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Workshop one: Representation, accessibility, accountability and transparency to ensure inclusive decision-making

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We are invited to consider the features of a democratic parliament that contribute to inclusive decision-making, in the context of the overall theme of the Forum – ‘dialogue, tolerance and freedom of expression as the cornerstones of democracy’. By way of introduction, this paper will outline, first, the main ways through which a parliament or legislature contributes to democracy; and then, secondly, suggest some of the key challenges that parliaments face in helping to realise the more specific requirements or values of the Forum’s overall theme. The main body of the paper will then elaborate on these challenges.

Parliament and democracy

There are three main ways in which a parliament or legislature makes an essential contribution to a country’s democracy:

1. Within the separation of powers, it fulfils the key democratic functions of approving and amending legislation and maintaining oversight of the executive on behalf of the whole society.
2. It protects and promotes democracy in society at large by guaranteeing the necessary conditions for democracy’s survival, including basic rights and freedoms, and by assisting in conflict resolution.
3. It embodies and expresses key democratic values in its own composition and procedures, and in the manner in which it conducts its business.

Item 1 above is the subject of the other, parallel, workshop; this one will address items 2 and 3.

Challenges to parliaments in respect of the Forum’s overall theme

The theme ‘dialogue, tolerance and freedom of expression as cornerstones of democracy’ suggests both a set of values or practices, and a distinctive context in which these values become essential. That context is the existence of *social diversity*, and the problem of how that diversity can be both expressed and also negotiated. Our starting point must be the acknowledgement that our societies are characterised by diversities of all kinds: of identity, social condition, belief, opinion, ways of living, and so on. These diversities include not only the different ways in which people live as individuals, families and communities, but also the different views they have about the laws and policies to which all are subject, and which can only be decided *collectively*, through a democratic process.

In the context of these diversities we can specify the first major challenge for parliaments: *how they can be fully inclusive and representative of all sections of society, both in their composition*

and their manner of working. This will form a substantial item for our discussion, including as it does the representation of women and minorities of all kinds.

A second challenge which the existence of social diversity presents to parliaments is how to protect basic rights and freedoms equally for all while respecting the differences between them. Among these rights, freedom of expression is particularly relevant to democracy, because it allows the diversities within society to find expression, to be publicly acknowledged, and to contribute to public debate, including and especially within parliament itself. Here we can define two distinct challenges to parliaments in the context of their legislative responsibilities: *how to find the right balance between protection of freedom of expression, and the restrictions on it that may be necessary, e.g., ‘for respect of the rights or reputations of others; for the protection of national security or of public order’* (International Covenant on Civil and Political Rights (ICCPR), 19.3). Secondly, given the crucial significance of the public media, *how to frame media regulation in a way that guarantees genuine pluralism, and respects the fundamental rights of all, including vulnerable minorities.*

A further important role that freedom of expression plays in a democracy is the contribution it makes to the public accountability of office-holders, including elected representatives. Without ‘the freedom to seek, receive and impart information’, e.g., through the work of investigative journalism, the public cannot hold office-holders effectively to account. Here lies a particular challenge to parliaments and parliamentarians: *how to ensure freedom of information and expression in respect of their own activities, as a necessary contribution to their accountability.*

A further issue which the existence of diversity within society presents to parliaments concerns the inclusiveness of a parliament’s accessibility to different groups through its consultative processes, its scrutiny and legislative committees, commissions of enquiry, and the many other channels through which the views of citizens can be brought to bear on its work. Typically, parliamentary and governmental processes tend to be biased in favour of well-organised interests and lobbies, and legislation is often partial as a result. Here the challenge to parliaments can be specified as: *how to ensure inclusiveness of access for all sections of society through the various channels of communication and influence which can contribute to their work.*

The challenges outlined above embrace the key requirements of a democratic parliament specified in the workshop programme – that it be representative, transparent, accountable and accessible – requirements that are summarised in the table from the IPU Guide *Parliament and democracy in the twenty-first century*¹ appended to this paper. The rest of the paper will expand on these different challenges in turn.

1. How parliaments can become fully representative and inclusive, both in their composition and their manner of working.

i) composition. There are broadly two different respects in which a parliament can be fully representative or inclusive. The first is in being *politically* representative of the diversity of interests and opinions among the population. This is primarily a question of the electoral and party systems operative in a country, and how well they allow the political diversity of the people to be reflected in parliament. In this context, many parliaments with constituency-based electoral systems have found it desirable to introduce a proportional element in addition, so that the composition of parliament more closely reflects the distribution of votes cast for the respective parties across the country as a whole. Parliaments may also be politically unrepresentative because of significant exclusions of citizens from the electoral register, or because sections of the population repeatedly lack the incentive to cast their votes.

