



WESTMINSTER
FOUNDATION FOR
DEMOCRACY



HANDBOOK ON PARLIAMENTARY ETHICS AND CONDUCT A GUIDE FOR PARLIAMENTARIANS

GLOBAL TASK FORCE ON PARLIAMENTARY ETHICS
CHAIR: GHASSAN MOUKHEIBER

AUTHOR: GREG POWER

A GUIDE FOR PARLIAMENTARIANS
Global Task Force on Parliamentary Ethics

Greg Power

Published by GOPAC- WFD

The **Global Organization of Parliamentarians Against Corruption (GOPAC)** is an international network of parliamentarians dedicated to good governance and to improving parliaments as institutions of oversight. It is the only parliamentary organisation/network with the single focus on combating corruption throughout the world. GOPAC members represent over 90 countries in all regions of the world. There are more than 30 national chapters in Africa, the Arab Region, Asia, Latin America, North America, and Europe working to improve governance in their respective countries.

The **Westminster Foundation for Democracy (WFD)** is the United Kingdom's democracy-building foundation, aimed at supporting the consolidation of democratic practices in developing democracies. Working with and through partner organisations, WFD seeks to strengthen the institutions of democracy, principally political parties (through the work of the UK political parties), parliaments and the range of institutions that make up civil society. WFD believes that, for a democracy to flourish, all of these institutions must be strong.

Acknowledgements

This document was commissioned on behalf of GOPAC by the Westminster Foundation for Democracy, and produced under the auspices of the Global Task Force on Parliamentary Ethics, chaired by Ghassan Moukheiber.

The document was written and edited by Greg Power on behalf of the Task force, the Westminster Foundation for Democracy and GOPAC.

About the author

Greg Power is a Director of Global Partners, a social purpose company working on projects to support democratic politics. He is a parliamentary specialist involved in projects to support the development of legislative institutions and political parties in countries in the Middle East, Africa and Central and Eastern Europe including Iraq, Rwanda and southern Sudan...

www.global-partners.co.uk

greg@global-partners.co.uk

The author would like to express his gratitude to Ghassan Moukheiber as chair of the task force, and to all of its members, for their help in developing the content. In addition, he is very grateful to Dina Melhem at WFD, Stephen Tsang and Nola Juaritis at GOPAC, and Oonagh Gay and Alda Barry at the House of Commons for their comments and suggestions on the text.

FOREWORD

The Global Organization of Parliamentarians Against Corruption (GOPAC), in collaboration with the Westminster Foundation for Democracy (WFD), is pleased to publish this Handbook on Parliamentary Ethics and Conduct.

The objective of the Handbook is to provide reform-minded parliamentarians with clear and useful guidance to develop the various building blocks of an effective ethics and conduct regime – a regime that is consistent with their respective political and cultural contexts, and at the same time, adheres to fundamental international standards.

Developing the rules of such an ethics and conduct regime with an appropriate enforcement mechanism for parliamentarians has become necessary in order to:

- allow parliamentarians to demonstrate high standards of ethics consistent with their important public interest roles, particularly in holding the executive branch of government accountable
- deter and sanction specific cases of unethical behaviour by parliamentarians in the broader context of preventing and fighting corruption
- enhance the public's level of trust in the democratic political system in general, and in parliaments and their members in particular, which is greatly influenced by perceived and real corruption

- implement the provisions of Article 8 of the United Nations Convention Against Corruption, which provides for the development of 'Codes of Conduct for Public Officials'

GOPAC members have recognized the concerns and needs mentioned above. During their global conference held in Arusha, Tanzania in September 2006, the members resolved to create a Global Task Force (GTF) on parliamentary ethics and conduct and mandated its Arab chapter (ARPAC) to lead it.

The Global Task Force comprises GOPAC parliamentarians from several continents, expert consultants, and representatives of international organizations. Its main goal is to develop a handbook on parliamentary ethics and conduct that can be disseminated to and used in various countries. A cooperation agreement was signed with the WFD, who provided the necessary expertise, technical and financial resources for the project, and for which we are most grateful. The Handbook was written by Mr. Greg Power, an internationally recognized expert on parliamentary rules and procedures. The GTF members met several times to establish the project's methodology, to develop an action plan, as well as to review and discuss the various drafts in order to make the Handbook a professional and useful document of high quality.

In doing so, the GTF members focused their attention on important issues that were less addressed so far in the literature and parliamentary practice, namely those related to conflict of interest, transparency, disclosure and restrictions on political activity. However, they opted to leave them out from any major development in this Handbook, in order to keep the focus on the selected issues. It is useful to highlight the two main areas not fully developed in this Handbook, albeit cornerstones of any ethics regime:

The first area is encouraging full compliance with the rules that criminalize acts of corruption, in compliance with the minimum standards provided by the UN Convention against Corruption (UNCAC). Although such rules are generally applicable to public officials and private citizens, some of them are of particular relevance to parliamentarians, who are more vulnerable to certain acts than other public officials, given the nature of their functions and responsibilities.

The second area is the personal demeanour of parliamentarians inside and outside parliament, which covers the most classical and strict rules of ethics and conduct, however indirectly related to corruption. These rules tend to cover mostly the relationships between parliamentarians themselves. They are most commonly included in the parliamentary rules of procedure and by-laws.

With the release of the Handbook, it is hoped that many reform-minded parliamentarians around the world will read it, and be inspired by its content to take the necessary action to develop their own ethics and conduct regime, or to improve their existing ones.

It is also our wish that this first edition of the Handbook will lead to significant follow-up

action, such as: the development of a similar handbook on ministerial ethics and conduct, translation into various languages (a project of translation for the Arab countries is already under way), training programs (A training on how to use the guidebook for members of Arab Parliamentarians against corruption has already taken place), development of examples and compilation of best practices of ethics and conduct regimes for parliamentarians around the globe.

Finally, we would like to express our deep appreciation to those who have generously contributed their knowledge, expertise, time, effort and resources to make the publication of the Handbook possible. Our gratitude goes particularly to the following individuals and organizations:

- GOPAC Parliamentarians: Hon. Dan Wandera Ogalo (Senator Uganda), and Hon. Ross Robertson (MP New Zealand).
- The Author: Mr. Greg Power of Global Partners and Associates.
- The Westminster Foundation for Democracy, particularly the countless effort of Ms. Dina Melhem and her team.
- UNDP - POGAR: Mr. Arkan El Seblani.
- Expert consultants: Ms. Alda Barry (Registrar of Members' Interests UK); Ms. Oonagh Gay (House of Commons Library UK); Mr. Howard Whitton (The Ethicos Group); Mr. Kenneth E. Kellner (Senior Counsel to the Committee on Standards of Official Conduct, U.S. House of Representatives).
- The team of GOPAC and ARPAC, particularly, Ms. Maia Bulbul, Ms. Nola Juraitis, Mr. Martin Ulrich and Mr. Stephen Tsang and all their support staff.

