

Recommended Benchmarks for Pacific Island Democratic Legislatures



*Pacific Legislatures for
Population and Governance*



Recommended Benchmarks for Pacific Island Democratic Legislatures

Recognizing that the sustainable development of Pacific Island nations and their people, including the realization of the Millennium Development Goals, can best be accomplished through a democratic system of government with a fully functioning and effective Legislature to express the will of the people and involve them in their governance;

Noting the development of global and regional standards for parliamentary self-assessment including the Benchmarks for Democratic Legislatures by the Commonwealth Parliamentary Association, the United Nations Development Programme and the World Bank Institute;

And recalling that the Forum Presiding Officers and Clerks Conference in 2008 in Honiara, Solomon Islands, mandated its Secretariat to work with the UNDP Pacific Centre and other partners to explore the development of specific Pacific Island Indicators/Benchmarks for Legislatures;

The 2009 Conference of the Pacific Legislatures for Population and Governance, formerly the Forum Presiding Officers and Clerks, in Rarotonga, Cook Islands, adopts the Pacific Islands Benchmarks for Democratic Legislatures.

These Benchmarks are directly built on: the CPA Recommended Benchmarks for Democratic Legislatures; the Brisbane benchmarking discussions held on 26 June, 2009 organized by the CPA, WBI and the Centre for Democratic Institutions, and the Benchmarks self-assessments of the Kiribati Parliament on 3 July 2009, the Nauru Parliament on 21 October 2009, the Tuvalu Parliament on 23 October 2009 and the Niue Parliament on 3 November 2009.

Some Pacific Benchmarks are the original recommended

Benchmarks of the CPA that were particularly endorsed by participants in various benchmarking self-assessments to be maintained because of their current or future relevance and importance to the developing Legislatures of the Pacific Islands. Benchmarks, or sections of Benchmarks, in bold italics are new Pacific Benchmarks.

I. GENERAL

1.1 Elections

1.1.1 Members of the popularly elected or only House shall be elected by direct universal and equal suffrage in a free and secret ballot.

1.1.2 *Special security measures, where appropriate and required, shall be in place to ensure the smooth and peaceful running of elections.¹*

1.1.3 *Legislative elections shall meet international standards for genuine and transparent elections such as those contained in the Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers endorsed by the Pacific Islands Forum, the Pacific Islands, Australia and New Zealand Electoral Administrators' Association, the Commonwealth Secretariat and the United Nations, among others.²*

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

1.2 Candidate Eligibility

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

- 1.2.2 If introduced, special measures to encourage the political participation of *specific* groups *such as women and youth*³ shall be narrowly drawn to accomplish precisely defined, and time-limited, objectives.
- 1.3 Incompatibility of Office
- 1.3.1 No elected Member shall be required to take a religious oath against his or her conscience in order to take his or her seat in the Legislature.
- 1.3.2 In a bicameral Legislature, a legislator may not be a Member of both Houses.⁴
- 1.3.3 A legislator may not simultaneously serve in the judicial branch or as a civil servant of the executive branch.
- 1.4 Immunity
- 1.4.1 Legislators shall have immunity for anything said in the course of the proceedings of the Legislature.

The Speaker of the Parliament of Kiribati, Hon. Taomati Iuta (centre right) during the CPA benchmarking workshop in June 2009.



- 1.4.2 Parliamentary immunity shall not extend beyond the term of office; but a former legislator shall continue to enjoy immunity for anything done during his or her term of office.
- 1.4.3 The executive branch shall have no right or power to lift the immunity of a legislator.
- 1.4.4 Legislators must be able to carry out their legislative and constitutional functions in accordance with the constitution, free from any form of interference.
- 1.5 Remuneration and Benefits
- 1.5.1 The Legislature shall provide proper **and sufficient**⁵ remuneration and reimbursement of parliamentary expenses to legislators for their service, and all forms of compensation shall be allocated on a non-partisan basis.
- 1.5.2 *An independent body should determine the appropriate remuneration, benefits and other statutory entitlements of legislators.*⁶
- 1.6 Resignation
- 1.6.1 Legislators shall have the right to resign their seats **in accordance with clearly defined procedures in the Rules of Procedure, the Constitution or any other related law.**⁷
- 1.7 Infrastructure
- 1.7.1 The Legislature shall have adequate physical infrastructure to enable Members and staff to fulfil their responsibilities.

