on their presentation and approval, these State representation amendments ended up absorbing a great part of the revenue increases introduced by the Congress in the LOA. The combination of huge amounts of money with individual amendments from congressmen, even if disguised as collective ones, has potentially serious implications, not only in terms of the allocation of public spending but also in the correctness of this process.<sup>18</sup>

Many members of the National Congress are of the opinion that they have the “right” to alter the draft budget by their own individual initiative. As such, they undermine the

legitimacy of the democratic institution that they represent, namely their collegiate action in budget formulation. In favour of the individual amendments, one can argue that the *a priori* identification of the final beneficiaries of the resources adds more transparency to the budget process and constitutes a political act in defence of regional or local interests. Another argument is that the legislature funds its actions through logic of a substantive nature, different from the objective nature that drives technocratic decisions, therefore representing an opportunity for the correction of errors or omissions. However, even considering that congressmen represent the population, the individual definition of voluntary transfers from the federal government to public or private entities does not follow the principle of impersonality in the public administration.

One can also argue that the amendments are mere propositions which need the approval of the CMO and of the Congress in plenary to give them legitimacy. However, the approval process of individual amendments occurs almost automatically, without a specific merit analysis since, as long as the amendments are technically admissible, the congressmen are free to define the projects they intend to see executed within their financial quota limits. This procedure allows one individual to introduce – as the federal government’s responsibility – expenditure that should be the responsibility of local governments, thus fragmenting federal resources while attending to local needs.

Contrary to what many believe, legislative amendments do have a serious repercussion in the federal government expenses. One recurring argument is that the total value added to the LOA by legislative amendments is insignificant in comparison to the total federal government budget. In fact, the percentage would be insignificant if this comparison was valid, but the federal government budget comprises the amortisation and rollover of the public debt, which distorts its real value, besides huge expenses of obligatory execution (transfers, personnel, social security benefits, etc.). The correct comparison should be against the federal government’s discretionary expenses, which are the only ones that the executive branch can reallocate. If done in a proper manner, the calculations would show that Congress alters a significant percentage of the budget every year.<sup>19</sup> Another symptom of that distortion is reflected in the executive branch’s need to submit a large amount of additional budget, much of it to supplement recurrent allocations cancelled by the general rapporteur during the examination of the PLO by the National Congress.

In the health sector, for example, it is common for congressmen to present amendments earmarking resources in favour of a health entity that promotes specialised public health care, in both public and private networks. The choice made by congressmen as to which locations will get benefits follows a parochial political logic, not taking into consideration any national policy criteria that should guide this distribution. Therefore, hospitals and hospital equipment – that, for reasons of logistics, economy of scale and maximisation of social benefits, should have regional coverage, attending to a minimum population group within a cluster of cities – can end up being overridden geographically, disfavours another region that would remain without assistance. Situations like these, which happen in all sectors, are a consequence of Congress’ predominant focus on local policies, relegating the debate about national priorities to a secondary status after the needs of each congressman’s electoral base have been addressed.

The definition of beneficiaries of voluntary transfers from the federal government programmes should follow formulas founded in social-economic indicators. Accordingly, the process of federal resource allocation would have more transparency and would also

avoid i) the detailing of budget appropriations by legislative amendments or ii) definition by the executive branch in a less transparent way. Social-economic indicators – such as the benefited population, the human development index or others more specific to each programme – could be attached to the programmes (defined every four years in the pluriannual plans and replicated in the annual budgets) or to the actions (defined annually in an annex to the LDO) or even in the specific laws which created the programmes.

Congress should demand that the executive branch make available, as an appendix to the draft LDO, the criteria and formulas it intends to adopt during the execution of programmes and actions for the regional allocation of federal government funds. A good part of these formulas already exist, such as those in the education, health, social assistance and transport sectors, but are exclusively known by the authorities in the Secretariats responsible for each of these sectors. If they are to be legitimate, these formulas need to be politically debated in the related sectoral committee (see Section 5 below), which would not alter the LDO appendix.<sup>20</sup> Hence, legislative performance would happen at a different level, where the highly criticised and permissive specification of the final beneficiaries of public resources would be replaced by a discussion about the criteria for applying these same resources.

The excessive tendency of congressmen to transfer resources to private entities, added to the fragile and untimely control of these expenditures, point towards eliminating the individual amendment modality. Nonetheless, a recommendation in this sense would be far removed from the political reality of Brazil and would be completely disassociated from the frame of thought predominant among the agents involved in the legislative process of formulating the budget. Therefore, in the short run, the chances of implementing such a recommendation are practically non-existent; for Brazilian society to react and to press for additional reforms in legislative procedures, additional political scandals involving the presentation of budget amendments would be necessary. These reforms would need to avoid being merely cosmetic, as they have been to this day, but should adopt propositions that are more effective.

