

Taiwan's Legislative Yuan

and the Challenge of Putting
Democratic Principles into Practice

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A decade and a half after democratic reforms reinstated the popular election of the Legislative Yuan of the Republic of China, Taiwan's highest legislative assembly today is decidedly more representative of the people of Taiwan, proactive in its lawmaking functions, and vigilant in its government monitoring role than ever before. Broad political reform coupled with institutional capacity-building investments in the 1980s and 1990s have enabled the Legislative Yuan to evolve from a rubber-stamp legislature to one that demonstrates greater autonomy within Taiwan's overall political structure.

Yet despite these great strides, progress in enhancing the Legislative Yuan's contributions to effective democratic governance in Taiwan appears to have stalled. Instead, the Legislative Yuan has become the major arena for confrontation in a politically divided society.¹ Attention to policymaking in the public interest has been sacrificed in the daily battles between politicians of opposing camps for control of the government's agenda. Key pieces of legislation end up stalled indefinitely, victims of legislative gridlock, or rushed through in a political trade with an inadequate review of language, content, or impact. Added to other existing weaknesses in Taiwan's constitutional, electoral, and governing institutions, the use of the Legislative Yuan as a venue for political posturing at the expense of good policymaking inherently undermines efforts to support good governance in Taiwan.

From this perspective, the continuing institutional shortcomings of the Legislative Yuan are not rooted in a lack of understanding of the legislative functions of representation, lawmaking, and government oversight. Rather, they stem from a political culture that has yet to embrace fully the *principles* of democratic governance—principles such as accountability, accessibility, transparency, peaceful resolution of conflicts, and consensus-building. Political culture is intrinsic in the behavior and interactions of political actors both within and outside the legislature.² As such, it is a critical factor in generating the political will to ensure that institutional resources, rules and procedures, and constitutional powers are utilized in such a way that the Legislative Yuan fulfills its proper role in supporting effective democratic governance.

Taiwan boasts an affluent, highly-educated society, and is ranked among the most advanced economies in the world. Ninety percent of the 6th Legislative Yuan's members hold university degrees; the majority of those members also hold graduate or professional degrees.³ The Legislative

Yuan has significant access to domestic and international resources and expertise that can support legislative capacity in representation, lawmaking, and government oversight. The priority needs in supporting better democratic governance, therefore, are different from those in societies where lack of access to basic inputs such as technical knowledge and skills, financial and human resources, and infrastructure to support legislative functions are a significant barrier to improving overall governance.

The priority need in Taiwan is to strengthen the confidence, and therefore commitment, of political actors and the public in the principles that are at the core of democratic processes and institutions. This paper attempts to identify some of the major challenges to this task, as they relate to the performance of the Legislative Yuan, and suggests possible areas for action.⁴

A RENEWED FOCUS ON LEGISLATIVE DEVELOPMENT IN TAIWAN: WHY NOW?

An elected legislature's effectiveness in representing diverse citizen interests and transforming them into coherent policy is vital to a democratic government's functioning. How well the Legislative Yuan functions affects the soundness of public policy, touching upon all aspects of the quality of life of Taiwan's citizens, as well as the decisions of both domestic and foreign investors for whom the law and policymaking process is a key dimension of the business environment. The imperative of ensuring Taiwan's continued prosperity and stability through more effective democratic governance makes improving legislative performance urgent.

Public dissatisfaction with the Legislative Yuan resulted in constitutional amendments in 2005 that will overhaul the legislative electoral system and halve the number of legislators starting from the 2007 Legislative Yuan elections.⁵ Such legislative reform has been driven largely by complaints about the quality of legislators and their behavior. What has been lacking, however, is a sustained public dialogue about the desired qualities or characteristics of legislative performance that should comprise the objectives of institutional or policy reforms. Only when serious attention is paid to such issues both inside and outside the Legislative Yuan, can reforms hope to succeed in 1) addressing citizens' concerns about how the Legislative Yuan functions, 2) strengthening the relationship between legislative performance and citizen concerns, and ultimately 3) enhancing the public's confidence in the legitimacy of the Legislative Yuan as a democratic institution.

The Taiwanese public is not alone in its dissatisfaction with and distrust of legislative institutions and political parties, as similar trends in public opinion toward political institutions are being observed worldwide. In Taiwan, however, the impact of deficiencies in legislative performance on governance in general has particularly troubling implications for the consolidation of democracy. Compared to other new democracies in East Asia, the public in Taiwan also has demonstrated "backsliding on a scale rarely seen in any emerging democracy" in its unqualified support for democracy as a form of government.⁶

TRENDS IN LEGISLATIVE DEVELOPMENT ASSISTANCE: LESSONS FOR TAIWAN?

On the positive side, Taiwan is not alone in experimenting with different approaches to building an effective legislature as part of its democratic development. In this respect, the experience of legislative development as a field in democratic assistance may yield useful lessons for consideration in helping the Legislative Yuan fulfill its potential as a democratic institution.

As a way to assist in developing legislative structures and practices among like institutions, members of legislatures from "older" democracies have shared experiences and advice with peers in other countries for decades. As a distinct area of development assistance, however, "legislative development," "legislative strengthening," or "legislative assistance" came to particular prominence in the 1980s and 1990s. Bilateral and multilateral aid programs funded by "advanced" democracies accorded increasing importance to democracy assistance as the "third wave" of democratization swept across the globe, and - in the process - invested greater resources in building democratic institutions, including elected legislatures, in countries "in transition."⁷

In working with newly-democratizing societies, democracy assistance programs in the 1980s and early 1990s focused their work with legislatures on rectifying the concentration of power in the executive branch that had characterized the previous authoritarian, one-party, or totalitarian regimes. In some cases, this included providing technical assistance on constitutional reform, so as to create checks and balances within the political structure where limits on executive power had previously been weak or nonexistent. Technical assistance also aided some countries in re-designing their electoral systems to improve the representativeness of their legislatures. The bulk of legislative assistance, however, was aimed at strengthening legislatures'

capacity to exercise legislative powers (and thus to serve as an effective balance vis-à-vis the executive) through better performance of their representation, lawmaking, and oversight functions.

