



ANGUILLA

COMMONWEALTH PARLIAMENTARY ASSOCIATION
BENCHMARKS FOR DEMOCRATIC LEGISLATURES

FINAL REPORT



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SUMMARY

The Clerk of the House and his team should be commended for the tremendous efforts and dedication taken to improve the administration and procedural processes of the House of Assembly. However, it is extremely concerning that overall the Assembly fails to meet the majority of Recommended Benchmarks for Democratic Legislatures. The Assembly remains handicapped by its limited access to financial and administrative resources, outdated Standing Orders, poor public engagement and little to no transparency or independence. The existing parliamentary services are wholly inadequate to meet current or future requirements. Although the House of Assembly is a relatively new body, this should be deemed a factor, but not an excuse for its current situation. Whereas there is optimism that improvements may result as part of the ongoing constitutional reform process, this is insufficient on its own to ensure the House of Assembly functions to a minimum standard. Nevertheless, the people of Anguilla demonstrate a drive and determination to strengthen their governance institutions and will seek to develop and enhance their 'People's House'.

BACKGROUND

In 2018 the CPA completed a consultation and review process that resulted in the adoption of updated Recommended Benchmarks for Democratic Legislatures. The benchmarks provide a minimum standard and a guide on how a Parliament should be constituted and how it should function. They play an important role in developing the effectiveness of parliamentary institutions across the 180 Parliaments and Legislatures of the CPA and contribute to the implementation of the Sustainable Development Goals (SDGs)¹.

In February 2020, the House of Assembly of Anguilla became the eleventh Commonwealth legislature to use the framework to conduct an Assessment. The overall objective of the exercise was for local stakeholders to measure the progress of their legislature in achieving democratic and good governance standards by comparing their practices to the benchmarks that have been developed and adopted by Commonwealth parliamentarians and by extension the CPA.

The Assessment was approved by the Speaker, Deputy Speaker and organised by parliamentary staff. The actual Assessment took place from 10-14 February 2020. In advance of the Assessment, the Clerk of the House undertook a review of the technical and legal benchmarks. Two officials of the CPA Headquarters Secretariat, Matthew Salik, Head of Parliamentary Development and Jack Hardcastle, Programme Assistant, facilitated the Assessment and met with over 50 stakeholders including the Governor, Deputy Governor, Premier, Government Ministers, Speaker, Deputy Speaker, Leader of the Opposition, Members of House, election candidates, civil servants, civil society, the media and youth groups.

A review of key documents was also undertaken including the Constitution of Anguilla, Constitutional Amendments, Draft Constitutional Review, Rules of Procedures for the Assembly, Strategic Plan of the Assembly, Election Observation Report 2015, Elections Act 2019, and other related laws, 2019 estimates and expenditure, sample committee reports as well as other materials.

ACKNOWLEDGEMENTS

The Assembly and senior stakeholders in Anguilla should be praised for undertaking an Assessment at this time. With the increase in the size of the Assembly's composition, with imminent completion of the Assembly's refurbishments and in advance of the 2020 General Election, having such an Assessment at such an opportune time to take stock of the functions, procedures and practices of the Assembly is appropriate. Such an approach highlights the willingness of the people of Anguilla to strive for continuous improvement and growth in their democracy. CPA Headquarters Secretariat express its thanks to all the stakeholders who took the time to input into this report and offer such warm hospitality throughout the officials' time in Anguilla. Special thanks are given to Lenox Proctor, Clerk of the House for his time and dedication in supporting the Assessment and to the Hon. Jose Vanterpool, Deputy Speaker for initiating the process.

SUPPORT & FOLLOW-UP

Following the publication and consequential consideration of the findings of this report, and with financial and administration resources remaining constrained in the short-term, the Commonwealth Parliamentary Association has and will remain committed to supporting the House of Assembly and the people of Anguilla in strengthening its democratic processes. As such, the CPA stand ready to enable the House to take forward these recommendations where requested and appropriate. In consultation with the Assembly, the CPA will develop a roadmap to implement key recommendations following the 2020 elections.

1. In particular Goal 16.6 Develop effective, accountable and transparent institutions at all levels and Goal 16.7 Ensure responsive, inclusive, participatory and representative decision-making at all levels.

POLITICAL CONTEXT

GOVERNANCE OVERVIEW

1. Anguilla is a UK Overseas Territory and is internally self-governing with executive powers invested in the British Crown through an appointed Governor. The Governor Chairs the Executive Council (Cabinet) which has general control of the direction of Government. The House of Assembly comprises of eleven Members (including two ex-officio – Attorney General and Deputy Governor). There are two nominated Members and an externally elected Speaker. The Anguillan Government comprises also of a Premier (who is Minister of Finance) and three Ministers, each with a broad range of ministerial portfolios. The Governor has reserved powers in respect of legislation and is responsible for external affairs, offshore finance, defence, internal security and aspects of public service.

HISTORY

2. After the Anguilla Revolution of 1967, Anguilla separated from St Kitts and Nevis to become a standalone UK Overseas Territory in and around 1980 following the Anguilla Act. The legislature (now known as the House of Assembly) is a unicameral chamber which has existed from 1976 and was formally established in the Anguilla Constitutional Order of 1982. There have been three subsequent amendments to the Constitution in 1983, 1990 and most recently in 2019. The last of which forms part of a holistic constitutional review which published its draft report in 2017, and the 2019 Amendment has brought into force a number (but not all) of the proposed recommendations.

