

Recommended Benchmarks for Asia, India and South-East Asia Regions' Democratic Legislatures



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Parliamentary democracy, which encapsulates within it the “Vox Populi”, is today by far the most accepted form of governance, hence the need for and relevance of credible, transparent and inclusive democratic Legislatures. It is for the democratic Legislatures to identify and articulate Benchmarks for all democratic Legislatures to strive for. The key factors in this context are “parliamentary development”, “parliamentary advancement” and the evolution of international consensus around the basic minimum Benchmarks for democratic Legislatures. The Recommended Benchmarks for Democratic Legislatures was the outcome of a CPA Study Group convened in Bermuda in 2006. Since then, these Benchmarks have been considered and endorsed, with certain modifications and several new Benchmarks by Pacific Island Legislatures.

Democratic legislatures are vibrant and fast advancing in Asian, Indian and South-East Asian democracies. The Regional Workshop on Benchmarks for Democratic Legislatures of these regions held in Dhaka, Bangladesh, from 25 to 27 January 2010 was attended by Legislators, CPA Regional Secretaries and Clerks or their representatives from national and state Legislatures of CPA Asia, India, and South-East Asia Regions. At the Workshop, the CPA Recommended Benchmarks were considered in depth in order to adapt the global Benchmarks to reflect the experiences of Parliaments in the regions.

Noting the laudable objective behind this endeavour and acknowledging the need for and relevance of these Benchmarks, the Workshop broadly endorsed the Benchmarks with certain modifications and additions. These Asian Benchmarks build on the CPA Recommended Benchmarks and amendments or additions are displayed in bold italic text.

The Workshop participants commend these Benchmarks to national and state/provincial Parliaments and Legislatures in the CPA Asia, India, and South-East Asia regions.

I. GENERAL

1.1 Elections

- 1.1.1 Members of the popularly elected or only House shall be elected by direct universal and equal suffrage in a free and secret ballot.¹
- 1.1.2 Legislative elections shall meet international standards for free, fair and transparent elections.²
- 1.1.3 Term lengths for members of the popular house shall reflect the need for accountability through regular and periodic legislative elections.
- 1.1.4 *Election expenses of candidates shall be monitored by the Election Commission or similar authority.*

1.2 Candidate Eligibility

- 1.2.1 Restrictions on candidate eligibility shall not be based on religion, gender, ethnicity, race or disability.
- 1.2.2 *If applicable*, special measures to encourage the political participation of *minority groups or* marginalized groups shall be narrowly drawn to accomplish precisely defined objectives.

1.3 Incompatibility of Office

- 1.3.1 In a bicameral Legislature, a legislator *shall* not be a Member of both houses.
- 1.3.2 A legislator *shall* not simultaneously serve in the judicial branch or as a civil servant of the executive branch.

1.4 Immunity

- 1.4.1 Legislators shall have immunity for anything said in the course of the proceedings of the Legislature.
- 1.4.2 Parliamentary immunity *for anything said in the course of the proceedings of the Legislature* shall not extend beyond the term of office; but a former legislator shall continue to enjoy protection for his or her term of office.
- 1.4.3 The executive branch shall have no right or power to lift the immunity of a legislator.
- 1.4.4 Legislators must be able to carry out their legislative and constitutional functions in accordance with the constitution, free from interference.



At the Asia Benchmarks workshop in January 2010.

1.5 Remuneration and Benefits

- 1.5.1 The Legislature shall provide *appropriate* remuneration and reimbursement of parliamentary expenses to legislators for their service, and all forms of compensation shall be allocated on a non-partisan basis.

1.6 Resignation

- 1.6.1 Legislators shall have the right to resign their seats.

1.7 Infrastructure

- 1.7.1 The Legislature shall have adequate infrastructure to enable Members and staff to fulfil their responsibilities.

II. ORGANIZATION OF THE LEGISLATURE

2. PROCEDURES AND SESSIONS

2.1 Rules of Procedure

- 2.1.1 Only the Legislature may adopt and amend its Rules of Procedure.

2.2 Presiding Officers

- 2.2.1 The Legislature shall select or elect presiding officers pursuant to criteria and procedures clearly defined in the *constitution and/or* rules of procedure.³

2.3 Convening Sessions

- 2.3.1 The Legislature shall meet regularly, at intervals sufficient to fulfil its responsibilities.
- 2.3.2 The Legislature shall have procedures for calling itself into regular sessions.
- 2.3.3 The Legislature shall have procedures for calling itself into extraordinary or special sessions.

2.4 Agenda

- 2.4.1 Legislators shall have the right to vote to amend the proposed agenda for debate.
- 2.4.2 Legislators in the lower or only House shall have the right to initiate legislation and to offer amendments to proposed legislation.
- 2.4.3 The Legislature shall give legislators adequate advance notice of session meetings and the agenda for the meeting.

