

# Guidelines on the rights and duties of the opposition in parliament



*Unanimously adopted by the participants at the Parliamentary Seminar on Relations Between Majority and Minority Parties in African Parliaments (Libreville, Gabon, 17–19 May 1999)*

The representatives of African Parliaments meeting in Libreville from 17 to 19 May 1999 on the occasion of the *Parliamentary Seminar on Relations Between Majority and Minority Parties in African Parliaments*, organised by the Inter-Parliamentary Union in co-operation with the United Nations Development Programme and at the invitation of the Parliament of Gabon, have drawn up the following guidelines for the rights and duties of the opposition in parliament.

They express the hope that these guidelines, inspired by the general principles of democracy and human rights and by national practise and experience in the countries represented, can be completed on the occasion of other similar seminars in other parts of the world, so that the Inter-Parliamentary Union may work out a comprehensive international reference text on the opposition both inside and outside parliament. In this context, they ask that this document be brought to the attention of the Council of the Inter-Parliamentary Union on the occasion of the Berlin Inter-Parliamentary Meetings (10–16 October 1999).

Pending the adoption by the Inter-Parliamentary Union of a more complete document on the opposition in parliament, the seminar participants express the hope that States, and more particularly the African States, will draw inspiration, each according to its local realities, from the following guidelines to draft rules governing the functioning of their parliamentary assemblies.



## I. INTRODUCTION

1. Enjoyment of democracy is a basic right of citizenship to be exercised under conditions of freedom, equality, transparency and responsibility, with due respect for the plurality of views, and in the interest of polity. It is founded on the right of everyone to take part in the management of public affairs\*.
2. Democracy is an inclusive process in which all citizens, men and women representing all political and social forces in the country, can take part. In the political context, this means that it must be possible for the opposition – i.e. those political parties or groups and individuals who do not form part of the governmental majority – to participate in a meaningful manner in the democratic process.
3. The Inter-Parliamentary Union should consider developing a comprehensive statement, setting out the rights and duties of the opposition. This work should be based on established principles enshrined in the *Universal Declaration of Human Rights* (United Nations, 1948), the *International Covenant on Civil and Political Rights* (United Nations, 1966), the *Declaration on Criteria for Free and Fair Elections* (Inter-Parliamentary Union, 1994) and the *Universal Declaration on Democracy* (Inter-Parliamentary Union, 1997) This latter document stipulates among other things that:

- “Democracy aims essentially to preserve and promote the dignity and fundamental rights of the individual, to achieve social justice, foster economic and social development of the community, strengthen the cohesion of society and enhance national tranquillity, as well as create a climate that is favourable for international peace. As a form of government, democracy is the best way of achieving these objectives; it is also the only political system that has the capacity for self-correction.” (Article 3)
- “The achievement of democracy presupposes a genuine partnership between men and women in the conduct of the affairs of society in which they work in equality and complementarity, drawing mutual enrichment from their differences.” (Article 4)
- “A state of democracy ensures that the processes by which power is acceded to, wielded and alternates allow for free political competition and are the product of open, free and non-discriminatory participation by the people, exercised

*in accordance with the rule of law, in both letter and spirit.” (Article 5). “The key element in the exercise of democracy is the holding of free and fair elections at regular intervals enabling the people’s will to be expressed. (. . .)” (Article 12)*

- *“Democracy is founded on the right of everyone to take part in the management of public affairs; it therefore requires the existence of representative institutions at all levels and, in particular, a Parliament in which all components of society are represented and which has the requisite powers and means to express the will of the people by legislating and overseeing government action.” (Article 11)*
- *“Public life as a whole must be stamped by a sense of ethics and by transparency, and appropriate norms and procedures must be established to uphold them.” (Article 15)*
- *“Individual participation in democratic processes and public life at all levels must be regulated fairly and impartially and must avoid any discrimination, as well as the risk of intimidation by State and non-State actors.” (Article 16)*
- *“A sustained state of democracy requires a democratic climate and culture constantly nurtured and reinforced by education and other vehicles of culture and information. Hence, a democratic society must be committed to education in the broadest sense of the term, and more particularly civic education and the shaping of a responsible citizenry.” (Article 19)*
- *“The state of democracy presupposes freedom of opinion and expression; this right implies freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” (Article 21)*

