

DRAFT BENCHMARKS FOR DEMOCRATIC LEGISLATURES IN SOUTHERN AFRICA

(Post Workshop DRAFT – for comments only)

ACKNOWLEDGEMENTS

These Benchmarks for Democratic Legislatures in Southern Africa fall within 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.

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PREAMBLE

The re-introduction of multi-partyism 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 branches, prospects for democratic consolidation on the continent are limited. Whereas it cannot be gainsaid that democratisation *per se* may 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 democracy is 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 of 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 a parliament may be measured qualitatively by examining three essential factors; namely 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 proportionally large number, have resulted in decreased parliamentary oversight capacity. Invariably, the executive produces most of the bills. Private members' bills are a very rare phenomenon. In practice, parliament is primarily a reactive institution rather than pro-active one, largely unable to respond sufficiently to emerging challenges, opportunities and national emergencies. The Westminster-inherited systems of government that are prevalent in most countries of southern Africa compromise the principle of separation of powers. Under these systems, ministers are most often drawn members of the legislature, which ironically should oversee their performance. This puts a dent on oversight functions of the legislature on the executive.

Citizens have high expectations from their Members of Parliament (MPs) and parliaments in general. In addition to the traditional role of legislator, MPs are also expected to perform constituency services, perhaps one of the most influential functions of an MP in Africa. In many parts of rural, agriculturally based African countries, MPs 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 MPs to

perform their other equally important parliamentary roles. These competing and often conflictual roles impose immense challenges on MPs, who in many cases have very little or no human and material support. Oftentimes, MPs have no offices or staff 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 parliament with meaningful powers, documentation and time for effective scrutiny. Ironically, some parliaments cannot even determine their own budgets, let alone receive resources timely 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. Whereas, some parliaments may have the constitutional power they may not have the capacity or willingness to exercise such 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.

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 served?
- (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 that are necessary for optimal professional parliamentary performance?
- (e) What are the structural arrangements that should be put in place to enable political parties, civil society organisations and interest groups to influence the business of parliament?

This is the context within which the SADC Parliamentary Forum proposes minimum benchmarks for effective parliamentary performance and development in southern African. These benchmarks set forth the parliamentary reform agenda for all member parliaments. These benchmarks are intended to provide a mirror for self-assessment, measuring parliamentary performance of SADC parliaments. Key to this process is the overarching objective of strengthening the capacity, role and functional autonomy of parliaments as the elected institution representing in government and governance.

The domestication of these benchmarks in southern Africa, through relevant parliamentary reforms, constitutional reforms and re-orientation of value systems will lend true meaning to axiom, governments for the people, of the people and by the people!

DEFINITIONS

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

Elections	Parliamentary, provincial/regional and local government elections.
EMB	Body mandated with the organisation and management of national, provincial/regional and local government elections, ordinarily referred to as electoral management body or electoral commission.
Judges	Chief Justices, Supreme Court justices and High Court justices excluding lower court judges and magistrates.
Member	Member of any house of parliament.
Member of Parliament	Member of the lower, popularly and directly elected Chamber.
National Assembly	Directly or popularly elected house of parliament, sometimes referred to as the lower House
Parliament	Legislative branch of government as distinct from the executive and judicial branches. Parliament includes either one or two chambers and does not include the President or Head of State. Parliament and the legislature are used interchangeably.
Partisan staff	Staff who work with politicians, political parties and party caucuses to advance the agenda and manifestoes of such parties
Portfolio committees	Committees that oversee government ministries or departments
Presiding Officer	Speaker, President or Chairperson of either Chamber
Presiding officers	Speakers, Presidents of the National Assembly and their deputies
Secretary General	Head of the parliamentary service otherwise known as Clerk of Parliament or Secretary to Parliament
Senior judges	Constitutional Court judges, Supreme Court judges and Supreme Court judges.

Special groups

Professional associations, interest groups historically disadvantaged, marginalised social groups including women, the youth and the disabled and trade unions

Steering committee

Committee that manages the business of parliament, sometimes referred to as the standing orders committee or business committee

INTRODUCTION

The Southern African Development Community (SADC) region has in common core values that characterise democratic legislatures. Based on the colonial history and constitutional arrangements, these values manifest themselves in a variety of ways in different jurisdictions. 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 begging for concrete interventions to bridge the chasm between aspirations, policy and practice.