2.5 Debate

- 2.5.1 The Legislature shall establish and follow clear procedures for structuring debate and determining the order of precedence of motions tabled by Members.
- 2.5.2 *There shall be a mechanism to* provide adequate opportunity for legislators to debate bills prior to a vote.

2.6 Voting

- 2.6.1 Plenary votes in the Legislature shall be public.⁴

Participants at the Benchmarks workshop in January 2010.



2.6.2 Members in a minority on a vote shall be able to demand a recorded vote.

2.6.3 Only legislators may vote on issues before the Legislature.

2.7 Records

2.7.1 The Legislature shall maintain and publish readily accessible records of its proceedings.

3. COMMITTEES

3.1 Organization

3.1.1 The Legislature shall have the right to form committees.

3.1.2 The Legislature's assignment of committee Members on each committee shall include both majority and

minority party Members and reflect the political composition of the Legislature *as far as practicable*.

- 3.1.3 The Legislature shall establish and follow a transparent method for selecting or electing the chairs of committees.

3.2 Powers

- 3.2.1 There shall be a presumption that the Legislature will **consider** legislation in **detail and/or refer** it to a committee, and any exceptions must be transparent, narrowly-defined, and extraordinary in nature.
- 3.2.2 Committees shall scrutinize legislation referred to them and have the power to recommend amendments or amend the legislation.⁵
- 3.2.3 Committees shall have the right to consult and/or employ experts.
- 3.2.4 Committees shall have the power to summon persons, papers and records, and this power shall extend to witnesses and evidence from the executive branch, including officials.
- 3.2.5 Only legislators appointed to the *committee shall* have the right to vote in *the* committee.

4. POLITICAL PARTIES, PARTY GROUPS AND CROSS PARTY GROUPS

4.1 Political Parties

- 4.1.1 The right of freedom of association shall exist for legislators, as for all people.

4.1.2 Any restrictions on the legality of political parties shall be narrowly drawn in law and be consistent with international *norms*.

4.2 Party Groups

4.2.1 Criteria for the formation of formal parliamentary party groups, and their rights and responsibilities in the Legislature, shall be clearly *defined*.

4.2.2 The Legislature shall provide adequate *support* for party groups *in a way* that does not unduly *benefit any party or group*.



Maldivian and Pakistani delegates at the workshop.

5. PARLIAMENTARY STAFF

5.1 General

5.1.1 The Legislature shall have an adequate non-partisan

professional staff to support its operations including the operations of its committees.

5.1.2 The Legislature *shall have an independent* parliamentary service. *In instances where parliamentary services are drawn from the public service, there shall be adequate safeguards to ensure non-interference from the Executive.*

5.1.3 Members and staff of the legislature shall have access to sufficient research, library, and ICT facilities.

5.2 Recruitment

5.2.1 The Legislature shall have adequate resources to recruit staff sufficient to fulfil its responsibilities. The rates of pay shall be broadly comparable to those in the public service.

5.2.2 The Legislature shall not discriminate in its recruitment of staff on the basis of race, ethnicity, religion, gender, disability, or party affiliation.

5.3 Promotion

5.3.1 Recruitment and promotion of staff shall be on the basis of merit and equal opportunity.⁷

5.4 Organization and Management

5.4.1 The head of the parliamentary service shall have a form of protected status to prevent undue political pressure.⁸

5.4.2 Legislatures should, either by legislation or resolution, establish *a management structure or committee* responsible for governance of the parliamentary service.⁹

5.4.3 All staff shall be subject to a code of conduct.

III. FUNCTIONS OF THE LEGISLATURE

6. LEGISLATIVE FUNCTIONS

6.1 General

6.1.1 The approval of the Legislature is required for the passage of all legislation, including budgets.

6.1.2 Only the Legislature shall be empowered to determine and approve the budget of the Legislature.

6.1.3 The Legislature shall have the power to enact resolutions or other non-binding expressions of its will.

6.1.4 In bicameral systems, only a popularly elected House shall have the power to bring down *the* government.

6.1.5 A Chamber where a majority of Members are not directly elected may not indefinitely deny or reject a money Bill.

6.2 Legislative Procedure

6.2.1 In a bicameral Legislature there shall be clearly defined roles for each Chamber in the passage of legislation.

6.2.2 The Legislature shall have the right to override an executive veto.

6.3 The Public and Legislation

6.3.1 Opportunities shall be given for public input into the legislative process.

6.3.2 *Information shall be provided to the public in a timely manner regarding matters under consideration by the Legislature.*

7. OVERSIGHT FUNCTION

7.1 General

7.1.1 The Legislature shall have mechanisms to obtain information from the executive branch sufficient to exercise its oversight function in a meaningful way.