## II. THE OPPOSITION IN PARLIAMENT

4. Parliament is the institution that embodies society in the diversity of its composition and its opinions and which relays and channels this diversity in the political process. Its vocation is to regulate tensions and maintain equilibrium between the competing claims of diversity and uniformity, individuality and collectivity, in order to enhance social cohesion and solidarity. Its role is to legislate, *inter alia* by allocating financial resources, and oversee the action of the Executive.
5. Parliament must accommodate the participation of all people in homogeneous as well as heterogeneous societies in order to safeguard diversity, pluralism and the right to be different in a climate of tolerance. Hence the importance of political forces and individuals representing the opposition being able to participate in the work of the parliament. This will require recognition of and respect for human rights in general as well as for their specific rights and duties.
6. The opposition in parliament is a necessary and indispensable component of democracy. For it to be effective,

however, the government and society at large must accept the essentials of parliamentary democracy. The primary function of the opposition is to offer a credible alternative to the majority in power. Moreover, by overseeing and criticising the action of the government, it works to ensure transparency, integrity and efficiency in the conduct of public affairs and to prevent abuses by the authorities and individuals, thereby ensuring the defence of the public interest. Indeed, the opposition contributes to the promotion and defence of human rights and fundamental freedoms, thus helping to ensure that democracy functions properly.

## III. THE RIGHTS OF THE OPPOSITION IN PARLIAMENT

7. Just like members of parliament who are part of the government majority, members of the opposition require full respect for basic rights. For example, they must all be able to enjoy the right to life and therefore, in their political activities, be shielded from any measure which would infringe upon their personal integrity or harm their property. If circumstances so require, the State must provide them with personal protection on equal terms with the representatives of the majority.
8. Similarly, respect for freedom of expression and information is essential to members of parliament and particularly those who belong to the opposition to permit them to carry out their parliamentary duties. Representatives of the opposition must be able to denounce freely in Parliament and before public opinion the abuses which they have noticed or which have been brought to their attention by their constituents, and to act with a view to their remedy. The opposition must also enjoy fair access, on equal terms with the majority, to State media in order to disseminate its views, criticise the government’s action and propose alternatives to the government’s solutions.
9. While these (and other) essential rights are already enshrined in national laws, members of parliament, particularly those belonging to the opposition, need to benefit from additional prerogatives to enable them to work with the government majority as well as to monitor the action of the government and to criticise it whenever necessary. These are listed below and should be codified in an appropriate form through constitutional norms and/or parliamentary procedures.

### III.1 Possibility for the opposition in parliament to contribute to the democratic process on equal terms with the majority

- Parliament should be consulted by the government on important questions involving the life of the nation:



threat of civil war, risk of foreign invasion or war, military interventions abroad, etc. This will enable the opposition to take part in the debate and provide its input to the decision-making process. The opposition must also be able to raise matters regarding the Constitution with a view to its amendment.

- The opposition shall be entitled to criticise any dysfunctioning of the courts or the Executive. It shall be entitled to inquire about presumed human rights violations and to call for remedial action.

### III.2 Organisation of parliamentary work

- When setting up the governing body of Parliament (Board), an effort must be made to reflect the political composition of the assembly. If there are vice-presidents, a fair share of these posts must be set aside for opposition MPs who, in alternation with majority MPs, shall preside over the assembly's sittings.
- Political (parliamentary) groups may be formed freely, subject to the minimum number of members for each group as established by law. Each parliamentary group, from the majority and the opposition alike, shall have funds allocated to it enabling it to recruit its own staff and shall be entitled to the use of premises for meetings in the Parliament.
- The opposition shall be entitled to be represented, proportionate to its numbers, on each parliamentary committee and sub-committee.