1.0 ACCESSIBILITY

1.1 Citizens and the Press

- (a) Parliament and its committees shall be accessible and open to citizens, civil society organisations and the media, subject only to demonstrable public safety and work requirements.
- (b) Parliament shall ensure that the media are given appropriate access to the proceedings of parliament without compromising the proper functioning of parliament and its rules of procedure.
- (c) Parliament shall have a non-partisan media relations facility.
- (d) Parliament shall promote the public's understanding of the work of parliament.
- (e) Dress codes in parliament shall be culturally inclusive and shall not unduly limit public access.

1.2 Languages

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.

2.0 ETHICAL GOVERNANCE

2.1 Transparency and Integrity

- (a) 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.
- (b) Parliament shall enact legislation to enforce parliamentary codes of conduct, including rules on conflicts of interest and acceptance of gifts for MPs and parliamentary staff.
- (c) Parliament shall enact legislation which requires legislators and staff to fully and publicly disclose their financial assets and business interests.
- (d) Parliaments shall have internal mechanisms to prevent, detect, and bring to justice, members and staff engaged, in corrupt practices.

3.0 REPRESENTATIVENESS

- (a) The electoral system shall be such as to ensure that the composition of parliament reflects the will of the people as expressed through a voting process conducted in accordance with regional norms and standards for elections.
- (b) Parliamentary membership shall reflect the social diversity of the population with respect to gender, language, religion, and ethnicity among other considerations.

4.0 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 are also intended to buttress multiparty political pluralism. Therefore, the organisational framework of parliament must be set up in such a way to ensure separation of powers and autonomy from executive interference as well as institutional arrangements that facilitate societal input and accountability from the constituencies which elected the MPs. The organisational structure of parliament must be set up to facilitate all the primary functions of a parliament, namely the legislative function, budget approval, representation function, and oversight function.

4.1 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 the executive resulting in what are commonly referred to as “rubber stamp” parliaments. In vibrant, democratic parliaments, the legislative function includes much more amendment or enactment of legislation proposed by the executive. Parliamentarians may also propose legislation for debate. It is this feature, amongst others, which separates a proactive from a reactive or rubber-stamp legislature. Perhaps the most important aspect of the work of parliament is the approval of the country’s annual budget. The ability to perform this function effectively is contingent on many necessary factors which require a commitment of resources to capacitate parliament’s ability to review the budget and also require the cooperation of the executive. Finally, the legislative function often includes the power to amend the constitution. Needless to say, the exercise of these sensitive functions must be done in a participatory, transparent and democratic context.

4.1.1 General

- (a) The approval of parliament is required for the passage of all legislation, including the budget and any supplemental budgets.
- (b) Decrees shall not be used to bypass parliament’s legislative function.
- (c) Parliament shall approve all grants, loans and guarantees, both domestic and international.
- (d) Parliaments shall approve all treaties, protocols and conventions.

- (e) 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.
- (f) A chamber where a majority of members are not directly elected or indirectly elected may not indefinitely deny or reject a money bill.

4.2 LEGISLATIVE PROCEDURE

- (a) In a bicameral parliament there shall be clearly defined roles for each chamber in the passage of legislation.
- (b) Parliament shall have the right to override an executive veto.
- (c) Opportunities shall be given for public input into the legislative process, including providing relevant information to the public in a timely manner.
- (d) MPs shall have the right to initiate legislation and to offer amendments on proposed and existing legislation.
- (e) Costs for the 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 drafts person(s).
- (f) Parliament shall give MPs and citizens adequate advance notice of all meetings including the agenda.
- (g) MPs shall be afforded reasonable time to consult their constituents on proposed legislation, including constitutional amendments.
- (h) Private member's bills shall be governed by the same requirement for advance notice as all other types of bills.

