BENCHMARKS FOR DEMOCRATIC LEGISLATURES IN SOUTHERN AFRICA

ACKNOWLEDGEMENTS

These *Benchmarks for Democratic Legislatures in Southern Africa* fall within the context of the strategic objective of the SADC Parliamentary Forum relating to Strengthening Institutions for Democratic Governance. Recognising Parliament or the legislature as one of critical institutions for democratic governance, indeed the glue that holds together the state and society, the SADC Parliamentary Forum has developed these important minimum standards on the constitutional and legal framework, political imperatives as well as institutional, financial, material and human resources requirements for truly democratic Parliaments.

The development of these benchmarks benefitted from financial and technical support from the United Nations Development Programme's Global Programme for Parliamentary Strengthening, Friedrich Ebert Stiftung, the European Parliament's Office for Promotion of Parliamentary Democracy, Africa Capacity Building Foundation and the Commonwealth Parliamentary Association (CPA), Open Society Initiative for Southern Africa (OSISA), among others. The CPA's *Benchmarks for Democratic Legislatures* (2006), Inter-Parliamentary Union's *Parliament and Democracy in the 21st Century: A Guide to Good Practice* (2006) and the National Democratic Institute for International Affairs' discussion document: *Towards the Development for International Standards for Democratic Legislatures* (2007), among other relevant publications, constitutions, laws, standing rules and order of different countries and jurisdictions, provided useful reference material for the development of these potentially seminal standards.

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PREAMBLE

The re-introduction of multi-party politics in the early 1990s in Africa has led to a renewed interest in institutions of democracy. This auspicious wave of pluralism has not, however, produced effective and efficient Parliaments to underpin the democratisation process. To the contrary, most of Africa's young democracies are still characterised by dominant executives, not-so-independent judiciaries, and weak Parliaments. Without the full development of the three branches of government – the executive, legislative and judicial – prospects for democratic consolidation on the continent are limited. Although it cannot be denied that democratisation itself does not necessarily produce effective Parliaments, all democracies today have a Parliament in one form or another. Elected Parliaments are the building blocks upon which representative democracies are built.

An ideal Parliament undertakes the following key functions:

(a) Holding the executive to account through the oversight function of executive ministries and departments,
(b) Representing the nation in its diversity, either of social groupings or constituencies,
(c) Making laws for the good governance of the country, including private members' bills,
(d) Approving national budgets, taxation policy and monitoring public expenditure,
(e) Ratifying and domesticating international conventions and treaties, and
(f) Resolving conflict and disputes through peaceful mechanisms.

There is consensus among scholars that the performance of Parliament may be measured qualitatively by examining three essential factors: its impact on policy, the degree to which it acts independently in setting its own agenda, and the extent to which societal interests influence the decision making process.

In southern Africa, the executive generally dominates Parliament including even setting its agenda, appointing parliamentary staff, and determining its calendar. In some cases, the large dual membership of ministers to the executive and legislative branches of government as well as their proportionately large number, have resulted in decreased parliamentary oversight capacity. Invariably, the executive produces most of the bills, with private members' bills remaining a rare phenomenon and expensive to draft. In many instances, Parliament is primarily a reactive institution rather than proactive one, largely unable to respond sufficiently to emerging challenges, opportunities and national emergencies. The Westminster-inspired systems of government that are prevalent in most countries of southern Africa tend to compromise the principle of separation of powers. Under these systems, ministers are most often drawn from members of the legislature, which, ironically, should oversee their performance. While there are benefits to this feature, this may limit the oversight functions of Parliament on the executive.

Citizens have high expectations from their parliamentary representatives and Parliaments in general. In addition to the traditional role of legislator, parliamentarians are also expected to perform constituency services, which is perhaps one of the most influential

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functions of a parliamentarian in Africa. In many parts of rural, agriculturally based African countries, parliamentarians are expected to be the providers of social services and to facilitate financing for development projects with their personal resources. This limits the capacity of parliamentarians to perform their other equally important parliamentary roles. These competing and often conflicting roles impose great challenges on parliamentarians, who in many cases have very little or often no human or material support to facilitate their work.

While some African Parliaments have begun to exert greater autonomy and oversight over the executive, the role of Parliaments in southern African remains constrained by very powerful executives. Existing arrangements for budget consideration in most southern African countries do not provide Parliaments with meaningful powers, documentation and time for effective scrutiny. Ironically, some Parliaments cannot even determine their own budgets, let alone receive timely resources to efficiently and effectively undertake their mandates. While executives have begun to acknowledge input from civil society into the budget process, it is often expected that the budget *passes through* as opposed to being *scrutinised and passed by* Parliament.