CONSTITUTIONAL REFORM

3. The Constitution and Electoral Reform Committee's proposals highlighted a number of key issues that needed to be addressed for the Territory which related to human rights, the powers of the Governor and more pertinent to this report, the composition of the Assembly. The new Constitutional Amendment 2019 has determined the increase in ministerial positions from four to five and as a consequence the House would increase to a total of thirteen with four additional Island-wide Members replacing the two nominated Members. This is to ensure that the number of Ministers would not be given a disproportionate role in the Assembly. However, this approach was instigated before a Boundary Commission could be established to determine the proportion of voters to districts which is now due once a new census is completed.

ELECTORAL REFORM

4. The need for electoral reform was also a key component of the constitutional review. As an outcome of the 2015 CPA BIMR Election Observation Mission's report it was highlighted that there were a considerable number of deficiencies in the law and practices related to elections on the Island. Whereas the Commission, the Constitutional Amendment and subsequent Elections Act of 2019 has addressed some of these issues, many important matters have been left unaddressed, specifically those on the financial transparency of campaigning, the creation of an independent Electoral Commission and voter registration. At the time of this Assessment, Anguilla is due to have its elections (within three-four months) with campaigning underway across the Island to bring into reality the new Assembly composition.

CURRENT POLITICAL SITUATION

5. The results of the April 2015 election have had a considerable impact on the functions of the Assembly. The election brought to power the Anguilla United Front (AUF) led by Hon. Victor Banks which won all but one seat in the Assembly. AUF beat the Anguilla United Movement (AUM) formally led by Hon. Hubert Hughes which had been in power since 2010. Consequently, and in spite of the two nominated Members, there has been only one member of the opposition, the Leader of the Opposition, Hon. Pamalvon Webster, an independent Member. This small number has hindered the intended role of the opposition to hold the government to account and to effectively scrutinise legislation.

ECONOMY & UK RELATIONS

6. In the context of this report it is essential to highlight the economic situation of Anguilla. It is also important to highlight, Anguilla's relationship with the UK Government due to its role in overseeing the Island. Anguilla's economy is heavily dependent on the luxury tourism sector, and associated construction industry, both of which are vulnerable to external factors. Continued growth depended largely upon stability in the international economic climate, increased investment and infrastructural improvements. Although the Anguillan economy has moved forward since the 1980's and in 2003 graduated from UK Bilateral Development Assistance, the 2008 economic downturn has severely impacted

on the Island's economy and its recovery remains slow and national debt remains a burden. The economy of the Island has been further impacted by Hurricane Irma which struck the Island in September 2017. As a result, extensive damage was inflicted on the Island's infrastructure and tourist sector. Roads, electricity supply were affected, hotels closed the main ferry port was inaccessible. Most notably the roof was blown off the Assembly building. Although there was criticism expressed over the delayed response of the UK Government to offer assistance, it was forthcoming. The UK Government provided immediate humanitarian effort following the storm and pledged £60m. for reconstruction works, dependent on the Anguilla's Government's compliance with certain financial conditions. According to the Eastern Caribbean Central Bank, Anguilla's GDP contracted by 7.7% in 2017, as a result of the extensive damage caused by Hurricane Irma. GDP was estimated to have returned to growth of 1.4% in 2018 and was projected at 1.8% for both 2019 and 2020, owing to a significant number of major construction projects, many of which were part of the post-hurricane rebuilding programme.² It is however worth noting that only in late 2019 the post-hurricane rebuilding and refurbishment of the House of Assembly is underway.

House of Assembly, The Valley, Anguilla



2. Europa World- Anguilla

ELECTIONS

INTERNATIONAL STANDARDS

7. Despite recent reforms to the electoral law as of 2019, Anguilla fails to meet basic international standards³ and the CPA Benchmarks when it comes to electoral best practice, specifically those in relation to transparency. The Executive has not as yet implemented any political party or campaign finance regulations contrary to repeated calls by the public and the Election Observation Mission in 2015⁴. While Anguilla should be commended for having Observation Missions present to review election practice, it has been highlighted by stakeholders to be of limited value if there remains an intransience to implement the most pernicious of issues. Stakeholders have highlighted that this seems contrary to Anguilla's willingness to improve transparency where it applies to their financial services sector. Consequently, voters continue to express distrust in the system, and it remains unclear as to whether all candidates have a level playing-field when campaigning.

CURRENT REFORM

8. Anguilla does have frequent elections, but there are currently inconsistencies in applying the fixed term election provision in the 2019 Election Act⁵ where it conflicts with provisions in the Constitution⁶. Therefore, it is uncertain when the 2020 elections will take place.⁷ Furthermore, it is open to interpretation as to whether Anguilla has genuine elections. There remain significant disparities in the number of electors in different districts undermining the principle of the equality of the vote and clarity over who is resident or domiciled in Anguilla to vote. Whereas the Central Electoral Office should be commended for striving to ensure electoral procedures are delivered to the highest of standards, the electoral landscape has considerable room for reform.

ELECTORAL COMMISSION

9. Although Anguilla has an established Election Management Body (Central Electoral Office) it does not have an independent Electoral Commission. Although several Commissions have been considered as part of the Constitutional Review, there seems no intention to create an Electoral Commission which could potentially form part of a new Boundary Commission. Stakeholders have highlighted that this might be due to the size of Anguilla's electorate and the fact that elections are held once every five years. However this is counter to the Venice Commission's good practice to have the organisation of elections overseen by an impartial body that should be in charge of applying electoral law.⁸ The matter of having such a Commission has been raised again in the light of the Supervisor of Election's resignation of the 11 February and the subsequent, and arguably erroneous public perception of distrust in decision-making and implementation of electoral regulations and laws.