To succeed, any attempt to change the congressional budget examination process should keep the Brazilian political reality in mind and should benefit both governmental branches. A possible “agreement” would be the introduction of greater financial and quantitative restrictions to individual and State representation amendments in exchange for the executive branch’s obligation to effectively execute and finance legislative amendments to the budget. As part of this agreement, the legislative branch should decide not to use the “errors or omissions” tactic to alter the budgetary revenue estimates. The executive branch would retain the advantages of having a more preserved budget and of having prior knowledge of the fiscal cost of the legislature’s intervention. On the other hand, an advantage for the legislative branch would be the effective execution of the alterations introduced in the draft budget. Additionally, congressmen will be reassured that they took action to change the budget process before the emergence of new scandals involving congressmen and public budgeting. In order for the new agreement to last, the public finance complementary law should express the additional restrictions to the amendments and the mandatory execution of amendments.<sup>21</sup>

A first restriction on the amendments, of a fiscal and financial nature, would be to limit the global value added to the PLO for each of the amendment modalities to 0.25% of the net current revenue of the federal government, totalling 0.5% of the net current revenue

– equivalent to BRL 2.3 billion in the PLO for 2009. This value is sustainable from a fiscal point of view, and not even the mandatory nature of the execution of this expenditure would prevent reaching the primary result target, since the value of the budget amendments effectively paid in recent years is higher.

A second restriction relates to the beneficiaries and the amount of amendments that each congressman and each State representation can present. In regards to the individual amendments, taking into consideration the problems caused when the beneficiaries are non-profit private entities designated by congressmen, it would be wise to eliminate the allocation of resources thus defined. The control principles do not recommend the participation of congressmen in the allocation of public resources to private entities because it is in fact the Congress which, in the last recourse, follows up and controls how these resources are used. The congressional focus should be on the establishment of strict legislation for the use of public resources, the assurance of transparency in the executive branch transfers, and the guarantee of broad, intensive and timely control from the agencies in charge.

Consequently, individual amendments would send funds exclusively to public entities from any government level. If the financial quota system had been preserved, each congressman would have been awarded an approximate amount of BRL 1.9 million (in 2009 PLO values), a substantial reduction from the BRL 10 million quota established for the 2009 PLO examination process. If the 595 congressmen could present only ten amendments each to the PLO, there would be less than 6 000 amendments, decreasing significantly the fragmentation of federal resources observed in recent years. This number of amendments is sufficient and adequate, so that congressmen can respond to parochial political requests, and allows the execution of small investments in some localities with needy areas. At the same time, it encourages congressmen, in a healthy way, to prioritise the political requests that they receive.

Regarding the State representation amendments, the creation of financial limits will return to the idea behind their creation in 1993, which was for them to reflect a few and important State priorities. It is also necessary to rationalise the amount of amendments per State representation in order to prevent the current practice of dividing the amendments per representation members. Furthermore, the absence of these restrictions allows the political negotiation process for the approval of the State representation amendments to become too complicated. Therefore, not only can these changes recapture the original intentions of State representation amendments, but they can also simplify and speed up the internal decision process of the CMO.

A drastic reduction in the number of State representation amendments (to something around less than 100 amendments total) is necessary to reach these goals. A better distribution of amendments between the State representations must follow that reduction, since currently Resolution No. 1/06-CN gives greater benefit to the smaller representations stipulating a low amplitude variation (between 18 and 23 amendments per State representation). The best would be to establish proportionality with the number of congressmen in each State representation, which would continue to benefit the smaller States of the Union because of the disproportional popular representation in both houses, but would eliminate the excesses that occur nowadays. If direct proportionality by number of congressmen is adopted, the smaller State representations with 11 congressmen would

have the right to two amendments, while the biggest State representation, from the State of Sao Paulo, would have the right to 12 amendments.

## 5. The permanent sectoral committees

As defined by the Constitution, the CMO (the Planning, Public Budget and Control Combined Committee) is responsible for analysing proposals of a budgetary nature, thus excluding the active participation of the permanent committees of the Senate and the House of Representatives. Resolution No. 1/06-CN and CMO regulations limit the participation of permanent committees: they can present no more than eight amendments (four on appropriations and four on virements); they can only hold public auditions with the purpose of discussing issues related to their own subject areas; and they are allowed to propose priority programming for receiving amendments. Besides being limited to proposals related to only their own subject areas, the committee amendments must be of an institutional nature, must represent the national interest (i.e. it is forbidden to designate private entities), and must contain within their justification the elements, criteria and formulas that determine the resource allocation.<sup>22</sup>

In order to analyse the sectoral programming contained in the PLO, Resolution No. 1/06-CN divides it into ten thematic areas. A sectoral rapporteur, designated from among the CMO members who preferably are also members of the permanent committee related to the subject area, reports on each thematic area.<sup>23</sup> The sectoral rapporteurs' job is limited by guidelines and restrictions imposed by the preliminary statement, approved in the CMO plenary. It is their responsibility to approve, totally or partially, or to reject the amendments presented by congressmen in their respective subject areas, as well as to decide about eventual cuts in investment programming contained in the PLO in their respective areas. Therefore, examination of the PLO sectoral programming does not happen in each house's permanent committee, but inside the CMO itself.

In that respect, the discussion and voting of the sectoral programming comprised in the PLO does not happen among specialised congressmen or those interested in discussing specific public policies pertinent to a certain sector. For example, the budget programming in the education and health areas are not discussed in their respective permanent committees, which spend the rest of the year analysing propositions in that area. In this arrangement, the prevailing view is that of the individual rapporteur, whose main worry is to have his/her sectoral report approved by his/her peers in the CMO. For that to happen, it is sufficient for the individual amendments to be approved, which happens in a quasi-automatic way, and for State representation and committee amendments to be treated in a balanced manner, considering the diverse political interests and the limitations in available resources.<sup>24</sup> The discussion does not assess the efficiency, efficacy and effectiveness of the government programmes in their respective thematic areas, nor the targets, indicators and results reached in previous years. Also, the discussion does not take into consideration national priorities, especially because most of the time the amendments cover parochial interests.