In some cases, parliamentary development has been limited by Parliament's constitutional powers. Although some Parliaments may have constitutional powers, they may not have the capacity or willingness to exercise these powers due to the political dynamics of strong parties and/or strong Presidents. Weak political parties and inadequate human, financial and infrastructural resources severely limit the capacity of Parliament and its committees to exercise its constitutionally mandated functions.

RATIONALE FOR DEMOCRATIC PARLIAMENTS

The challenges highlighted above bring into sharp focus the following issues:

(a) How can Parliament - as the representative institution and voice of the citizenry - be strengthened and the principle of separation of powers better observed?
(b) What are the minimum constitutional, legal, normative and institutional arrangements for a democratic legislature?
(c) How should a democratic Parliament relate to other arms of government in general and the executive in particular?
(d) What are the most critical organisational, financial, human resources and operational requirements necessary for optimal professional parliamentary performance?
(e) What structural arrangements should be put in place to enable political parties, civil society organisations and interest groups to influence the business of Parliament?

On the basis of the above challenges and related issues, the SADC Parliamentary Forum proposes minimum benchmarks for effective parliamentary performance and development in Southern Africa. These benchmarks set forth the parliamentary reform agenda for all member Parliaments. They are intended to provide a mirror for self-

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assessment, measuring the performance of SADC Parliaments. Integral in this process is the overarching objective of strengthening the capacity, role and functional autonomy of Parliaments as the elected institution in government and in governance.

The domestication of these benchmarks in Southern Africa, through relevant parliamentary and constitution reforms and the reorientation of value systems, will lend true meaning to the axiom "Governments for the people, of the people and by the people!"

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DEFINITIONS

For the purposes of this document, the following definitions shall apply:

Elections	A process by which public representatives are chosen for parliamentary, provincial/regional and local government office.
EMB (Election Management Body)	Body mandated with the organisation and management of national, provincial/regional and local government elections, ordinarily referred to as an Election Management Body or Electoral Commission.
Judges	Chief Justices, Supreme Court Justices and High Court Justices excluding magistrates.
Judicial Service Commission	A body established to receive, review, and in some cases, interview and recommend to the head of state, nominations for positions of senior judges.
Member of Parliament	Member of any House of Parliament.
National Assembly	Directly or popularly elected House of Parliament.
Parliament	Legislative branch of government/state as distinct from the executive and judicial branches. Parliament includes either one or two chambers.
Partisan staff	Staff who work with politicians, political parties and party caucuses to advance the agenda and manifestos of such parties
Portfolio committees	Committees that oversee government ministries or departments
Speaker	The political head of the legislative branch of government/state who is also called the President in some countries.
Presiding Officers	Speaker and Deputy Speakers, President or Vice President of a National Assembly or Chairperson and Deputy Chairpersons of a House of Parliament
Roll call voting	A voting system in the chamber used by calling each member's name aloud and the member responds either in the affirmative or negative on a vote. This typically occurs when a voice vote is

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	unclear or when the presiding officer's decision is challenged by a specified minority of Members. Where electronic voting is used to achieve the above, it shall be understood to fall within the definition of roll call voting.
Secretary General	Head of the parliamentary service, otherwise known as Clerk of Parliament or Secretary to Parliament
Special groups	Professional associations, trade unions, interest groups, and historically disadvantaged and marginalised social groups, including women, youth, and persons living with disabilities.
Special seats	Parliamentary seats reserved for special populations or interest groups.
Steering committee	Committee that sets the agenda or business of Parliament, sometimes referred to as the Standing Orders Committee or Business Committee

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BENCHMARKS FOR DEMOCRATIC LEGISLATURES IN SOUTHERN AFRICA

1 INTRODUCTION: CORE VALUES FOR DEMOCRATIC LEGISLATURES

The Southern African Development Community (SADC) region has common core values that characterise democratic legislatures. Based on colonial history and constitutional arrangements, these values manifest themselves in a variety of ways in different SADC countries. In some cases, these values are already embedded in the constitutional and legal architecture and activities of some Parliaments, while in others, these values remain aspirations that require urgent and concrete interventions if the chasm between aspirations, policy and practice is to be bridged.

2 ACCESSIBILITY

2.1 *Citizens and the Press*

2.1.1 Parliament shall be accessible and open to citizens, civil society organisations and the media, subject only to demonstrable public safety and work requirements.