Such institutional capacity-building primarily entailed increasing the technical skills and knowledge of legislatures, particularly with regard to lawmaking and exercising oversight of the government, and ensuring that legislatures possessed at least basic infrastructure and equipment to support these activities. Aid programs provided legislatures with information, training, and office hardware, and often included activities such as upgrading the information technology and networks available to the legislature, establishing professional library and research units within the legislature, training legislative staff in law-drafting and legislative procedures, and technical assistance and study tours to examine legislative functions and structural design.

Over the course of the 1990s and up to the present, the development aid community periodically re-examined its cumulative experience in providing legislative assistance in order to find more effective strategies for promoting strong, better functioning legislatures. The 1990s, for example, witnessed significant increases in the amount of resources allocated to helping nongovernmental organizations (NGOs) and the media understand legislative affairs. Capacity-building in the civil society and media sectors was designed to help generate public pressure on the legislature, and government in general, to be responsive to society's needs. Though institutional capacity-building continued to receive significant emphasis, development aid programs increasingly recognized that the momentum for legislative reform and modernization could not be sustained merely from within legislatures.

Taiwan's own experience in legislative development featured approaches similar to those taken by international development programs in other societies. As Taiwan moved in the 1980s and 1990s toward a system of democratic governance, strengthening the role and legitimacy of the legislative branch focused on the Legislative Yuan's transformation from a rubber-stamp legislature to an autonomous branch of government. Constitutional and electoral reforms were undertaken to make the Legislative Yuan more representative of the people of Taiwan. Other measures aimed to build institutional capacity, particularly in lawmaking and government oversight. At the same time, international organizations such as The Asia Foundation supported capacity-building in Taiwan's nascent civil society sector and the media.

Although financial and other resources from international organizations supported some of the Legislative Yuan's capacity-building activities early on, Taiwan's economic successes enabled the Legislative Yuan to assume responsibility for investments in its own development. The Legislative Yuan's budget increased steadily during the mid-1990s and then substantially in the late 1990s.⁸ While these increases were necessary to accommodate the increase in the number of legislators starting with the 4th Legislative Yuan, they also accompanied the authorization of up to 10 assistants per legislator, as well as dedicated committee researchers and staff, to be funded with taxpayer dollars.

The comparative experiences of legislatures in other democracies continued to play an important role in generating ideas for increasing the Legislative Yuan's representation, lawmaking, and oversight abilities. The professional information services supplied to the U.S. Congress by the Congressional Research Service, for example, provided the impetus for investments in the Legislative Yuan's Parliamentary Library, Organic Law and Statute Bureau, and Budget Center; each of these units is designed to provide the research and analysis needed for enhancing the capacity of legislators and their staff to draft and review legislation and evaluate government budgets. In some areas, such as legislative library and information technology services, the Legislative Yuan in turn has served as a model for study by other developing legislatures.

Over the years, significant investments have been made in the information, staff, and expert resources available to legislators, the information and physical infrastructure of the Legislative Yuan, and enhancements in the financial resources and physical space allotted to each legislator and legislative caucus. Today's Legislative Yuan is well on the path toward becoming a "professional" legislature, in terms of the information, staff, and expert resources supporting legislative operations. Meanwhile, Taiwan's freedom of press and the rapid growth of the civil society sector are internationally renowned.

Why, then, has the Legislative Yuan continued to disappoint in its role as a key institution of democratic governance, both in substance and in the eyes of the electorate? To understand the challenges of improving legislative performance, Taiwan again can draw upon lessons learned from development assistance programs in newly-democratizing countries, as well as recent experiences in more advanced democracies.

In recent years, legislative assistance strategies in developing countries have shifted back toward the legislatures themselves, with particular attention to both the capacity of legislators in representation and the role of political parties in the democratic and legislative processes. The new focus on political parties stems from the recognition that investments in the technical capacity of legislatures, civil society, and the media, may have little effect on the performance of the legislature as an institution if the political party system fails to support democratic values and processes. Where the party system itself is characterized by over-concentration (in one dominant party), fragmentation (among many small parties), or polarization (deeply confrontational stances), the political factors behind these attributes can render ineffective efforts to improve legislative performance through enhanced capacity and external pressure. In reformulating legislative development strategies, democratic assistance programs are examining more closely how the political party system, and the political dynamics encouraged or perpetuated by it, drive the behavior of the legislature.

More generally, the past several years have seen greater acknowledgement of the reality that, most often, political challenges, rather than lack of capacity, are the principal barrier to improved legislative performance. Legislative assistance programs around the world recognize that without the commitment of political leadership (both inside and outside the legislative branch) to make the legislature function more effectively, improvements in technical skills and knowledge for legislative functions, or changes in legislative structure or procedures, will fall short of their desired impact.

Trends in public perception of government institutions within the "advanced" democracies themselves are informative to Taiwan. Across North America, western Europe, and Japan, citizen confidence in politicians, parliaments, and political parties has declined over time. Despite longer experience and ample capacity, advanced democracies are facing the political task of ensuring legislative performance, and governance in general, that meets citizens' needs.⁹

Fundamentally, efforts to develop a strong, effective legislative branch that enjoys the trust and confidence of the citizenry cannot be viewed in isolation from the political context in which such development must take place. The political structure of a society is a critical dimension of this context; reforms in the constitutional framework, electoral system, and laws governing the actions of the legislature and other parts of government can help shape

legislative performance. At the same time, the underlying political culture exerts a pervasive influence on the manner in which political actors and society interact with each other and the governance structures surrounding them.

Therefore, in Taiwan's Legislative Yuan, continuing weaknesses in institutional capacity can be understood as symptoms of underlying causes of poor Legislative Yuan performance, rather than the direct causes themselves. Weaknesses often highlighted include lack of "professionalism" among legislators, lack of substantive expertise and technical legislative skills among legislators and legislative staff, high staff and legislator turnover, over-focus of legislators and their staff on doing favors for constituents at the expense of attention to public policy issues, under-staffed standing committees, and underutilization of or insufficient capacity in legislative information service units designed to support the knowledgeable review of legislation and government policies.

