



Benchmarks for Democratic Legislatures: Findings and Recommendations

CPA Assessment Workshop for the Asia, India and South-East Asia Regions

*Ipoh, Perak, Malaysia
14-15 December 2015*

Introduction

In 2006, the Commonwealth Parliamentary Association (CPA) published Recommended Benchmarks for Democratic Legislatures (the *CPA Benchmarks*), which was the product of a CPA Study Group hosted by the Parliament of Bermuda. The *CPA Benchmarks* were intended to codify minimum benchmarks for democratic legislatures and drew heavily on the outcomes of past CPA Study Groups on a range of specific issues. The *CPA Benchmarks* provide a tool for Commonwealth parliaments to use in undertaking their own self-assessment, as they seek to identify possible new ways to function as effectively as possible. Since their publication, the *CPA Benchmarks* have had an impact globally, with a number of other parliamentary associations developing their own sets of recommended benchmarks or standards based on the *Benchmarks*. Similar benchmarks or self-assessment tools have been developed by the Inter-Parliamentary Union, the *Assemblée Parlementaire de la Francophonie*, the Southern African Development Community Parliamentary Forum (SADC-PF) and the Confederation of Parliaments of the Americas (COPA).

Following the publication of the *CPA Benchmarks* in 2006, the CPA hosted a series of regional meetings to spread awareness of the *Benchmarks*, and to develop benchmarks tailored to particular CPA regions. As part of this process, the CPA convened a workshop for the Asia, India and South-East Asia Region on the benchmarks in Dhaka, Bangladesh, from 25 to 27 January 2010. This regional workshop was which 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. The product of this workshop was a set of tailored ***Recommended Benchmarks for Asia, India, and South-East Asia Regions' Democratic Legislatures*** (the *Asia Benchmarks*).

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In addition, since their adoption, a number of Commonwealth parliaments have conducted self-assessments of their parliaments against the *CPA Benchmarks*, or against regional adaptations of them. For example, at the request of the Executive Committee of the Caribbean, Americas and Atlantic (CAA) Region, the CPA Secretariat organized an assessment workshop, hosted by the Parliament of Barbados, to review regional progress against the benchmarks. An outcome document was produced from that assessment work that identified a number of regional priorities for parliamentary reform within the region, as well as issues that the Benchmarks do not currently, but perhaps should, address. In addition, the CAA region agreed to convene a regular meeting, every three years, to review regional developments in meeting the benchmarks, as well as update the benchmarks in the CAA region, as appropriate.

From December 14-15, 2015, the CPA convened a similar workshop in the Asia, India and South-East Asia Region to assess the progress of parliaments in the region against the *Asia Benchmarks*. The workshop, hosted by the Perak Legislative Assembly, also provided an opportunity for participants to look at the usefulness of the existing *Asia Benchmarks* and to, perhaps, suggest areas for additional development. Although the current budget session of parliament prevented participation in the workshop by members and staff of the parliament of India, the workshop included members and staff from the national parliaments of Bangladesh, Malaysia, Pakistan and Sri Lanka, as well as the leadership and staff of the Perak Legislative Assembly, Malaysia.

The meeting, conducted under the Chatham House Rule, indicated general support for the concept of the *Asia Benchmarks*. Prior to the workshop, many of the participants completed a self-assessment of their parliaments against the benchmarks; the parliaments that completed this self-assessment indicated that they met the vast majority of the *Asia Benchmarks*. With respect to a few specific benchmarks, participants indicated that, although a benchmark might be met as a formal matter, implementation or enforcement of that benchmark could be improved. In other areas, it may be that the *Asia Benchmarks*, could be further developed in order to be useful as a guide for further strengthening of parliaments in the region.

Over the course of the workshop, the following specific observations were made:

- *Development Funds Should be Allocated Irrespective of Party Affiliations.* *Asia Benchmark 1.5.1* provides that remuneration and reimbursement of parliamentary expenses should be allocated on a non-partisan basis. In this context, it was noted that the distribution of funds for development efforts can depend on the political affiliation of members representing a given district. Participants felt it important to note that government should not discriminate in the allocation of development funds to districts based on the voting behavior of that district or the on the political affiliation of the members representing that district. Doing so can create a perception that voters may be penalized for voting for a member of an opposition party and can undermine the legitimacy of the electoral process.