DIVERSITY & INCLUSION

10. Anguilla does not have any measures to encourage the representative political participation of marginalized groups, but this stems from an established and diverse political culture that does not place any significant barriers based on gender, religion, age or disabilities. In fact, Anguilla should be praised for the proportion of women in leadership roles across the public sector.⁹

RECOMMENDATION 1

Political party and campaign finance regulations must be legislated immediately after the 2020 elections. An Electoral Commission should be established as a standalone body or as part of the Boundaries Commission. Should there remain resistance to regulate for campaign financing, the Governor's Office should consider necessitating such laws to ensure transparent governance on the Island¹⁰. All other recommendations of the 2015 Election Observation Mission should be implemented.

3. Although the International Covenant for Civil and Political Rights (ICCPR) has not been extended to Anguilla as of 2020, it should nevertheless be used as a standard to which the Anguillan democratic process should uphold as best as possible.

4. Recommendation 8 and 9, CPA BIMR Election Observer Mission 2015, Final Report

5. Elections Act 2019, Article 34

6. Anguilla Constitutional Order 1982, Section 64

7. It is considered best practice in electoral matters to not legislate for elections within the same year as the election is to take place (see footnote below)

8. European Commission for Democracy through Law (Venice Commission) Code of Good Practice in Election Matters, Section II, 3.

9. The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) is an international treaty adopted in 1979. This has been extended to Anguilla.

10. Arguably this would sit within the Governor's reserved legislating powers preserving 'public faith' provision in the Constitution.

INFRASTRUCTURE, ORGANISATION AND MANAGEMENT

REMUNERATION

11. Although Members receive an annual allowance/salary this is less than adequate for them to discharge their duties¹¹. Ministers receive a larger allowance in their ministerial capacity. Members receive no expenses allowance, no support for staffing, office accommodation, IT or stationery. There is no body in place to determine an equitable level of benefits or entitlements based on a non-partisan basis. The Executive Council sets the level of allowance which has been reduced over a number of years, with the last review occurring in 2013. This arguably undermines the independence of the Assembly and could open the government to accusations of stifling the legislature's ability to perform its role adequately. Poor pay provisions will inevitably place a systematic barrier for candidates from more impoverished backgrounds who may want to become parliamentarians or more problematically, incentivise parliamentarians in sourcing alternative forms of remuneration which will inevitably result in conflicts of interest. This is further compounded as the Assembly has no formal procedure for registering Members interests¹².

PRIVILEGES & IMMUNITIES

12. The Assembly has robust legislation in place to offer protections of immunity and freedom of speech for the legislature. Members are free from any form of overt intimidation or judicial interference. However, these laws have not been tested. On the matter of natural justice¹³ there are no formal laws or practices in place to protect Members, but again these provisions have not been tested in practice a Members do not seem to have faced serious charges of offences of contempt from within the legislature, and punishments have never been called upon.

INFRASTRUCTURE

13. The House has inadequate physical infrastructure to enable Members and staff to fulfil their responsibilities, although attempts are being made to repair the House of Assembly following the Hurricane damage of 2017. The Assembly complex must currently use Court rooms to conduct its business. There is an office for the Clerk and two admin staff, an office for the Speaker (including a small conference room) and an office for the Leader of the Opposition. The main Chamber which is inaccessible will be converted to include a separate meeting room. Although the House is under considerable financial constraints, there is disproportionately poor support and infrastructure for Members and staff, and provision of resources do not adequately exist; to the extent the Leader of the Opposition purchased office furniture and equipment at her own expense.

TRAINING & DEVELOPMENT

14. Members do have opportunities for training which has predominately been provided by the CPA through its Post-Election Seminar for newly elected Members and other capacity building opportunities. The House with support of the Governor's Office and CPA UK have been instrumental in training and supporting the Public Accounts Committee membership. This has achieved considerable impact in the Committee's performance. However, the House has no capacity or resources to supplement such training or development internally and on an ongoing basis. It is evident from interaction with Members that more training is desirable and needed.

RECOMMENDATION 2

Members' salaries should be equitable to Permanent Secretaries and backbenchers and the Leader of the Opposition should have their office expense allowance reinstated. Such remuneration should be set by an independent Parliamentary Service Commission (see recommendation 10).

11. Approximately EC 9,271 per month (equivalent of US\$ 3,433). When compared to an average Permanent Secretary (EC 15,000) this is considerably lower.

12. Although provisions for a register of interest is set down in the constitution (section 60A) there is no specific legislative framework to record such interests. Therefore, this is not done in practice.

13. Natural Justice is the legal principle that there are fundamental procedures that must be followed in order for a decision to be made that reflects an unbiased approach. Such procedures include notice in a timely manner, the opportunity to present one's case and respond, access to an impartial decision-maker, no undue delays in a hearing, reasons issued for a decision and decisions are made by those that hear the matter.