¹ Inter-Parliamentary Union (2006). *Parliament and democracy in the twenty-first century: A guide to good practice.* Available online at <<http://www.ipu.org/dem-e/guide.htm>>

A second respect in which a parliament can be representative of society is in its *social composition*. Here three main concerns currently occupy the attention of parliaments. One is the low proportion of women members compared with the population as a whole (for the latest regional figures see <http://www.ipu.org/wmn-e/world.htm>). Redressing this imbalance is primarily a matter for political parties and their procedures for candidate selection, which can include special treatment for women on party lists or constituency short-lists. However, legislation may also be appropriate. Some countries maintain reserved seats in parliament for women, while others make it a condition on political parties for the receipt of public funding that they give equal opportunity for women in candidate selection. In this context, two considerations are worth bearing in mind. First is the view expressed by the UNDP (1995) that for women as a group to exert a meaningful influence in legislative bodies requires at least a 30 per cent level of representation. The second is the article of the UN Convention on the Elimination of All Forms of Discrimination against Women, that 'Adoption by states parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination.' (Art. 4.1)

The second concern of many parliaments is the effective representation of minority and marginal communities, whether these are distinguished by language, religion, ethnicity or other characteristic. In some countries effective representation can be achieved by measures undertaken by mainstream political parties. In others a variety of legal mechanisms may be required to ensure adequate representation, including reserved seats, candidate quotas, favourable constituency or registration arrangements, and so on. Which, if any, of these measures are appropriate, will largely depend on the particular context; they may be especially important in post-conflict situations. However, there is always a danger that such special measures may serve to consolidate or solidify particular social or cultural identities at the expense of a common citizenship.

The third, more recently developed, concern about the unrepresentative social composition of many parliaments relates to the possibility that the cost to the personal finances of candidates in fighting elections excludes all but the most wealthy from campaigning for public office, with the result that parliamentary composition becomes skewed in favour of a narrow section of society. Here we can only touch on the complex and contested issue of subventions from public funds for candidates and parties, on the one hand, and legal measures to limit election expenditure, on the other; and how these can be effectively enforced in practice (see pp.104-9 of the IPU Guide).

ii) inclusive parliamentary procedures. The inclusiveness of a parliament or legislature is not only a matter of its composition, but also of its procedures and the impartiality with which its business is conducted, e.g., through its presiding officer or officers. Particularly relevant in this context are, for example, the following:

- rights for opposition and minority parties to play a full part in the work of parliament, including specialist committees and the organising of business;
- gender-sensitive arrangements, which will facilitate women members in playing a full part in parliament, including its leadership roles;
- adequate training and support facilities for all members, so that none is excluded through lack of capacity from contributing to parliament's work;
- opportunity for a full range of views to be expressed in parliamentary debate consistent with the limitations of time.

2. How parliaments can guarantee freedom of expression consistent with respect for human rights and public security.

In societies characterised by diversity and potential antagonism this is one of the most important and difficult challenges that current parliaments face. We could distinguish three different spheres in which this challenge occurs: in society as a whole, in relation to the media, and in the context of parliament itself.

i) in society as a whole. Although the US Bill of Rights acknowledges no limitation on freedom of expression, most countries follow the ICCPR in specifying certain limits 'within the law'. This gives a particular responsibility to parliaments to define where these limits should be set. The Western liberal tradition follows J.S. Mill in making a clear distinction between actions or words that are likely to cause *harm* and those that merely cause *offence*. On these grounds a number of legislatures have outlawed language likely to cause 'incitement to racial or religious hatred' since this can predictably result in physical harm to vulnerable groups and their property. Yet does disparaging or ridiculing a minority group's defining beliefs or identity in itself constitute merely 'offence' or rather actual 'harm'? At this point framing legislation in a way that does not stifle legitimate criticism, necessary in a democratic society, or lead to excessive litigation, is difficult. Many would say that, because of the centrality of vigorous debate to democracy, legislation should err on the side of freedom; but that it is up to all citizens, and especially those in positions of responsibility, to exercise that freedom with restraint. Where the line has been crossed, non-legal sanctions may be more appropriate than legal ones. Much, however, will depend on the particular circumstances of each country.