- 1.7.2 *Private or independent Members shall be entitled to have adequate office space and basic work stations throughout their term in Parliament.*⁸

II. ORGANIZATION OF THE LEGISLATURE

2. PROCEDURES AND SESSIONS

2.1 Rules of Procedure

- 2.1.1 Only the Legislature may adopt and amend its Rules of Procedure *based on a report submitted by a relevant standing committee.*⁹

2.2 Presiding Officers

- 2.2.1 The Legislature shall select or elect presiding officers pursuant to criteria and procedures clearly defined in the Rules of Procedure and/or the Constitution.¹⁰

2.3 Convening Sessions

- 2.3.1 The Legislature shall meet regularly, at intervals sufficient to fulfil its responsibilities.
- 2.3.2 The Legislature shall have procedures *and the right*¹¹ for calling itself into regular sessions.
- 2.3.3 The Legislature shall have procedures for calling itself into extraordinary or special sessions.
- 2.3.4 *The Legislature shall have a clear definition of a special session and a regular session.*¹²

- 2.3.5 Provisions for the executive branch to convene a special session of the Legislature shall be clearly

specified in accordance with the Rules of Procedure, the Constitution or relevant legislation. And shall include consultations with the Office of the Speaker.¹³

2.4 Agenda

2.4.1 Legislators shall have the right to vote to amend the proposed agenda for debate *in accordance with Rules of Procedure*.¹⁴

2.4.2 Legislators in the lower or only House shall have the right to initiate legislation and to offer amendments to proposed legislation.

2.4.3 *The Legislature shall provide adequate resources for Private or independent Members to draft legislation or amendments to any legislation.*¹⁵

2.4.4 The Legislature shall give legislators adequate advance notice of session meetings and the agenda for the meeting.

2.5 Debate

2.5.1 The Legislature shall establish and follow clear procedures for structuring debate and determining the order of precedence of motions tabled by Members.

2.5.2 The Legislature shall provide adequate *and specific*¹⁶ opportunity for legislators to debate Bills prior to a vote.

2.5.3 *The Speaker or Presiding Officer should ensure that every Member is given a fair opportunity to contribute constructively to any debate.*¹⁷

2.6 Voting

2.6.1 Plenary votes in the Legislature shall be public.

2.6.2 Members in a minority on a vote shall be able to demand a recorded vote *in accordance with the Rules of Procedure and/or the Constitution*.¹⁸

2.6.3 Only legislators may vote on issues before the Legislature.

2.7 Records

2.7.1 The Legislature shall maintain and publish readily accessible records of proceedings, *in a standard and consistent format that is appropriate and sustainable*.¹⁹

3. COMMITTEES

3.1 Organization

3.1.1 The Legislature shall have the right *and sufficient resources to*²⁰ form permanent and temporary committees.

3.1.2 The Legislature's assignment of committee Members on each committee shall include both majority and minority party Members and Independents²¹ and reflect the political composition of the Legislature.

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

- 3.1.4 *The chair of the Public Accounts Committee, or a similar committee, shall be appointed from the Opposition or Independents.*²²
- 3.1.5 *Once established, committees should meet regularly to ensure completion of their terms of reference in a timely and effective manner. Regular updates should be provided to the Presiding Officer by Committee Chairs who will report progress to the Legislature.*
- 3.1.6 Committee hearings *and submissions* shall be *open to the*²³ public. Any exceptions shall be clearly defined and provided for in the Rules of Procedure.
- 3.1.7 Votes of committees shall be in public. Any exceptions shall be clearly defined and provided for in the Rules of Procedure.
- 3.2 Powers
- 3.2.1 There shall be a presumption that the Legislature will refer legislation to a committee, and any exceptions must be transparent, narrowly defined, and extraordinary in nature.²⁴
- 3.2.2 Committees shall scrutinize legislation referred to them and have the power to recommend amendments to the Legislature.
- 3.2.3 Committees shall have the right to consult and/or employ experts.
- 3.2.4 Committees shall have the power to summon persons, papers and records, and this power shall extend to witnesses and evidence from the executive branch, including officials.

- 3.2.5 Only legislators appointed to the committee, or authorized substitutes, shall have the right to vote in committee.
- 3.2.6 Legislation shall protect informants ***such as whistleblowers or public servants***²⁵ and witnesses presenting relevant information to commissions of inquiry about corruption or unlawful activity.