***Ghassan Moukheiber (MP Lebanon) Chairman
GOPAC Global Task Force on Parliamentary
Ethics and Conduct***

CONTENTS

Foreword | 5

Introduction | 8

- Terminology and structures for an ethics and conduct regime | 9
- Building an ethical culture - consultation and discussion | 10
- The process of developing an ethics and conduct regime | 11

Section 1: Determining the purpose of an ethics and conduct regime | 12

- Defining the problem | 13
- The broader purpose of the ethics and conduct regime - ensuring MPs understand their roles | 14
- Summary – A toolbox approach | 15
- Key Questions | 15

Section 2: Establishing the principles for an ethics and conduct regime | 16

- Defining the principles of parliamentary conduct | 17
- i. Internal sources | 17*
- ii. International parliamentary experience | 17*
- iii. International standards | 18*
- Summary - Identifying universal principles | 19
- Key questions | 19

Section 3: Developing the content of the ethics and conduct regime | 20

- **Part one** – Identifying and addressing conflicts of interest | 21
- Summary – Ensuring the integrity of the institution | 22
- Key questions | 22

- **Part two** – Rules for transparency and disclosure | 23

i) Forms and timing of disclosure | 23

ii) Who should register? | 23

iii) What should be registered? | 24

- Summary – Disclosing the right details | 25

- Key questions | 25

- **Part three** – Restrictions on ‘outside interests’ | 26

- Post-employment restrictions | 27

- Summary – Finding the right balance | 27

- Key questions | 27

- **Part four** – Parliamentary Immunity | 27

- Key Questions | 29

Section 4: mechanisms for regulation and enforcement | 30

- Three models for regulation of ethical conduct | 31

- A sliding scale of sanctions | 32

i. Categories of rules | 32

ii. Three categories of sanctions | 33

- Summary – Finding the right mechanisms and proportionate sanctions | 34

- Key questions | 34

Section 5: developing a culture around the ethics regime - education and training | 36

- Summary – Influencing parliamentary behaviour | 38

- Key questions | 39

Section 6 - Conclusion | 40

Sources | 42

INTRODUCTION

This handbook has been designed by politicians for politicians. It is aimed, principally, at reform-minded members of parliament (MPs) but, we hope, will also be used by others (including citizens, Civil Society Organizations and the media) seeking to understand and improve standards of ethical conduct within legislative bodies.

The handbook has two purposes, first, to describe and explain the constituent parts of a system of ethics and conduct that need to be implemented and, second, to identify the key issues for politicians in developing, implementing and enforcing such a system.

The handbook does not aim to provide a universal blueprint, capable of being implemented in every legislature. This is not feasible. It is impossible to transplant practice directly from one parliament to another. The content, structure and provisions will vary according to the political context, culture and rules that exist within that institution. Instead the guide sets out the key stages of a political reform process – firstly, establishing political agreement on the broad principles for ethics and conduct, and then building more detailed rules and mechanisms for their enforcement.

It is for each parliament to decide the detail – and whether the system will be implemented by legislation, new parliamentary bylaws, protocols, or some other mechanism. But a new system which determines standards of behaviour inside and outside the parliament must command support from politicians and be regarded as legitimate by the public. Therefore it should complement and reinforce existing parliamentary rules, but

should also reflect globally-accepted ethical standards if it is to ensure the integrity of the institution.

Terminology and structures for an ethics and conduct regime

At the outset, it is important to be clear about terminology. The phrase most often to describe these systems is a 'code of conduct'. However, the GOPAC Global Task Force felt that this term could be interpreted in different ways. For countries with a Civil Law tradition 'code' has a legal connotation, implying that such rules would need to be based in a single compiled statute, whereas the ethics and conduct rules and related regulatory framework could be developed incrementally and be included in several different statutes. In Common Law countries a 'code' often infers the opposite, that it is developed by agreement within an institution and its application rests on non-statutory regulation.

We have sought to avoid using the word 'code' where possible in the main body of this document.¹ The handbook is designed to be relevant for both types of legal system. However, finding alternative terminology that is commonly understood is difficult. The task force suggests that it is perhaps more helpful to think of a 'system of ethics and conduct', or an 'ethical regime'. The intention is to provide the building blocks around which new systems of ethical behaviour can be built or further developed.

For the purposes of this handbook we use 'ethics and conduct regime' as an all-encompassing

¹ *Although where other authors are cited and refer to a code of conduct, or where parliaments describe their own systems as 'codes of conduct', we have not changed their terminology.*

term to cover the constituent parts of the system. That system is made up of three distinct parts, which will be referred to as 'principles', 'rules' and 'regulatory framework':

i) Principles: The general ethical principles which all members of the parliamentary institution should seek to uphold.

ii) Rules: The detailed provisions which identify acceptable and unacceptable conduct and behaviour for MPs.

iii) Regulatory framework: The mechanisms for enforcing the rules and applying sanctions.

“A legislative code of conduct is a formal document which regulates the behaviour of legislators by establishing what is considered to be acceptable behaviour and what is not. In other words, it is intended to create a political culture which places considerable emphasis on the propriety, correctness, transparency, and honesty of parliamentarians’ behaviour. However, the code of conduct is not intended to create this behaviour by itself.”

Stapenhurst and Pelizzo, p. 9

Whether these individual aspects of the ethics and conduct regime require legal authority or can be enforced through other means, such as a parliamentary resolution, will need to be decided in each country.

Politicians will also need to determine the content in each of the three areas according to their own circumstances. But each element should link to, and inform, the others. A set of general ethical principles might be widely-accepted, but cannot be used to judge MPs’ behaviour unless they can be linked to activity in certain contexts and circumstances. The principles are given force

through the development of more detailed rules. But in order for the rules to be effective there must, in addition, be the threat of real, but proportionate punishment of those who break them.

Building an ethical culture - consultation and discussion

The purpose of an ethical regime is to ensure certain standards of conduct amongst its members. It should take as a basis the commonly-accepted standards that already exist within the institution, but it should also seek to establish new ones.

Developing an ethics and conduct regime, in other words, requires more than simply publishing a written set of principles, rules and regulations. It means developing political agreement around the purpose of the regime and building a culture around its provisions.

Parliamentarians must be engaged in the process of developing the system at each stage. This can be done in different ways, but the early stages of development should involve as wide a range of MPs as possible - through general debate and discussion. At the later stages it will be more effective to delegate the task of writing rules to a committee, but again it must be accompanied by consultation, discussion and deliberation within the parliament.

The effectiveness of such a system in practice is determined by the way in which it is observed and applied. But an ethics and conduct regime will not, by itself, solve problems of unethical behaviour, nor will it be able to govern the conduct of Members in every given situation – no matter how comprehensive or detailed it is. There will always be grey areas or rules that are open to interpretation.

In these cases the legislature must rely on the individual MP's best judgement to always behave in a manner that upholds the integrity of the institution.

The process of developing an ethics and conduct regime

i) Creating the political will for reform

The first stage is to build a coalition for change within parliament around the need for an ethics and conduct regime. This may be prompted by a political crisis, an incidence of corruption or general parliamentary concern about public trust in the institution. Politicians must understand why a comprehensive and effective ethics is needed and what it is designed to achieve. This is the subject of section 1.

ii) Get agreement on ethical principles first

Once parliamentarians have accepted the need for an ethics and conduct regime, the next stage is to generate agreement around the broad principles by which all politicians should abide. It is important to start with principles for two reasons. First, most institutions already have defining values included in their bylaws or in the constitution. Second, it is easier to get agreement around general principles than around the detail of the rules. This is dealt with in section 2.

iii) Develop detailed rules

The application of ethical principles requires more detailed rules which explain how those principles operate in practice. There are three main elements to these rules; first, defining what constitutes a conflict of interest, second, greater openness to minimise the risk of a conflict of interest and third, limiting politicians' activity where conflicts might occur.