2.1.2 Parliament shall ensure that the media are given appropriate access to its proceedings without compromising the proper functioning of Parliament and its rules of procedure.

2.1.3 Parliament shall have a non-partisan media relations facility.

2.1.4 Parliament shall promote the public's understanding of its work.

2.1.5 Dress codes in Parliament shall be culturally inclusive and shall not unduly limit public access.

2.2 *Languages*

2.2.1 Where the constitution or parliamentary rules provide for the use of multiple working languages, Parliament shall provide for simultaneous interpretation of debates and translation of records. Multiple languages shall include the use of Braille, sign language and hearing aids.

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3 ETHICAL GOVERNANCE

3.1 *Transparency and Integrity*

3.1.1 Parliament shall require Members and staff to maintain high standards of accountability, transparency and integrity in the conduct of all personal, public and parliamentary matters.

3.1.2 Parliament shall enact legislation to enforce parliamentary codes of conduct, including rules on conflicts of interest and acceptance of gifts for Members and parliamentary staff.

3.1.3 Parliament shall enact legislation requiring legislators and staff to fully and publicly disclose their financial assets and business interests.

3.1.4 Parliaments shall have internal mechanisms to prevent, detect and bring to justice Members and staff engaged in corrupt practices.

4 REPRESENTATIVENESS

4.1 The electoral system shall be designed to ensure that the composition of Parliament reflects the will of the people as expressed through a voting process conducted in accordance with continental and regional instruments for democratic elections.

4.2 In relation to 4.1, the membership of Parliament shall reflect the social diversity of the population with respect to gender, language, religion, and ethnicity among other considerations.

5 ORGANISATION OF THE PARLIAMENT

In order for Parliament to be an efficient and effective institution, certain minimum organisational structures and arrangements are required. These benchmarks are intended not only to build formal parliamentary structures but also strengthen multiparty political pluralism. This requires an organisational framework designed to ensure effective separation of powers and Parliament's autonomy from executive interference. In addition, institutional arrangements must be sufficient to facilitate societal input into parliamentary processes, and to promote Parliamentarians accountability to the constituencies that elected them in particular and to the public in general. Most importantly, the organisational structure of Parliament must be designed to facilitate all the primary functions of a Parliament, namely, its legislative, representative, budget approval and oversight functions.

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5.1 *Rules of Procedure*

5.1.1 Parliament shall develop and adopt its own rules of procedure based on regional best practices.

5.1.2 Only Parliament shall have the power to adopt and amend its rules of procedure subject to review by the judiciary only in cases of a constitutional nature.

5.1.3 As part of its advisory function, the parliamentary legal department shall review all draft laws and standing orders to ensure compliance with the constitution.

5.2 *Sessions*

5.2.1 Only the Speaker shall have the power to convene Parliament for ordinary business, provided that the Head of State may call extraordinary or special sessions in consultation with the Speaker.

5.2.2 Parliament shall meet regularly and for lengths of time sufficient for Parliamentarians, the plenary, and committees to engage sufficiently in their responsibilities, including constituency work.

5.2.3 Parliament shall develop its own calendar.

5.2.4 Parliament shall only be prorogued in consultation with the Speaker.

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5.3 *Plenary*

5.3.1 One third of the MPs may petition the Speaker to call for an extraordinary meeting of Parliament[1].

Comment [RK1]: A duplicate of this footnote is wrongly appended to the end of this sentence on the PDF version.

5.4 *Plenary Agenda*

5.4.1 The agenda of Parliament shall be set by a steering committee chaired by the Speaker. The committee shall include the Speaker, leaders of parliamentary parties and/or party groups among others, and shall be made available to Members in advance of plenary meetings. This body is sometimes called the Business Committee, Standing Rules and Orders Committee, Committee of Committees, or the Bureau. Where the membership of such a body includes members of the executive, such members shall not outnumber backbenchers.

5.4.2 Parliament shall have the right to amend the proposed plenary agenda which equitably allocates time for both government and private members' business.

5.5 *Plenary Debate*

5.5.1 Parliament shall establish and follow transparent procedures for structuring debates and determining the order of precedence of motions tabled by Members.

5.5.2 Parliamentary rules shall not be changed in the chamber. Waivers or suspension of rules shall be agreed to prior to plenary by the steering committee.

5.5.3 Parliament shall have equitable time allocations for motions, committee reports, ministerial statements, and bills and constituency issues.

