

# Recommended Benchmarks for Democratic Parliaments

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Over the last ten years significant progress has been made in developing parliamentary assessment frameworks to assist Parliament assess its overall performance at a given moment<sup>1</sup>. Commonwealth Parliamentary Association (CPA) Members and Parliamentary staff were the first to conceptualise and create a set of agreed **Recommended Benchmarks for Democratic Legislatures** in 2006 to reflect good Commonwealth parliamentary practice and provide a minimum standard on how a Parliament should be constituted and how it should function. Reflecting new parliamentary developments and practices as well as international developments such as the Commonwealth Charter<sup>2</sup> and the implementation of the 2015 United Nations (UN) Sustainable Development Goals (SDGs), the Benchmarks were reviewed and updated in 2018 and now being promoted and implemented across the 180 Legislatures of the CPA.

This paper is organized as follows. The next section discusses the merits of benchmarking for Parliaments. The following section reviews the use of the original 2006 benchmarks and the development of regional versions. The third section introduces the new version of the Benchmarks and the paper concludes by making some observations of the implementation of the new framework following the first three facilitated self-assessments in South Africa, Malaysia and Belize.

## The Merits of Assessment Frameworks

The UNDP (2007) sets out three practical benefits to parliamentary development from the presence of commonly accepted norms: they help empower parliaments to claim their proper place in the state institutional order; they provide a readily accessible guide to evaluate the areas of strength and weakness of individual legislatures; and they are useful in designing parliamentary strengthening programming. Hubli (2009 & 2010) adds further benefits including assistance to the reform process and the identification of significant issues for the strategic plan; raising the awareness of parliamentary governance, and strengthening inter-parliamentary cooperation and regional development. Assessment Frameworks can be used

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<sup>1</sup> Von Trapp (2010) provides a comprehensive overview of the process for developing standards for legislatures to date. Examples include the Assemblée Parlementaire de la Francophonie (APF) Benchmarks, the Canadian Parliamentary Centre report card methodology; Parliamentary Assembly of the Council of Europe and Self-Evaluation; International IDEA's State of Democracy Assessment Methodology; TI's National Integrity System Assessment; and the World Bank's Actionable Governance Indicators.

<sup>2</sup> The Commonwealth Charter was adopted by Commonwealth Heads of Government on 14 December 2012 and expresses the fundamental values and principles of the Commonwealth, including the commitment of member states to the development of free and democratic societies.

by donors to justify both their expenditure on parliamentary development and the effectiveness of these interventions. For Inter-parliamentary Organizations (IPOs), benchmarks provide an opportunity to codify programs and best practice guides and to share experiences across Parliaments. This is particularly useful because members may be more open to receiving advice from their peers in IPOs.

There are, of course, difficulties and problems in applying such assessment frameworks to legislatures. Legislatures are not always good at assessing their own performance: they may be reluctant to measure their own work for fear of exposing bad practice or because of doubts about the practicality of the exercise (parliamentary impact is often hard to assess and measure). Equally, the executive may view the parliamentary benchmarking exercise in zero-sum terms rather than the plus sum goal of improved democratic performance. In this respect a benchmarking exercise is likely to face similar problems to that shown by general executive-legislative relations (Staddon & Toornstra, 2016).

### **The 2006 Recommended Benchmarks for Democratic Legislatures**

The original Benchmarks were composed of 87 indicators and were drafted by Parliamentarians representing different Commonwealth regions at a Study Group hosted by the Legislature of Bermuda on behalf of the CPA and the World Bank Group (WBG), with support from the UNDP, the European Parliament and the National Democratic Institute for International Affairs (NDI). The Benchmarks divided parliamentary democracy into four main areas. The first part of the document details how members enter parliament and the general features of the institution. The next part recommends how the institution should be organized, operated, and administered, which is followed by a focus on the main functions of the legislature in making laws, overseeing the executive, and representing the views of the people. The document concludes with recommendations on public access, transparency, and integrity provisions to provide ethical governance.

The CPA's 2006 framework provides a comprehensive set of indicators to allow a Parliament to measure its own performance and answer the question of how it should best function, i.e. the key conditions under which parliaments can be effective. For example, a number of the provisions relate to the autonomy of parliament which is a prerequisite for effective functioning, such as the right to set its own internal rules of procedure, the right to elect its own officers, and the right to set its own functioning budget.

The Benchmarks have been used to track a Parliament's progress against an accepted standard or to support a request for external assistance. The self-assessment process is about fact-seeking, and may even be seen as prescriptive or normative because of the way the benchmarks are stated. It enables stakeholders to assess the current state of a legislature against accepted international criteria, providing examples of issues to consider and stimulating debate about what kind of institution the organization should become.