4.2.1 Financial and Budgetary Powers

- (a) The proposed national budget shall require the approval of parliament. Parliament shall have the power to amend the budget before approving it.
- (b) Parliament shall have a reasonable period of time in which to review the proposed budget, align needs with the resource base, equitably distribute resources and set national priorities.
- (c) In this regard, parliament shall have a budget or finance committee which reviews the draft annual budget (or estimates) and presents its report to parliament.
- (d) In addition, parliaments shall have a Parliamentary Budget Office with qualified staff to assist in budget analysis and monitoring budget implementation on least a quarterly basis.
- (e) Only parliament shall be empowered to determine and approve the budget of the parliament, which shall be made available to parliament in quarterly or annual allotments.

4.2.2 Delegation of Legislative Power

- (a) Parliament may delegate some of its legislative powers to the executive branch. These powers shall however be temporary in nature, be clearly defined, and shall be confirmed by legislature.
- (b) Parliament reserves the right to withdraw delegated power.
- (c) Parliament shall only be prorogued in consultation with the presiding officer.

4.2.3 Constitutional Amendments

- (a) In the absence of a national referendum, constitutional amendments shall require the approval of two thirds of the full membership of parliament.
- (b) All proposed amendments to the constitution shall be published in the government gazette at least 30 days prior to plenary debate.

4.3 OVERSIGHT FUNCTION

In order for parliament to 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 intended to embarrass the government. Rather it is aimed at enhancing accountability through the scrutiny of government policies, spending and nominations in order to produce a better, democratic outcome. The oversight function goes beyond overseeing government ministries and departments. It 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.

4.3.1 General

- (a) Parliament shall oversee the activities of all executive ministries and departments.
- (b) Parliament shall receive annual reports and scrutinize the activities of all independent governmental bodies and constitutional bodies such as the human rights commission, ombudsman, director of public prosecutions and public protector, among others.
- (c) Parliament shall have sufficient and effective mechanisms of obtaining information from the executive branch and statutory bodies.
- (d) Parliament's oversight authority of parliament shall include meaningful oversight of the security services and of state-owned enterprises.
- (e) Following the declaration of a state of emergency, the president shall within reasonable time, seek the ratification of parliament.
- (f) Parliament shall enact legislation to protect informants (whistle blowers) and witnesses presenting credible information about corrupt or unlawful activities.

4.3.2 Commissions of Inquiry and Approval of Appointments

- (a) 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 to appear and give evidence under oath.
- (b) Parliament or a committee of parliament shall approve presidential appointments for offices that are of a non-partisan nature. These include human rights commissioners, the ombudsman, electoral commissioners, auditor general, director of public prosecutions and public protector, among others.
- (c) The president shall not remove these officials without notification and approval of parliament.

4.3.3 Financial and Budget Oversight

- (a) Parliament shall ensure that public accounts committees provide MPs in general and opposition parties in particular meaningful opportunity to engage in effective oversight of the executive branch expenditure. In this regard, the Chairperson of the Public Accounts Committee shall be from the opposition.
- (b) Public accounts committees shall have access to records of the executive branch accounts and related documentation sufficient to be able to meaningfully review the accuracy of such reports on revenue and expenditure.
- (c) There shall be an independent supreme Auditor-General's Office that conducts audits and reports to Parliament in a timely manner.

4.3.4 No Confidence and Impeachment

- (a) 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).
- (b) 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.
- (c) Rules for impeachment shall be developed by parliament in a non-partisan manner.

4.3.5 Parliament-Judicial Relationship

- (a) Parliament's consent shall be required in the appointment and confirmation of senior judges .
- (b) Parliament shall confirm appointments based on recommendations from a judicial service commission.
- (c) There shall also be mechanisms for Parliament to impeach judges for serious crimes.

4.4 REPRESENTATION FUNCTION

In southern African countries, the representation function creates a challenge to address as urban-based MPs attempt to represent rural voters. In proportional representation systems, the representation function is based on parties and societal groups; whereas, in first-past-the-post systems, MPs represent constituents in geographically defined areas. The connection between the constituents and the MP is the glue that binds voters to political institutions. As such, representatives must be strengthened in a way that facilitates interaction and feedback mechanisms with the electorate.

4.4.1 Representational Nature of Legislatures

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

4.4.2 Constituency Relations

- (a) Parliament shall provide all parliamentarians with adequate and appropriate resources to enable them to fulfil their constituency responsibilities.