5.5.4 Parliament shall provide meaningful opportunity for legislators to debate bills and consider committee reports in open session before adoption or a vote.

5.5.5 At each new meeting, Parliament shall allocate time for outstanding business from previous meetings.

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[1]The application of this benchmark may differ from country to country provided that the constitution or rules of procedure allow a specified minority of Parliamentarians to petition for the convening of an extraordinary session of Parliament.

5.6 *Plenary Voting*

5.6.1 Voting in plenary shall be public. Parliament shall make public any exceptions to this presumption and give advance notice before a secret vote.

5.6.2 Parliament shall establish and follow fair and transparent procedures for a specified minority of Members to demand a recorded method of voting to be used.

5.6.3 When Parliament uses roll call voting, the public shall be given access to how Members voted.

5.6.4 All Members shall have the right to vote in the chamber.

5.7 *Presiding Officers*

5.7.1 Members shall have the right to elect their own Presiding Officers.

5.7.2 The Presiding Officer shall be impartial in the conduct of his or her duties.

5.7.3 There shall be equitable gender representation in the election of Presiding Officers.

5.7.4 The Presiding Officer shall be elected by secret ballot.

5.7.5 The removal of a Presiding Officer from office shall follow due process established by Parliament's own rule of procedure. Removal from the position of presiding officer does not imply removal from Parliament, as a former presiding officer may become an ordinary member.

5.7.6 The executive shall not have the power to remove Presiding Officers.

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5.8 ***Committee System***

5.8.1 Parliament shall have permanent and temporary committees.

5.8.2 Membership of committees shall reflect the Parliament's political party composition and gender parity, and shall seek to include all parties and independent MPs.

5.8.3 Selection of Members of committees shall be the responsibility of a committee presided by the Speaker with leaders of parliamentary parties and/or party groups or party whips as members.

5.8.4 With limited exceptions, membership to committees shall be for the entire term of the Parliament.

5.8.5 Chairpersons and Vice Chairpersons of committees shall be elected by committee members and shall reflect gender equality.

5.8.6 Parliamentary committee meetings and hearings, except those of the business/standing orders committee, shall be open to the public. Parliament may, however, establish transparent procedures for determining in-camera committee meetings and hearings.

5.8.7 Parliament shall notify the public in advance of committee meetings or hearings.

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5.9 *Powers of Committees*

5.9.1 All legislation shall be referred to an appropriate parliamentary committee for review before plenary debate. This includes bills and other forms of legislation such as regulations.

5.9.2 Parliamentary committees shall have the power to call for public consultations on legislation and any matter under consideration.

5.9.3 Parliamentary committees shall have the power to propose amendments to legislation.

5.9.4 Parliamentary committees shall have the right to consult and/or hire experts if the required expertise is not available in Parliament.

5.9.5 Parliamentary committees shall have the power of summons to examine persons, papers and records from the executive and quasi-executive bodies.

5.9.6 Parliament shall determine and enforce penalties for non-compliance with its powers and those of its committees.

6 PARLIAMENTARY SERVICE COMMISSION

In order for Parliament to carry out its mandate, it requires highly trained and competitively remunerated professional staff. The emerging best practice in the region is that a parliamentary service authority often called the Parliamentary Service Commission, separate and distinct from the regular Public Service Commission, be established to enhance Parliament's human resource capacity and professionalise Parliamentary support services. Among other things, such an authority would determine the terms and conditions of service for Members and staff to enhance Parliament's autonomy and minimise overlap between the work of the legislative and executive branches.

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6.1 *General*

6.1.1 Parliament shall establish an independent Parliamentary Service Commission or its equivalent to determine the remuneration and other terms and conditions for Members and parliamentary staff.

6.1.2 Parliament staff shall not be under the general civil service and its regulations.

6.1.3 Where applicable, a distinction shall be drawn between partisan and non-partisan staff.

6.1.4 Parliament shall be availed adequate human, material and technological resources to support its operations and those of its committees.

6.2 *Parliament Administration*

6.2.1 The administrative arm of Parliament shall be headed by a Secretary General who shall be a public servant and whose office shall be protected from undue political pressure.

6.2.2 The Secretary General shall be selected and appointed by the Parliamentary Service Commission.

6.2.3 The Secretary General shall be accountable to Parliament and his or her tenure shall outlast that of Parliament.

6.2.4 While parliamentary staff may belong to political parties, they shall not, while under the employ of Parliament, be active in partisan political activities.