Section 3 examines each of these elements and the sorts of provisions that parliaments might want to implement.

iv) Establishing the regulatory system and training members

The final stage is to develop a robust system of regulation which can enforce the rules. This must also though include the training and education of MPs so that they understand and abide by the rules. This is the subject of section 4.

The process can be likened to one of building a pyramid, starting from a very wide and general base, but building to a narrower and more detailed pinnacle.

This handbook is structured around this process, starting with the broad principles and building to greater detail. It aims to provide the tools for its readers to build their own pyramid, and an understanding of the strategy to do so. However, each parliament is likely to develop the regime in its own style and according to the local political circumstances.

Summary

The development of high ethical standards depends more on politicians than on the contents of an ethics and conduct regime. It relies on MPs understanding and respecting the regime. Developing a new system is therefore a political process which should seek to carry the agreement of Members at every stage. Identifying opportunities for reform and starting with broad principles with which few can disagree will provide a basis from which to build not only detailed rules, but also the political will to establish certain standards of behaviour.

SECTION 1

DETERMINING THE PURPOSE OF THE ETHICS AND CONDUCT REGIME

Developing an ethics and conduct regime is a political process. The political context will therefore shape both the content and the process of developing the regime.

The political situation may also provide the initial opportunity for reformers. It is important that reform-minded politicians regard political and public concern over standards as an opportunity – it may provide the basis for building political will to do something

This section examines how and why ethics and conduct regimes are developed. It is important, first, to be clear about the reasons for introducing an ethics and conduct regime and the problem that it is seeking to address. Second, the regime must complement existing parliamentary rules and procedures to ensure MPs understand their roles, and thus influence their behaviour.

Defining the problem

Parliaments introduce new systems of ethics and conduct usually for one of three reasons:

- i) as a response to ethical misdemeanours,
- ii) public concern about parliamentary standards and
- iii) enforcing existing parliamentary bylaws within parliament.

First, some countries have introduced systems as a direct result of MPs breaking the existing rules. In the United Kingdom, for example, a new system for policing ethical behaviour was introduced in the mid-1990s following several cases where MPs were being paid to represent private interests in the House of Commons. This behaviour breached previous parliamentary resolutions, and highlighted the weaknesses of the existing system of self-regulation. In response to political, public and media

concern a new and more comprehensive regulatory system was introduced which tightened and reinforced the rules governing ethical conduct.

Second, in some countries the need for a new ethics and conduct regime has been mooted in response to a more general public concern about the standards and behaviour of politicians. This may often be prompted by specific cases of MPs using public office for private gain, but the ethics and conduct regime is seen as a way of emphasising public standards across the board as much as the need to introduce new regulations to deal with specific cases. In Australia, for example, the debate about the need for a code of conduct was the result of a slew of stories about misuse of public funds and declining levels of public trust in politicians - at one stage only 7% of Australians believed that MPs had high standards of honesty and ethics. In such circumstances, ethics and conduct regimes are principally about attempting to restore public trust in politicians.

Third, although ethics and conduct regimes have traditionally been used to combat corruption and unethical behaviour their scope is expanding to cover other forms of misconduct which interfere with the operation of parliament. There is particular interest in emerging democracies as to how ethics and conduct regimes might be used to establish the authority of the rules - and the Speaker - in a new parliamentary institution. In the early years of a legislature, there is no general acceptance or common understanding of how the rules of procedure should be interpreted. In fact, they are highly-contested by MPs, so that debate is fractious and the Speaker's authority frequently questioned. The battle is over the type of institution that

members wish to create – in which all Members have a direct interest – and the high turnover of MPs at each election prolongs that process of contestation. Increasingly such parliaments are seeing ethics and conduct regimes as a way of reinforcing parliamentary procedure, protocol and etiquette in the chamber, committee work and even interaction with voters.

The key issue is to identify the nature of the problem that the new system is seeking to address. It is likely that it will include elements of all three of the examples listed above. Although each example might be regarded as a problem, they also provide opportunities for reforming parliamentarians - each provides conducive circumstances for establishing a new regime. In short, reform-minded MPs should use these opportunities to frame the discussion around a new ethical regime. Still, the objectives of the new system need to be closely defined. They will determine its contents and scope, and the way in which it is enforced. If the objectives of the regime are clear from the outset, the more likely it is that it will succeed in meeting those objectives.

The broader purpose of the ethics and conduct regime - ensuring MPs understand their roles

In deciding the nature of the regime it is also important to ensure that it complements other sources of advice and guidance for MPs. At its most basic level an ethics and conduct regime should ensure that MPs understand and adhere to the basic rules of parliament. But, given that all parliamentary institutions are governed by often quite detailed rules of procedure, what additional purpose should an ethics and conduct regime serve?

The initial problems exist at three levels.

- First, there is frequently a lack of knowledge amongst members about how the institution works, especially when they are first elected.
- Second, rules of procedure tend to be complex, legalistic documents. They are often difficult to understand, and interpretation of one section of the rules often relies on understanding the provisions in other sections.
- Third, although the rules dictate how the institution works, they do not tell the MP how to behave. They deal only with the MP's role within the institution, and even then only offer guidance on process, but rarely on the quality or content of that work.

In new parliaments with limited democratic experience and a high turnover of MPs at each election, it is more difficult because there is not always a clear parliamentary culture. Members will need help in firstly, understanding the rules of procedure and secondly, understanding the standards expected of them.

The most obvious way in which to achieve this is through a system of induction or training for new members. Although most parliaments acknowledge the principle and importance of training, it varies enormously in practice and delivery. In addition, the impact of training can be time-limited, especially if such efforts are not followed up or are not part of an on-going programme.

As a result a number of parliaments have developed guides to act as reference sources for MPs. These documents are generally used as supplements to the rules of procedure, explaining the institution and its processes. These can simply be glossaries of

parliamentary terminology, such as that developed by the Namibian parliament. Other parliaments have more detailed handbooks of parliamentary procedure, which include more guides to the operation of the institution. For example, the House of Commons Business of the House and its Committees: a short guide covers aspects such as the rules of debate and how and when to table a question to a minister, as well some of the technical aspects of statutory instruments, regulatory reform orders and programming orders. Similar documents exist in Canada, Australia, India and Japan.

Some legislative bodies in the Arab region are also developing more user-friendly guides to parliament for members. These handbooks of procedure, such as that developed by the UNDP with the Bahraini Council of Representatives, provide an overview of the institution and the MPs role within it.

However, although most of these guides will give MPs a better understanding of their role and the institution, they tend to focus on process rather than content. That is, they will explain how the institution works but won't necessarily describe how to behave.

It is here that ethics and conduct regimes could perform a complementary role. Ethics and conduct regimes should focus more issues that determine the standards and quality of an MP's work, but in doing so need to be informed by, and seek to reinforce the parliament's rules and procedures.