Five broad themes were identified as common across the Benchmarks and other assessment frameworks: institutional independence; procedural fairness; democratic legitimacy and representation; parliamentary organization; and core legislative and oversight functions (Box 1).

### **Box 1: Assessment Frameworks for Democratic Parliaments: Areas of Consensus<sup>3</sup>**

#### **Institutional Independence**

Examples include parliamentary immunity, budgetary autonomy, control over staff, recourse to own expertise, sufficient resources to perform constitutional functions, adequate physical infrastructure, control over internal rules, and calling extraordinary sessions.

#### **Procedural Fairness**

Examples include written procedural rules, plenary sittings in public, order of precedence of motions and points of order, meaningful opportunity for debate, use of official languages, right of all members to express their views freely, and arrangements to ensure that opposition and minority parties can contribute effectively to the work of Parliament.

#### **Democratic Legitimacy**

Examples include democratic elections, lower house elected through universal suffrage, regular periodic elections, and no restrictions on candidacy by race and gender, language or religion.

#### **Parliamentary Organization**

Examples include right of legislatures to form committees, presumption that legislation is referred to committees, election of committee chairs and leadership according to procedures, right to form parliamentary party groups, right to permanent, professional, nonpartisan staff, and protection of head of the nonpartisan service from undue political pressure.

#### **Core Legislative and Oversight Functions**

Examples include the ability of the lower house to initiate legislation, rights to propose amendments and to amend legislation, right to consult experts and staff on legislation, ability to hold public hearings or receive testimony from experts, the right to subpoena or obtain documents, and methods for protecting witnesses.

## **Use of the 2006 Benchmarks**

A number of CPA Branches volunteered to use the benchmarks including Canada, Sri Lanka and the sub-national legislature of the Australian Capital Territory (ACT), and many other

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<sup>3</sup> Participants' Statement at the International Conference on Benchmarking and Self-Assessment for Democratic Parliaments, Paris, 2-4 March 2010, reproduced in Staddon & Toornstra (2016).

legislatures were involved in discussions about the actual benchmarks as part of technical assistance programmes. Four Pacific legislatures undertook benchmarking exercises with the assistance of the UNDP Pacific Centre<sup>4</sup>. However, the most visible, and perhaps unexpected, use of the Commonwealth framework was the adaptation of the Benchmarks by the CPA regions to their specific regional context. This included the Pacific Region Branch (2009), the Asia, India and South-East Asia Branch (2010) and the Caribbean, Americas and Atlantic Branch (2011) adaptations. The Benchmarks also formed the basis of adaptations by non-Commonwealth groups, including the Southern African Development Community Parliamentary Forum (SADC PF), the Assemblée Parlementaire de la Francophonie (APF) and the Parliamentary Confederation of the Americas (COPA).

The regional adaptation of the 2006 Framework demonstrated the different experiences of the practice and policies relating to parliamentary democracy within the catchment area of the CPA membership. Hubli (2010) argued that plural approaches to parliamentary benchmarks increase ownership and awareness among MPs; produce a healthy “competitive” dynamic in driving change; expose areas of difference for further research and dialogue; and reinforce the legitimacy of areas which overlap between multiple frameworks<sup>5</sup>. Despite some concerns that practice may vary greatly even within a region (in the Pacific it is well accepted that the smaller island states differ greatly in many ways from Australia and New Zealand), the experience regional work has followed the direction taken by standards for elections with some regions establishing their own benchmarks and minimum standards for good electoral conduct, systems and processes.<sup>6</sup>

The regional dimension to the international benchmarking debate yielded some interesting differences and findings. The CPA Asia, India and South-East Asia Regions removed the CPA international benchmark 4.3.1 concerning the right to form interest caucuses in their regional version. It has also highlighted the importance of gender as SADC PF, COPA and the APF took the view that, given the regional and continent-wide protocols and conventions on gender equality, the gender dimension should be strengthened by including new benchmarks on: child-care facilities, equitable gender representation in the election of presiding officers and/or special measures in order to establish and maintain an equal proportion of women and men at all levels of responsibility, and special considerations given to gender when selecting parliamentary delegations.

## Review of the 2006 Benchmarks

In 2016, the CPA and the Westminster Foundation for Democracy (WFD) convened an initial consultation meeting with the organisations involved in the production of the original Benchmarks, the WBG, the NDI, the UNDP and the Organisation for Economic Co-Operation and Development (OECD). The main findings of the review were:

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<sup>4</sup> Von, Trapp, L (2010) *op.cit* p.30.