RULES OF PROCEDURE

15. The legal framework that determines the structure and powers of the House of Assembly are enshrined in the Constitution (and other laws¹⁴) and as such have been modified by the 2019 Amendment. However, in terms of rules of procedures (Standing Orders) for the House these are woefully outdated and are still based on those drafted in 1976¹⁵. Although an attempt was made to update them in 2016, unfortunately this never came to fruition. Standing Orders should be reviewed on an ongoing basis and formally updated at least every five-ten years to ensure the Assembly is adaptive and capable of dealing with new challenges and innovation. There seems to be a very limited understanding of the rules of procedure from the membership of the House, other than from the Presiding Officers and Members who need to test points of order. Members do not seem to comprehend that these rules are theirs to shape and amend when they wish. The House does not have the capacity to record rulings from the Speaker in a systematic way to effectively supplement rules where gaps have and continue to exist. The Speaker is, perhaps justifiably, uncomfortable in making rulings without there being clearer guidance from the House. Although provisions exist to use the House of Commons procedures as a reference where there are gaps, this is an impractical solution in mimicking procedures for a Chamber of 650 parliamentarians when transposed on to an Anguillan context for an Assembly of eleven. Stakeholders have expressed frustration with length of contributions in debates and questions from the Leader of the Opposition, which are deemed unnecessary as it is in the public domain. Issues which are simple to resolve by updating Standing Orders to actually reflect the practices and culture of the House.

RECOMMENDATION 3

A comprehensive review of the rules of procedure for the House should be undertaken and a Standing Orders Committee set up to update and pass the amended rules as soon as possible.

SPEAKER OF THE HOUSE

16. The Assembly is compliant on all benchmarks related to the role of Presiding Officer (Speaker of the House). The Speaker is elected to the role by the House. But whereas the candidate for the role must be qualified to be a Member they do not have to have been elected¹⁶. The Speaker is able to perform his functions effectively within the Chamber. However, the Speaker's role currently is part-time with responsibilities predominantly focused on the days the Assembly sits. The role of the Speaker plays a limited outreach and educational role. In addition, stakeholders have expressed concern over the way in which the Speaker is elected which inevitably gives too great an advantage to the governing party.

RECOMMENDATION 4

The Speaker should take on a greater role in society as a role-model and spokesperson for the Assembly, specifically in educating the public on what the Assembly is and does. Should an independent body be created to oversee the Assembly, the Speaker should Chair such an entity. Furthermore, the Speaker should proactively seek to establish and Chair special Committees to highlight issues of national importance where necessary.

14. House of Assembly (Powers and Privileges) Act, 2000

15. Legislative Assembly (Procedure) Rules, 1976 with amendments of 1992.

16. Anguilla Constitutional Order 1982 Section 50

SITTING PERIOD

17. The House of Assembly meets infrequently and at irregular periods. Currently the House meets once a month and although attempts have been made to increase that to twice a month (at the beginning and then the end of the month) this has met with resistance and difficulties in maintaining a quorum. As highlighted in subsequent sections, this is far from sufficient to enable the House to adequately fulfil its responsibilities. There is no annual parliamentary calendar and no business of the House is set aside for opposition or backbench Members.

RECOMMENDATION 5

The House should increase the number of days it sits, this could be around four-five days per month but should meet the demands of Members, the Government and the expectations of the public to ensure they feel satisfied that robust scrutiny is undertaken. Consideration should be given to enable the House to be more responsive in dealing with urgent uses that can be discussed at short notice in the Chamber. A fixed annual or biannual calendar should be set and published. Should concerns of a quorum not be mitigated, the rules should be amended to incentivise attendance. A register of attendance should also be published online.

VOTING

18. In terms of voting, legislators can vote on issues before the House, however stakeholders have expressed deep concern that ex-officio Members (namely the Deputy Governor and Attorney-General) can also cast their votes in the House. This arguably undermines the Latimer House Principles¹⁷ giving too much power to the government in the democratic process.

RECOMMENDATION 6

At a minimum the House should not permit ex-officio Members a vote in the House. However, consideration should be given as to whether their membership of the House is required at all if the House has existing provisions to co-opt non-Members to the House and Committees to enable it to conduct its business.

PETITIONS

19. Provisions exist for petitions to be presented to the House, however there is little to no awareness of such provisions and as such no petitions have been presented in recent years. This undermines public engagement and their perceptions of influence and input in the legislative process.

OFFICIAL RECORD/HANSARD

20. Provisions also exist for an official record/minutes (Hansard) to be maintained. But there is a considerable backlog in the production of such records which significantly hampers the ability of Members to note what occurred at previous sittings. The backlog stems primarily from inadequate staffing resources within the House administration. This is a considerable weakness which impacts upon the transparency of the House, an absence of a historical record of the Assembly in its processes and practices and the ability of the public to adequately hold their representatives to account. By not having such records and leaving such a role to the media creates a potentially dangerous scenario of inaccurate reporting to the public. This issue also handicaps the judiciary to be able to fully interpret parliament's rationale when legislating.

17. Although Anguilla is not technically a signatory to these Principles, as a Territory of the United Kingdom they should be extended to Anguilla in practice

RECOMMENDATION 7

The House should explore alternative ways of managing the official record by considering sharing Hansard services with other Overseas Territories through a form of affordable audio speech recognition technology that is used by many small legislatures to provide timely official verbatim transcripts. This could also be done in collaboration with the Judicial Department for recording court records. An Official Reporter/Clerk of Journals should also be appointed to the House Service to generate timely records of Assembly and Committee business and document systematically rulings from the Speaker.

COMMITTEES

RULES AND RESOURCES

21. The House does have all the necessary provisions in its rules of procedure to create committees but it by no means has the resources to do so. Although a Standing Finance Committee should exist according to the 1976 rules of procedure, it does not do so in practice (and may never have existed). Furthermore, although the 1992 amendment to the rules included a Public Accounts Committee, it has only been functioning since 2015. This highlights the weak scrutiny functions of the House of Assembly. The House has all the necessary powers for its committees both in theory and in practice to enable it to carry out its functions effectively, but there is virtually no resources or political will to do so for standing, select or legislative committees. There is approval in place to employ a dedicated Committee Clerk, but there are now insufficient finances in place to make this a reality.