Another problem with the current model is the task reserved for sectoral rapporteurs of deciding on eventual cuts in the investment programming contained in the PLO. Usually the rapporteur, who is not always familiar with a certain area, has enormous difficulties in implementing cuts in the programming proposed by the executive branch. In most cases, to escape the political onus of proposing a more drastic cancellation in a certain project,

the sectoral rapporteur prefers to propose an “across-the-board” or quasi-linear cut, which is easier to apply than undertaking detailed comparisons between the proposed allocations and previous years’ execution. The absence of more specific knowledge on the part of those responsible for cancellation decisions again jeopardises the National Congress’ capacity to evaluate more effectively the executive branch’s proposed programming.

The best way to provide the legislative branch with the capacity of effectively assessing the PLO’s sectoral programming would be to alter the Constitution in order to delegate the responsibility for examination, discussion and voting, currently concentrated in the CMO, to the permanent sectoral committees of both houses. The CMO would keep the relevant role of co-ordinating the draft budget’s transition process in Congress, assessing the most significant expenses (salaries, debt payments) and imposing limits of a fiscal and financial nature to the modifications introduced by each sectoral committee, as well as protecting the good practices in budgeting.<sup>25</sup> The thematic committees would have the role of assessing the sectoral programming, including the individual and State representation amendments that propose alterations in their subject areas. By accepting the alterations they find more relevant, the committees would contribute to an efficient use of available resources through a better prioritisation of the expenditure programming.

One practical problem with the implementation of this alternative comes from the fact that the House and the Senate do not have the same number of committees, and that they are grouped by distinct thematic areas. The Constitution determines that the voting process on all budgetary matters occurs separately in both congressional houses. Therefore, the analysis and voting of the PLO by the sectoral committees in the House and the Senate would demand a huge co-ordination effort from the CMO, which would have to reconcile the increases and cancellations made in each thematic area by the committees of both houses.

Ideally, the duplication in the examination process should not exist, and only one of the congressional houses should be in charge of examining and voting the budgetary law. Alternatively, the Congress could create temporary combined sectoral committees formed by members of the related permanent committees of both houses. However, the first alternative requires changes in the country’s higher legislation – which at this time seems out of the question – and the second alternative requires a political understanding between the two congressional houses that seems improbable. To alleviate this deadlock, it would be helpful to revise the thematic areas and sub-areas of each permanent committee, in order to achieve greater thematic harmony between the sectoral committees of both the House and the Senate. The joint regulation of the National Congress (Resolution No. 1-CN of 1970) will need to establish a co-ordination mechanism between the several committees of both houses in the budgetary process.

Furthermore, even though the National Congress has not been entirely applying its joint regulation in this respect, the regulation establishes the way the permanent committees in both houses should collaborate with the CMO in the examination of the PLO. To alleviate the problem of reconciling sectoral analysis, the joint regulation foresees the possibility of both houses’ committees holding joint meetings. Article 90, §3 f, of the regulation states that “by deliberation of the majority of its members, the Federal Senate and the House of Representatives’ permanent committees that have coincident competence, are allowed to hold joint meetings under the alternate direction of their respective presidents, being able to reach conclusion by a single statement”.

With the discussion and voting of the PLO happening in the permanent committees, the Congress could reduce the size of the CMO, as the latter would only be in charge of coordinating and systemising the draft budget's transition process. The preliminary statement of the CMO would continue to establish the technical budgetary conditions that the permanent committees must consider in the examination of the PLO, as well as the fiscal and financial limitations that each of these committees would have to follow. Heading the systematisation, a general rapporteur (a congressman with a technical profile who, contrary to current practice, would not have the power to approve additional values for the amendments) would reconcile the increases and cancellations made in each thematic area by the sectoral committees of both houses.<sup>26</sup> Finally, the CMO would vote a consolidated draft budget report and, after approval, forward it for voting in the congressional plenary.

To revitalise the currently weak legislative role of the thematic committees, it is important to pay attention to the way they present amendments to the PLO. If Congress does not well regulate the issue, one can predict that the committee amendments will end up being a way to circumvent the restrictions imposed on other amendment modalities. Therefore, Congress needs to rethink the conception of committee amendments, to avoid having them suffer the same restrictions that made individual and State representation amendments become mere detailing of the actions proposed by the executive branch. The committees need to have the freedom to modify the PLO sectoral programming in the way they find most convenient.

Joyce (2005, p. 9) argues that, when analysing resource allocation, congressmen frequently do not have the incentive to request and use information about budget programme performance because they do not notice a connection between the results achieved by these programmes and their probable electoral benefits. Even if this difficulty is also present in Brazil, there should be incentives for the intervention of sectoral committees in the budgetary process during the examination of the draft pluriannual plan, so that eventual changes introduced in its programming are reflected in the following PLOs. The focus of the committees' interest should be the conception of sectoral programmes and their actions, activities and projects. The committees in the Brazilian Congress should examine – with the support of the budget and legislative advisory units (see Section 6 below) – the pertinence of the programmes, the indicators used and the results achieved.

In the new scenario, in order to make sure that the committees' amendments reflect the debate about which public policies are of interest to their respective areas, taking into consideration a national perspective, these amendments would have to be proposed exclusively by the political parties' representation on each committee, and not by the individual initiative of a congressman.<sup>27</sup> In this context, as a way to improve the performance of their new tasks, all committees should be obligated to invite ministers and other authorities in their subject areas to present and discuss the respective sectoral budget proposal. The examination of the PLOs for 2008 and 2009, when the foreseen public auctions did not happen, are examples of how the committees need to have effective power to change the PLO in order for them to really be interested in discussing the draft budget.