Another issue where defining the appropriate balance between freedom of expression and its limits is that of public security. Here legislation limiting freedom of expression in the name of public security may impact differentially on different groups in society, and its enforcement be experienced as oppressive by them. It may, for example, affect opposition groups exercising the right to protest or canvass support through public rallies. Or the legislation itself may be framed in a way that is perceived as discriminatory. The current legislation in the UK outlawing 'the glorification of terrorism' is a case in point, widely perceived as it is as directed at the Muslim communities. In addition, the terms used are so vague that, as has been pointed out, the law could have been used to prosecute those supporting the ANC in its armed struggle against apartheid (the so-called 'Mandela test'). Here it is worth quoting the statement of Kofi Annan made shortly after 9/11: 'The danger is that in pursuit of security we end up sacrificing crucial liberties, thereby weakening our common security, not strengthening it – and thereby corroding the vessel of democratic government from within.'

ii) in relation to the media. It is relatively easy to specify in principle what the public requires from the media in a democratic society: accurate information, a variety of viewpoints and opinions, and respect for the equal dignity of all members of the population. Securing these in practice in a way that is consistent with the freedom of expression is more complex. Many countries have established an independent regulatory body for the media to ensure a minimum of pluralism in ownership and output, for example through powers to limit concentrations of ownership, including the cross-ownership of different media, as well as to prevent government interference in publicly owned broadcasting. Here parliaments can play an important non-partisan role in setting the framework for such a regulatory body and acting as guarantor of its independence.

More controversial is the issue of the regulation of standards of media content beyond, say, the timing of 'adult' programmes on television and minimum standards for advertising. Many within the media insist that this should be a matter for self-regulation, not legal prohibition. A recent study group of the Commonwealth Parliamentary Association, for example, concluded that 'it is the responsibility of the media, not parliament, to set and supervise the highest professional and ethical standards.' A good example of self-regulation would be the code of ethics on the reporting of inter-communal incidents adopted by the All India Newspaper

Editors' Conference as long ago as 1968. Yet examples are all too familiar where self-regulation has been ineffective or absent altogether: in gross media invasions of personal privacy; gratuitous distortions of the truth, if not downright lies; reports prejudicial of the right to a fair trial; damaging representations of women, children, minorities and vulnerable groups in general. These must be matters of concern to parliaments and especially to their human rights committees, if not a matter of restrictive legislation itself.

iii) in respect of parliament's own activities. The idea of a 'transparent' parliament entails a two-sided process. On one side are the many channels used by parliaments and their members to inform their electorates about their work. The IPU Guide details an impressive range of initiatives currently undertaken by parliaments in this regard, including use of the latest information technology (see pp.53-67). The other side of the process concerns the ability of citizens and journalists to access information on their own initiative under freedom of information regimes, with a view to wider dissemination and comment. Together, these processes make a crucial contribution to parliamentary accountability, since without accurate information about what parliaments and their members are doing, individually and collectively, there can be no holding them to account. In this context we can identify a number of points where the question of limits on 'the freedom to seek, receive and impart information' is at issue in a number of parliaments:

- what limits, if any, should be placed on the openness of parliamentary proceedings, including committees, to the public and the media;
- whether it is appropriate to use defamation legislation or contempt of parliament provisions to limit criticism or punish journalists for reporting leaked information;
- how extensive 'declarations of financial interest' on the part of parliamentarians and their families should be, and how best they might be monitored and enforced.

3. How to ensure inclusiveness for all sections of society to contribute to the legislative process and the work of parliamentary committees.

In almost all parliaments there have existed long-standing channels of influence and complaint for citizens, through elected representatives and their constituency offices, through the right of petition, and so on. An increasingly common feature of contemporary practice, as parliaments seek to bridge the perceived gulf with their electorates and make their work more relevant, is the opening of the legislative process and the work of special committees to submissions from interested groups and individuals. A variety of mechanisms is used to this end: a parliamentary register of experts and civil society groups who can be consulted when the need and opportunity arises; designated specialists from academia and other bodies who work routinely with particular committees; a 'chamber of civil society' which has a formal consultative role in the legislative process; open invitations to individuals and groups to make submissions to commissions of enquiry or committees engaged in pre-legislative scrutiny. Among the more successful examples of such engagement in many countries has come from women's groups, for example over gender budgeting, though it has typically required close cooperation with senior women parliamentarians to achieve a continuous impact (see more generally the IPU Guide, pp.79-93).

A number of concerns are frequently raised about the engagement of civil society in parliamentary work, of which the following are typical:

- how to ensure that it is both inclusive and transparent, with a public record of submissions;
- how to prevent the undue influence over the legislative process of a few powerful and well-financed lobbies;

- how to empower the voices of those sections of society who lack the skills, resources or opportunities to make a meaningful contribution to public life;
- whether particular channels of civil engagement should be complemented by a more general right of 'citizen's initiative' to make legislative proposals, subject to strict safeguards (e.g., a minimum level of supporting signatures);
- whether moving in this direction involves blurring the distinction between 'representative' and 'direct' democracy.