- The opposition shall be entitled to a number of standing committee chairmanships proportionate to its numbers. The chairmanship of the committee responsible for budgetary matters shall go *ex officio* to the opposition.
- The opposition must be represented in any select committee competent to exercise oversight over secret activities, regardless of their nature.

### III.3 Functioning of parliament

- In order to ensure equality of treatment between members of the governing majority and opposition parties, the Speaker (Presiding Officer) of Parliament must be impartial in exercising his or her functions.
- All parliamentarians, from the majority and the opposition alike, are equally entitled to receive in a timely manner the same information from the government, except on internal party matters.
- Equally, all parliamentarians from the majority and the opposition should receive information upon request from a specific information and research service set up within parliament to this effect.
- All parliamentarians shall be equally entitled to submit bills and amendments.
- All parliamentarians shall be equally entitled to put written and oral questions to the members of the government and to receive answers to these questions. The opposition shall be entitled to speaking time proportionate to its numbers in sittings set aside for oral questions.



- The agenda for a predefined number of sittings during the parliamentary sessions shall *ex officio* be chosen freely by the assembly itself. In the assembly, the decision shall lie *ex officio* with each parliamentary group, on a rotating basis.
- Each parliamentary group shall be entitled, at intervals fixed following consultations, to have a commission of inquiry established on the subject of its choice. In this case, the opposition shall be represented thereon.
- The opposition shall be empowered to seize, if it exists, the judicial body entrusted with determining the constitutionality of laws.

### III.4 Material resources

- When State funding is possible, the opposition should benefit therefrom on a fair and non-discriminatory basis vis-à-vis the majority.
- The opposition shall be entitled to equal access to the material and technical resources and other facilities made available to parliament for the accomplishment of its missions.

### III.5 Parliamentary privileges and immunities

- Parliamentary privileges must be clearly defined and established by law. By guaranteeing parliamentarians absolute protection from prosecution for all acts carried out as part of their parliamentary function and for all words spoken and votes cast in parliament, it permits MPs – from the majority and the opposition alike – to fulfil the mandate entrusted to them by their constituents without fear of any retaliatory measures on account of their positions.
- If the parliamentary system in force so provides, parliamentary immunities must also be clearly established by law. These immunities are not meant to place Members of Parliament above the law, but to protect them from

possible groundless proceedings or accusations that may be politically motivated. The grounds and terms for lifting of immunity must be clearly specified by law so that this may only occur following a decision taken by the competent body on a non-partisan basis.

## IV. DUTIES OF THE OPPOSITION

10. The opposition in parliament has a duty to offer voters a credible alternative to the government in office to make the majority accountable. To be a credible alternative, however, the opposition must also be ready to exercise the responsibilities to which it aspires on a lasting basis. In other words, it must have a programme which it is ready to implement. In democracy, political life is enriched by free competition of political programmes; it is impoverished by rivalry based on personal ambitions which merely disqualifies it in the eyes of public opinion.
11. Moreover, the opposition in parliament must show itself to be responsible and be able to act in a statesmanlike manner. It must engage in constructive and responsible opposition by making counter-proposals. In its action, the opposition must not seek to hinder pointlessly the action of the government but rather endeavour to encourage it to improve such action in the general interest.
12. The duties of the opposition are by their very nature defined by political and behavioural rules; not by constitutional norms or parliamentary texts. The duties therefore do not require codification. What is required is for the members of the opposition – like all Members of Parliament – to exercise their responsibilities with due respect for the Constitution and the laws in force. They must, of course, refrain from advocating violence as a means of political expression. Indeed, their action must be in keeping with a spirit of mutual tolerance and a quest for dialogue and concerted action.

\* Universal Declaration on Democracy, Articles 1 and 11, Inter-Parliamentary Union, 1997



Created in 1889, the Inter-Parliamentary Union (IPU) is the international organization of parliaments. In June 2009, 153 parliaments were members of the IPU. Eight regional parliamentary assemblies were associate members.

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