Alston and Mueller (2006, p. 98) are sceptical about the chances of an arrangement where the sectoral committees or the political parties conduct the collective answer from the Brazilian Congress to political negotiations proposed by the executive branch. The authors argue that congressmen do not dominate the sectoral committees' agenda, since party leaders routinely switch the congressmen around from one committee to another

and can even remove proposals under consideration by the committees. In relation to political parties, the authors argue that there are several parties and that none of them is large enough to ensure stability in the negotiations. As per the sectoral committees, the experience of Germany could be adopted, whereby the nomination of sectoral rapporteurs is valid during the entire legislature in order for these rapporteurs to intensify their specialisation and develop deep knowledge of the programming under their responsibility. Concerning the political parties, the new way of organising the congressional budget process would allow society to know their position in relation to the federal government spending priorities, opening up differences in political views.<sup>28</sup>

Nevertheless, Schick (2002, p. 29) considers an evolution: the replacement of a centralised process where everything is decided by a budget committee, by a co-ordinated process where a budget committee decides about fiscal aggregates but programmatic decisions are made in specialised sectoral committees. A co-ordinated process maintains the capacity to control fiscal aggregates and targets, and at the same time deepens the sectoral analysis in a complementary way. This co-ordination is not to be confused with a decentralised process where the sectoral committees retain all the decision power over programming in the respective sectors, an arrangement more commonly found in parliamentary countries. Wehner (2006, p. 771) claims that a well-conceived committee structure speeds up the examination of the draft budget and the follow-up of its execution. Research data from the 2007 OECD study of 38 countries show that the majority of modern democracies' legislatures, even if only presidential countries are considered, still prefer to delegate budget issues to a budget committee (normally one in each house) instead of sharing that responsibility with sectoral committees (OECD, 2007).<sup>29</sup>

Despite having a parliamentary form of government, Sweden is a good example of how a co-ordinated system can work in a positive way (Blöndal, 2001, pp. 40-42). Similar to Brazil, in Sweden the executive branch submits the following year's fiscal aggregates to the parliament in April. After discussions with the opposition, a decision (not legally binding) on the proposal is taken. Then, after the parliament receives the draft budget in September, a finance committee decides on the revenue estimate and proposes expenditure limits for 27 different thematic areas. Hence, each sectoral committee proposes expenditure programming within its subject area and its established limits. By mid-December, the parliament makes a formal decision on the committees' proposed programming in each thematic area. Different from Brazil, there is only one house in the parliament to examine the budget proposal, which simplifies the process in Sweden.

When building indexes to measure the separation of powers and the legislature's control over the budget in 28 countries, Lienert (2005, p. 10) discovered that the participation of a second house in the budgetary process can strengthen the influence of the legislative branch. In Japan, during the draft budget's approval process, when one of the congressional houses makes a decision that is different from the other house, the Constitution and the common regulation delineate a special reconciliation process so that both houses achieve an understanding. A combined committee formed with representatives from both houses has a 30-day period to achieve an agreement; if there is no consensus, the lower house's proposal prevails (Lienert and Jung, 2004, pp. 262-263). In Germany, the budget committee adopts the interesting practice of being traditionally presided by an opposition congressman.

In the United States – a presidential country – the examination of the budget occurs in parallel in both houses of Congress, involving mainly a budget committee and an

appropriations committee in each house (besides the specific committees created to examine revenue). Each appropriations committee is subdivided into 13 subcommittees that are responsible for preparing a draft budget related to their thematic area. The appropriations committees from each house are in charge of consolidating the proposals from the subcommittees, and the budget committees are in charge of systemising revenues and expenses. On the other hand, the United Kingdom and other parliamentary countries that follow the Westminster model do not have a budget committee, instead concentrating the control over the executive branch in *ex post* audits. According to Wehner (2005, p. 13), in these countries any alteration to the draft budget submitted by the executive branch is still considered a vote of non-confidence in the government.

In Latin America, Santiso (2004, p. 63) observes that, in general, the parliamentary sectoral committees' low level of institutionalisation prevents them from making a more effective contribution to the budgetary process. Currstine and Bas (2007, pp. 89-95) highlight the heterogeneity of the legislature's role in the budget process across Latin American countries. Currstine and Bas point out the wide variation in the degree to which the legislatures can alter the budget, and the fact that the legislatures of most of the countries in the region actually approve few budget amendments.

## 6. The technical-institutional advisory

Anderson (2005, pp. 38-39) highlights the importance for congressmen to have reliable and unbiased information to be able to participate in a constructive manner in budget formulation. They need to rely on an independent and non-partisan analytical unit that would simplify the complex budget information, promote transparency and accountability, increase the credibility of budget estimates, and quickly respond to congressmen's questions. Data from the OECD study done in 2007 show that 70% of the 33 countries which responded to a specific question have a specialised technical unit that conducts budgetary analysis (the data include external auditing units).

Schick (2002, p. 31) highlights the increasing number of legislatures around the world that feel the need to have their own staff specialised in public budgeting to allow for a budgetary examination process that is truly independent of the executive branch. Currently, Brazilian federal congressmen are able to call upon highly specialised technical assistance in budget matters. Institutional advisory units in each house provide this assistance, as well as technical staff knowledgeable in budget matters in the political parties' leadership.