Each of these weaknesses, however, is tied to a framework of laws, institutional rules and policies, and individual management decisions that both reflect and foster the principles of governance supported by society. The challenge of encouraging the development of a legislature that promotes effective democratic governance is also one of strengthening, not only within the legislature but also throughout the government, political parties, the citizenry, civil society, and the media, commitment to and action based on principles that support democratic governance, including:

- Accountability and transparency in governance
- Consensus-building and deliberation on public policy
- Accessibility and participation in the governance process

PRINCIPLES: THE FOUNDATION OF DEMOCRATIC LEGISLATURES¹⁰

The basic functions of a legislature in modern democratic societies are commonly referred to as representation, law-making, and oversight: to represent the public by serving as a mediator between citizens and the state; to shape laws in the public interest; and to monitor the effectiveness of the government (executive branch) in carrying out public policies, authorized and funded under the law. While the

formal powers endowed to the legislative branches vis-à-vis other government branches may vary, these basic functions of the legislative branch remain largely consistent across democratic political systems, whether they are considered presidential, parliamentary, or a hybrid incorporating characteristics of both.

Underlying how well a legislature performs these functions, however, is the strength of principles that supports democratic governance and essentially justifies the existence of an elected legislature in the political system. Respect for *constitutionalism* in observing the separation, limitation, and balancing of government powers serves to validate the legal framework for the exercise of legislative power. In the exercise of legislative power, other principles that bolster democratic governance include the following:

ACCOUNTABILITY AND TRANSPARENCY

The legislature derives its legitimacy from its representation of citizens' interests in the public policy arena, principally through lawmaking and government oversight. As a principle, accountability is expressed in how well the legislature follows through on its commitment to serving the public interest effectively. Accountability is embedded in the laws and internal procedures, standards, and rules that encourage legislators to take responsibility for their actions taken (or not taken) in the conduct of legislative business and in their service to the public. Transparency is an essential complement to accountability, and helps provide citizens with knowledge that will enable them to pass judgment on how well their legislators have served as representatives of the public.

CONSENSUS-BUILDING AND DELIBERATION

In representing citizens' interests, the legislature must provide for the meaningful deliberation and formation of public consensus on the need for or changes to the laws governing society. To have faith in consensus-building also requires respect for pluralism and confidence in minority rights. The faithfulness with which legislators abide by consensus-building in their conduct of public business is critical to the legislature's ability to aggregate diverse public interests into coherent public policy based on compromise. Doing so also requires careful deliberation of proposed and existing laws and policies, without which compromise is even more difficult to attain. How strongly the legislative process is steeped in the principles of consensus-building and deliberation is demonstrated in rigorous, informed review and debate oriented toward generating outcomes on law and public policy that support the common good.

ACCESSIBILITY AND PARTICIPATION

The legislature's mandate to represent citizens' interests requires that the public is both granted access to and takes an active role in expressing its interests in the legislative process. As part of the public's relationship with political parties, elected representatives and legislative institutions, and executive branch institutions and officials, such access and civic participation helps to inform the actions of democratic institutions. Commitment to accessibility and participation is manifested in the degree to which citizens are encouraged to understand, monitor, and provide input into legislative activities in order to ensure governance according to public interests.

In Taiwan, as in other societies, the infusion of these principles into governance processes and structures has moved at a slower pace than the initial structural transition from authoritarian to democratic rule. These principles have taken root, however. Taiwan's government has made remarkable progress over the past twenty years in promoting greater accountability and citizen participation in public affairs. Civil society groups, particularly women's and environmental NGOs, have become more sophisticated in engaging with the government both on specific areas of public policy and in demanding further reforms to make governing institutions even more democratic.

Within the Legislative Yuan, too, there are positive signs. In addition to granting the public and media greater access to legislative affairs, for example, groups of legislators are increasingly coming together in cross-party alliances oriented around substantive policy areas. These alliances provide a mechanism for encouraging development of common knowledge on which to build discussion of key policy issues; collaboration across party lines on the development of legislation; and communication with the executive branch, academia, and civil society on legislative matters.

Nevertheless, historical and structural factors, as well as factors in the regulation of legislative affairs, continue to challenge the development of governance based on a political culture rooted in a strong commitment to these principles. The following sections examine some of these factors.

POLITICAL CONTEXT AND LEGISLATIVE YUAN PERFORMANCE

The structure of Taiwan's political system provides the broad framework for the exercise of executive and legislative power, and hence the relations between the executive, legislative, and other branches of government. In addition, the electoral system and the political party system shape the relationship between voters and their representatives. During the period of authoritarian rule, these factors served to discourage accountability and transparency, consensus-building and deliberation, and accessibility and participation.

Due to Taiwan's relatively recent democratization, these principles are still emerging in the political culture. Taiwan's political actors and citizens certainly exhibit a much stronger commitment to these principles today. Even so, the polarization between the pan-Blue and pan-Green camps, based on issues of national identity, both perpetuates and is exacerbated by the delicate state of confidence in these principles in Taiwan's collective political consciousness. Furthermore, lingering weaknesses in the political framework and institutional arrangements combine with these political divisions to intensify the negative governance effects of behavior that run contrary to these principles.¹¹

First, a consequence of executive and one-party dominance under authoritarianism has been that a working Executive-Legislative relationship grounded in the principles of accountability and consensus-building has been slow to develop. As Taiwan moved toward democratization in the late 1980s and early 1990s, the legislature became an important venue for opposition groups to protest government (ruling party) policies and actions. This dimension of protest became a main ingredient in the Legislative Yuan's evolution toward greater autonomy from the Executive branch in its exercise of legislative power. With government initiatives stewarded through the legislative process by the dominant ruling party, the minority opposition often used existing procedural rules to find opportunities to stall the passage of such bills and publicly contest the legitimacy of government actions. As its numbers grew, the opposition also was able to take a greater role in introducing legislations to counter government proposals. A tradition of the Executive and Legislative branches working both autonomously and collaboratively, however, is lacking.

Since the 2000 presidential election, Taiwan for the first time has experienced "divided government," in which the Executive and Legislative branches are controlled by different,

and opposing, political parties. While clearly a milestone in Taiwan's democratic consolidation, the transfer of power from the Kuomintang (KMT) to the Democratic Progressive Party (DPP) in the Executive branch also inaugurated a new, uncertain stage in Executive-Legislative relations that persists today.

