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Recommended Benchmarks for Democratic Legislatures

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RECOMMENDED BENCHMARKS FOR DEMOCRATIC LEGISLATURES

These benchmarks are the outcome of a Study Group hosted by the Legislature of Bermuda on behalf of the Commonwealth Parliamentary Association and the World Bank Institute with support from the United Nations Development Programme, the European Parliament and the National Democratic Institute for International Affairs.

I. GENERAL

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I.1 Elections

I.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.

I.1.2 Legislative elections shall meet international standards for genuine and transparent elections.

I.1.3 Term lengths for Members of the popular House shall reflect the need for accountability through regular and periodic legislative elections.

I.2 Candidate Eligibility

I.2.1 Restrictions on candidate eligibility shall not be based on religion, gender, ethnicity, race or disability.

I.2.2 Special measures to encourage the political participation of marginalized groups shall be narrowly drawn to accomplish precisely defined, and time-limited, objectives.

I.3 Incompatibility of Office

I.3.1 No elected Member shall be required to take a religious oath against his or her conscience in order to take his or her seat in the Legislature.

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1.3.2 In a bicameral Legislature, a legislator may not be a Member of both Houses.

1.3.3 A legislator may 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 Legislature.

1.4.2 Parliamentary immunity 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.

1.5 Remuneration and Benefits

1.5.1 The Legislature shall provide proper 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 physical infrastructure to enable Members and staff to fulfil their responsibilities.

II. ORGANIZATION OF THE LEGISLATURE

2. PROCEDURE 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 rules of procedure.

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 session.

2.3.3 The Legislature shall have procedures for calling itself into extraordinary or special session.

2.3.4 Provisions for the executive branch to convene a special session of the Legislature shall be clearly specified.

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.

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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 The Legislature shall 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.¹

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 permanent and temporary 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.

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

3.1.4 Committee hearings shall be in public. Any exceptions shall be clearly defined and provided for in the rules of procedure.

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- 3.1.5 Votes of committee shall be in public. Any exceptions shall be clearly defined and provided for in the rules of procedure.

3.2 Powers

- 3.2.1 There shall be a presumption that the Legislature will refer legislation 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.

- 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, or authorized substitutes, shall have the right to vote in committee.

- 3.2.6 Legislation shall protect informants and witnesses presenting relevant information to commissions of inquiry about corruption or unlawful activity.

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 shall be consistent with the International Covenant on Civil and Political Rights.

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4.2 Party Groups

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

4.2.2 The Legislature shall provide adequate resources and facilities for party groups pursuant to a clear and transparent formula that does not unduly advantage the majority party.²

4.3 Cross Party Groups

4.3.1 Legislators shall have the right to form interest caucuses around issues of common concern.

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, rather than the executive branch, shall control the parliamentary service and determine the terms of employment.

5.1.3 The Legislature shall draw and maintain a clear distinction between partisan and non-partisan staff.

5.1.4 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, in the case of non-partisan staff, party affiliation.

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5.3 Promotion

5.3.1 Recruitment and promotion of non-partisan staff shall be on the basis of merit and equal opportunity.³

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.⁴

5.4.2 Legislatures should, either by legislation or resolution, establish corporate bodies responsible for providing services and funding entitlements for parliamentary purposes and providing for governance of the parliamentary service.⁵

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

III. FUNCTIONS OF THE LEGISLATURE

6. LEGISLATIVE FUNCTION

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 government.

6.1.5 A chamber where a majority of Members are not directly or indirectly elected may not indefinitely deny or reject a money bill.

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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 military security and intelligence services.

7.1.3 The oversight authority of the Legislature shall include meaningful oversight of state owned enterprises.

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.⁶

7.2.2 Oversight committees shall provide meaningful opportunities for minority or opposition parties to engage in effective oversight of government expenditures. Typically, the Public Accounts Committee will be chaired by a Member of the opposition party.

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- 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 adequate and appropriate resources to enable the legislators to fulfil their constituency responsibilities.

8.2 Parliamentary Networking and Diplomacy

- 8.2.1 The Legislature shall have the right to receive development assistance to strengthen the institution of parliament.
- 8.2.2 Members and staff of Parliament shall have the right to receive technical and advisory 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 Legislatures shall require legislators to fully and publicly disclose their financial assets and business interests.

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

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Endnotes

- 1 The Study Group noted that one possible exception to this may be the election of officers.
- 2 The Study Group considered it best practice to 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.
- 3 Rather than banning political activity by non-partisan staff, the Study Group 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.
- 4 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.
- 5 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.
- 6 The Study Group made reference to the Organization for Economic Co-operation and Development 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)

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