Since the mid 1990s, political party leaders have shown a growing concern for having available specialised technical assistance in public budgeting. Government workers with previous experience in the executive branch – many of whom were originally budget analysts in the Federal Budget Secretariat – usually fill these positions. Every party's leadership in the House of Representatives has at least one technical staff person specialised in public budgeting. With varied levels of competence, these staff members help their respective legislative representation follow the budget matters of the federal government.

With respect to institutional assistance in the legislature, there are highly qualified advisors in budgetary matters in both houses: 40 in the Budget Advisory Unit of the House of Representatives (CONOF) and 25 in the Budget Advisory Unit of the Senate (CONORF). These advisory units, revamped after the 1988 Constitution, prepare analysis, studies and technical reports related to the most relevant budgetary issues or in response to specific requests from congressmen. The advisory units also undertake all the technical processing

in support of the examination processes for the draft pluriannual plan, LDO and LOA, as well as in support of the amendments to these proposals. Regarding the procedures necessary for presenting amendments to the budget proposals, the advisory units prepare a manual containing specific instructions for each sector, and guide congressmen and their assistants with seminars, personal advice or phone availability. Both advisory units have a very horizontal administrative structure, formed by a technical co-ordination and several thematic divisions informally co-ordinated by an advisor, all subordinated to their respective director. The advisors' role is to assist congressmen in a professional and politically unbiased way, including in particular the elaboration of report minutes under the rapporteur's guidance.<sup>30</sup>

According to the information available, no other country has two co-existing budget research units, with practically the same tasks, linked to the legislature. In Brazil, the existence of two advisory units has led to the establishment of informal relationship rules that, although allowing proper budget formulation in the legislative branch, have also generated duplication and unnecessary conflicts. These issues arise first from the very existence of these two separate units with different directors but who have the same spokespersons – namely the budget committee president, the budget general rapporteur, and authorities of the executive branch. The good functioning of this arrangement depends on the personality of the directors, their personal ambition and their desire to share decision power in order to preserve a good relationship.<sup>31</sup>

At the levels of direction and technical co-ordination, there has been apparently no major conflict in recent years, but problems arise with the joint work of the thematic divisions during the budget formulation process. In this case, the technical work is led by the advisory unit which contains the congressman in charge of preparing the sectoral report. Except for a few cases, the participation of advisors from the other house is generally minimal. Consequently, in the areas where there is an annual rotation of rapporteurs between Senators and House Representatives, the memory of what was done in the previous year might be lost (although it can be compensated by the existence of the sectoral report). Alternatively, in the areas in which the rapporteur is always from only one of the houses, there are complaints about excessive workload in a division of that house and about the lack of technical knowledge in that area in the other house.

In 1994, a technical working group formed by advisors from both CONOF and CONORF made suggestions to a group of congressmen in charge of proposing a new resolution to the CMO (the Planning, Public Budget and Control Combined Committee). Although the congressman in charge of writing the report included in the draft resolution the proposition to merge the two advisory units into one congressional budget unit, as suggested by the technicians, the group of congressmen decided not to include the merge of both advisory units in its final report. The reasons for refusal were the resistance to the merge from part of the technical staff, and bureaucratic issues related to the practical implementation of an eventual "Congressional Budget Institute". In reality, the congressmen feared that strengthening the congressional technical staff could somehow, in the future, jeopardise their freedom to act in the budget examination process.

Another aspect that deserves mention refers to the weak relationship between the technical teams in the executive and the legislature. The National Congress' budget advisory units should promote technical dialogue with the Federal Budget Secretariat and other executive branch entities involved in the budget process. However, on the rare

occasions when they meet, there is visible reciprocal distrust. To allow this dialogue to be fruitful, a *sine qua non* condition is that the defence of the best budgetary practices be one of the main concerns of the legislative advisory units, which requires a minimum amount of autonomy in relation to eventual political interference. Furthermore, it is necessary for the congressional advisory units to have only one voice, which is not currently the case because of the duplicate direction and the excessively horizontal hierarchy of their administrative structures.

The Brazilian Congress would benefit from a more independent, single technical advisory unit in the budget area – that is, one that would evaluate the proposals from the executive branch in a more professional way, without the interference of immediate political interests from the leaders of the CMO. According to data from the OECD research done in 2007, Japan (21 specialists), Korea (since 2004, 96 specialists), Mexico (since 2000, 20 specialists in the *Centro de Estudios de las Finanzas Publicas*), Poland (since 1991, 12 specialists plus support from university professors), and the United States (since 1974, 205 specialists) are examples of countries that have set up a technical advisory unit in the budget area linked to their respective legislatures.<sup>32</sup> Both the executive branch's agencies and congressmen recognise the United States Congressional Budget Office (CBO) as an example of a renowned and respected entity. It produces high-level economic-budgetary analysis with no involvement of party politics, avoids providing recommendations or making media appearances, and is able to cater to the committees and not to individual congressmen (Anderson, 2005, p. 43). Meyers and Joyce (2005, p. 79) point out that the CBO has become the most trustworthy source of federal government budget information, even above executive branch agencies.