6.2.5 Parliament shall establish a code of conduct for staff to ensure among other things that staff do not use their membership in political parties to influence the functioning of Parliament in a partisan manner.

6.3 *Recruitment and Promotion*

Parliaments often have partisan and non-partisan staff. Partisan staff members are hired to serve only their party's Members and to provide technical expertise and administrative support for the party in Parliament. Non-partisan staff members are hired as public servants and are to serve Members from all political parties.

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6.3.1 Non-partisan staff shall be recruited and promoted on the basis of merit and equal opportunity.

6.3.2 Non-partisan staff may belong to political parties but shall neither hold office in such parties nor be active in partisan activities during their term of office.

6.3.3 In the recruitment and promotion of staff, the Parliamentary Service Commission shall not discriminate on the basis of ethnicity, religion, creed, gender, physical disability, or party affiliation in respect of non-partisan staff.

6.3.4 Parliament shall have adequate resources to recruit sufficient and adequately compensated staff to fulfil its responsibilities.

6.4 *Media Function*

6.4.1 Parliament shall have a non-partisan media relations facility with dedicated staff. Such facility shall be sufficiently and consistently funded by Parliament and be under the administrative control of the office of the secretary general.

6.4.2 Parliament shall have a regularly updated website to enhance and promote information sharing and interaction with citizens and the outside world.

6.4.3 Parliamentary records shall be produced in all official languages, including Braille, and be readily accessible to Parliamentarians, staff and citizens.

6.4.4 Citizens shall have access to parliamentary business through broadcasts of plenary and committee meetings via multimedia such as the Internet, live television and radio.

6.4.5 Accredited journalists shall be allowed to cover parliamentary proceedings regardless of the media's political views.

7 LEGISLATIVE FUNCTION

The legislative function is perhaps the most basic function of any Parliament. In some Parliaments, this function is carried out with undue deference to and interference from the executive, resulting in what are commonly referred to as "rubber stamp" Parliaments. In vibrant, democratic Parliaments, the legislative function includes much more than amendment or enactment of legislation proposed by the executive. Parliamentarians also propose legislation for debate. It is this feature, amongst others, that separates a proactive legislature from a reactive or rubber-stamp legislature. Related to law-making is the important work of approving the country's annual budget. The ability to perform this function effectively is contingent upon many factors that require a commitment of

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resources that will enhance Parliament's ability to review the budget with the necessary cooperation of the executive. The legislative function often includes the power to amend the constitution. The exercise of these sensitive functions must be done in a participatory, transparent and democratic way.

7.1 *General*

7.1.1 The approval of Parliament is required for the passage of all legislation, including the budget and any supplementary budgets.

7.1.2 Executive decrees shall not be used to bypass Parliament's legislative function. They shall be used only when Parliament is not in session, subject to ratification by Parliament.

7.1.3 Parliament shall approve all grants, loans and guarantees, both domestic and international.

7.1.4 Parliaments shall approve all treaties, protocols and conventions.

7.1.5 In bicameral systems with a parliamentary system of government (as opposed to a presidential system), only a popularly elected house (national assembly) shall have the power to pass a vote of no confidence in the executive.

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

7.2 *Legislative Procedure*

7.2.1 In a bicameral Parliament, there shall be clearly defined roles for each chamber in the passage of legislation.

7.2.2 The main legislative function shall be exercised by the directly elected chamber. Where a second chamber exists, it shall have a secondary role.

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7.2.3 Parliament shall have the power to override an executive veto.

7.2.4 Opportunities shall be given for public input into the legislative process, including providing relevant information to the public in a timely manner.

7.2.5 Members shall have the right to initiate legislation and to offer amendments on proposed and existing legislation.

7.2.6 Costs for public consultation, legal drafting, printing and distribution of private members' bills and notices shall be incurred by Parliament. Best practice is for Parliament to have its own legal draftsperson(s).

7.2.7 Parliament shall give Members and citizens adequate advance notice of all meetings and their agendas.

7.2.8 Members shall be afforded reasonable time to consult their constituents and any interested parties on proposed legislation, including constitutional amendments.

7.2.9 Private member's bills shall be governed by the same requirements, including advance notice, as all other types of bills.

7.3 *Financial and Budgetary Powers*

7.3.1 The proposed national budget shall require the approval of Parliament. Parliament shall have the power to amend the budget before approving it.

7.3.2 Parliament shall have a reasonable period of time in which to review the proposed budget, which aligns needs with the resource base, equitably distributes resources and sets national priorities.