Summary - A toolbox approach

One of the key points of this guidebook is that each parliament should determine its own needs and the measures necessary to address them. In some parliaments this may involve the restatement of existing principles through a parliamentary resolution.

In other cases, the principles and rules of ethical conduct may be added to the rules of procedure, or may be published as an entirely separate document. In those countries with a civil law system, the implementation of an ethical regime may require legislation to give the document legal force.

It is impossible to transplant the experience of one parliament directly to another. Rather those wishing to develop an ethics and conduct regime need to establish the following: first, the nature of the problem that they are seeking to address and whether a new system is likely to meet these objectives; secondly, how the new system will complement other initiatives and improve the general understanding of the rules amongst MPs; and thirdly, what are the most appropriate measures to achieve those objectives.

Key questions

- What problem is the ethics and conduct regime seeking to address? Is it tackling a specific instance of corruption?
- Is it intended to improve public trust in the institution? If so, how will the success of the regime be measured?
- Is the system also likely to be used to enforce parliamentary procedure and shape parliamentarians' behaviour in the chamber, committee and with voters?
- What is the attitude of the main political parties and significant parliamentary figures (e.g. the Speaker, key committee chairs, etc.)?
- Is the development of the ethics and conduct regime likely to split opinion along partisan lines? What does this mean for the likely success of the regime?
- What other mechanisms are in place to ensure that MPs understand and abide by the rules? How will the ethics and conduct regime interact with these?

SECTION 2

ESTABLISHING THE PRINCIPLES FOR AN ETHICS AND CONDUCT REGIME

Parliament needs to identify the basic principles and values that should characterise the institution and the behaviour of its Members.

Such principles tend to be general characteristics, such as honesty, integrity and responsibility – principles that few MPs will disagree with.

Parliaments can draw on three sources to develop these principles: first, the internal rules of procedure or the constitution; second, ethics regimes from other parliaments; third, international standards and guidelines, such as the United Nations Convention Against Corruption.

Building consensus around these defining values provides a basis from which to develop more detailed rules.

Defining the principles of parliamentary conduct

The parliamentary process of developing an ethics and conduct regime must start with the political culture within which it needs to operate. The regime should embody and build on the cultural values of the parliament.

Most institutions will already have defining values, either included in the rules of procedure or, sometimes, in the constitution. If parliamentary behaviour is failing to reflect one or more of the principles, it can be a useful catalyst for starting a debate about the need for a new regime. Even if such a set of principles does not exist, the discussion of what values MPs should uphold is a useful way of creating a basis from which to launch the creation of a new system, in that they are

usually so general that it is relatively easy to generate widespread political agreement.

i. Internal sources

Some countries already include such principles as part of the parliament's rules of procedure or within the constitution. For example, the constitution of Belize includes the following provisions:

Legislators should not act in such a way as:

- to place themselves in positions in which they have or could have a conflict of interest
- to compromise the fair exercise of their public or official functions and duties
- to use their office for private gain
- to demean their office or position
- to allow their integrity to be called into question
- to endanger or diminish respect for, or confidence in, the integrity of the Government

In countries where there is no specific reference to the behaviour of legislators, there may be a more general set of principles for all public officials which could be used and adapted to parliamentarians.

ii. International parliamentary experience

Parliamentarians may also draw on the experiences of other parliaments that have implemented new ethical regimes. One of the most widely-cited set of principles is that developed by the Committee on Standards in Public Life, established in the UK in 1994. The committee established a new comprehensive code of conduct for MPs, which incorporates the committee's 'Seven Principles of Public Life'. These are:

1. **Selflessness:** Holders of public office should act solely in terms of the public

interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.

2. **Integrity:** Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.
3. **Objectivity:** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
4. **Accountability:** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
5. **Openness:** Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
6. **Honesty:** Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
7. **Leadership:** Holders of public office should promote and support these principles by leadership and example.

Other countries have similar statements which provide basic standards of conduct for MPs. For example, in Canada MPs must agree:

- to recognise that service in Parliament is a public trust

- to maintain public confidence and trust in the integrity of Parliamentarians individually and the respect and confidence that society places in Parliament as an institution
- to reassure the public that all Parliamentarians are held to standards that place the public interest ahead of Parliamentarians' private interests and to provide a transparent system by which the public may judge this to be the case
- to provide for greater certainty and guidance for Parliamentarians in how to reconcile their private interests with their public duties
- to foster consensus among Parliamentarians by establishing common rules and by providing the means by which questions relating to proper conduct may be answered by an independent, non-partisan advisor

Other parliaments set down similar defining characteristics. For example, in Uganda the general principles are selflessness, integrity, objectivity, accountability, openness, honesty and promotion of good governance. In Ethiopia the standing orders state that an MP must be 'a loyal and honest servant as well as a good example to the Ethiopian people... protecting and respecting national and public interests', and 'shall, at any place, keep the prestige and dignity of the House'.

iii. International standards

As well as drawing on internal sources and the experience of other parliaments for the regime's principles, there are other international resources. The United Nations Convention Against Corruption (UNCAC) provides the benchmark for anti-corruption

initiatives, by setting out a comprehensive set of standards, measures and rules for countries to implement. These are based around both preventative measures and criminalisation of certain acts.

The Legislative Guide for the Implementation of the United Nations Convention Against Corruption describes the measures needed to implement the convention and takes a three-stage approach which identifies a) the mandatory requirements that states need to take, b) the optional requirements which states are obliged to consider and c) further optional measures which states may wish to implement. It provides a useful reference point for parliamentarians, with Article 8 stating that each country should promote integrity, honesty and responsibility amongst its public officials, and should endeavour to apply ‘codes or standards of conduct for the correct, honourable and proper performance of public functions.’

The Global Organisation of Parliamentarians Against Corruption (GOPAC) itself is committed to ensuring that parliamentarians should play an active leadership role in the implementation, domestication and monitoring of UNCAC. In particular, parliaments play an important role in adapting international standards to regional or national circumstances, and ensuring effective oversight of its provisions. It provides a checklist for parliamentarians designed to build awareness, consensus and capacity within parliaments.

Summary - Identifying universal principles

As can be seen, each of the examples includes very similar basic principles designed

to uphold the integrity of the institution and retain public trust, and urges members to act in such a way as to not bring the institution into disrepute. Such principles are usually general, so that all members of parliament can agree to them. They reflect values that are regarded as the foundation of the organization and as such tend to be aspirational, rather than prescriptive.

In short, the establishment of core principles is an important first step in building an ethics and conduct regime, but it is not enough by itself. Giving them meaning and application requires the institution to elaborate more detailed provisions, and develop a mechanism for monitoring and enforcing the rules.

Key questions

- Are there internal sources which define principles of good conduct? For example, do MPs have to commit to upholding the integrity of the institution on taking office?
- Are the values of the institution enshrined in a constitution or the rules of procedure?
- Where these values do not exist, can existing parliamentary rule books be used as the starting point for developing a set of principles?
- Is disagreement over certain principles or values likely? Is this to do with party politics or other sources of cultural/ethnic/religious difference?
- How will the existing political culture and context influence the debate about the institution’s core values?
- Are there principles used by other parliaments or international standards that might be used as the basis for consultation?