Divided government presents challenging conditions for Executive-Legislative relations in most presidential and semi-presidential political systems. In Taiwan's particular version of semi-presidentialism, however, existing constitutional arrangements present additional complications. The Legislative branch has few legislative tools with which to influence the policy and budgetary initiatives of the Executive, as its powers of amendment (involving fiscal impact) and investigation remain limited. At the same time, the Executive has few options available for countering legislative inaction or assertiveness resulting from Executive-Legislative disagreement over legislative proposals.¹² In this context, it becomes vital for policymaking to be based on consensus-building both within the Legislative Yuan and between the two branches. This is made even more difficult when neutral mechanisms for facilitating communication between the Executive and Legislative (including both ruling and opposition parties) are lacking, or when the Executive's own process of initiating legislation produces poorly drafted bills.¹³ But without the dedicated effort of ruling and opposition parties to achieve policy outcomes based on consensus-building, the result of divided government is political gridlock. The opposing camps can continue to focus on wrestling for dominance of government affairs through the institutions in their respective control, but at the expense of accountability to the public for good governance.

Second, as in many other societies that have recently transitioned to more democratic forms of government, the traditional dominance of the Executive branch in Taiwan has meant that the Legislative Yuan itself, historically, has not been held accountable for its performance of legislative functions, whether in lawmaking, reviewing and approving the government budget, or providing government oversight. In addition, responsibility for the development of legislation and public consensus on public policy still remains dispersed among different branches of government, primarily between the Executive Yuan and the Legislative Yuan.

As a result, the Legislative Yuan's efforts to ensure its own accountability in legislative affairs have been *ad hoc* and

remain unfinished. There has been significant progress over the past decade in the Legislative Yuan's provision of both information on legislative business to the public and opportunities for public input into the legislative process. There also has been progress in putting in place laws governing legislator behavior, such as the Legislator Demeanor Law and the Political Contributions Law. Despite such progress, the public remains largely unconvinced that lawmakers act in accordance with the public interest in their day-to-day capacities as elected representatives. According to a recent survey, "posturing" ranks highest on a list of the public's concerns relating to legislators, followed by corruption.¹⁴ This suggests that greater attention needs to be paid to laws, procedures, and rules to support legislative performance that assures the public that legislators' purpose is to serve them, and not carry out activities in their own self-interest.

Third, the electoral system's impact on the perceived relationship between voters and their elected representatives affects how legislators view their responsibilities once they have assumed office. Under Taiwan's current single non-transferable vote (SNTV), multi-member district system, intra-party competition for voters' support is a significant aspect of legislative elections in Taiwan, and legislative behavior has been marked by the cultivation of the personal vote.¹⁵ This is not in itself in conflict with principles of democratic governance, but in practice it creates social demands which, at their best, divert the time and efforts of legislators away from their lawmaking and oversight functions. High levels of absenteeism have long been a feature of committee meetings and Yuan sittings, for example. At their worst, they can open the door to corrupt practices and self-dealing. In between, they can bind the legislators' concept of representation to a small group of constituents and perpetuate legislative behavior focused on delivering goods to special interests, rather than on promoting good governance.

Finally, the fractious nature of party politics combined with declining voter turnout in legislative elections suggests that the political party system also continues to be deficient in reflecting and fostering accountability, consensus-building, and participation. The current electoral system has facilitated the development of fragmented parties whose "weak ideological foundations make them vulnerable to unprincipled and opportunistic political infighting."¹⁶ Parties on both sides of the Blue/Green divide have demonstrated difficulty in turning diverse citizens' interests into coherent policy platforms defined by anything other than the split over

national identity and relations with mainland China. Even on those issues, frequent public displays of fissures on both sides, including within the factionalized parties, signal the tenuous ability to engage citizens and build consensus within each camp. Moreover, the desperation with which each camp has sought to score on the political front has opened the door for extremist minority voices on both sides to drive the political debate, drowning out efforts to draw attention to other pressing policy issues.¹⁷

As a result, the political party system, the key intermediary between voters and elected institutions, is failing to channel citizens' interests into sound policy platforms effectively through consensus-building and civic participation. Accountability is also weak, as the party system has not been able to produce credible alternative options for voters. Survey data show that public trust in political parties is lower than public trust in Legislative Yuan, both of which rank behind public trust in the courts, the police, and the military.¹⁸ In the December 2004 elections for the 6th Legislative Yuan, voter turnout for Legislative Yuan elections fell below 60% of eligible voters for the first time, in contrast to 80% for the March 2004 Presidential election. While turnout for Legislative Yuan elections never has been as high as for presidential elections, the difference in voter turnout between the two has been steadily growing since the introduction of direct presidential elections. The disengagement of an increasing portion of the electorate from legislative elections has worrisome implications for the status and legitimacy of the Legislative Yuan as a key democratic institution.

INSIDE LEGISLATIVE AFFAIRS: DE-RAILING THE LEGISLATIVE YUAN'S DEMOCRATIC POTENTIAL

Good-faith efforts within the Legislative Yuan to overcome the constraints discussed above and to conduct legislative affairs in a manner consistent with principles of democratic governance do exist, as demonstrated by the work of some cross-party alliances and progress in transparency in legislative affairs. The impact of these efforts on overall legislative performance, however, is diluted when the internal framework for legislative activities in essence does not provide sufficient incentives for action, based on the core principles of democratic governance, or strong deterrents to action contrary to these principles. This section discusses a few ways that the system of rules, procedures, and standard practices of the Legislative Yuan impede the Yuan's ability to function effectively and support democratic governance.