<sup>5</sup> Hubli (2010) *op.cit*.

<sup>6</sup> An example is the Norms and Standards for Elections in the SADC Region.

- The indicators needed to be more conducive to measurement and more easily applied to the work of the parliaments;
- Given the fact the Benchmarks were originally adopted in 2006, it was recognised that there was a need for a review to update the indicators to reflect current thinking regarding parliamentary development;
- With the adoption of the Sustainable Development Goals (SDGs)<sup>7</sup> in 2015, there was a need to ensure the Benchmarks reflected the new global development goals; and
- There was a need for the Benchmarks to reflect the new Commonwealth Charter, signed in 2013<sup>8</sup>.

An external consultant was commissioned to review and update the Benchmarks, integrating aspects of SDG 16 and the Commonwealth Charter. In November 2017, Parliamentarians attending the 63<sup>rd</sup> Commonwealth Parliamentary Conference (CPC) in Dhaka, Bangladesh endorsed a recommendation that Parliaments should use updated CPA Benchmarks on Democratic Legislatures as a tool to ensure their contribution to *Sustainable Development Goal 16* (on inclusive and accountable governance). A Study Group was convened in April 2018 to complete the review process and the revised set of [\*CPA Recommended Benchmarks for Democratic Legislatures\*](#) was officially launched at Westminster in November 2018.

The 2018 version increased the number of Benchmarks from 87 to 132 Benchmarks and incorporated missing elements from the original framework such as the role of the opposition; freedom of information; and the scrutiny of delegated legislation. The review also assimilated many of the benchmarks introduced by the CPA regions, thereby ensuring the evolution of the benchmarks has respected the principles of democratic pluralism and decentralization as well as the Commonwealth's regional diversity<sup>9</sup>. The CPA's 2018 framework continues to recognise the diverse nature of CPA member legislatures that vary in size, resources and functions – but has moved the Benchmarks beyond the minimum standard to become more aspirational in scope. Fundamentally, the 2018 update was agreed to and is owned by the 180 Parliaments and Legislatures of the Association, thereby ensuring its legitimacy and relevance.

The Study Group and wider CPA membership agreed that the revised benchmarks should:

- a) highlight the risks and negative impact of high-cost politics (including fears concerning corruption, exclusion from the political process and the quality of democracy);
- b) strengthen the section on electoral integrity through the presence of strong institutional safeguards;
- c) broaden the immunities section as one of the purposes of the freedom of speech privilege is to ensure the Parliament has all the information it needs to do its work;

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<sup>7</sup> In particular Goal 16.6 *Develop effective, accountable and transparent institutions at all levels* and Goal 16.7 *Ensure responsive, inclusive, participatory and representative decision-making at all levels*.

<sup>8</sup> CPA Benchmarks for Democratic Legislatures Field Guide 2019 (forthcoming)

<sup>9</sup> CPA Benchmarks for Democratic Legislatures Self-Assessment Guidance Note.

- d) encourage induction training and the continuous professional development of Members;
- e) incorporate a new section on Natural Justice to ensure a legislature incorporates principles of natural justice into its rules and procedures;
- f) ensure greater predictability and transparency in the scheduling of parliamentary business;
- g) ensure a greater prominence is given to gender, including measures to enable the substantive representation of women in its work (including representation at all levels of the parliamentary administration) and encouraging the process of equality impact assessments with respect to the development of legislation, policies and budgets.
- h) highlight the important role of the Opposition in Parliament;
- i) strengthen the section on Parliamentary staff taking note of the CPA Study Group on 'The Financing and Administration of Parliament' held in Zanzibar, Tanzania, in May 2005;
- j) ensure that due attention and focus is given to delegated legislation, an area of increased importance and highlighted by many Legislatures as a gap in the original Benchmarks;
- k) ensure that Private Members can fairly exercise their rights to initiate and introduce legislation;
- l) ensure that the legislative process places sufficient attention on the consequences and impact of legislation (post-legislative scrutiny).
- m) encourage Parliament to provide opportunities for civil society and the general public to engage in discussions about how public resources are raised and spent;
- n) ensure that a Parliament's oversight function is not restricted by the size of the Cabinet (a particular concern in small jurisdictions);
- o) ensure that Parliament provides appropriate oversight of international treaties and obligations including the SDGs;
- p) encourage the position of an independent Ombudsman and a Human Rights Commission (or similar offices) with appropriate funding and oversight;
- q) strengthen the section on Financial and Budget Oversight taking account of recognised international good practice (for example to ensure regulations and laws are in place specific to Parliament budget scrutiny and to focus on the principles of adequate notice and time to consider as means to the end of meaningful scrutiny and parliamentary control of public spending);
- r) ensure that the Legislature has the right to seek development assistance (and does not need to rely on the Executive);
- s) enhance the accessibility, openness and engagement of the legislature, for example by ensuring the legislature shall be accessible and open to persons with disabilities; promote the inclusion of all demographic groups in the Legislature (such as young people); and have a regularly updated and accessible website; and
- t) strengthen the section on ethical governance to reinforce the importance of high standards in the conduct of all public and parliamentary matters as well as strict adherence to codes of conduct, codes of ethics; ensure the regular disclosure of