- (b) In constituency-based systems, Constituency Development Funds shall be established to facilitate constituency development work.
- (c) The allocation and use of such funds shall be subject to non-partisanship, transparency and accountability, and take into account special seats.
- (d) Parliament shall establish constituency offices as well as provide sufficient human, financial and material resources to enhance effective constituency relations.
- (e) Constituency office staff shall be recruited by parliament with the involvement of the MP.
- (f) Constituency offices shall be organised and managed in a non-partisan manner.

4.4.3 International Representation

National parliaments in SADC are members of several regional and international organisations such as the SADC Parliamentary Forum, Commonwealth Parliamentary Association and Inter-Parliamentary Union. In addition, parliaments also receive various forms of technical assistance and are supported by international financial partners such UNDP, among others. Parliaments and parliamentarians also benefit from their membership to regional and international organisations and training programmes. This right of parliamentarians to associate with like-minded institutions is also an extension of parliament's oversight role beyond the nation-state level.

- (a) 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 parliament and inter-parliamentary organisations.
- (b) The type of assistance, the budget and the use of these funds shall be determined in a transparent and accountable manner within parliament's strategic plan.

4.4.4 Rules of Procedure

- (a) Parliament shall develop and adopt its own rules of procedures based on regional best practices
- (b) Only parliament shall have the power to adopt and amend its rules of procedures subject to review by the judiciary only in cases of constitutional review.
- (c) The legal advisory services of shall review all laws and standing orders to ensure compliance with the constitution.

4.4.5 Sessions

- (a) 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.

- (b) Parliament shall meet regularly and for lengths of time sufficient for parliamentarians, the plenary, and committees to engage sufficiently in their responsibilities.
- (c) Parliament shall develop its own calendar with plenary meetings at least four times per year, each meeting lasting not less than 10 sitting days.

4.4.6 Plenary

One third of the MPs may petition the speaker to call for an extraordinary meeting of parliament.

4.4.7 Plenary Agenda

- (a) The agenda of parliament shall be set by a steering committee chaired by the Speaker and leaders of parties and/or groups. This body is sometimes called the Business Committee, Standing Rules and Orders Committee or the Committee of Committees.
- (b) Parliament shall have the right to amend the proposed agenda which allocates time for both government and private members' business.

4.4.8 Plenary Debate

- (a) Parliament shall establish and follow clear procedures for structuring debates and determining the order of precedence of motions tabled by members.
- (b) 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.
- (c) Parliament shall have clear allocations for motions, committee reports, ministerial statements and bills and constituency issues.
- (d) Parliament shall provide meaningful opportunity for legislators to debate bills and consider committee reports publicly before adoption or a vote.
- (e) Parliament shall allocate time in each new meeting to outstanding issues from the previous meeting.

4.4.9 Plenary Voting

- (a) Voting in plenary shall be public. Parliament shall make public any exceptions to this presumption and give advance notice before a non-secret vote.
- (b) Parliament shall establish and follow procedures for a specified minority of MPs to demand a recorded method of voting to be used.
- (c) When parliament uses roll call voting, the public shall be given access to how members voted.
- (d) All MPs shall have a vote in the chamber.

4.4.10 Presiding Officers

- (a) Parliament shall have the right to elect presiding officers to lead the legislative branch of government
- (b) Presiding officer shall be impartial in the conduct of their her duties.
- (c) There shall be equitable gender representation in the election of presiding officers.
- (d) Presiding officer shall be elected by MPs by secret ballot.
- (e) The removal of the presiding officer from office shall follow due process established by parliament's own rule of procedure.
- (f) The executive shall not have the power to remove presiding officers.

4.5 COMMITTEE SYSTEM

- (a) Parliament shall have permanent and temporary committees.
- (b) Parliament shall elect members of the steering committee to organise and assist in the management of the business of parliament. Where the membership of such a body includes members of the executive, such members shall not outnumber backbenchers.
- (c) Membership of committees shall reflect the parliament's political party composition, gender parity and shall include all parties and independent MPs.
- (d) Selection of members of committees shall be the responsibility of a committee presided by the Speaker with party whips as members.
- (e) With limited exceptions, membership to committees shall be for the entire term of the parliament.
- (f) Chairpersons and vice chairpersons of committee shall be elected by committee members.
- (g) 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.
- (h) Parliament shall notify the public in advance of committee meetings or hearings.