- Reporting of Campaign Expenses. The *Asia Benchmarks* go further than the original 2006 *CPA Benchmarks* in several respects. Section 1.1.4 of the *Asia Benchmarks* adds a provision that the election expenses of parliamentary candidates shall be monitored by the Election Commission or similar authority. While there was support for impartial monitoring of campaign expenses by election authorities, there was also a view that implementation and enforcement of these laws was sometimes lacking.
- Party Discipline and “Anti-Hopping Laws”. Section 4.2 of the benchmarks address several issues relating to parliamentary party groups. There was some discussion in the workshop over the issue of party discipline and the use of “anti-hopping” laws to limit the ability of parliamentarians to switch parties. There was a view that anti-hopping legislation may have uses in certain contexts, for example, to promote greater stability within political parties. Anti-hopping laws may also prevent political parties with financial resources from offering inducements to individual members to switch parties, effectively changing the political party representation in parliament determined in the election. While the value of mechanisms for maintaining party discipline were recognized, *Asia Benchmark* 4.1.1 also guarantees, for example, that legislators have the right of freedom of association.
- Management of the Floor Debate. Section 2.5 of the *Asia Benchmarks* governs parliamentary debate. Participants agreed that there should be clear procedures for allocating time during floor debate and for equitably allocating time among members of the institution. There was a belief that if the government leader is given the ability to speak by leave (i.e., for an unlimited time), that the same courtesy should be extended to the leader of the opposition. Again, the complexities of equitably allocating time for floor debate were discussed by participants. Reference was made to a fairly unusual situation in the Sri Lankan parliament, where a group of members belonging to the government party have chosen to sit with the opposition party. They are not able to draw on the speaking time allocated to the government party, nor are they given time from the opposition leader, nor is there a provision for allocating time to independents. As a result, the 49 members in this situation are effectively limited from speaking in the parliament.
- Use of Technology by Parliaments. Section 2.7.1 of the *Asia Benchmarks* require legislatures to maintain and publish records of its proceedings in a readily accessible format. It was noted that technology is changing the way that parliaments operate, and some parliaments have referenced the ability to provide documentation to members on tablets or electronically, rather than only in paper copy. Technology has also had an impact on behaviour on the floor of parliament. For example, several participants noted that it has become more difficult to prevent members of parliament from taking photos and using social media while on the floor.
- Strengthening the Role of Committees. Section 3 of the *Asia Benchmarks* govern committees. There were a number of comments relating to the need to strengthen committees, which have often been referred to as “the engines of the legislature”. Practice with respect to standing vs. select committees varies substantially within the region. The

Malaysian parliament currently has four standing committees; there are approximately 60 standing committees in the Sri Lankan parliament. It was noted that the Malaysian parliament is currently considering a proposal that would expand the number of standing committees substantially adding, for the first time, standing committees with responsibility for specific sectoral areas, such as education and health. There also appears to be variation in current practice with respect to the role that Ministers are able to play in committees with jurisdiction over their ministries. Section 3.2.2 of the *Asia Benchmarks* provides that committees shall scrutinize legislation referred to them. It was noted by one of the resource persons participating in the Workshop that, in most countries in the Commonwealth, ministers are not given a role in committees that are charged with scrutinizing their ministry.