In Brazil, the nomination of a director for such a unified budget unit should follow a model that would allow him/her to act with a certain degree of freedom, avoiding what happened in 1992. That year, the CONOF director lost his position because of the repercussions of the first technical note produced by the advisory unit, which analysed the draft LDO (budget guidelines law) for 1993 from a technical perspective. Since then, the subsequent directors knew that in order to keep their positions they had to cater to the congressmen who successively ran the CMO each year (presidents and annual budget general rapporteurs), many times to the detriment of the best budgetary practices. If a single budget advisory unit is created, a triple candidate list could be prepared by the advisors and submitted to the leadership of the CMO for selection (with rules to protect the incumbent director from being unjustifiably removed or removed by lesser political issues). Thus, there would be enough stability for the chosen candidate to perform the job of director with relative independence for an entire legislative period (four years).

It would be an evaluation error to imagine that a unified budget advisory unit, formed only by public budget specialists, could supply all the information needed for congressmen to make a qualified analysis of the budget proposals submitted by the executive branch. In order to achieve that, it would be necessary to involve policy specialists in all the different areas of public administration. This knowledge exists in the House of Representatives and in the Senate, where legislative advisory units with technical staff (approximately 200 in the House and 175 in the Senate) are available to advise congressmen. They are specialised in public sectoral policies, and many consider them as some of the most qualified technicians in the Brazilian federal public service. However, under the current model, these advisors (grouped in 21 thematic areas in the House and 32 in the Senate) do not have the opportunity to participate in discussions related to budget proposals in their respective

knowledge areas, which reduces the quality of legislative debates on policies and public programmes.

In order for the participation of these legislative advisory units to be effective and productive, it must occur in conjunction with the work of the advisors specialised in budgeting. Unfortunately, the majority of specialists in public policies are not aware of the programmes and actions involved in their respective budget areas, and even less aware of the values involved in programming. Moreover, few of these public policy specialists have a complete notion of the federal government's limitations in terms of fiscal capacity and, because of their deep involvement with a specific sector, they tend to advocate the allocation of more resources to that sector which could negatively affect the allocation to other sectors and the balance of public spending. On the other hand, budget specialists in Brazil are usually unable to discuss the public policies that should guide the programming of the sectors they analyse. These budget specialists have a deep knowledge of the programmes, actions and values involved in sectoral budgeting, but are unaware of the academic studies and the theoretical advantages and disadvantages of the current and proposed sectoral policies.

Therefore, ideally these two types of professionals should work together to examine budget propositions. One specialist knows best the theoretical side of policies and sectoral programming, while the other knows better the practical side, the fiscal limitations, the budget actions and the evolution of values allocated in the sector. This combined work has its own locus and momentum: the permanent thematic committees of the House and the Senate, revitalised according to the suggestions made in Section 5 above. Members of the permanent committees would perform their new tasks (that is, the analysis of sectoral budget propositions) with the aid of the legislative advisors, many of whom are involved with these committees on a daily basis. The more the legislative advisors are involved, the more information will be brought to the examination of the PLO, allowing for a higher quality of congressional intervention in the budget approval process.

## 7. Conclusion

In the 18th century, the search by European societies for the right to influence the allocation of public expenditures was partially responsible for the emergence of independent parliaments, as we know today. Folscher (2006, p. 135) argues that the participation of the legislature in the allocation of public expenditure cannot be judged only by the efficiency of the financial management system, but by a more broad view that considers the impact on good governance of a system where the legislature controls and counterbalances the executive's powers. There are plenty of worldwide examples of big allocation mistakes made by executive branches that were not accountable to anyone.

When analysing the legislature's power to influence the budget in 28 countries with different government forms, Lienert (2005, p. 18) suggests that specific factors of each country, instead of forms of government, are predominant in determining the legislature's influence in the budgetary process. Wehner (2005, pp. 8-10) confirms these results by creating an index composed of three parts: the first measures the authority of the legislative branch to alter and impose the execution of expenses; the second measures the complexity of the legislative branch's internal organisation to deal with the budget; and the last measures the legislature's access to budget information. Brazil did not take part of any of

these studies but, if included, it would certainly appear among the countries where the legislative branch most influences the budget.

Despite this power, certain nearsightedness prevails among Brazilian congressmen and even among other agents involved in the National Congress' budget examination process. In Brazil, unfortunately, the Congress is at the mercy of congressmen, and they end up abusing the constitutional power of altering the draft budget at the expense of the federal government's fiscal capacity, the budget reality and the pertinence of the programming included in the LOA. A considerable number of congressmen see any attempt to provide more rationality to congressional intervention in this process as an attempt to limit congressional constitutional rights, and therefore a limitation to democracy as a whole.

There is a weak perception in the federal legislative branch that the strengthening of Congress depends on a reformulation of the way Congress examines the draft budget. A belief still prevails among congressmen that if more amendments are approved, more resources will be allocated to their electoral bases, thus indicating better congressional intervention. In the approval process, the Congress wants to make believe that it assures the next year's fiscal targets, when actually it closes the accounts with revenues that will hardly become a reality. In the execution process, more influential congressmen succeed in obtaining greater resources for their amendments, and others justify themselves to their electorates for the non-execution of their amendments by blaming the impoundment imposed by the executive branch.

The fiscal issue is crucial, and the agents involved in the budgetary process still need to entirely assimilate its importance. As with the executive branch, which initially defines the fiscal target and revenue estimates before establishing the sectoral limits for expenditure programming, the legislative branch also needs to define the fiscal target and the revenue estimate, as well as the mandatory expenses, before presenting expense increase proposals. The Planning, Public Budget and Control Combined Committee (CMO) needs to take these fiscal decisions so that, in a second step, sectoral committees can analyse the programming correspondent to their thematic areas with full knowledge of the amounts available to them. The two-step budget examination process avoids the temptation to look for easy ways out when difficult problems arise, such as prioritising expenditures.