First, the agenda-setting process of the Legislative Yuan is

governed by rules that enable the legislative agenda itself to be undermined by political confrontation. The Procedure Committee sets the legislative agenda by determining which bills will be placed on the schedule for the First Reading, the first stage of the deliberative process. The Committee is not obligated to place bills on the agenda, however. Because the Committee is comprised of legislators and reflects the party composition of the Legislative Yuan, agenda-setting can be used to prevent legislation, particularly from the minority, from entering the deliberative process, and is thus subject to political deal-making.¹⁹ This not only preempts the priority-setting initiative and deliberative role of the standing committees, but also detracts from the Legislative Yuan's governance role more generally, as some bills in need of public debate and consensus-building fail to make it into the deliberative process, or find support ensured without meaningful debate.²⁰

Second, once legislation enters the deliberative process, the frequent use of inter-party (or cross-party) negotiations to determine the fate of draft legislation also detracts from the conduct of legislative business in accordance with principles of democratic governance. The inter-party negotiation mechanism emerged from the lack of a consensus-building tradition, itself a legacy of the long period of one-party rule; the democratization of the Legislative Yuan gave rise to increased competition over control of the legislative agenda both between and within parties, which frequently paralyzed the legislative process. In inter-party negotiations, the speaker of the Legislative Yuan, party caucus leaders, and a limited number of additional legislators convene on behalf of the other members of the Legislative Yuan to settle disagreements regarding legislation under review, legislative procedure, or operational issues. Institutionalizing the inter-party negotiations in the legislative process was a measure intended to provide a more efficient mechanism for resolving disputes when deliberations in committee meetings or Yuan sittings failed to generate a consensus.

In reality, the inter-party negotiations have displaced committees as the venue for decision-making on the content of legislation prior to voting by the full Legislative Yuan. The negotiations effectively divert responsibility for decisions on legislation away from committee members and perpetuate the concentration of decision-making power in the party caucus leaders and Legislative Yuan leadership. Because the negotiation results carry the authority of the political party leadership, legislation that emerges from the negotiations is unlikely to be subjected to further debate as it is presented to the entire Yuan for a vote. The practice of inter-party

negotiations undercuts the relevance of the standing committees and discourages initiative and attentiveness in lawmaking by rank-and-file legislators.

The closed-door, off-the-public-record negotiations effectively shield the legislative decision-making process from public scrutiny, providing another venue for unaccountable deal-making. Though not classified as "secret," the inter-party negotiations are closed to the public and the media. Participating legislators sometimes brief the news media on their own views of progress (or lack thereof) made during the negotiations, but only the final results of the negotiations are required to be reported formally for the official Legislative Yuan records (the *Legislative Yuan Gazette*). Information on the negotiation proceedings, which could be used to identify the participant or party responsible for specific changes in the bills negotiated, is omitted from the official record. Given the decisive role of the inter-party negotiations in the legislative process, the lack of access to a formal record of the negotiation proceedings (which are allowed to take up to four months for a single bill) represents a critical shortcoming in the transparency of the formal legislative process. This not only impedes public understanding of how key decisions regarding bills under consideration are made, but also weakens accountability for the decisions that were made during the negotiations.²¹

Third, with limited influence in the legislative process, the Legislative Yuan's standing committees do not serve to ensure thorough, informed review of draft legislation or oversight of public policy. Such review, supported by use of careful research, budgetary information, and public input, is the basis for knowledgeable deliberation and government interpellation, and hence legislative accountability. Instead, the rules and structure of the standing committees, including low quorum thresholds, no incentives based on seniority, and frequent rotation in membership during a single legislative term, tend to discourage meaningful, informed lawmaking and oversight activities through the committees. Limited review in committee also limits opportunities for public understanding of and participation in the review process through public hearings.

Fourth, while some legal and regulatory mechanisms do exist to regulate the legislator behavior, existing mechanisms generally are viewed as insufficient in penalizing non-accountable behavior. Such behavior can range from inappropriate (e.g., treating colleagues with disrespect, willfully violating institutional rules), to irresponsible (e.g., making unsupported claims, leaking privileged

information), to illegal (e.g., self-dealing and corruption). The Legislative Yuan has put in place mechanisms such as the Discipline Committee, the Legislator Demeanor Law, and the Political Contributions Law, but penalties for aberrant behavior are either weak or loosely enforced.²² Efforts to promote other "sunshine legislation," such as legislation on access to government information and the regulation of lobbying, have stalled. As a result, appearances of conflicts of interest and sensational antics by legislators continue to undermine trust in the Legislative Yuan.²³

Finally, public access to key dimensions of Legislative Yuan activities remains limited, reducing the transparency and accessibility of legislative affairs. On one hand, the Taiwanese public today enjoys unprecedented levels of access to information on and media coverage of legislative activities, as well as legislators. Efforts to promote "e-government," liberalization of the media industry, and growth of public interest advocacy groups, accompanied by advances in information technology, have all combined to provide the public greater information on legislative activities. The Legislative Yuan also provides media access to open meetings in the Yuan and committees, and makes records of meeting proceedings available in print and via the Internet.

On the other hand, notable limits to the public's access to information on legislative activities persist. In the absence of unedited broadcast coverage on Legislative Yuan activities, public images of legislative activities are determined by access provided to the media and the editorial decisions of commercial broadcasters. Furthermore, as discussed above, the substance of legislative decision-making tends not to take place in the Yuan sittings and committee meetings to which the media have access. These factors combine to create an environment in which the media's desire for quick, attention-grabbing headlines and politicians' efforts to score political points encourage the confrontational behavior and commentary that dominate public images of legislative affairs. Meanwhile, the substance of much legislative activity and decision-making remains inaccessible to most of the public, which also affects accountability in Taiwan's legislative affairs.

The system of laws, rules, procedures, and standard practices that provides the institutional framework for legislative activities, too, is the product of the interrelationship between political culture, structure, and institutions. In this respect there are some positive signs, as calls for reforms in each of the areas mentioned above have been voiced by legislators, the government, the media, and civil

society. The non-transparency of inter-party negotiations, for example, not only is questioned by scholars, but also has drawn fire from public interest groups, the media, and even some legislators. Whether or not these calls will generate the political will required, both inside and outside the Legislative Yuan, to ensure that the conduct of legislative affairs is firmly grounded in and promotes accountability, transparency, consensus-building, deliberation, accessibility, and participation, remains uncertain.

Until such political will exists, efforts to generate, deploy, and sustain additional improvements in staff and institutional capacity - including in areas such as legislative drafting and analysis, technical legislative advisory services, formalized qualification and benefits systems for legislative staff, etc. - are likely to fall short of expectations in their impact on overall legislative performance in representation, lawmaking, and government oversight.