financial assets and business interests and demonstrate a clear commitment to protecting the integrity of the parliamentary institution; and underlie the importance of Freedom of Information as a fundamental human right.

## Benchmark Implementation

The recent work undertaken to revise the Benchmarks is part of a wider programmatic activity under the umbrella of the Commonwealth Partnership for Democracy (CP4D) programme which was approved during the recent Commonwealth Heads of Government Meeting (CHOGM) in London, United Kingdom in 2018<sup>10</sup>. The programme objective is for developing Commonwealth countries to strengthen democratic good governance; the Benchmarks have assisted Parliaments to identify a Commonwealth Standard for Democratic Legislatures and as such have strengthened Parliaments' capacity to adhere to good governance principles. This has translated into credible, transparent and inclusive democratic legislatures, the key factors being parliamentary development and parliamentary advancement.

The CPA is now promoting the new Benchmarks to provide a process by which branches can use the framework to conduct a self-assessment. As part of CP4D, 26 Parliaments have been contacted and offered support to carry out self-assessments using the new Benchmarks<sup>11</sup>. The overall objective is for local stakeholders (i.e. MPs and parliamentary staff) to measure the progress of their parliament in achieving democratic and good governance standards by comparing their practices to the benchmarks that have been developed and adopted by the CPA. In advance of the assessment, the Clerk of Parliament (or a senior Clerk) undertakes a review of the technical and legal benchmarks leaving the detailed qualitative assessment to be undertaken by a cross-section of parliamentarians with input from parliamentary staff. A Self-Assessment Methodology and workbook have been designed for local use and two external consultants are available to facilitate the self-assessment by providing contextual information and drafting a report that reflects a realistic perspective on a Parliament's work.

To date, three Self-Assessments have been completed (South Africa (February 2019); Malaysia & Belize (April 2019). The assessments have been used for different goals - South Africa as part of the legacy work for the 5th Parliament ahead of the general election on 8 May; Malaysia as part of the reform agenda being led by the Speaker following the country's first transition of power since independence more than half a century ago; and in Belize as part of the Speaker's attempts to modernise the Parliament ahead of the 2020 General Election.

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<sup>10</sup> Over the course of 2018-2020, the CP4D programme will work with parliaments in 19 Commonwealth Member States across Sub-Saharan Africa and South- East Asia. The CP4D programme is managed by the UK Foreign and Commonwealth Office and implemented by the WFD in partnership with the CPA; the CPA UK Branch and the Commonwealth Local Government Forum (CLGF). The CP4D programme will end in April 2020 in time for the next CHOGM in Rwanda.

<sup>11</sup> Overall funding and assistance available for this project will end in April 2020.

The South African facilitated self-assessment highlighted the progress Parliament had made in supporting efforts to meet SDG 16 and a number of targets relevant to parliaments, including targets on promoting the rule of law (target 16.4), reducing corruption and bribery (target 16.5), developing effective, accountable and transparent institutions (target 16.6), and ensuring responsive, inclusive, participatory and representative decision-making at all levels (target 16.7). For example, the Political Party Funding Act was a critical piece of legislation passed in the 5<sup>th</sup> Parliament. A Public Participation model was also adopted and executed through initiatives such as *Taking Parliament to the People* and various Sectoral Parliaments. An Oversight Monitoring and Tracking Project has been also established to enable monitoring and feedback from accountable parties to Parliament, through tracking the progress of House resolutions and questions. One of the issues highlighted by the assessment for the sixth Parliament to consider is whether the Chapter 9 institutions (or the Institutions Supporting Democracy (ISDS)), each of which is attached to a government department, should be “delinked” and be accountable to Parliament in the expectation this would ensure greater independence and accountability.