7.3.3 Parliament shall have a Budget Committee which reviews the draft annual budget (or estimates) and report to Parliament accordingly.

7.3.4 Parliaments shall have a Parliamentary Budget Office, established by law, with qualified staff to assist in budget analysis and monitoring budget implementation, and advise Parliament at least on a quarterly basis.

7.3.5 Only Parliament shall be empowered to determine and approve its own budget. Approved resources shall be made available to Parliament in quarterly or annual allotments.

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7.4 *Delegation of Legislative Power*

7.4.1 Parliament may delegate some of its legislative powers to the executive branch. These powers shall, however, be temporary in nature, clearly defined, and confirmed by Parliament.

7.4.2 Parliament reserves the right to withdraw any delegated power.

7.5 *Constitutional Amendments*

7.5.1 In the absence of a national referendum, constitutional amendments shall require the approval of two thirds of the full membership of Parliament.

7.5.2 All proposed amendments to the constitution shall be published in the Government Gazette at least 30 days prior to plenary debate.

8 OVERSIGHT FUNCTION

In order for Parliament to effectively exercise its oversight function, the cooperation of the executive branch is required. Oversight of the executive is often misunderstood by both the executive and legislative branches. Oversight is neither a fault-finding exercise nor is it intended to embarrass the government. Rather, oversight is aimed at enhancing accountability and promote demotractic governance through the scrutiny of government policies, spending and nominations to public offices. The oversight function goes beyond overseeing government ministries and departments. It also includes constitutional bodies and quasi-state organs. In this regard, the size of the executive in Parliament should not be such as to reduce the oversight potential of Parliament. For example, when ministers also serve as MPs, then a large cabinet may result in very few backbenchers who are available to scrutinise the executive.

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8.1 *General*

8.1.1 Where the constitution does not make such provision, Parliament shall enact legislation to ensure that the size of cabinet does not upset the balance of power in Parliament resulting in limited parliamentary oversight capacity.

8.1.2 Parliament shall oversee the activities of all executive ministries and departments.

8.1.3 Parliament shall receive annual reports and scrutinize the activities of all independent governmental and constitutional bodies, such as the human rights commission, ombudsman, director of public prosecutions and public protector, among others.

8.1.4 Parliament shall have sufficient and effective mechanisms of obtaining information from the executive branch and statutory bodies.

8.1.5 Parliament's oversight authority shall include meaningful oversight of security services and of state-owned enterprises.

8.1.6 Parliament's oversight authority shall include oversight of compliance with regional and international human rights instruments, including those on gender equality and socio-economic justice.

8.1.7 Following the declaration of a state of emergency, the head of state shall seek the approval of Parliament within reasonable time.

8.1.8 Parliament shall enact legislation to protect informants ("whistle blowers") and witnesses presenting credible information about corrupt or unlawful activities.

8.1.9 Parliament shall have effective procedures to ensure that the executive responds to parliamentary committee reports and recommendations substantively and in a timely manner.

8.2 *Commissions of Inquiry and Approval of Appointments*

8.2.1 Parliament shall enact a law to guarantee the right of Parliament to create commissions of inquiry. Such commissions shall have the power to compel government officials and citizens to appear and give evidence under oath.

8.2.2 Parliament shall consider presidential nominations for appointment to independent public institutions supporting democracy. Parliamentary approval shall also be required for the removal of such persons.

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8.3 *Financial and Budget Oversight*

8.3.1 Parliament shall ensure that public accounts committees provide Members in general and opposition parties and independent members in particular meaningful opportunity to engage in effective oversight on the budget. In this regard, the Chairperson of the Public Accounts Committee or its equivalent shall be from the opposition[2]

8.3.2 Public Accounts Committees shall have access to statements of accounts, records and other documentation related to public expenditure to enable them to meaningfully review the accuracy of such reports.

8.3.3 There shall be an independent supreme Auditor-General's Office that conducts audits and reports to Parliament in a timely manner.

8.4 *No Confidence and Impeachment*

In presidential systems with fixed terms, the executive cannot be removed unless the head of state is impeached. In parliamentary systems, an executive can be relieved of office through a vote of no confidence. Where Parliament passes a vote of no confidence in the government, the government is obliged to offer its resignation resulting in the formation of a new government or the calling of a general election.

8.4.1 Parliament shall have mechanisms to impeach or censure officials of the executive branch (in presidential systems) or to express no-confidence in the government (in parliamentary systems).