- *Government Assurances and Follow-up.* In discussing the role of committees, one participant noted that progress has been made in the ability of committees to question ministers; however, the challenge is that, after the committee meeting, there may not be sufficient follow-up by the government on commitments made to the committee. While the issue of government assurances is not addressed directly in the *Asia Benchmarks*, it was noted that committees can be effective only if the government takes action based on promises or assurances provided to parliamentary committees. For example, in the Lok Sabha of India and the Jatiyo Sangsad of Bangladesh, the Committee on Government Assurances is charged with ensuring that the government takes action with respect to assurances that are made to committees or parliament. In the Australian Capital Territory, government must respond to committee recommendations within three months. To help promote compliance with this requirement, the Speaker periodically issues a list of outstanding or late responses by the government, which provides an incentive for the government to respond within the required time frame.
- *Parliamentary Staff Loyalty to Parliament.* Section 5.1.2 of the *Asia Benchmarks* requires that the Legislature “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”. Several participants felt that this issue was of paramount importance. In some state level legislatures with smaller staffing structures, this continues to be an issue. For example, it was noted that, in nine states in Malaysia, the Secretary to the Legislative Assembly also serves as the Secretary of the State Executive Council. There was a discussion regarding the appointment or approval of the Secretary General, with an agreement that legislatures benefit from civil servants who develop a deep nuanced understanding of the legislature, and that frequent rotation of senior civil servants can undermine loyalty to the institution. In some cases, where the legislature has limited staff, the deficiency has been remedied by seconding additional staff from the executive branch. In some cases, it was noted that the Minister of Parliamentary Affairs has a role in approving new parliamentary positions. In addition, in some cases it was noted that parliamentary staff may be subject to a general civil service code of conduct, but there may not be a separate parliamentary code of conduct. It was noted that in the Australian Region

some parliaments have a separate parliamentary services act which allows for the employment of parliamentary staff separate from the executive staff.

- *Budgetary Autonomy.* Section 6.1.2 of the *Asia Benchmarks* enshrines the principle of parliamentary autonomy over its budget. However, it was noted that, particularly during periods of fiscal austerity, finding resources for parliamentary infrastructure or staff can be challenging. Several participants noted that challenges can arise with respect to negotiating funding to cover inter-parliamentary relations, and participants described a number of ways in which parliamentary budgets were negotiated within the government. It was noted that Malaysia is currently considering the creation of a new committee on the parliamentary budget, rather than discussing the parliamentary budget in the plenary.
- *Infrastructure.* Section 1.7.1 of the *Asia Benchmarks* requires that the legislature shall have adequate infrastructure to enable members and staff to fulfill their responsibilities. It was noted that the infrastructure needs of parliaments are changing. Parliaments that are located in historic buildings often face high maintenance costs and challenges in adapting historic buildings to the needs of a modern legislature. Currently, infrastructure needs involve not only issues such as office space, but also adequate internet access and speed, parking space, tablets and mobile communications. It was noted that, in some cases, the Leader of the Opposition may not have access to office space commensurate to their position.
- *Nominated Members for Reserved Seats.* Section 1.2.2 of the *Asia Benchmarks* provide for the use of special measures to encourage the political participation of minority or marginalized groups. Some parliaments, including the *Dewan Negara* of Malaysia, in the region have nominated seats reserved for minority groups. While the value of this process was recognized, it was also suggested that there might be a more democratic process for selecting individuals to fill these reserved minority seats, rather than relying primarily on nominations by government.
- *Relations between Parliament and the Judiciary.* The workshop was made aware of several instances where there had been issues concerning the separation of powers between the judiciary and the legislature. Whilst not commenting on the merits of any specific case, the participants noted that the judiciary and the legislature should be respectful of their respective constitutional roles and observe comity between these two important branches of government, as reflected in the *Commonwealth Principles* (often referred to as the Latimer House Principles).
- *Improving the Effectiveness of Question Time.* Benchmark 7.1.1 provides that the legislature shall have mechanisms to obtain information from the executive branch sufficient to exercise its oversight function in a meaningful way. It was noted that questions with and without notice were used in different ways across the region. The workshop considered that there was room for improvement or enhancement in this important benchmark. In some cases, requirements for advance notice may mean that the questions become less politically

relevant during the time period required for advance notice. Some participants mentioned that, by allowing questions to be asked of ministers without notice, the value of the question and answer period might be improved. Lastly, it was noted that in some cases management of question time has been an issue. To ensure that question time is used to effectively address a range of matters, some parliaments have limited government responses to a set period per question (e.g., four minutes) to make sure questions are able to be asked on a range of issues.