4. POLITICAL PARTIES, PARTY GROUPS AND CROSS PARTY GROUPS

4.1 Political Parties

4.1.1 The right of freedom of association shall exist for legislators, as for all people.

4.1.2 Any restrictions on the legality of political parties shall be narrowly drawn ***by statute consistent***²⁶ with the International Covenant on Civil and Political Rights.

4.2 Party Groups

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

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

4.3 Cross Party Groups

4.3.1 Legislators shall have the right to form interest caucuses around issues of common concern ***such as***

5. PARLIAMENTARY STAFF

5.1 General

5.1.1 The Legislature *shall ensure*²⁸ an adequate non-partisan professional staff to support its operations including the operations of its committees.

5.1.2 The Legislature shall control a parliamentary service *that is separate from the public service or any other state service*²⁹ and determine the terms of employment.

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

5.1.4 Members and staff of the Legislature shall have access to sufficient research, library and Information and Communications Technology facilities.

5.2 Recruitment

5.2.1 The Legislature shall have adequate resources to recruit staff sufficient to fulfil its responsibilities. The rates of pay shall be broadly comparable to those in the public service.

5.2.2 The Legislature shall not discriminate in its recruitment of staff on the basis of race, ethnicity, religion, gender, disability, or, in the case of non-partisan staff, party affiliation.

- 5.3 Promotion
 - 5.3.1 Recruitment and promotion of non-partisan staff shall be on the basis of merit and equal opportunity.
- 5.4 Organization and Management
 - 5.4.1 The *Clerk shall be head*³⁰ of the parliamentary service *and* shall have a form of protected status to prevent undue political pressure.
 - 5.4.2 Legislatures should, either by legislation or resolution, establish corporate bodies responsible for providing services and funding entitlements for parliamentary purposes and providing for governance of the parliamentary service.
 - 5.4.3 All staff shall be subject to a code of conduct *appropriate to a democratic Legislature.*³¹

III. FUNCTIONS OF THE LEGISLATURE

6. LEGISLATIVE FUNCTIONS

- 6.1 General
 - 6.1.1 The approval of the Legislature is required for the passage of all legislation, including budgets.
 - 6.1.2 Only the Legislature shall be empowered to determine and approve the budget of the Legislature.
 - 6.1.3 The Legislature shall have the power to enact resolutions or other non-binding expressions of its will.
 - 6.1.4 In bicameral systems, only a popularly elected House shall have the power to bring down government.

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

6.2 Legislative Procedure

6.2.1 In a bicameral Legislature there shall be clearly defined roles for each Chamber in the passage of legislation.

6.2.2 *The Legislature shall have the right to override an executive veto. Any exceptions shall be clearly defined and provided for in the Rules of Procedure and/or the Constitution.*³²

6.3 The Public and Legislation

6.3.1 Opportunities shall be given for public input into the legislative process.

6.3.2 *The Legislature shall provide adequate mechanisms to encourage wider consultations and public submissions on any Bills introduced in the House.*³³

6.3.3 Information shall be provided to the public in a timely manner regarding matters under consideration by the Legislature.

7. OVERSIGHT FUNCTION

7.1 General

7.1.1 *The Legislature shall have appropriate legislation or a constitutional provision that clearly determines the size of cabinet which should not exceed one third of the total membership of the Legislature.*³⁴



- 7.1.2 The Legislature shall have mechanisms to obtain information from the executive sufficient to exercise its oversight function in a meaningful *and timely manner*.³⁵
- 7.1.3 The oversight authority of the Legislature shall include meaningful oversight of the military security and intelligence services.
- 7.1.4 The oversight authority of the Legislature shall include meaningful *and timely*³⁶ oversight of state-owned enterprises.
- 7.1.5 *The oversight authority of the Legislature shall include meaningful oversight of compliance with international human rights instruments and national constitutional rights, including consideration of gender and socio-economic impact.*
- 7.1.6 *The oversight authority of the Legislature shall include meaningful and timely oversight of accountability institutions, such as election commissions, human rights commissions, anti-corruption commissions,*

*ombudsmen, information commissions and offices of Auditors General.*³⁷

7.2 Financial and Budget Oversight

7.2.1 The Legislature shall have a reasonable period of *time that is clearly specified in the Rules*³⁸ in which to review *and debate* the proposed national budget.