Congress has to recognise the need of having the federal government budget approved with realistic revenues, so that the executive entities can effectively pay the expenses included in the law. This is the only way to eliminate the constantly huge commitment and cash controls which would thus become occasional, smaller or even unnecessary. There are several alternative set-ups that could allow this goal to be achieved, the first being the strict respect of the constitutional text. However, most importantly, Congress needs to have agreement from the executive branch regarding the revenues included in the budget law before the congressional committees start to examine the sectoral programming.

The consequence of incorporating realistic revenues into the LOA is the decrease of its size and of the expenses it includes. The Congress must be encouraged to contribute to this decrease by controlling the programming included by amendments in the budget law. In order for that to happen, there is a need to reorganise the process of amending the draft PLO. The problems with the modality of individual amendments are very evident and pop up from time to time in investigations, creating a negative perception of the National Congress in Brazilian society. Congress must decrease the number of amendments per congressman, reduce the value of the financial quota, and restrict the beneficiaries of these

amendments. The State representation amendments also need to be better controlled. The establishment of financial limits on this amendment modality is crucial, as well as a strong reduction in the quantity of amendments approved, with a more balanced distribution among State representations. It is not wise to insist on increasing the total value of the amendments, given their unsustainability in the medium and long terms *vis-à-vis* the country's fiscal capacity.

When congressmen are content to simply introduce “pork barrel” amendments to their original political localities, by specifying the location of budget actions, they give up the big advantage of the legislature's participation in the definition of public policies and thus the capacity to judge with greater clarity which policies are acceptable to society in general. The disfiguration of the idea behind the creation of collective amendments represented a lost opportunity for Congress to become a forum for political discussion of the budget. If it had taken the collective amendments seriously, Congress could have justified that the conflict, the bargaining and the accommodation of legitimate interests that typically occur in parliaments would counterbalance the technocratic formulation of the LOA, which does not always guarantee the optimum allocation of available resources.

Many congressmen insist on implementing the mandatory nature of budget execution, sometimes for all budget expenses, sometimes for those that come from legislative amendments. One group of congressmen ignores the fiscal and technical requirements that would allow such an obligation to be implemented without generating complete chaos. Others acknowledge these requirements but support their peers, maybe in an attempt to pressure the executive branch to release more funds for their amendments. When restricting the aggregated value in the approved amendments, Congress makes it easier for negotiations where the executive branch accepts the mandatory nature of the execution of legislative amendments.

Sectoral permanent committees in the House and the Senate need to be effectively involved in the legislature's examination of the draft budget. In order for them to be interested in performing their role, these committees need to have real power over the programming of the thematic areas assigned to them. The biggest benefit to the legislature's budget examination process will be the involvement of congressmen with specialised knowledge in sectoral matters, helped by legislative advisors from both houses – factors that will contribute to the improvement of budget programming.

Therefore, ensuring that the two branches are equally aware of the fiscal cost of examination of the PLO in Congress would pave the way for a mature and productive relationship between the technical teams of the Federal Budget Secretariat and congressional budget advisors. This relationship requires that a main spokesperson be designated on the congressional side. Brazil cannot continue to be the only country in the world where two distinct units, with the same tasks, provide budgetary advice to the legislative branch. This duplication is unnecessary, causes a waste of talents, and foments rivalry. A greater independence and subsequent strengthening of the budget technical area supporting Congress is in the interest of congressmen who wish to improve Congress' capacity to examine budget proposals submitted by the executive branch.

Finally, if the proposals suggested here are implemented, Brazil would be re-establishing the federal budget law as an instrument for determining the allocation of federal government expenditure, a function that has been performed unsatisfactorily for many decades. If this function is re-established, the country would be closer to having a more

realistic budget, a goal long sought by many working in the federal budget system. But some second-order problems would still need to be treated in order to pursue this ideal: an effective integration of the LOA with the planning instruments, the focus in the programmes' scope, costs, indicators and results, the feedback to budget formulation, and the transparency of some programmes.