COMMITTEE PUBLIC ENGAGEMENT

22. Many stakeholders have highlighted a lack of awareness or engagement in public consultation in terms of government policies or bills. These consultations are undertaken by Departments and Ministries, but there is a lack of interest until the policies are presented as Bills and laid before the House. Arguably where House Committees should be used as a forum for such consultation and airing of grievances or concerns on such policies and Bills, this does not happen. It is evident from comments by stakeholders that there is a general lack of awareness of the role and usefulness of House committees to the government and the public.

LEGISLATIVE COMMITTEES

23. The House does consistently have Committees of the Whole to scrutinise legislation. However, due to the current composition of the House, such committees are simply a formality, typically taking less than 10 minutes to complete this legislative stage. As such, stakeholders have expressed that most legislation is poor in quality and most feel it is rushed through. Reinforcing public perception that the House is simply a government 'Rubber Stamp'.

RECOMMENDATION 8

The House must have fully functioning existing House Committees by increasing the number of sitting dates, strictly enforcing quorums, providing financial provisions to Committee Chairs and by having a Clerk of Committees and Legislation. Members need training on the importance and practice of Committees and why they are important for the government in perfecting its policies and increasing public awareness. Public consultations could be undertaken in committee stage or some other innovative way to ensure people feel more connected to the House and its work.¹⁸

18. Citizen Assemblies are being increasingly employed in jurisdictions across the world to enable wider public consultations. This could be formally embedded as part of the parliamentary process at a committee stage and is ideal for a population the size of Anguilla. E-polling could also be employed for those that have limited time to dedicate and are less willing to speak in public.

POLITICAL PARTIES & OPPOSITION

RULES AND REGULATIONS

24. There are no restrictions which limit the legality of political parties, but this is because there are no laws which regulate their existence. The Elections Act 2019 does refer to them and does provide provisions for them in the context of elections, but not in the relation to the House of Assembly. As such, the House makes no allowance for them in resources or rules. Consequently, there are no regulations in the funding of such bodies or even independent candidates, highlighting concerning deficiencies in accountability and transparency.

OPPOSITION

25. The Leader of the Opposition does receive a slightly higher salary compared to other Members¹⁹, but no other support is provided to enable her to fulfil her mandate as Leader of the Opposition. This severely handicaps the post-holder in holding the government to account.

RECOMMENDATION 9

In terms of political parties, see recommendation 1. In relation to the Leader of the Opposition, as with all backbench members who should be fulfilling their duties as legislators, scrutineers, representatives and advocates there has to be adequate budgetary and administrative resources provided. The House should have at least one researcher/librarian to provide Members with independent, impartial and accurate briefing materials.

19. An additional EC 1566 per month.

PARLIAMENTARY SERVICE

HUMAN RESOURCES

26. The House of Assembly's staff is non-partisan, recruited in a fair and open transparent manner with an ethos of equality and non-discrimination. The House Service formally comprises of the Clerk of the House and two administrators. There is also additional support from a part-time Serjeant at Arms, a presider of prayers and a cleaner. House staff are employed by the Department of Public Administration and fall under the remit and policies of this office. Staff must comply with the same procedures and codes of ethics (general orders) of all public servants. The Clerk of the House reports to the Public Administration's Permanent Secretary who in turn reports to the Deputy Governor and Governor. Although this oversight is considered 'light-touch' it does result in the House Service being dependent to some degree on the executive. Currently no staff performance review mechanism is in place although this policy is in development.

OPERATIONS AND PROCEDURES

27. The level of staffing is inadequate to meet the operational and procedural needs of the House of Assembly. The Assembly is starved of satisfactory support to meet current and future needs especially in light of the increase in the composition of the Assembly. Staff have insufficient access to resources (such as IT, research, etc) to adequately perform in their jobs and although Members are highly praiseworthy of existing staffing, they are far from satisfied that it meets their needs.

FINANCIAL PROVISIONS

28. The budget of the Assembly is inadequate to meet its needs and long-term wants. The budget is far below that of comparative institutions, such as the judiciary²⁰. The House should be deemed an equal to the other branches of government. The fact that the budget allocated to the Assembly is so low is arguably reflective of the poor perception of the Assembly, or as some stakeholders' view, as an attempt by the government to stifle its ability to effectively hold the executive to account. Whereas Anguilla's economy remains in a difficult position, it is understandable that priority cannot be given to the Assembly, however the continued neglect of the Assembly will inevitably be highly detrimental to good governance of the Island.

INDEPENDENCE

29. Stakeholders raised concerns over the lack of administrative or procedural independence of the Assembly. The Assembly is financially and administratively under the supervision of the executive (ultimately under the Governor's Office). Anguilla has not established a corporate body responsible for providing services and funding entitlements for parliamentary purposes and providing for governance of the parliamentary service.