7.2.2 *The Legislature shall have clear procedures requiring government to provide timely responses to parliamentary committee reports and recommendations.*³⁹

7.2.3 Oversight committees shall provide meaningful opportunities for minority or opposition parties *and Independents* to engage in effective oversight of government expenditures. Typically, the Public Accounts Committee will be chaired by a Member of the opposition party *or an Independent*.⁴⁰

7.2.4 Oversight committees shall have access to records of executive branch accounts and related documentation sufficient to be able to meaningfully review the accuracy of executive branch reporting on its revenues and expenditures.

7.2.5 There shall be an independent, non-partisan supreme or national audit office whose reports are tabled in the Legislature in a timely manner.

7.2.6 The supreme or national audit office shall be provided with adequate resources and legal authority to conduct audits in a timely manner.

- 7.3 No Confidence and Impeachment
- 7.3.1 The Legislature shall have mechanisms to impeach or censure officials of the executive branch, or **pass a** no-confidence motion in the government.
- 7.3.2 If the Legislature expresses no confidence in the government, the government is obliged to offer its resignation. If the head of state agrees that no other alternative government can be formed, a general election should be held ***in an appropriate time frame that is clearly specified in the Constitution or in any other related law.***⁴¹

8. REPRESENTATIONAL FUNCTION

- 8.1 Constituent Relations
- 8.1.1 The Legislature shall provide all legislators with adequate and appropriate resources to enable the legislators to fulfil their constituency responsibilities.
- 8.2 Parliamentary Networking and Diplomacy
- 8.2.1 The Legislature shall have the right to receive development assistance to strengthen the institution of Parliament.
- 8.2.2 Members and staff of Parliament shall have the right to receive technical and advisory assistance, as well as to network and exchange experience with individuals from other Legislatures.

IV. VALUES OF THE LEGISLATURE

9. ACCESSIBILITY

9.1 Citizens and the Press

9.1.1 The Legislature shall be accessible and open to citizens and the media, subject only to demonstrable public safety and work requirements.

9.1.2 The Legislature should ensure that the media are given appropriate access to the proceedings of the Legislature and its Rules of Procedure.

9.1.3 The Legislature shall have a non-partisan media relations facility.

9.1.4 The Legislature shall promote the public's understanding of the work of Legislature.

9.2 Languages

9.2.1 Where the constitution or parliamentary rules provide for the use of multiple working languages, the Legislature shall make every reasonable effort to provide for simultaneous interpretation of debates and translation of records.

10. ETHICAL GOVERNANCE

10.1 Transparency and Integrity

10.1.1 Legislators should maintain high standards of accountability, transparency and responsibility in the conduct of all public and parliamentary matters.

10.1.2 The Legislature shall approve and enforce a code of

conduct, including rules on conflicts of interest and the acceptance of gifts.

- 10.1.3 Legislatures shall require legislators to fully and publicly disclose their financial assets and business interests.
- 10.1.4 There shall be mechanisms to prevent and detect corruption, and bring to justice legislators and staff engaged in corrupt practices.

Footnotes

1. In PNG, people do not vote freely under fear of intimidation and violence. This new Benchmark is to accommodate PNG's peculiar circumstances.

2. This is a new Benchmark. It clearly specifies relevant international standards to be followed by Pacific Islands for genuine and transparent elections.

3. Women and youths are not very well represented in most Pacific Parliaments though they make up a significant number of the Pacific Islands' populations and also participate actively in community and economic development.

4. Most Pacific Legislatures are unicameral hence this Benchmark is not currently applicable; however, it is maintained for possible future political restructures.

5. Some current Pacific Island legislators, especially Backbenchers, receive remuneration less than those of middle management civil servants or university graduates.

6. This is a new Benchmark. It provides more transparency and accountability in determining MPs' remuneration and entitlements. In some current Legislatures, like Tuvalu, remuneration, benefits and statutory entitlements of legislators are determined by Members themselves through a Standing Committee of Parliament called the Privileges Committee composed of Members and a few co-opted members of the public who do not have a vote. In Samoa, an independent Salaries Tribunal decides on the remuneration of Parliamentarians (and government officials). In Fiji and Kiribati, an independent body recommends salaries, but the final amount awarded has to be approved by Parliament.