7.1.2 The oversight authority of the Legislature shall include meaningful oversight of the security *services* and *state owned enterprises*.¹⁰

7.2 Financial and Budget Oversight

7.2.1 The Legislature shall have a reasonable period of time in which to review the proposed national budget.¹¹

7.2.2 Oversight committees shall provide meaningful opportunities for minority or opposition parties to engage in effective oversight of government expenditures.¹²

7.2.3 Oversight committees shall have access to records of executive branch accounts and related documentation sufficient to be able to meaningfully review the accuracy of executive branch reporting on its revenues and expenditures.

7.2.4 There shall be an independent, non-partisan Supreme or National Audit Office whose reports are tabled in the Legislature in a timely manner.

7.2.5 The supreme or national audit office shall be provided with adequate resources and legal authority to conduct audits in a timely manner.

7.3 No Confidence and Impeachment

7.3.1 The Legislature shall have mechanisms to impeach or censure officials of the executive branch, or express no-confidence in the government.

7.3.2 If the Legislature expresses no confidence in the government, the government is obliged to offer its resignation. If the head of state agrees that no other alternative government can be formed, a general election should be held.

8. REPRESENTATIONAL FUNCTION

8.1 Constituent Relations

8.1.1 The Legislature shall provide all legislators with appropriate resources to enable *them* to fulfil *representational functions* in *their constituencies*.

8.2 Parliamentary Networking and Diplomacy

8.2.1 The Legislature *should be given the opportunity* to receive development assistance to strengthen the institution of Parliament.

8.2.2 Members and staff of Parliament *should be given the opportunity* to receive technical and advisory



Presenters at the Benchmarks workshop.

assistance, as well as to network and exchange experience with individuals from other Legislatures.

IV. VALUES OF THE LEGISLATURE

9. ACCESSIBILITY

9.1 Citizens and the Press

9.1.1 The Legislature shall be accessible and open to citizens and the media, subject only to demonstrable public safety and work requirements.

9.1.2 The Legislature should ensure that the media are given appropriate access to the proceedings of the Legislature without compromising the proper functioning of the Legislature and its rules of procedure.

9.1.3 The Legislature shall have a non-partisan media relations facility.

9.1.4 The Legislature shall promote the public's understanding of the work of the Legislature.

9.2 Languages

9.2.1 Where the constitution or parliamentary rules provide for the use of multiple working languages, the Legislature shall make every reasonable effort to provide for simultaneous interpretation of debates and translation of records.

10. ETHICAL GOVERNANCE

10.1 Transparency and Integrity

10.1.1 Legislators should maintain high standards of accountability, transparency and responsibility in the conduct of all public and parliamentary matters.

10.1.2 The Legislature shall approve and enforce a code of conduct, including rules on conflicts of interest and the acceptance of gifts.

10.1.3 *Legislators shall **be required** to disclose their financial assets and business interests.*

10.1.4 There shall be mechanisms to prevent, detect, and bring to justice legislators and staff engaged in corrupt practices.

10.1.5 *Legislatures should establish a mechanism to oversee the conduct of legislators.*

End Notes

1. *Some Parliaments in the Regions reserve seats for women, minority groups and other ethnic groups, subject to 1.2.2.*
2. *Including, but not limited to, the Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers as endorsed by the Commonwealth.*
3. *In some circumstances, presiding officers are appointed under the constitution by the Head of State.*
4. The Workshop noted that one possible exception to this may be the election of officers.
5. *For purposes of 3.2.1 and 3.2.2 Committee means select, joint, standing or Committee of the Whole House.*
6. *The Workshop* considered it best practice for Legislatures to provide party groups with funding allocations and allow each party group to make their own decisions on the types of facilities they require. The Study Group recognized the special circumstances of small and/or under-resourced jurisdictions.
7. *This Workshop* recommended that all staff be subject to a code of conduct and that staff are assessed on their conduct annually. A code of conduct should make clear what is acceptable staff behaviour and serve to prevent staff from using their position to influence the functioning of the legislature in a political manner.
8. This benchmark was taken directly from the recommendations of the previous CPA's Study Group on 'The Financing and Administration of Parliament', held in Zanzibar, Tanzania on May 25-29, 2005.
9. This modifies the wording of the Benchmarks derived from the recommendations of the previous CPA's Study Group on 'The Financing and Administration of Parliament', held in Zanzibar, Tanzania on May 25-29, 2005.
10. *"Security services" is as defined in OECD DAC Guidelines and Reference Series, Security System Reform and Governance.*
11. The Workshop made reference to the OECD best practice guidelines which suggest presentation of the draft budget to the Legislature no less than three months prior to the start of the fiscal year. (OECD Best Practices for Budget Transparency, 2001)
12. *Typically, the public accounts committee will be chaired by a member of the opposition party.*

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