- *Reducing Gender and other Types of Bias in Parliament.* Several of the *Asia Benchmarks* reference issues of nondiscrimination on the basis of gender, ethnicity, race or disability. The workshop's attention was drawn to examples where sexist remarks have been made on the floor of parliament. Malaysia noted that they have amended their rules of procedure to specifically prohibit such remarks in the plenary session. Other parliaments may wish to consider whether there are adequate mechanisms in place to deal with this situation.
- *Legislative Process.* Several comments were made about ways to improve the legislative process, which is covered in Section 6 of the Benchmarks. In one case reference was made to specific pieces of legislation that were passed with limited opportunity for debate. In other instances, there were examples of how the executive branch has used ordinances or other administrative regulations in lieu of passage of a law on certain controversial matters. Where ordinances are used when parliaments are not in session, there was also reference made to procedures for legislative review of these ordinances when they convene and, if the ordinances are not confirmed within 30 days, the ordinances cease to have force of law.
- *Ensuring Parliamentary Oversight of Security Sector and State-Owned Enterprises.* Section 7.1.2 of the *Asia Benchmarks* provides that the oversight authority of the legislature should include meaningful oversight of the security services and state-owned enterprises. This was noted as an ongoing challenge. In many countries around the world, executive branches often used security rationales to limit or circumscribe the role of the legislative branch. Legislatures should continue to assert their role in overseeing all aspects of the executive branch. Reference was also made to the lack of budget offices or dedicated financial analysts working solely for the legislature. In many contexts of financial oversight, it is important for parliament to have access to financial expertise to effectively oversee state-owned enterprises or conduct other elements of financial oversight effectively.
- *Citizens, the Press and Civic Education.* Section 9.1 of the *Asia Benchmarks* governs the relationships between citizens and the press. It was noted that many parliaments have media centers in the parliament to facilitate the work of the media. However, many participants noted a range of challenges, particularly in relation to the rise of social media. Often, coverage of complex issues are too easily reduced to simplistic tweets. It was noted that the rise of social media increases the need for greater civic education for the youth. Several good practices were noted, including the Youth Parliament and Undergraduate Parliament in Malaysia, whose resolutions are provided for consideration in the federal

parliament. Another good practice referenced was the existence of a Children's gallery for school groups to observe the parliament. However, it was noted that simply observing proceedings may be insufficient, particularly if children are viewing debates that are viewed by citizens as political bickering, rather than serious policy debate. There was also a discussion about the lack of a responsible press in some cases, or a lack of a code of conduct for media. Similarly, it was noted that women, in particular, may suffer from irresponsible media coverage. While there was broad recognition of the importance of a free press, there was concern expressed in some cases that press can be "hired" and coverage is influenced more by economics or money, rather than professional coverage.

- *Language as a Possible Barrier to Political Participation.* Section 9.2.1 of the *Asian Benchmarks* governs the use of working languages, and notes that legislatures shall make every reasonable effort to provide for simultaneous interpretation of debates, where parliament has multiple working languages. Reference was made to opportunities in Pakistan to speak in regional languages. While the situation is, of course, different in every country in the region, participants noted that, in an ideal world, efforts would be made to ensure that language is not a barrier to political participation. Reference was made to a recent practice in the Australian Capital Territories to provide for sign language interpretation, to facilitate full participation by a hearing impaired member, as well as improve accessibility of proceedings to persons with hearing disabilities – recognizing that this can involve budget implications.
- *Codes of Conduct.* Section 10.1 governs ethical governance, with Section 10.1.5 of the *Asian Benchmarks* specifically noting that legislatures should establish a mechanism to oversee the conduct of legislators. It was noted that not all parliaments in the region have a code of conduct for members. Many participants did reference, however, specific provisions that require recusal where there is a specific conflict of interest.

Next Steps

The participating Branches recommended the following next steps with respect to the *Asia, India and South East Asia Regional Benchmarks*:

1. There should be a regular report on the status of implementing the *India, Asia and South-East Asia Regional Benchmarks* -- particularly those Benchmarks that were identified as priorities in the course of the assessment workshop. This status report could be made a part of any annual Regional meeting of the regions.
2. The CPA Secretariat is requested to organize a similar workshop every three years to conduct a regular review of progress vis-a-vis the *Asia, India and South East Asia Regional Benchmarks*, as well as to consider changes in the Benchmarks.