7. The wording of this Benchmark was expanded in order to be more precise.

8. This is a new Benchmark. In some Legislatures, like Niue, cabinet Ministers and Private Members all share space in one building where Ministers take up most of the space.

9. In Tuvalu, the Rules Standing Committee reviews the Rules and tables its report and recommendations in Parliament for discussion and adoption.

10. Establishing procedures for electing Presiding Officers in the Constitution as well as in the Rules will ensure continuity and stability.

11. In most Pacific Legislatures, the authority to call a session is vested in the executive; but Legislatures want to change this to give total authority to the Legislature to call any session.

12. This is a new Benchmark. Some Pacific Legislatures such as Nauru regard every session as a special session.

13. The added words will ensure the final authority to convene any session lies with the Legislature, a move for change that is currently preferred by most of the assessed Parliaments to reflect the independence of the institution.

14. The added words will ensure that legislators follow specific Rules whenever they vote to amend the proposed agenda for debate.

15. This is a new Benchmark. It is uncommon in the Pacific Islands for Private Members to propose new legislation or amendments because one of the main reasons is that they lack the relevant resources to do so, eg. Tuvalu's Parliament does not have a parliamentary counsel to help draft Private Members' legislation or amendments. Hence this new Benchmark will ensure that Private Members can fairly exercise their rights to initiate and introduce legislation.

16. In some Pacific Legislatures, the Speaker has to restrict the debate due to the time factor.

17. This is a new Benchmark. It allows a fair chance for Members to debate issues as sometimes the Speaker restricts debate due to the time factor.

18. The added words will ensure that procedures for any demand for a recorded vote are clearly stipulated in the Rules or in the Constitution as in the case of a vote to amend the Constitution or a recorded vote of no-confidence in the government. Tuvalu has procedures specified in the Rules and the Constitution.

19. The Hansard and Committee reports are published in a number of formats in

some Pacific Legislatures. The added words will ensure parliamentary reports stand out, are organized and are easily identified.

20. The Legislature can only form permanent and temporary committees if it has sufficient resources.

21. Added words ensure the inclusion of Members who do not belong to a party group.

22. This new Benchmark will ensure the Chair of the PAC or a similar committee is appointed from the Opposition or Independents to provide stronger oversight of government undertakings.

23. The words "in public" were replaced to be clearer.

24. In Samoa, unless the Head of State deems a Bill "urgent", all Bills are referred to Committees for consideration after the second reading.

25. The added words provide specification in relation to informants. Public servants sometimes are unwilling to cooperate with, for example, PAC interviews under fear of political victimization by the executive.

26. A proposal in Brisbane to reword this Benchmark more precisely to include these words and to delete the words "in law and shall be consistent..."

27. The added words provide specific examples of important issues of common interests to Members.

28. Most Pacific Legislatures have inadequate staff due to budgetary constraints.

29. The added words will ensure an autonomous parliamentary service which is already established in Samoa and Papua New Guinea. Some other Pacific Island countries are currently working towards it such as the Solomon Islands, Tuvalu; others want to achieve this in the near future.

30. Normally the office of each Pacific Legislature is headed by the Clerk.

31. A Code of Conduct should reflect or be based on democratic principles.

32. This new Benchmark clearly specifies how, who and when the exceptions could be allowed.

33. Currently most Pacific Legislatures have minimal and ineffective mechanisms that allow for public input and participation in the legislative process.

34. This new Benchmark provides a more effective oversight function for the Legislature. The Tuvalu Parliament's oversight function is very ineffective as cabinet contains more than half of the Legislature's total membership.

35. The added words will ensure the executive maintains up to date and proper records including its complete accounts so they can be effectively scrutinized at any point in time by the Legislature, the PAC and any similar committee.

36. The added words will ensure state-owned enterprises maintain up to date and proper records and complete accounts at any point in time for effective scrutiny by the Legislature or by the PAC.

37. This new Benchmark extends the oversight role of the Legislature.

38. The added words ensure the Legislature has enough time to consider the proposed national budget .

39. This new Benchmark provides a stronger oversight function for Parliament.

40. The added words are consistent with other related Benchmarks.

41. In Kiribati, a general election will be held three months after the passing of the no-confidence motion. The added words ensure that a general election is held as soon as practicable after taking into account factors such as the time required for election preparations which may differ between countries. They also ensure that a newly elected government is formed as soon as possible.

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