SECTION 3

DEVELOPING THE CONTENT OF THE ETHICS AND CONDUCT REGIME

Agreement over the principles for parliamentary behaviour provides a base from which to build an ethics and conduct regime.

But because such principles are general they can be interpreted in different ways. Politicians may continue to have different understandings as to which activities are acceptable, and which are illicit. Parliaments need to build understanding and consensus around detailed new rules.

This section is broken into three parts, each dealing with one element of developing rules for codes of conduct.

- First, the potential for conflicts of interest between an MP's public duties and their private interests
- Second, the key provisions in ethical rules, specifically relating to transparency and disclosure of interests
- Third, how this greater openness is reconciled with protection for MPs in carrying out their work

Part one – Identifying and addressing conflicts of interest

At the root of most unethical behaviour lies the notion of a 'conflict of interest' - in other words, where the private interests of a politician conflict with the public interests of those they were elected to represent. In its most extreme form this involves an MP using their public position for private benefit. But even the appearance that a conflict of interest influenced a politician's behaviour may undermine the integrity of the institution.

Addressing conflicts of interest is therefore at the centre of almost all parliamentary ethical regimes. However, it is important to

understand that conflicts of interest are inevitable for politicians. They are constantly being asked to mediate between different interests, including locality, race, gender, religion or political party. A conflict of interest is not the same as corrupt or unethical behaviour, but the potential difficulties need to be understood and absorbed by MPs.

The task of an ethics regime for parliamentarians is to identify which conflicts of interest may lead to - or appear to lead to - unethical behaviour.

The ultimate task of the MP is to ensure that they always seek to promote the public interest. Some constitutions, such as that in Rwanda, are explicit in stating that the MP should not be beholden to anything other than representing the national interest. However, 'national interest' is a subjective judgement. All politicians will claim that their party has the best policies for pursuing the national interest, yet those policies are likely to diverge significantly.

The perception of a conflict of interest will also be affected by contextual factors such as culture and constitution. In many societies there is a tradition of gift-giving which forms a familiar part of political practice. Culture, though, should not be used as an excuse for bribery and the buying of favours. Here international standards, such as those provided by UNCAC or GOPAC provide guidance.

UNCAC states that bribery takes place when the giving of a gift (or even the offer of a gift) gives undue advantage to a particular person over a public official or any decisions they may take.

The difficulty for all ethics regimes is in establishing that a gift influenced a subsequent decision or might result in some future benefit. Ethical rules therefore tend to include examples of the sorts of conflicts that might occur in order to guide politicians.

These, though, are often very specific, and it is impossible to cover every possible situation in a single set of rules. For that reason, ethics and conduct regimes tend to include a general clause which urges politicians to be cautious when accepting anything. For example, the Canadian parliament's code of conduct states that MPs should not accept "any gift or benefit connected with their position that might reasonably be seen to compromise their personal judgement or integrity."

Interpreting the rules will also be conditioned by the constitutional system within which they operate. In the US Congress legislators are expected to lobby for government grants for district interests, while in Westminster-style systems, MPs would usually be prevented from taking part in directly pressing for financial benefits – their involvement would be regarded as exerting undue influence and, as such, distorting the wider public interest.

However, even where MPs are prevented from certain types of lobbying, there are grey areas. For example, a dairy farmer elected to parliament by a constituency with a large number of dairy farms would be expected to articulate their interests in parliament. A distinction could therefore be made between representing the interests of the dairy farm industry as a whole (which would not be seen as a conflict) and

seeking to influence decisions which would benefit only the dairy farms in that constituency (which would be a conflict). (See Gerald Carney, Conflict of Interest)

Summary – Ensuring the integrity of the institution

These few examples highlight some of the difficulty in defining what constitutes a conflict of interest in any particular set of circumstances. Ultimately, the purpose of identifying the potential for conflict is to ensure public trust in the political system, and avoid any suggestion that MPs are using their position for private gain. The perception of misuse of power can be as damaging as the actual misuse of power.

Therefore, one of the underlying principles of any ethical regime should be that MPs should not behave in a way that they would find difficult to justify in public.

Ultimately, an ethics and conduct regime cannot govern MPs behaviour in every situation. Its observance must rely on the intelligence and good sense of the MP. It is important that they understand and abide by the spirit of the rules. For that reason, the process of consultation with politicians – ensuring they are involved and understand the purpose of the rules – is as important as the outcome.

Key questions

- Does the parliament anywhere define a conflict of interest for MPs? Will the concept impinge on commonly-accepted patterns of behaviour?
- Are there particular areas of activity (e.g. gift-giving) that are likely to be contentious when defining a conflict of interest?

- Will the ethical rules include a specific definition of bribery?
- How far will the rules seek to define the explicit circumstances which present a potential conflict of interest?

Part two – Rules for transparency and disclosure

Although disclosure and transparency do not necessarily remove a conflict between a private interest and the public interest, they do identify that the potential conflict exists.

This approach requires MPs to declare their private interests to a parliamentary register, thus allowing others – and especially voters – to judge whether their actions as an MP might have been influenced by those interests.

However, the definition of what needs to be registered, by whom and when varies from county to country.

This section deals with,

- i) Forms and timing of disclosure
- ii) Who should register?
- iii) What should be registered?

Rules for improving transparency and disclosure usually have three main elements.

i) Forms and timing of disclosure

The forms of disclosure tend to fall into one of two categories, either ad hoc or routine.

Ad hoc disclosure means that the MP must announce an outside interest before they participate in a debate, committee hearing or vote where that interest is likely to conflict. Routine disclosure means that MPs

must declare their interests on taking up the position, and at regular intervals thereafter. Of course, the two forms of disclosure are not mutually exclusive, and in many cases MPs are expected to do both.

The purpose of disclosure is to highlight the potential for a conflict of interest. In some cases this may result in the MP being prevented from participating in a debate or vote, or it may be enough simply for the MP to announce the nature of the interest. However, the routine registration of interests is a far more thorough and consistent mechanism for declaration. It means developing a register of all MPs' interests which is periodically updated during the lifetime of a parliament. It is easier for parliamentary authorities to manage, and to identify where MPs have failed to declare an interest.

It can also constitute an indispensable element in investigating and prosecuting crimes of corruption. It is important that any system of routine disclosure obliges MPs to state their interests at regular intervals, so that any unexpected increases in income or assets can be explained. In such cases, the accused will carry the burden of proving their innocence and demonstrating that this enrichment was legal.

ii) Who should register?

Although it seems obvious that the register should contain the interests of the legislator, many countries also include the financial details of the MP's spouse and children. This is partly so that MPs are not tempted to circumvent the regulations by channelling assets to other members of their family. However, this has raised concerns about the level of privacy

afforded to those who, after all, have not sought public office themselves, and do not see why their private affairs should be made public. This can be dealt with in a number of ways, either by limiting the level of detail held on other members of the family, or by obliging families to register collectively rather than as individuals.