The Parliament of Malaysia’s self-assessment was notable for demonstrating broad support for the reform process being led by the Speaker of the House of Representatives with the priority policy reform being the planned Parliamentary Service Act to ensure that the Parliament occupies its rightful place under the constitution. At the operational level, more work is needed to support the new committee structure, including devising clear terms of reference and ensuring broad acceptance of the modus operandi of the new committees. This work is now being scheduled with the support of a number of international bodies.

The Parliament of Belize became the third legislature to undertake a facilitated self-assessment at the end of April 2019. Again, the assessment was championed by the Speaker as part of a broader reform agenda to modernise the Parliament with the intention to use the review as a basis to consider further proposals for technical and advisory assistance. The review highlighted the importance of updating the Standing Orders of both the National Assembly and the Senate as well as an organizational review of the Parliament and the need to prioritise the work of the Public Accounts Committee. However, the review also highlighted some existing good practices and innovations to be shared across other smaller jurisdictions – for example the Constitutional provision that ensures the size of the Cabinet is in proportion to the size of the Legislature and the introduction of “Social Partner” Senators<sup>12</sup> to broaden the Parliament’s representational function.

The CPA is in discussions with a number of other Branches about facilitating further self-assessments. One lesson from the first three self-assessments is that the exercise provides an opportunity for parliamentarians from opposing parties, with diverging views, or from

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<sup>12</sup> There are 4 such senators: one is appointed on the advice of the Belize Chamber of Commerce and the Belize Business Bureau; one is appointed on the advice of the Belize Council of Churches and the Evangelical Association of Churches; one is appointed on the advice of the Belize National Trade Union Congress and the Civil Society Steering Committee; and one is appointed on the advice of the Non-Governmental Organizations.

different Houses, to come together to discuss and debate the present strength and future of their institution. This is also true of parliamentary staff and parliamentarians as the former can provide different insights than parliamentarians in many jurisdictions. In Belize, for example, all officials from the institution participated in the exercise – the first time many of them had been involved in discussions of this kind.

Interviews conducted at the 62<sup>nd</sup> Commonwealth Parliamentary Conference in London United Kingdom (December 2017) revealed that those Branches and/or Members with greater knowledge of the benchmarks and/or have used them for some form of self-assessment within Parliament were very positive about the experience. In such jurisdictions the application and/or consideration of the benchmarks enabled an independent platform on which to base parliamentary reform and to educate public servants about the role and importance of parliament. One benchmark which has proved particularly useful relates to the autonomy of Parliament and its administrative and financial independence – this is true particularly in smaller jurisdictions as diverse as Bermuda, ACT and Trinidad and Tobago.

The reviews have also demonstrated the need to obtain input from civil society, particularly as several of the Benchmarks address: (1) the importance of public access to parliament and parliamentary information; and (2) public involvement in the legislative process. Engaging civil society may also prevent the exercise from becoming a ‘publish and forget’ exercise and lead to a greater understanding of the constraints facing parliament and broader support for parliamentary strengthening.

It should also be stressed that the exercise must be repeated at regular intervals because developments and the context in which the Parliament operates are dynamic. Furthermore the expectations of any democratic Parliament are likely to increase over a period of time (although it is also true that Parliaments may move forwards and backwards in terms of their own development). While research demonstrates that “*the presence of a powerful legislature is an unmixed blessing for democratization*” (Fish, 2006), individual legislatures are under increasing pressure to demonstrate to citizens that they can fulfil their key roles and deliver results. There is a trust deficit facing many democracies and their legislatures today, resulting in a growth of support for populism. It is therefore essential for parliaments to be accountable, self-reflective and to strive for constant improvement. Therefore, every parliament, no matter its level of maturity or current rules, can benefit from a consideration of how it functions.

## Conclusion

The CPA Secretary-General, Akbar Khan, has argued (2016, 76) that parliaments throughout the Commonwealth have always changed to meet new demands, to exploit new opportunities such as those presented by new technologies, and to meet ever-higher expectations on the part of citizens and parliamentarians and parliamentary officials themselves. The benchmarks

contribute to this evolutionary process. The early experience of the CPA demonstrates the potential for the CPA Benchmarks to act as an independent and objective diagnostic tool for reform which can assist legislatures in a number of areas, from increased awareness of global advances in parliamentary practices and procedures to strategic planning and performance monitoring and providing a baseline assessment to help a Parliament identify priorities and areas for development and as a review of progress against the SDGs. Fundamentally, there must be political will and leadership within Parliament, often with support of the executive and outside agencies for the benchmark assessment to be successful.

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