8.4.2 Parliament shall develop rules for impeachment in a non-partisan manner.

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[2]Not all countries in southern Africa have Public Accounts Committees as understood in Westminster-inspired legislative systems. In this regard, during discussions, strong sentiments were expressed on the benchmark requiring Public Accounts Committees to be chaired by the opposition. It was felt that the chairing of any Parliamentary committee should follow the 'democratic' process through which chairpersons are either voted for by members of the Committee or appointed by the majority party.

8.5 *Parliament-Judicial Relationship*

8.5.1 Parliament's consent shall be required in the appointment and confirmation of judges.

8.5.2 Parliament shall confirm appointments based on recommendations from the Judicial Service Commission or through such procedure as may be established to protect the appointment process from partisan political or other influences.

8.5.3 There shall also be mechanisms for Parliament to impeach judges for serious crimes. Serious crimes shall be defined in the laws of the country.

9 REPRESENTATION FUNCTION

Representation is one of the most valued functions of Parliament. In constituency systems, the connection between constituents and the MP is the glue that binds voters to political institutions. In proportional representation systems, voters are closely attached to political parties as vehicles for representation in Parliament. Whatever the system, Members' working methods and environment must be strengthened in a way that facilitates interaction with and feedback from the electorate.

9.1 *Representational Nature of Legislatures*

9.1.1 The number of seats in Parliament and the resultant citizen-member ratio should be such as to facilitate meaningful member-constituent relations, taking into account equity, community of interest and geographic features.

9.2 *Constituency Relations*

Although this section primarily refers to constituency-based, first-past-the-post systems, these benchmarks may be adapted to the local context in proportional representation countries as well.

9.2.1 Parliament shall provide all Members with adequate and appropriate resources to enable them to fulfil their constituency responsibilities.

9.2.2 Parliament shall establish constituency offices as well as provide sufficient human, financial and material resources to promote effective constituency relations.

9.2.3 Constituency office staff shall be recruited by Parliament with the involvement of the MP.

9.2.4 Constituency offices shall be organised and managed in a non-partisan manner.

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9.3 *International Representation*

National Parliaments in SADC countries are members of several regional and international parliamentary bodies such as the SADC Parliamentary Forum, Pan Africa Parliament, Commonwealth Parliamentary Association and Inter-Parliamentary Union. Parliaments also receive various forms of technical assistance and are supported by international partners such as UNDP, among others. Members also benefit from their membership to regional and international organisations and training programmes. This right of Members and staff to associate with like-minded organisations is an important aspect of networking, parliamentary strengthening, resource mobilisation and professional development for both Members and staff.

9.3.1 Subject to general national foreign policy guidelines, Parliament shall have the right to receive development assistance to strengthen the institution of Parliament. This includes technical and advisory assistance, networking and exchanging experiences with other Parliaments and inter-parliamentary organisations.

9.3.2 The type of assistance, budget and the use of these funds shall be determined by Parliament in a transparent and accountable manner.

10 ELECTIONS AND STATUS OF THE NATIONAL ASSEMBLY

10.1 *Elections of MPs*

10.1.1 Parliament shall enact all necessary laws to establish an independent electoral management body to ensure free, fair and credible elections.

10.1.2 MPs shall be directly elected through universal and equal suffrage in a free and secret ballot in accordance with regional and continental instruments for democratic elections.

10.1.3 Elections shall be held regularly and periodically.

10.1.4 MPs that are nominated or appointed by the head of state shall comprise not more than 5 percent of the overall size of the National Assembly.

10.1.5 The selection of MPs for seats reserved for special groups shall be based on non-partisanship.

10.1.6 Parliament shall take appropriate measures to assist MPs to increase their knowledge and skills through continuing education and training.

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10.2 *Candidate Eligibility*

10.2.1 Restrictions on candidate eligibility shall not be based on religion, creed, gender, ethnicity, race, marital status, or physical disability. However, citizenship, age, or residency requirements are permitted.

10.2.2 Parliament shall enact laws to determine candidate eligibility.

10.2.3 In constituency-based systems, nomination fees to become a candidate shall be reasonable and affordable so as not to unduly exclude potential candidates.

10.2.4 Persons convicted of serious crimes shall be ineligible to stand for elections.

10.2.5 Measures of affirmative action used to encourage the political participation of marginalised groups, shall be narrowly drawn to accomplish precisely defined and limited objectives.

10.2.6 Parliaments shall enact laws which require political parties to meet the provisions of the SADC Protocol on Gender and Development.