4.5.1 Powers of Committees

- (a) All legislation shall be referred to a parliamentary committee for review before plenary debate.
- (b) Parliamentary committees shall have the power to call for public consultations on legislation and any matter under consideration.
- (c) Parliamentary committees shall have the power to propose amendments to legislation.
- (d) Parliamentary committees shall have the right to consult and/or hire experts.
- (e) Parliamentary committees shall have the power of summons to examine persons, papers and records, including witnesses and evidence from the executive and quasi-executive bodies.
- (f) Parliament shall determine penalties for non-compliance with its powers and those of its committees.

5.0 PARLIAMENTARY SERVICE COMMISSION

5.1.1 In order for parliament to carry out its mandate, it requires highly trained and competitively-remunerated professional staff. Best practice in the region is that a parliamentary service authority, separate and distinct from the regular public service be established to enhance parliament's human resource capacity, and professionalise the parliamentary support services. Among other things, such an authority would determine terms and conditions of service for MPs and staff to enhance parliaments parliament's autonomy and minimise overlap between the legislative and executive branches.

5.1.2 General

- (a) Parliament shall establish a Parliamentary Service Commission or its equivalent to determine the remuneration and other terms and conditions for MPs and parliamentary staff.
- (b) Staff of parliament shall not be under the general civil service.
- (c) Where applicable, a distinction shall be drawn between partisan and non-partisan staff.
- (d) Parliament shall be availed adequate human, material and technological resources to support its operations including those of its committees.

5.1.3 Parliament Administration

- (a) The administrative arm of parliament shall be headed by a secretary general who shall be a public servant whose office shall be protected from undue political pressure.
- (b) The secretary general shall be selected and appointed by the Parliamentary Service Commission.
- (c) The secretary general shall be accountable to parliament and his or her tenure shall outlast that of parliament.
- (d) Whereas parliamentary staff may belong to political parties they shall not, while under the employ of parliament, be active in partisan activities.
- (e) Parliament shall establish a code of conduct for staff to ensure among other things that staff do not use their membership to political parties to influence the functioning of parliament in a partisan manner.

5.1.4 Recruitment and Promotion

- (a) Non-partisan staff shall be recruited and promoted on the basis of merit and equal opportunity
- (b) Non-partisan staff may belong to political parties but shall neither hold office in such parties nor be active in partisan activities.
- (c) In the recruitment and promotion of staff, the Commission shall not discriminate on the basis of ethnicity, religion, creed, gender, physical disability, or party affiliation in respect of non-partisan staff.
- (d) Parliament shall have adequate resources to recruit sufficient and adequately remunerated staff to fulfil its responsibilities.

5.1.5 Media Function

- (a) 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.
- (b) Parliament shall have a regularly updated website to enhance promote information sharing and interaction with citizens and the outside world.
- (c) Parliamentary records shall be produced in all the official languages and be readily accessible to parliamentarians, staff and citizens.
- (d) Broadcasts of plenary and committee citizens shall be permitted to enhance citizens' access to parliamentary business using multi-media including internet, and live TV and radio.
- (e) Accredited journalists shall be allowed to cover parliamentary proceedings regardless of the media's political views.

6.0 ELECTIONS AND STATUS OF MPS

6.1.1 Parliamentary Elections

- (a) Parliament shall enact all necessary laws to establish an independent electoral management body and to ensure free, fair and credible elections.
- (b) MPs shall be directly elected through universal and equal suffrage in a free and secret ballot in accordance with regional norms and standards for elections.
- (c) Elections shall be held regularly and periodically.
- (d) Nominated or appointed MPs shall comprise not more than 5 percent of the overall size of the Parliament.
- (e) The selection of MPs for reserved seats allocated for special groups shall be based on non-partisanship.
- (f) The main legislative function shall be exercised by the directly elected chamber. Where a second chamber exists, such house shall have a secondary role.
- (g) There shall be a minimum education requirement to determine eligibility to stand for Parliament established by law in accordance with national standards, provided that where a candidate has relevant experience, the education requirement may be waived.
- (h) Parliament shall be take appropriate measures to assist MPs to increase their educational qualifications.