THE OPPORTUNITIES

The political culture at the foundation of Taiwan's political structure and institutions, and political life in general, is in a state of flux. Over the past few decades, the changing values of Taiwan society have made it possible for Taiwan to achieve an increasingly democratic form of government, in accordance with growing expectations of governance based on accountability, consensus, and civic participation. The inertia of political values that emphasize control of governance above all else, however, continues to fuel politics as a zero-sum game based on pursuit of dominance and, conversely, fear of elimination or irrelevance. The challenge for Taiwan, as in democratic and democratizing societies all over the world, is to find ways to overcome this inertia - to cultivate politics and political institutions that reflect and foster principles that support Taiwan's progress toward realizing the full potential of effective democratic governance.

The constitutional reforms of 2005 are set to pave the way for significant changes in the electoral system and structure of the Legislative Yuan. In this environment of sweeping change, the doors are wide open for initiatives bringing the issues of greater accountability and transparency, consensus-building and deliberation, and accessibility and participation in the Legislative Yuan to the forefront of efforts to promote more effective democratic governance in Taiwan. Indeed, the initiatives taken (or not taken) by political actors and the public during this transition period

will influence the fundamental character of Taiwan's representative democracy for years to come, and the pace at which democratic governance in Taiwan will move forward. What might be included in some of these efforts?

First, a sustained public dialogue is needed on the features or characteristics of the Legislative Yuan that the people of Taiwan wish to see realized as part of any medium-to-long-term legislative reform effort. The undesirable features of the current state of legislative affairs are raised regularly through public opinion polls, in the media, and even among legislators, but key questions remain: What is the desired alternative to the current state of affairs? How would the public like to see the Legislative Yuan function? To the general public, what should greater accountability, deliberation, and accessibility look like in practice? Such a dialogue would help provide a vision for the Legislative Yuan, providing a sense of common purpose to reform efforts and simultaneously offering an opportunity for renewed engagement between the public and the Legislative Yuan. Such a dialogue also could provide greater depth to the level of public understanding about the anticipated impact and limitations of the current reforms.

Creating a sustained public dialogue would require concerted efforts across political institutions, the media, academia, and all sectors of society to promote better understanding among the general public of legislative affairs and energize civic participation in issues concerning the future development of the Legislative Yuan. Some concrete steps that could be considered in the near term include the following:

- Expanding the Legislative Yuan's public affairs programs and services to increase the accessibility of legislative affairs to the general public. Such measures could include the provision of easy-to-understand information guides on the legislative process, expanded opportunities to visit and observe the Legislative Yuan in session, and unedited broadcasting of committee meetings and Yuan sittings. Such measures would facilitate the Legislative Yuan's public outreach and broader public understanding of how the Yuan currently functions, as well as greater awareness of the positive changes that actually have taken place in the Yuan over the years.
- Organizing a regular forum or "town hall meeting" where members of the public could communicate directly with members of the Legislative Yuan on issues specifically related to the Legislative Yuan's functioning

and the representative role of the Yuan's members. While scholars and policy "think tanks" actively research and discuss such issues, greater effort could be made to engage the general public on these issues. Public forums not only would provide a direct feedback mechanism to legislators, but also provide legislators an opportunity to update communities on efforts to improve the functioning of the Legislative Yuan.

- Engaging Taiwan's youth in the discussion on the role and future of the Legislative Yuan. Stimulating interest among Taiwan's younger population in legislative affairs is critical for the long-term development of the Legislative Yuan and its relationship with Taiwan's citizens. Measures to get Taiwan's youth involved as stakeholders in the Legislative Yuan's development could include the integration of greater debate on the desired characteristics and functions of Taiwan's legislative bodies and representative government into forums such as the formal civic education curriculum, youth-oriented media programs, or talent (e.g., writing, public speaking) competitions.

Second, greater attention could be given to nurturing mechanisms, either formal or informal, that foster greater multi-partisan communication and cooperation on legislative affairs. For example, the Legislative Yuan could explore the possible benefits of establishing a regular forum for the systematic, comprehensive review of institutional management and reform issues. In recent years, legislatures in both emerging and "old" democracies alike have utilized mechanisms such as parliamentary modernization committees to facilitate multi-partisan cooperation on researching and evaluating strategic internal reform measures; these efforts demonstrate a common need among legislatures to reflect periodically on how to evolve with the changing needs and aspirations of their societies.²⁴ In Taiwan, some of the issues that could be reviewed through such a multi-partisan mechanism might include what changes could be made in legislative procedure, personnel structure, committee structure and rules, etc., in order to support better the functions of the Legislative Yuan and address the public's concern regarding legislative performance. While such issues currently are examined separately by academia, legislative research staff, individual legislators, or political party policy committees, the Legislative Yuan lacks a venue where different stakeholders can review fundamental operational issues in the context of institutional objectives. Such a mechanism, with participation from legislators and Legislative Yuan civil servants, could play a constructive role in helping formulate and

promote strategies to ensure that the laws, policies, rules, and regulations governing the Legislative Yuan's operations support, rather than render ineffective, efforts to improve the representation, lawmaking, and oversight functions of the Legislative Yuan.

Another option could be to strengthen linkages between the informal, multi-party alliances formed at the initiative of individual legislators concerned about specific issue areas and the legislative review and oversight processes associated with those issue areas. Despite partisan divisions in the Legislative Yuan, individual legislators do communicate and cooperate across party lines on matters concerning specific pieces of legislation or policy that are of interest to them. Existing alliances with participation from across the Blue/Green divide include the Legislative Yuan Sustainable Development Association, the Health, Welfare and Environment Coalition, and the Legislative Alliance for Science and Technology. Such alliances have facilitated collaboration among legislators and their staffs in research and information-gathering related to policy issues, including dialogue with civil society organizations, businesses, and citizens. To encourage the substantive impact of such alliances, more extensive capacity-building opportunities could be provided to the staff of legislators participating in such efforts.

Similarly, greater attention should be given to strengthening mechanisms for communication, negotiation, and collaboration between the Legislative Yuan and Executive Yuan on specific legislative issues and priorities *prior* to the initiation of draft legislation. For example, opportunities for Legislative Yuan staff, including staff of legislative research units, and Executive Yuan legislative staff, to come together to engage in joint research, evaluation, and legislative drafting related to specific issues could help to foster cross-institutional teamwork and lead the way to more regular channels of communication on legislative issues. Multi-party legislative alliances could play a role here, as well, in facilitating communication between the legislative and executive branches, and helping to expose and address contentious issues before such issues become an excuse for using the legislative process to engage in Executive-Legislative stand-offs.