In many countries there are restrictions on access to certain parts of the register frequently limiting public access to family details. In France, for example, the committee on Financial Transparency in Politics ensures the privacy of the records, whilst in Spain the private assets of legislators are kept private but the remainder of the register is open to the public. In South Africa, the financial statements are divided into confidential and public parts, with the Committee on Members' Interests determining the contents of each.

iii) What should be registered?

It is in this area that there is most variety between different ethical regimes as to what should be disclosed publicly by politicians. This itself reflects the significance of adapting the rules to the specific parliamentary institution and to ensure the support and compliance of those covered by the rules. For example, in Nigeria in 1979 when several thousand public officials were obliged to declare their private interests, only two did so, the incoming President and his Deputy.

Despite the variety there are, broadly, four categories under which declarable interests fall: a) assets, b) income, c) liabilities and d) gifts (including travel).

a) Assets

Assets will typically include property, shares, directorships, trusts, partnerships and any other investments. In addition to disclosure there may be further requirements on certain elected officials. For example, in the USA they are required to place shares and other assets into blind trusts or declare their full value. Similar provisions exist for ministers in the UK to place substantial assets into blind trusts so as to avoid any suggestion of undue influence on their governmental decisions.

b) Income

In most countries there are restrictions on certain forms of outside employment, deemed incompatible with holding elected office (see below). However, few countries have an outright ban on outside employment, and many MPs combine their official role with professions that can be pursued part-time such as journalism, law or medicine. Where this is the case, MPs should be obliged to declare by whom they are employed and how much they are being paid. Other forms of income such as sponsorship or remunerated offices (directorships or other appointments) also need to be included.

c) Liabilities

In many respects the need to declare liabilities is equally important as declaring assets and income. For example, a politician who is hugely indebted is perhaps more likely to try use their official position to secure additional sources of funding. If liabilities are built up the register needs to include details of how much is owed, to whom, the rate of interest and the reason for the debt.

Miscellaneous: Any relevant interest, not falling within one of the above categories, which nevertheless falls within the definition of the main purpose of the Register which is "to provide information of any pecuniary interest or other material benefit which a Member receives which might reasonably be thought by others to influence his or her actions, speeches, or votes in Parliament, or actions taken in his or her capacity as a Member of Parliament," or which the Member considers might be thought by others to influence his or her actions in a similar manner, even though the Member receives no financial benefit.

United Kingdom House of Commons, Registrable Interests, Clause 10

d) Gifts and travel

Restrictions on gifts and travel are included in most ethical rules. In some countries, such as Argentina, there is a direct ban on gifts directly related to the MP's position. In Australia, by contrast, MPs are allowed to accept gifts, provided they do not present a direct conflict of interest. In the UK gifts are acceptable, and do not have to be disclosed if they are unrelated to membership of parliament. But where they are related and valued above 1% of the annual parliamentary salary MPs are required to declare them and their value in the register of interests. In the USA no gift valued at more than \$100 can be accepted by an elected official.

As can be seen, in each of the categories there is usually a lower limit, below which interests do not have to be declared. However, as some of the examples have shown,

these vary enormously according to local context, often the specific provisions reflect an attempt to prevent the sort of abuses that led to the introduction of the ethical rules in the first place.

For those seeking to draw up a new ethics and conduct regime it is also worth including a 'catch-all clause' which again suggests that MPs need to be cautious and exercise sensible judgement. For example, the UK's list of registrable interests includes a final clause which encourages MPs to declare anything which others might feel would affect their judgement in office.

Summary – Disclosing the right details

The detailed rules of the ethics and conduct regime need to cover a wide range of eventualities. At the most basic level it means deciding what form of disclosure, how regularly disclosures are made, and what categories need to be covered by the register of interests. All elements of the system need to complement each other, and the detail in each section will determine how well the system works overall.

Key questions

- What form of disclosure does the parliament wish to adopt – routine, ad hoc or both?
- If the parliament uses a routine form of disclosure, how often will MPs be required to update their list of interests?
- Who will be responsible for the upkeep of the register – a parliamentary official, parliamentary committee or some other?
- Will the register be a fully public document or will parts of the register be kept private?

- Who should be obliged to register their interests? Will family members be included? If so, which members of the family?
- What should be registered? How detailed will the rules be in determining the various assets, income, liabilities and gifts that need to be declared?
- At what level should lower limits be set for declaring these interests? What provision will be made to update and change these limits over time?
- Will non-pecuniary interests be included in the register?

Part three – Restrictions on ‘outside interests’

The purpose of disclosure is to enable others to judge whether there is likely to be a conflict of interest. In other words, it is sometimes enough to know about the interest without any further action.

However, in certain circumstances where the nature of an outside interest has a direct bearing on the MPs’ involvement it may be necessary to prevent the MP from participating further, or where the MP is adjudged to have broken the rules, further sanction may be necessary. (The enforcement of sanctions is dealt with in detail in part four).

This part describes the situations in which politicians should be prevented from participating and how this needs to be balanced with parliamentary immunity.

Those developing an ethics and conduct regime will need to decide whether disclosure is enough. It may be that monitoring the potential for a conflict of interest is sufficient in certain cases. For example, MPs may simply

be obliged to announce their interest at the start of a debate in order to allow others to understand their interest in the matter.

In other circumstances the parliament may wish to prohibit certain forms of activity by MPs due to their interest. An MP might be prevented from speaking in certain debates or voting on specific issues where their private interests are likely to conflict with their public responsibilities.

In most ethics and conduct regimes there are also restrictions on certain outside interests that are deemed to be incompatible with membership of the legislative body. Many parliaments have ‘incompatibility’ rulings which identify categories of outside earnings and employment that are deemed to be unsuitable with the task of being an elected official. These typically include working in sensitive professions such as the armed forces, security services, civil servants or judicial roles. In addition, some countries have restrictions on members of the clergy. In all such cases MPs are required to resign from these roles before becoming an MP.

In some situations and countries the restrictions are severe. For example, in many countries, such as Rwanda, MPs may not have any form of outside employment. The intention is to preserve the independence of the politician, and to avoid any possibility that a private business interest might interfere with their public duties. The situation in the UK is different where the argument is made that that outside interests enable MPs to get a variety of perspectives which assist with their role as lawmakers.

Post-employment restrictions

There are also restrictions on forms of employment for politicians after they have left office. Politicians – and especially ministers – have privileged access to key decision-makers and information when in office, and are likely to take much of this with them when they depart parliament. In general ethics and conduct regimes tend to place restrictions on politicians – and especially ministers – from using this information for private gain once they have left office.

It is therefore common for ministers to be prevented from taking up jobs in areas of business for which they were previously responsible. For example, a minister of defence might be tempted to favour certain companies if they knew they would be working for them after leaving office.

Summary – Finding the right balance

The ethics and conduct regime must ensure that it reconciles giving MPs enough freedom to do the job, with ensuring that all MPs adhere to the expected standards of conduct. There is undoubtedly a tension between rules for ethics and parliamentary immunity. In emerging democracies it may be that conditions dictate the need to err on the side of protecting MPs. But an ethics and conduct regime should also be seen as a way of ensuring that systems of parliamentary immunity are not abused.

Key questions

- Does the parliament wish to prevent MPs from any form of outside employment? If outside employment is permitted, how will these forms of employment be defined? Which forms of employment will be deemed incompatible with holding public office?
- Will the ethics and conduct regime include post-employment restrictions? If so, how long will this ‘cooling off’ period last for?