RECOMMENDATION 10

The House must have financial independence based on a budget it sets for its needs. Members must remember that they can amend the budget to provide such resource provision. The best functioning legislatures are those that have financial and administrative independence through Parliamentary Services Commission and such an approach should be adopted for the Anguilla House of Assembly. Such a precedence exists with the judiciary and so should be extended to the Assembly. In addition, more training must be available for staff and that greater consideration is given to contingency planning in the event staff are incapacitated or resign

20. Budget of the Assembly for 2019 was EC 895,771 compared to the Judicial Department which was EC 3,450,712.

FUNCTIONS AND PROCESS OF THE LEGISLATURE

COMPOSITION

30. The Constitution of Anguilla gives provision for a Cabinet proportionate to the size of the Legislature. As a consequence of the increase in the Assembly size, to take effect after the upcoming election, amendments to the Constitution state that the number of Ministers may be increased by law but may not exceed a number proportionate to elected members within the house. Stakeholders consistently raised the issue of the makeup of the legislature as being a key constraint on the Assembly to function effectively, particularly regarding scrutiny, oversight and legislating. There was critique on the majoritarian system, whereby the government had far reaching powers to carry out its will without due consideration to the processes and functions of the House. Even in such circumstances, strengthening the rules, procedures and practices that underpin the Assembly can ensure greater effectiveness. The introduction of 4 additional, island-wide elected Members to the House of the Assembly following the upcoming 2020 election may open up the potential for greater scrutiny of government, but only if the House of Assembly embraces the intrinsic value of the institution of parliament and its functions of legislating, exercising oversight of the Executive and representing the citizenry.

RECOMMENDATION 11

Where concerns remain that the proposed increase in the composition of the House may not rectify the majoritarian nature of the Assembly, consideration could be given to increase the composition of the House further on an ad-hoc basis via nominated members recommended through a Parliamentary Service Commission with the consent of the Governor.

GOVERNOR'S ROLE

31. Under the Governor's reserved legislative powers, the Governor, through approval of the Secretary of State, can declare Bills into effect as they are introduced to the House, or with amendments without the approval by the House. Therefore, constitutionally, legislation can be adopted without any approval by the Assembly. In practice however, these powers are rarely exercised. As such, stakeholders on the whole did not cite this arrangement as the most pressing issue.

DELEGATED LEGISLATION

32. There are also no formal rules or procedures in place that allow the House to scrutinise secondary, delegated or subordinate legislation. The issue of affording scrutiny to such legislation, in light of other constraints and challenges faced by the Assembly, also appeared low on the list of immediate priorities or concerns among relevant stakeholders, although this may stem from a lack of awareness of such forms of legislation.

RECOMMENDATION 12

The House could consider introducing a Committee on Delegated Legislation to allow for the systematic scrutiny of delegated or subordinate legislation. However, with a limited committee system in the Anguilla House of Assembly, this issue could be integrated within the activities of a currently provisioned committees.

PRIVATE MEMBER'S BILLS

33. The Constitution also gives the right for any Member of Parliament to introduce any Bill or propose any motion for debate in the Assembly. In practice however, Private Member's Bills are non-existent. Members are provided with little to no resources in order to introduce legislation. This includes no provision for research materials, legislative drafting support or office space. Currently, the only support provided in this regard was to government ministers, through the relevant ministry. There was consensus among stakeholders that additional resources should be provided to Members in drafting and amending legislation, including to opposition members within the Assembly.

RECOMMENDATION 13

If the Assembly is to carry out its legislative function effectively then the disparity between resources afforded to ministers and legislators must be shortened. A Clerk of Committees & Legislation should be appointed to support Members with drafting amendments and Bills. Training should also be provided to Members to enable them to legislate in such a way.

TIMING OF BILLS

34. Another issue that various stakeholders raised was with timing. There is little to no opportunity for Members to conduct analysis or prepare for debate on Bills, despite the Constitution provisioning for such. Stakeholders have expressed deep concerns where Bills have had three readings in a single week's session and where legislation is routinely transmitted to Members around 3-7 days before arriving in the House. This provides inadequate time for raising public awareness of the legislation, and more importantly, for effective scrutiny to occur.

RECOMMENDATION 14

Amending Standing Orders could set a minimum number of days a Bill should be considered in the House and the House should have the powers to censure Ministries and the Attorney General's Chambers where Bills are not circulated within set periods in advance of debates occurring.

POST-LEGISLATIVE SCRUTINY

35. Procedures for systematic monitoring of the implementation and consequences of legislation (Post-Legislative Scrutiny) is entirely absent from the legislative process in Anguilla. Even in extra-ordinary cases, stakeholders noted that there have been no cases of either formal or informal procedures. There was a perception across stakeholders that this was not a priority, considering the deficiencies in the earlier stages of the legislative process.

OVERSIGHT FUNCTIONS

LEVEL OF OVERSIGHT

36. Overall, there is a considerable deficit in the oversight authority of the Legislature. Across important realms where best practice would necessitate parliamentary oversight, including of state-owned enterprises or international obligations such as human rights instruments and the Sustainable Development Goals, no rule, laws or practices exist.

INDEPENDENT COMMISSIONS

37. The Legislature has not established by means of legislation the office of an independent ombudsman or other office in which citizens can have complaints against the Executive independently investigated. The House has also not established a national human rights institute with a mandate to protect against human rights violations. Under the new proposed Constitutional reforms embodied within the Draft Constitution of Anguilla, provisions for both bodies have been made through a Complaints Commissioner and Human Rights Commissioner, respectively, alongside a host of other institutions protecting good governance²¹. Although the proposed creation of these bodies stem from an effort to correct the absence of accountability, oversight and transparency laws, policies and mechanisms, it is difficult to envisage how such a number of institutions can be resourced or receive the required political backing to function effectively.

RECOMMENDATION 15

The Anguilla House of Assembly has the potential to formulate innovative solutions to its current scrutiny and oversight deficit. For example, the introduction of more lay persons, including relevant experts or members of the public, on or in support of committees, could invigorate the scrutiny system, provided that such appointments were free from political interference.