6.1.2 Candidate Eligibility

- (a) 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.
- (b) Parliament shall enact laws to determine candidate eligibility
- (c) Nomination fees shall be reasonable and affordable so as not to unduly exclude potential candidates.

- (d) Persons convicted of serious crimes shall be ineligible to stand for elections. Political crimes or those committed during struggle for independence shall be excluded. In the event of a presidential pardon, the conviction is expunged.
- (e) Measures of affirmative action used to encourage the political participation of marginalised groups, shall be narrowly drawn to accomplish precisely defined and limited objectives.
- (f) Parliaments shall enact laws which require political parties to take measures of affirmative action for gender in order to meet the provisions of the SADC Protocol on Gender and Development.
- (g) MPs shall not be required to take a religious oath against the member's conscience in order to take a seat in parliament. Members may be allowed to affirm. MPs 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.

6.1.3 Incompatibility of Office

- (a) MP shall not simultaneously serve in the judiciary, or be a civil servant of the executive branch, an employee or board member of a state-owned enterprise.
- (b) Where the Attorney General is also a member of parliament, the Attorney General shall be *ex officio*.
- (c) The Attorney General shall not simultaneously serve as the Minister of Justice.

6.1.4 Immunity

- (a) Members shall have immunity for anything said in the course of parliamentary proceedings and within the precincts of parliament.
- (b) 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.
- (c) A former member shall continue to enjoy protection for any speech and/or statements made occurred during the member's term of office.

6.1.5 Tenure, Remuneration, Conditions of Service, and Infrastructure

In order to carry out the functions effectively, MPs must be full time parliamentarians. In this regard, their emoluments, terms and conditions of services must compare favourably to those of members of the judiciary and the executive. 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.

- (a) Parliament shall provide members with fair and adequate remuneration.
- (b) Ordinary members' remuneration package shall be at the level of deputy minister basis.

- (c) Committee chairs' remuneration package shall be at the level of the minister.
- (d) Members' salaries and allowances shall be made public.
- (e) Condition of service must be the same for all parties, and differences such as special privileges for certain office bearers must be determined in a transparent manner.
- (f) Parliament must have adequate infrastructure including designated offices and other amenities as child care facilities.
- (g) All forms of remuneration and infrastructure shall be allocated on a non-partisan basis.
- (h) In constituency-based systems, parliament shall establish and maintain non-partisan constituency offices.

6.1.6 Resignation and Recall

- (a) Members shall have the right to resign.
- (b) Subject to narrowly defined objective criteria, citizens shall have the right to recall their MP for non-performance.

7.0 POLITICAL PARTIES, PARTY GROUPS AND CAUCUSES

7.1.1 In a multiparty 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 ideology, principles and values. In a parliamentary system, party groups and caucuses give full expression to freedoms of association and political expression. One of the most important functions of political parties is the development of public policy options. To that extent, they should be encouraged and nurtured.

- (a) Parliament shall enact a law to regulate political parties.
- (b) MPs shall enjoy the right of freedom of association.
- (c) 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 conventions.
- (d) MPs shall have the right to associate and form political party caucuses or party groups just as citizens do.
- (e) Parliament shall recognise the largest opposition party as the official opposition and give due recognition, remuneration and facilities to its leader.
- (f) All parties shall be given adequate opportunities to participate in debates.
- (g) Within the life of parliament, MPs shall remain member 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.

- **Option 1:** In constituency-based systems, MPs shall have the right to resign from their parties after consultations with constituents and remain in parliament, provided they do not join another party within or outside parliament.

- **Option 2:** MPs shall remain members of the political party on whose ticket they were elected. Should an MP wish to join another party, then a by-election becomes necessary.
- (h) In the event of expulsion from a party an MP shall lose his or her seat.
 - (i) MPs who are elected as independents can remain independent or may work with a parliamentary party without losing his or her seat.
 - (j) Voting based on one's conscience, which may go against one's party shall not be construed as constituting floor crossing.
 - (k) Parties shall be publicly funded in proportion to the number of seats held in parliament.
 - (l) MPs shall have the right to form interest caucuses including women's caucuses, ethnic and religious caucuses.