10.2.7 Members shall not be required to take a religious oath against the member's conscience in order to take a seat in Parliament. Members should be allowed to make an affirmation. Oaths and affirmations shall be in relation to loyalty to the Constitution and the State and shall be administered by the Chief Justice or his/her representative.

10.3 *Incompatibility of Office*

10.3.1 Members shall not simultaneously serve in the [executive] judiciary, or be a civil servant of the executive branch, or an employee or board member of a state-owned enterprise. Members shall not simultaneously be President and a local government official[3]. Where the Attorney General is also a Member, the Attorney General shall be *ex officio*.

10.3.2 The Attorney General shall not simultaneously serve as the Minister of Justice.

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[3] At the September 2010 Luanda workshop, participants felt that the dual membership of cabinet minister to both the executive and Parliament contradicted the principle of separation of powers. They argued that ministers could not at the same time serve as Parliamentarians. For this reason, it was argued that the word 'executive' should be included in benchmark 10.3.1 on Incompatibility for Office.

10.4 ***Immunity***

10.4.1 Members shall have immunity for anything said in the course of parliamentary business proceedings and within the precincts of Parliament.

10.4.2 The executive branch shall have no right or power to lift the immunity of Members. Only Parliament can lift parliamentary privilege and the immunity of a Member.

10.4.3 A former Member shall continue to enjoy protection for any speech and/or statements made during the Member's term of office.

10.5 ***Tenure, Remuneration, Conditions of Service, and Infrastructure***

In order to carry out their functions effectively and meet the expectations of society, MPs must be full-time Parliamentarians. In this regard, their salaries and terms and conditions of service should be consistent with this expectation and competitive. This will have the positive effect of attracting professionals and other qualified persons to contest for Parliament with the potential of enhancing the quality of Parliament's influence and contribution to democratic consolidation.

10.5.1 Parliament shall provide Members with fair and adequate remuneration.

10.5.2 Members' salaries and allowances shall be made public.

10.5.3 Condition of service shall be the same for all parties. Differences such as special privileges for certain office bearers must be determined in a transparent manner.

10.5.4 Parliament shall make available adequate infrastructure including designated offices and other amenities such as child care facilities.

10.5.5 Parliament must be accessible to persons with disabilities.

10.5.6 All forms of remuneration and infrastructure shall be allocated on a non-discriminatory basis.

10.5.7 In constituency-based systems, Parliament shall establish and maintain non-partisan constituency offices.

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10.6 *Resignation and Recall*

10.6.1 Members shall have the right to resign from Parliament[4].

11 POLITICAL PARTIES, PARTY GROUPS AND CAUCUSES

In a multi-party democracy, political parties are important vehicles for political and social mobilisation and electioneering. Political parties bring together like-minded persons into a cohesive group guided by particular ideologies, principles and values. In a parliamentary system, party groups and caucuses give full expression to freedoms of association and political expression. Two of the most important functions of political parties are the development of public policy options and the grooming leaders. They should therefore be encouraged and nurtured.

11.1 Parliament shall enact a law to regulate political parties.

11.2 MPs shall enjoy the right of freedom of association.

11.3 Any restriction on the legality of political parties shall be narrowly defined in law and shall be consistent with the International Covenant on Civil and Political Rights and relevant regional and continental conventions.

11.4 MPs shall have the right to associate and form political caucuses or party groups just as citizens do. MPs shall have the right to form interest caucuses.

11.5 Parliament shall recognise the largest opposition party as the Official Opposition, give due recognition, remuneration and facilities to its leader, and legally guarantee the status of that position.

11.6 All parties shall be given adequate opportunities to participate in debates.

11.7 Within the life of Parliament, MPs shall remain members of the political party on whose ticket they were elected unless there is good reason for the MP to resign from the party or if the MP is dismissed from the party against his or her will. Should an MP wish to join another party, a by-election becomes necessary in constituency-based systems.

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[4]This benchmark must be contextually translated to other languages to refer to the right of an elected representative to exercise their right to resign from Parliament.

11.8 In constituency-based systems, in the event of expulsion from a party an MP shall not lose his or her seat.

11.9 MPs who are elected as independents can remain independent or may work with a parliamentary party without losing his or her seat.

11.10 Voting based on one's conscience, which may go against one's party, shall not be construed as floor crossing.

11.11 Parties shall be publicly funded in proportion to the number of seats held in Parliament. This shall be legally protected.

Final Benchmarks Adopted on 3 December 2010