21. Chapter 7 of the Draft Constitution of Anguilla, 2017.

REPRESENTATIONAL FUNCTIONS

EQUALITY

38. Although female representation in the Anguilla House of Assembly is around 25% and approaching the Sustainable Development Goal of 30%, there were currently no specific laws or provisions to promote women as legislators or women in leadership. A sense gained from discussions with stakeholders was that Anguilla was a fairly equal society with few limitations on the equal representation of genders in the Assembly, or the workplace in general. Although current data may indicate this to an extent, the threat of complacency in the absence of institutional protections for gender equality could have damaging consequences in the future.

CONSTITUENCY ROLE

39. The House of Assembly does not provide any resources to Members to allow them to engage constituents and fulfil their constituency responsibilities. Stakeholders, including the public, argued strongly that Members were not visible or actively engaged within their constituencies, apart from around election time. A constituency allowance did exist that provided modest sums of money for Members to build their capacity to function more effectively in their locale. Such funds however were cut in 2010 following a package of austerity measures. Some stakeholders mentioned Constituency Development Funds (CDF), a programme which appropriates national funding for MP-influenced, locally determined constituency level development, as a potential solution to constituency engagement. However, CDFs can be misused for corrupt practices. Considering the lack of accountability and transparency in the current system, this raises a number of potential problems.²²

22. For more information on CDFs, please see: http://www.cpahq.org/cpahq/Main/Document_Library/Budget_Matters/Constituency_Development_Funds/Constituency_Development_Funds.aspx

ACCESSIBILITY, OPENNESS AND ENGAGEMENT

MEDIA & PUBLIC ENGAGEMENT

40. The House of Assembly is generally open to citizens and the media and there are no limits placed upon the media's ability to report openly and freely on the proceedings of the House. This also reflects an open and familial atmosphere across Anguilla, where decision-makers, public servants, media and the citizenry, largely feel free to voice their opinions without fear of overt recrimination or consequence. The public have open access to plenary meetings of the House and a spacious public gallery has been integrated into the plans for the refurbishment of the House of Assembly.

RECOMMENDATION 16

It is recommended that with the creation of a new committee room in the refurbishment designs, that greater access can be afforded to the proceedings of committees, specifically where there are public inquiries and hearings.

ACCESS TO INFORMATION

41. The Government of Anguilla currently also produces The Gazette, a notice which publishes Government business, including Bills, Acts and Statutory documents on a monthly basis. It is a paid subscription-based service, costing around EC 250 per year with subscription numbers between 150-200. Currently there is only one staff member within the House who administers The Gazette, who devotes around 60% of their workload to it. Although the House was also working consistently on the backlog of minutes from House proceedings, different stakeholders agreed that newer, up-to-date, methods to publish House business in a consistent and accessible way was required.

RECOMMENDATION 17

The House should have a separate website to highlight that it is not the same as other Departments and offices of the government and thus emphasising its independence as an institution. Such a site, administered by an Outreach and Communications Manager should provide up-to-date information for the public to access.

DISABLED ACCESS

42. As the Assembly building is single story, there are a limited number of areas that currently prohibit wheelchair access. In the design plans for the refurbished Assembly, specific provisions have also been made for increased wheelchair access including, ramp access to the main parts of the building and restrooms. Sufficient spacing has also been provided for wheelchair access to Member's desk areas in the Chamber.

PUBLIC INTEREST

43. During discussions with stakeholders, it was widely acknowledged that there was a significant lack of public engagement around the House of Assembly. There was acceptance that the public had received little education on the workings of the House and its functions to society. Stakeholders agreed that this was due to a combination of Members, the Assembly and the Executive's chronic lack of engagement with the public. There was also the view that the public themselves had little interest in the proceedings of the Assembly and that they were generally unaware as to the mechanisms available to them to voice their views through the Assembly, such as their right to petition.

EDUCATION

44. In terms of educational measures to promote the public understanding of the work of the legislatures, this was lacking, and a contributing factor to the lack of public understanding or engagement with the House of Assembly. Although the aforementioned resource constraints of the Assembly and additional workload to Members may constrain the ability for more public outreach, various cost-effective possibilities exist that have yet to be explored.

RECOMMENDATION 18

A range of outreach activities, including integrating civic education into the school curriculum could be explored that works to increase public engagement with the House but that importantly, instils the fundamental importance of the institution of parliament to democracy in Anguilla. Other innovative approaches could be considered such as giving the public an opportunity to submit questions through the Speaker for Ministers to answer at question time.

ETHICAL GOVERNANCE

TRANSPARENCY

45. The Anguilla House of Assembly has little to no measures or rules in place to ensure standards of transparency, accountability and responsibility in the conduct of matters inside and outside the House. Although the Constitution provides for a Register of Interests made publicly available, currently there are no rules, laws or practices that require the periodic, full and public disclosure of legislators' financial and other interests.

RECOMMENDATION 19

A public register of interests would increase transparency within the House of Assembly and therefore contribute towards increasing public trust in the institution of parliament. The House could explore best practice from other small legislatures and overseas territories in this regard. An integrity commission has been provisioned in the Draft Constitution which among others, would have the power to maintain the Register of Interests²³, yet this is still to come into effect and faces the same above-mentioned challenges other similar proposed institutions face in their formulation

CODE OF CONDUCT & BEHAVIOUR

46. Although the House of Assembly does have procedural rules on etiquette in the House, it does not have a formal code of conduct that sets out the standards of behaviour expected of Members as they carry out their work in the Assembly and outside. A code of conduct would also contain the rules concerning the additional income, gifts and personal interests. Different stakeholders had indicated that there had been previous attempts to create measures and rules to create more transparency and improve behaviour, but this was met with resistance.