Finally, outside the Legislative Yuan, academia, the media, civil society organizations, and the business sector can play greater roles in helping the public understand that the monitoring of legislative activities and ensuring accountability of the Legislative Yuan is the public's affair,

and therefore the responsibility of all sectors of society. Only when the public appreciates how the conduct of legislative affairs affects its various interests, can it generate the demand for information on legislative activities that is required to support effective and sustainable monitoring activities. In this regard, civil society organizations, including those representing the business sector, could help their constituents to understand better how the legislative process affects their interests, and how supporting the provision of information on legislative activities is also in their interest. Until the public understands the need for and the uses of different types of legislative "monitoring," the level of public engagement in legislative affairs may be insufficient to ensure that the conduct of legislative affairs is held consistently to higher standards and in accordance with public expectations.

With imminent changes on the horizon for the structure of the Legislative Yuan and the electoral system, now is

the time to renew past efforts and embark on new initiatives designed to strengthen the legislative system's contribution to democratic governance in Taiwan. Efforts such as those outlined above could go a long way in fostering a political environment in which the pursuit of good governance, not political dominance, is at the center of politics. These and related initiatives would require, however, the accompanying commitment of individuals and institutions across the political landscape, not only within the Legislative Yuan, to governance based on principles such as accountability and transparency, consensus-building and deliberation, and accessibility and participation. Only when political institutions and society work together to sustain the demand for better governance can efforts to strengthen the legitimacy and functions of the Legislative Yuan hope to have a real impact on effective democratic governance in Taiwan.

For more than 50 years, The Asia Foundation has combined technical and geographic expertise in supporting programs that contribute to the long-term development of democratic institutions in Asia. The Foundation has worked in partnership with leaders in the government, business, and civil society sectors, assisting their efforts to find creative solutions to common challenges faced across societies. Rather than serving as a proponent of "correct" models, the Foundation helps to provide opportunities for the domestic and cross-border exchange of ideas on how to address pressing problems of political, social, and economic development.

Recognizing the importance of a strong legislature in the development of democratic governance, the Foundation has provided assistance for institution strengthening and capacity-building of legislatures throughout Asia over the past 25 years, including Bangladesh, Cambodia, East Timor, Indonesia, Japan, Korea, Malaysia, Mongolia, Nepal, Pakistan, the Philippines, Sri Lanka, Taiwan, Thailand, and Vietnam. The Foundation's initiatives have focused on strengthening legislative capacity, increasing broad-based participation in legislative affairs, and implementing education and exchange programs for legislators and legislative staff.

- A pioneering effort in the Foundation's support for legislative capacity-building was a four-year US\$300,000 grant from 1985-89 in Taiwan to modernize the Legislative Yuan's Library Information Service (LIS), the predecessor to today's Parliamentary Library. The Asia Foundation provided support to the Legislative Yuan for development of a computerized database of ROC legal records, staff training at the U.S. Library of Congress, and acquisition of legal reference materials, which enhanced its research and information services. The LIS became a model research and training site for other legislatures in the Asia Pacific region in the areas of research and related parliamentary support services.
- In Indonesia, the Foundation has supported civil society efforts to increase citizen participation in public policy formulation, such as the documentation and dissemination of information on the legislative process, including lessons learned from the mixed record of legislative advocacy efforts.
- The Foundation has an extensive record of implementing comparative legislative programs and regional and U.S. study tours for members of parliament and parliamentary staff from around Asia. In recent years, the Foundation has supported efforts by members of the Korean National Assembly to discuss how to enhance legislative research capacity and financial oversight of national budget issues (2003); and develop greater comparative knowledge of the challenges faced by elected representatives in fulfilling democratic ideals (2005).