Conclusion

The three broad challenges itemised above constitute a substantial agenda for the workshop discussion. Participating members may wish to decide what, if any, selection among them may be appropriate to meet their own current interests and concerns within the given constraints of the time schedule.

Framework: the parliamentary contribution to democracy

Basic objectives or values. A parliament that is:	Requirements	Possible procedural and institutional means for the realisation of these objectives or values
Representative	An elected parliament that is socially and politically representative, and committed to equal opportunities for its members so that they can carry out their mandates.	<p>Free and fair electoral system and process; means of ensuring representation of/by all sectors of society with a view to reflecting national and gender diversity, for example by using special procedures to ensure representation of marginalised or excluded groups.</p> <p>Open, democratic and independent party procedures, organisations and systems.</p> <p>Mechanisms to ensure the rights of the political opposition and other political groups, and to allow all members to exercise their mandates freely and without being subjected to undue influence and pressure.</p> <p>Freedom of speech and association; guarantees of parliamentary rights and immunities, including the integrity of the presiding officers and other office holders.</p> <p>Equal opportunities policies and procedures; non-discriminatory hours and conditions of work; language facilities for all members.</p>
Transparent	A parliament that is open to the nation and transparent in the conduct of its business.	<p>Proceedings open to the public; prior information to the public on the business before parliament; documentation available in relevant languages; availability of user-friendly tools, for example using various media such as the World Wide Web; the parliament should have its own public relations officers and facilities.</p> <p>Legislation on freedom of/access to information.</p>
Accessible	Involvement of the public, including civil society and other people's movements, in the work of the parliament.	<p>Various means for constituents to have access to their elected representatives.</p> <p>Effective modes of public participation in pre-legislative scrutiny; right of open consultation for interested parties; public right of petition; systematic grievance procedures.</p> <p>Possibility for lobbying, within the limits of agreed legal provisions that ensure transparency.</p>
Accountable	Members of parliament who are accountable to the electorate for their performance in office and for the integrity of their conduct.	<p>Effective electoral sanction and monitoring processes; reporting procedures to inform constituents; standards and enforceable code of conduct.</p> <p>Adequate salary for members; register of outside interests and income; enforceable limits on and transparency in election fundraising and expenditure.</p>

Basic objectives or values. A parliament that is:	Requirements	Possible procedural and institutional means for the realisation of these objectives or values
<p>Effective</p> <p><i>At all levels:</i></p> <p><i>(a) At the national level:</i></p> <p><i>(b) In relation to the international level:</i></p> <p><i>(c) In relation to the local level:</i></p>	<p>Effective organisation of business in accordance with these democratic norms and values.</p> <p>Effective performance of legislative and scrutiny functions, and as a national forum for issues of common concern.</p> <p>Active involvement of parliament in international affairs.</p> <p>Cooperative relationship with state, provincial and local legislatures.</p>	<p>Mechanisms and resources to ensure the independence and autonomy of parliament, including parliament's control of its own budget.</p> <p>Availability of non-partisan professional staff separate from the main civil service.</p> <p>Adequate unbiased research and information facilities for members; parliament's own business committee; procedures for effective planning and timetabling of business; systems for monitoring parliamentary performance; opinion surveys among relevant groups on perceptions of performance.</p> <p>Systematic procedures for executive accountability; adequate powers and resources for committees; accountability to parliament of non-governmental public bodies and commissions.</p> <p>Mechanisms to ensure effective parliamentary engagement in the national budget process in all its stages, including the subsequent auditing of accounts.</p> <p>Ability to address issues of major concern to society; to mediate in the event of tension and prevent violent conflict; to shape public institutions that cater for the needs of the entire population.</p> <p>For parliaments that approve senior appointments and/or perform judicial functions: mechanisms to ensure a fair, equitable and non-partisan process.</p> <p>Procedures for parliamentary monitoring of and input into international negotiations as well as overseeing the positions adopted by the government; mechanisms that allow for parliamentary scrutiny of activities of international organisations and input into their deliberations; mechanisms for ensuring national compliance with international norms and the rule of law; inter-parliamentary cooperation and parliamentary diplomacy.</p> <p>Mechanisms for regular consultations between the presiding officers of the national and sub-national parliaments or legislatures on national policy issues, in order to ensure that decisions are informed by local needs.</p>

Source: Inter-Parliamentary Union (2006). Parliament and democracy in the twenty-first century: A guide to good practice