Restrictions on ministers

No reporting public office holder shall, except as required in the exercise of his or her official powers, duties and functions,

- Engage in employment or the practice of a profession
- Manage or operate a business or commercial activity
- Continue as, or become, a director or officer in a corporation or an organisation
- Hold office in a union or professional association
- Serve as a paid consultant
- Be an active partner in a partnership

Conflict of Interest Act, Canada

Part four – Parliamentary Immunity

The arguments against disclosure of interests or restrictions on MPs’ activity are usually made on the grounds that it limits the ability of the MP to pursue their representative role and, more specifically, conflicts with the principle of parliamentary immunity. This is another contentious area, but there are few substantial arguments as to why an ethics and conduct regime cannot co-exist with a system of parliamentary immunity. However, the development of the regime does need to consider how far it will limit the immunity of MPs.

The purpose of parliamentary immunity is to ensure that MPs have enough freedom to discharge fully their duties in holding government to account, scrutinising legislation and representing the public. Some of these functions will bring them into direct confrontation with various institutions of state and MPs must be able to do so without fear of being prosecuted, victimised or in some other way targeted by the authorities.

“Parliaments should adopt functional systems of parliamentary immunity that provide protection from unwarranted and politically motivated prosecutions, but also ensure that parliamentarians are held accountable to the law.

GOPAC, Arusha Declaration, 23rd September 2006

Although the detailed provisions of parliamentary immunity schemes differ, they tend to follow either the British model of ‘non-accountability’ or the French model of ‘inviolability’.

The British model of non-accountability protects freedom of speech in the pursuit of the MPs’ duties. It means that representatives cannot be prosecuted for any opinions expressed, or votes cast in the course of parliamentary business. This right often extends to witnesses in parliamentary hearings. In some cases it also covers activity outside of parliament, such as constituency work, provided it can be defined as ‘parliamentary business’.

The French system of ‘inviolability’ is a much wider ranging notion of immunity, which means that elected representatives cannot be prosecuted for any criminal activity, unless they are caught in that act. The extent of inviolability tends to take three main forms. In Westminster-style systems there is a very limited form of inviolability where the Speaker simply has to be notified of the arrest of any member. In some countries (Liberia, Sierra Leone, Norway) members cannot be arrested on their way to or from parliament. However, in most other countries MPs cannot be prosecuted during the term of their parliamentary mandate, without the approval of the parliament.

The concept of parliamentary immunity is an important one, and absolutely necessary for a properly functioning parliament. In newly-emerging parliaments – and especially in post-conflict societies – this principle can be particularly important. There are many examples of Executive bodies seeking to undermine or victimise members of opposition parties through the misuse of laws or parliamentary procedure. The system of immunity must therefore be strong enough to withstand this threat.

However, the worldwide trend is away from the broad-ranging principle of ‘inviolability’ to the more limited concept of ‘non-accountability’. The fear in many countries is that by protecting MPs from prosecution, the system of immunity is being used as a means to hide corruption and misuse of power.

The guiding principle for the system of parliamentary immunity should be that the right to immunity is integral to the position, not the individual. The purpose is to protect the integrity of the office and the institution, but should not be used as a means to protect individuals who are engaged in obviously criminal activities.

Key Questions

- How will the ethics and conduct regime interact with provisions for parliamentary immunity?
- How will the parliament ensure that parliamentary immunity is not used to avoid provisions within the ethics and conduct regime?

SECTION 4

MECHANISMS FOR REGULATION AND ENFORCEMENT

The content of the principles and rules will provide guidance for elected officials, but an ethics and conduct regime also needs to include systems for enforcement and sanctions to deter potential offenders.

This section examines three different models of enforcement and regulation, namely, internal regulation by the parliament, external regulation by a judicial body and the creation of an independent commissioner who reports to a parliamentary committee.

The second half of this section examines the possible sanctions that parliaments might seek to apply in upholding ethical behaviour and good conduct.

Three models for regulation of ethical conduct

It is not surprising that the growth in the number of ethics and conduct regimes in many parliaments in the last two decades has also resulted in the adoption of new mechanisms for overseeing and enforcing the regulations. In general there are three main models. The first is entirely external regulation, as used in Taiwan. The second is to rely solely on regulation within the legislature itself, as practised in the USA. The third is to combine an external investigative commissioner with a parliamentary committee to enforce sanctions, which is the system adopted in the UK and Ireland.

The first model involves the creation of a judicial or quasi-judicial body which oversees and enforces the regulations on Members of Parliament. The difficulty in this model for many parliaments is that it makes any

breaches of the regulations subject to criminal proceedings and therefore may interfere with the provisions of any rules relating to parliamentary immunity. But, in addition, as an externally-enforced regime, there is little sense of ownership of the provisions of the principles or rules amongst parliamentarians. If the intention of the regime is to build some collective acceptance of its provisions, it may make more sense to find a more direct way of building it into the parliamentary culture.

The second model relies on parliament's self-regulation. This system requires the creation of a special ethics committee, which deals with the reporting, investigation and sanctioning of MPs who have been alleged to have violated the rules. However, the model has come in for considerable criticism, as it turns legislators into investigators, judges and juries, rather than maintaining them as a body which ratifies a judgement reached by an impartial adjudicator. In addition, if the intention is to ensure or restore public trust in politicians, a model that relies on politicians regulating themselves is unlikely to retain public credibility.

The third model combines elements of the first two. This model involves the creation of an independent regulator appointed by and reporting to parliament. The regulator is then responsible for investigating cases and advising members on the application of the rules, but the imposition of penalties is decided within parliament by a specially-convened committee. This has been the model in the UK since the mid-1990s, but has been criticised for giving too much

power to MPs, and being too similar to self-regulation. The concern over British parliamentary standards in 2009 saw the government propose a new, entirely independent form of regulation.

A common factor for all models is determining how cases are referred for investigation. In South Africa, for example, the Ethics Committee can instigate its own enquiries against MPs. In other systems, such as the UK until 2009, the Commissioner for Standards could only investigate complaints made against specific MPs, but these complaints could be submitted by other MPs or by members of the general public.

However, as mentioned previously, the development of ethics and conduct regimes has blurred the responsibility for aspects of parliamentary conduct that fall beyond purely ethical considerations. For example, the constitution of Sierra Leone empowers the Presiding Officer to refer cases where a Member has defamed someone, and the Committee of Privileges determines disciplinary sanctions. In other parliaments the Ethics Committee is charged with determining sanctions in the more serious breaches of parliamentary protocol.

The key point is that the distinction between traditionally understood ethical rules and more general issues of parliamentary conduct is starting to blur. This is in part because ethical rules have sought to establish broad standards of acceptable behaviour in all aspects of public life. This has obvious implications for newly-established parliaments seeking to develop standards of parliamentary behaviour.