- 1 On one side are the "pan-Blue" parties, namely the Chinese Nationalist Party or Kuomintang (KMT) and its ally, the People First Party (PFP). On the other side are the "pan-Green" parties, principally the Democratic Progressive Party (DPP) and its ally, the Taiwan Solidarity Union (TSU).
- 2 There is still much debate among theorists as to how exactly "political culture," its source, and its relationship with political institutions should be understood. Common interpretations, however, define political culture as "a complex of feelings and images" involved in both "the way political interests are identified and then acted upon." As such, political culture is embedded in a society's politics, as well as the institutions that both emerge from and influence politics. John Street, "Review Article: Political Culture - From Civic Culture to Mass Culture," *British Journal of Political Science* 24.1 (1994): 95-113.
- 3 Central Election Commission in The Republic of China (Taiwan), "Statistical Analysis of Nominees Elected Background for The 6th Legislators Elections," available from the Election Study Center, National Chengchi University (2004). URL: <http://vote.nccu.edu.tw>
- 4 This paper is not intended to provide detailed descriptions of the Legislative Yuan's formal structure or specific proposals for constitutional or structural reform, which are available from research institutions in Taiwan. Information regarding the Legislative Yuan's history, structure, and legislative procedure can be found at its website, <http://www.ly.gov.tw>.
- 5 The constitutional amendments were part of a package initiated by the 5th Legislative Yuan in 2004, and ratified by the provisional National Assembly in May 2005. The amendment package included provisions to re-design Taiwan's legislative electoral system, from a single non-transferable vote/multi-member district (SNTV-MMD) system to a single-member district/two-vote system; reduce the number of Legislative Yuan members by half (from 225 to 113) and increase the legislative term of office from three years to four; abolish the National Assembly and give the public the power to ratify amendments to the constitution through popular referendum; and place the final decision on impeachment of the President or Vice President of the R.O.C. in the hands of the Council of Grand Justices.
- 6 Yun-han Chu, "Taiwan's Year of Stress," *Journal of Democracy* 16.2 (2005) 46. See also Doh Chull Shin and Jason Wells, "Is Democracy the Only Game in Town?" *Journal of Democracy* 16.2 (2005): 88-101. Outside of Taiwan, the apparent readiness of Taiwan's legislators to resort to physical confrontation over their differences also "undercuts [Taiwan's] claims to be a democratic role model in Asia" and "raise[s] questions about how serious the Taiwanese are about their own democracy." Stephan Grauwels, "Legislative brawl endangers Taiwan's democratic image," *Associated Press Worldstream* via LexisNexis, October 14, 2005.
- 7 The background information in this section is based on legislative assistance materials from the Department for International Development (DFID), National Democratic Institute for International Affairs (NDI), Swedish International Development Cooperation Agency (Sida), United Nations Development Programme (UNDP), and U.S. Agency for International Development (USAID).
- 8 Shioh-duan Hawang, "The New Parameter of Legislative Politics," paper presented at the International Workshop on Challenges to Taiwan's Democracy in the Post-Hegemonic Era, Taipei, June 7-8, 2002: 14.
- 9 Susan J. Pharr, Robert D. Putnam, and Russell J. Dalton, "A Quarter-Century of Declining Confidence" *Journal of Democracy* 11.2 (2000): 5-25.
- 10 The definitions provided in this section are adapted from Swedish International Development Cooperation Agency (Sida), "The Political Institutions: Parties, Elections and Parliaments," (2002) 34-36; Jeremy M. Creelan and Laura M. Moulton, *The New York State Legislative Process: An Evaluation and Blueprint for Reform*, Brennan Center for Justice at NYU School of Law (2004) p. 2-3; and Abner J. Mikva and Eric Lane, *Legislative Process*, (2nd ed. 2002).
- 11 For more on how Taiwan's institutional arrangements affect governance, see Jih-wen Lin, "Institutionalized Uncertainty and Governing Crises in the Post-Hegemonic Taiwan," paper presented at the International Workshop on Challenges to Taiwan's Democracy in the Post-Hegemonic Era, Taipei, June 7-8, 2002.
- 12 In Taiwan's semi-presidential system, the president holds the power to appoint the premier, who forms the government (Cabinet) independently of the legislature. The Executive must submit all policy and budget proposals to the Legislative Yuan for approval, but the latter's power to alter budget proposals is limited to decreasing budget amounts, while legislative oversight of government policy does not include rights to audit or investigation. While the Legislative Yuan has the right to a vote of no-confidence against the premier, the cost of elections, should the vote be accompanied by dissolution of the legislature, has served as a deterrent to its use. (Chu, 48; Lin, 10-11.)
- 13 For more on the Executive Yuan's processes for initiating legislation, see Brian L. Kennedy, "Rube Goldberg Meets Taiwan Law-making," *Topics* [now *Taiwan Business Topics*], American Chamber of Commerce in Taipei 34.8 (2004): 36-38.
- 14 Taiwan ThinkTank, "Poll-Taiwanese people's impression of the Legislative Yuan," Feb. 1, 2005. URL:

<http://www.taiwanthinktank.org>

- 15 The most salient feature of Taiwan's current electoral system is the single non-transferable vote (SNTV), multi-member district system. 184 Legislative Yuan seats out of 225 are elected by this method, where voters cast a single vote in a district that will have multiple representatives. The local district seats are won by the candidates with the greatest number of votes; the remaining Legislative Yuan seats are won by proportional representation based on the number of seats won by each party in the local districts. SNTV in Taiwan tends to generate strong intra-party competition in addition to inter-party competition, due to multiple candidacies from the same party in the same district. Among other effects, this not only makes it possible for candidates to be elected with relatively few votes, but also amplifies the importance of securing a reliable group of supporters, and increases the role of money politics in the campaign process. Additional effects of the SNTV system are discussed in Bernard Grofman et al, eds., *Elections in Japan, Korea, and Taiwan under the Single Non-Transferable Vote*, University of Michigan Press, 1999.
- 16 Shelley Rigger, "Why Taiwan's Political Paralysis Persists," Foreign Policy Research Institute E-Notes, April 18, 2002. URL: <http://www.fpri.org/enotes/asia.20020418.rigger.taiwanpoliticalparalysis.html>
- 17 The May 14, 2005 National Assembly election, for example, was to have been about the pros and cons of the proposed constitutional amendments, but the focus of the parties turned primarily to issues related to ties with China instead. This was despite the fact that the elected National Assembly's actions were limited to voting on the proposed constitutional amendments, and that the DPP and KMT both shared the same position (for the amendments), while the TSU and the PFP also both shared the same position (against). Joy Su, "Voters unphased by pan-Blue China trips," TaipeiTimes, May 15, 2005, p. 3.
- 18 According to data from the East Asia Barometer project, the percentages of survey respondents expressing "a great deal" or "a lot" of trust in certain institutions was as follows: Army/Military, 58%; Police, 45%; Courts, 41%; Parliament/Congress, 20%; Political parties, 16%. URL: <http://www.globalbarometer.org/governanceindicators/Taiwan.htm>
- 19 "Parties bill-juggle in final week of legislative session," The China Post, May 23, 2005; Ko Shu-ling, "Pan-blue camp blocks arms bill again," TaipeiTimes, May 28, 2005, p. 1.
- 20 "Lawmakers reduce legislative backlog," The China Post, May 21, 2005.
- 21 Chen Jia-hong, "Is opening the legislative process and affairs to the public so hard?" China Times (in Chinese), January 21, 2005 ("Gong kai lifa chengxu yu yishi you zhenme nan ma?"); Wang Hsiao-wen, "Legislators slammed for murky bill deliberations," TaipeiTimes, December 3, 2004, p. 2; Staff writer, "Last-minute laws leave no room for discussion: critics," TaipeiTimes, January 17, 2000, p. 3.
- 22 For example, challenges in enforcing the Political Contributions Law with regard to unlawful contributions include "donors' insufficient awareness of the contribution law provisions; the absence of detailed enforcement rules; and the failure to authorize the Control Yuan to mete out 'administrative penalties' to those who refuse to cooperate in the investigative process." Sofia Wu, "DPP lawmaker tops list of political contribution recipients," Central News Agency (Taiwan), May 11, 2005.
- 23 Ko Shu-ling, "Indicted Legislator elected head of judicial committee," TaipeiTimes, March 8, 2005, p. 1; "DPP lawmakers dare police to arrest them," The China Post, May 5, 2005; Ko Shu-ling, "Legislator sues colleague over slap in face," TaipeiTimes, May 20, 2005, p. 3.
- 24 The national and regional-level parliaments of United Kingdom and Canada, for example, have utilized parliamentary modernization committees to guide such reform efforts.

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