## Notes

1. Impoundment (or endowment, detract) stands for the bimonthly reviewed commitment and cash control mechanism which imposes ceilings on the execution of discretionary expenditures of the budgetary units of all three governmental branches, divided by recurrent and capital expenditures, by group of resource source, and by priority programmes.
2. The budget guidelines law is an annual law that sets the directives for the budget formulation and execution processes. The executive branch has to submit the draft LDO for congressional examination and approval four and a half months before the budget submission deadline.
3. Additionally, the CMO examines and issues a statement on i) the annual accounts presented annually by the President of the Republic and ii) the national, regional and sectoral plans and programmes. It also exercises the budget execution follow up and control.
4. For a detailed presentation on the evolution of Congress' examination of budget proposals since the Federal Constitution of 1988, see Greggianin (2005), Santa Helena (2005), or Sanches (1998 and 2002).
5. Previously, the CMO could re-estimate revenues several times until the end of the PLO examination process, and the general rapporteur could freely allocate the additional resources obtained in this manner.
6. To prevent sectoral rapporteurs from increasing the investment programme by making cuts to recurrent expenditure, since 1995 preliminary statements have stipulated that the sectoral rapporteurs can cancel only the capital appropriations, while the cancellation of recurrent expenditures can only be done by the general rapporteur (whose resources are normally shared with the sectoral rapporteurs).
7. Resolution No. 1/95-CN created the regional amendments which should comprise actions related to a geo-economic region and should be approved by the absolute majority of that region's congressmen. Initially limited to five, Resolution No. 1/01-CN reduced these regional amendments to two, and later Resolution No. 1/06-CN eliminated them.
8. Resolution No. 1/06-CN attempted to reverse the situation in which the general rapporteur, using his/her own criteria, ended up providing the majority of the resources necessary for the conclusion of the sectoral reports.
9. The *real* is the Brazilian currency, since 1994. In January 2009, one United States dollar was exchanged for approximately BRL 2.30.
10. On average, the first revenue re-estimate prepared by Congress represents around 70% of the total revenue increase introduced in the PLO revenues estimation during the examination processes.
11. Lienert and Jung (2004, p. 102) cite Canada and the Netherlands as countries which adopt this practice.
12. Available at [www4.bcb.gov.br/?focusmerc](http://www4.bcb.gov.br/?focusmerc).
13. "Midgets" is a reference to the small physical stature of the main congressmen involved in that scandal; "bloodsuckers" refers to politicians involved in a scandal in the health sector; and "NGO" refers to a scandal regarding transfers to private entities.
14. See, for example, the statement by Sergio Ronaldo da Silva, a federal government employee and director of the Confederation of Federal Government Workers: "These amendments are the big problem. When they are presented, everything is already agreed upon: to whom it will go to, to which project, who the municipality will hire, how much will be executed and how much will be bribed" (*O Estado de Sao Paulo*, 11 November 2007).
15. The pertinence of voluntary transfers from the federal government to the States and the municipal governments, which often happen to the detriment of these governments' duties, is not discussed here.

16. That year, to show how active he was in defending his region's interests, a congressman distributed to his electoral base a booklet with a listing of the almost 1 000 amendments he presented, supporting the statement by Bezerra (2001, p. 51) about the techniques used to broadcast as widely as possible the name of the one responsible for the benefits that were obtained.
17. Before executing these generic expenditures included by Congress, the executive entities await guidance from a congressman (co-ordinator of the State representation) regarding the destination of the budget appropriation.
18. See the speech of Lucas Furtado, General Prosecutor to the Administrative Court: "If there was a real desire to improve the fight against corruption, it would be necessary to change the whole budgetary elaboration and execution system. We do not know the criteria. The impression is that everything is done to allow that members of the Budget Committee request campaign donations, which is, in legal language, getting bribes from private businesses" (*O Globo*, 10 December 2007).
19. On average, the new programme introduced by Congress in recent years has represented something around 20% of the discretionary expenditures included in the LOA.
20. The executive branch needs to have some freedom to allow for emergencies during budget execution.
21. Its absence would weaken the agreement, since the budget guidelines laws (LDOs) would have to repeat its terms every year, thus facilitating its alteration if circumstantial events occur.
22. In 2007 (the PLO for 2008), the first active year of the new resolution, the permanent committees did not participate in the public audience phase nor in the proposal of priority programming for receiving amendments, nor did the committee amendments contain the elements, criteria and formulas that determined the resource allocation.
23. In 1995, the CMO created seven permanent sub-committees, each responsible for a specific thematic area. It was the duty of these sub-committees to evaluate sectoral reports, write bimonthly reports on budget execution, examine the LDO priorities and targets, and promote public audiences. However, the sub-committees failed because of the few meetings held and the lack of follow-up in budget execution, and because they promoted simultaneous voting that prevented the participation of all interested CMO members.
24. Because of their partial view of State requests, Sanches (2002, p. 19) understands that sectoral rapporteurs actually complicate more than help this balance, and that the legislative examination process would gain in transparency, rationality and effectiveness if organised as a single cycle led by a college of rapporteurs.
25. Eventually, one could consider the possibility that such a CMO be composed exclusively of congressmen who are senior members of the finance and fiscal committee in their house, facilitating the discussion on budgetary fiscal issues.
26. Pontes (2004, pp. 8-12) proposes restrictions on the participation of any committees that do not deal with budgetary issues or that deal exclusively with control issues.
27. There has already been a similar initiative inside the CMO: in 1994, during the examination of the PLO for 1995, three political parties used a prerogative established in the preliminary statement that allowed political parties to present budget amendments.
28. Ideally, a political reform that strengthened the political parties with congressional representation should precede the implementation of such a procedure.
29. Of the 38 countries researched, only Belgium, the Czech Republic, Ireland, Korea, Norway, Sweden and the United States adopt a co-ordinated model; Hungary, the Netherlands and the United Kingdom adopt a decentralised model.
30. The House of Representatives' advisors also prepare draft reports on the adequacy of budget and financial propositions in the Finance and Tax Committee, a task not required of the Senate advisors.
31. A recent example of the problems of having two independent structures with the same tasks was the questioning involving the interpretation of a clause in the LDO for 2007. The CONOF prepared a technical note concluding one thing, and the CONORF prepared its own technical note concluding exactly the opposite. The technical expertise within Congress did not have a unified position regarding the clause, obliging the president of the CMO to send two conflicting technical notes to the executive branch entities involved in the issue.
32. In addition to Mexico, other Latin American countries recently implemented budget study centres linked to the parliament: Colombia (*Oficina de Asistencia Técnica Legislativa*) and Peru (*Centro de Investigación Parlamentaria*). The Philippines also has a budget unit with 50 specialists.

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