PUNISHMENTS

47. There are also powers provisioned within the House to punish Members who engage in certain corrupt practices²⁴. In reality however, such powers have not been exercised. Beyond this there are no rules, laws or practices that prevent, detect and prosecute legislators and staff who are engaged in corrupt practices. Through their absence, continued mistrust of the House and governing institutions may continue and attempts to reform the functioning and conduct of the Assembly could falter.

RECOMMENDATION 20

The House must introduce a code of conduct which would bring Anguilla in line with international best practice. It would also provide an important reference point for Members and Ministers alike to signal to the public that the Assembly is an institution committed to regulating itself and preventing the abuse of power.

23. Section 98 (1) of the Draft Constitution of Anguilla, 2017.

24. Section 12 of the House of Assembly Powers and Privileges Act, 1992, provisions for a monetary or custodial punishment to members for accepting a bribe, fee, compensation, reward or benefit of any kind for (or refraining from) speaking, voting or acting within the Legislature.

CONSOLIDATED LIST OF RECOMMENDATIONS

RECOMMENDATION 1

Political party and campaign finance regulations must be legislated immediately after the 2020 elections. An Electoral Commission should be established as a standalone body or as part of the Boundaries Commission. Should there remain resistance to regulate for campaign financing, the Governor's Office should consider necessitating such laws to ensure transparent governance on the Island . All other recommendations of the 2015 Election Observation Mission should be implemented.

RECOMMENDATION 2

Members' salaries should be equitable to Permanent Secretaries and backbenchers and the Leader of the Opposition should have their office expense allowance reinstated. Such remuneration should be set by an independent Parliamentary Service Commission (see recommendation 10).

RECOMMENDATION 3

A comprehensive review of the rules of procedure for the House should be undertaken and a Standing Orders Committee set up to update and pass the amended rules as soon as possible.

RECOMMENDATIONS 4

The Speaker should take on a greater role in society as a role-model and spokesperson for the Assembly, specifically in educating the public on what the Assembly is and does. Should an independent body be created to oversee the Assembly, the Speaker should Chair such an entity. Furthermore, the Speaker should proactively seek to establish and Chair special Committees to highlight issues of national importance where necessary.

RECOMMENDATION 5

The House should increase the number of days it sits, this could be around four-five days per month but should meet the demands of Members, the Government and the expectations of the public to ensure they feel satisfied that robust scrutiny is undertaken. Consideration should be given to enable the House to be more responsive in dealing with urgent uses that can be discussed at short notice in the Chamber. A fixed annual or biannual calendar should be set and published. Should concerns of a quorum not be mitigated, the rules should be amended to incentivise attendance. A register of attendance should also be published online.

RECOMMENDATION 6

At a minimum the House should not permit ex-officio Members a vote in the House. However, consideration should be given as to whether their membership of the House is required at all if the House has existing provisions to co-opt non-Members to the House and Committees to enable it to conduct its business.

RECOMMENDATION 7

The House should explore alternative ways of managing the official record by considering sharing Hansard services with other Overseas Territories through a form of affordable audio speech recognition technology that is used by many small legislatures to provide timely official verbatim transcripts. This could also be done in collaboration with the Judicial Department for recording court records. An Official Reporter/Clerk of Journals should also be appointed to the House Service to generate timely records of Assembly and Committee business and document systematically rulings from the Speaker.

RECOMMENDATION 8

The House must have fully functioning existing House Committees by increasing the number of sitting dates, strictly enforcing quorums, providing financial provisions to Committee Chairs and by having a Clerk of Committees and Legislation. Members need training on the importance and practice of Committees and why they are important for the government in perfecting its policies and increasing public awareness. Public consultations could be undertaken in committee stage or some other innovative way to ensure people feel more connected to the House and its work.

RECOMMENDATION 9

In terms of political parties, see recommendation 1. In relation to the Leader of the Opposition, as with all backbench members who should be fulfilling their duties as legislators, scrutineers, representatives and advocates there has to be adequate budgetary and administrative resources provided. The House should have at least one researcher/librarian to provide Members with independent, impartial and accurate briefing materials.

RECOMMENDATION 10

The House must have financial independence based on a budget it sets for its needs. Members must remember that they can amend the budget to provide such resource provision. The best functioning legislatures are those that have financial and administrative independence through Parliamentary Services Commission and such an approach should be adopted for the Anguilla House of Assembly. Such a precedence exists with the judiciary and so should be extended to the Assembly. In addition, more training must be available for staff and that greater consideration is given to contingency planning in the event staff are incapacitated or resign.

RECOMMENDATION 11

Where concerns remain that the proposed increase in the composition of the House may not rectify the majoritarian nature of the Assembly, consideration could be given to increase the composition of the House further on an ad-hoc basis via nominated members recommended through a Parliamentary Service Commission with the consent of the Governor.

RECOMMENDATION 12

The House could consider introducing a Committee on Delegated Legislation to allow for the systematic scrutiny of delegated or subordinate legislation. However, with a limited committee system in the Anguilla House of Assembly, this issue could be integrated within the activities of a currently provisioned committees.

RECOMMENDATION 13

If the Assembly is to carry out its legislative function effectively then the disparity between resources afforded to ministers and legislators must be shortened. A Clerk of Committees & Legislation should be appointed to support Members with drafting amendments and Bills. Training should also be provided to Members to enable them to legislate in such a way.

RECOMMENDATION 14

Amending Standing Orders could set a minimum number of days a Bill should be considered in the House and the House should have the powers to censure Ministries and the Attorney General's Chambers where Bills are not circulated within set periods in advance of debates occurring.

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