A sliding scale of sanctions

The rules relating to conduct within parliament are so diverse and specific to the particular institution that it is difficult to draw anything other than the most general points in a guidebook of this length. However, a general overview reinforces the perception that sanctions for breaches of ethical rules and poor conduct in parliamentary proceedings are overlapping and blending with each other. This section looks briefly at four categories of rules relating to parliamentary proceedings and then at three main types of sanctions.²

i. Categories of rules

The first set of rules relates to the prohibition of force during proceedings and an implicit or explicit ban on carrying weapons. The second set of rules prohibits threats, intimidation, provocation and insults. However, definitions of what constitutes ‘unparliamentary language’ vary between institutions. This usually relies on the ruling of the Presiding Officer to determine where the boundaries lie. The third set can be categorised as rules which prevent the unlawful obstruction of proceedings. In other words, cases where parliamentarians refuse to obey the rules of procedure and, in so doing, prevent business from continuing. This may include taking the floor without the Speaker’s permission, ignoring a call to order or refusing to acknowledge the Speaker’s authority in some other way. The final set of rules is designed to preserve the dignity of the parliament. Such rules often refer to language, but also commonly apply to dress code, particularly those with a British parliamentary

² This section draws heavily on Van der Hulst, pp. 112-119

tradition. The Sierra Leone constitution stipulates that MPs shall maintain the dignity and image of parliament at all times.

ii. Three categories of sanctions

The sorts of rules identified above are usually enforced by the Presiding Officer, mainly because they relate directly to proceedings in the chamber. However, in the case of more serious misdemeanours or those relating to unethical conduct, the tendency is to refer matters to an Ethics Committee (if one exists), which then determines the nature of the sanction.

However, the sanctions available to either the Presiding Officer or the Ethics Committee generally fall into three categories. The first, found in the French parliamentary tradition, is the call to order, which is followed by increasingly severe steps. A first offence simply results in a call to order, the second stage is that the call to order is noted in the parliamentary record and the third is to deprive the member of the right to speak if they refuse to follow the Speaker's ruling. This is then followed by an official 'censure' or 'reprimand', which is entered into the record, and can be accompanied by a temporary expulsion from the chamber. This is used in the most serious cases where there has been the threat or use of violence or a challenge to the head of state. In the US Senate, this can be accompanied by a deduction from salary for the time the senator is expelled.

The second category revolves around the British tradition of 'naming' Members, which is the most severe penalty the Speaker can

impose. This is usually only enforced after the offender has been warned several times and been asked to withdraw from the Chamber. Once a Member has been named, the House is invited to agree a Motion that he or she be suspended, and such suspension lasts for five sitting days in the first instance.

The third category relates to subsidiary sanctions, which are linked to the above stages. These may include a fine or loss of salary, an enforced apology to the parliament, or the loss of seniority, such as a committee chair and the privileges that go with it.

As mentioned, the sanctions and enforcement mechanisms attached to ethical breaches tend to fall into the same categories. But because, by definition, such cases tend to be at the more serious end of the scale they tend to involve suspension, expulsion and fines for misconduct or the withholding of salary for a period. For example, breaches of the code of conduct in Ireland involve suspension, fines or public censure; in France there is only one option; banishment from future candidacy for one year; and in Germany (where the complaints are dealt with entirely by the Presiding Officer) he or she discloses any violations to the voters, letting them determine the MP's fate. And, in all cases, the most significant deterrent should be that greater transparency means that the final verdict is the decision imposed by voters at the ballot box.

Summary – Finding the right mechanisms and proportionate sanctions

Determining the right mechanisms for regulation and what sort of punishments are suitable can only be decided in the context of the political system and the specific misdemeanours. But whichever is chosen both elements of the system must ensure parliamentary and public support. In order to preserve the integrity of the institution the system must be regarded as independent, legitimate and proportionate.

Key questions

- Does the parliament wish to create an external form of regulation presided over by the courts, an internal form of regulation by the speaker or a parliamentary committee, or an external commissioner that reports to a parliamentary committee?
 - If the regime relies on an external commissioner, who will make this appointment, how long will they serve in that post, who will they report to in parliament?
 - Will the parliament need to create an additional committee to deal with the enforcement of the rules or will the task be given to an existing committee?
 - What sort of sanctions will be imposed against those who breach the rules? How will they be determined? Who will be responsible for implementing them?
 - Who will be entitled to launch an investigation against an MP? Will members of the public be able to complain? Will the committee or commissioner be able to decide for themselves when to investigate?
- What safeguards will be put in place to ensure that the ethics and conduct regime is not used simply to pursue political or personal vendettas against particular MPs?
 - Will MPs have a right of appeal if they believe they have been unfairly treated? Will this be heard by a commissioner, a parliamentary committee or a plenary sitting of the whole house?

SECTION 5

DEVELOPING A CULTURE AROUND THE ETHICS REGIME - EDUCATION AND TRAINING

The intention of the ethics and conduct regime should be to prevent as much as punish. A regime is at its most effective where MPs understand and abide by its rules.

The ethics and conduct regime should identify the correct path for MPs to walk, but also needs to provide streetlights making it as easy as possible to follow.

The system of regulation and enforcement must also include provision for the training and education of MPs, providing continuing advice and guidance on how to interpret and implement the rules.

This section examines options for building a culture around the ethics regime.

The process of developing and implementing an ethics and conduct regime is an integral part of creating a culture in which clear standards are, firstly, understood, and secondly, regarded as legitimate by those who have to abide by them.

A dominant culture which has high ethical standards will do more to deter potential offenders than any detailed set of rules - the opinion of one's fellow MPs can often be the most powerful deterrent to certain forms of behaviour.

For this reason, it is important that MPs are involved at every stage in developing the contents of the ethics and conduct regime. This is not to suggest that their view should dominate in all instances, but that the process of developing the regime should ensure

that MPs regard its provisions as fair and realistic, and that they therefore have a stake in the success of the regime.

In addition, the ethics and conduct regime needs to ensure the active support of the key parliamentary actors to generate acceptance and understanding of the rules and principles. In this respect the Presiding Officer plays an important role in setting the tone within the institution. Any new ethics and conduct regime will need to be in keeping with the general principles for parliamentary proceedings and the Speaker will be a key figure to involve in the development of the regime.

In terms of consulting and educating members, the role of political parties will also be crucial. It is within the political parties that MPs learn many of the critical skills and standards for discharging their duties. Development of the regime should involve key figures from the political parties at an early stage to secure their support for the process, and also ensure that they play a role in educating members as to what is expected of them.

The experience of the Indian Lok Sabha is interesting in this regard. In their decision to develop an ethics and conduct regime for members, the Ethics Committee also recommended that "Concerted efforts should be made to ingrain amongst the legislators the basic values of ethics... The culture of ethics has to be evolved and the sense of discipline and responsibility should come from within." To this end, the Committee recommended that the parliament hold a

seminar covering *An Analysis on the present day functioning of Parliament – An Introspection*, involving the leaders and deputy leaders of the parties, secretaries and whips, as well the chair and members of Committee on Ethics, and the Secretary General. This was to be followed up by a series of four or five seminars for all members of the Lok Sabha.

Parliaments need to consider a variety of awareness-raising tools and opportunities. Incorporating the ethics and conduct regime into frequently-used resources such as existing publications or websites is one option. Providing handbooks which explain the implications of the principles and rules in paper or electronic form may also be useful.

But politicians will also need specific training when the new system is introduced and at the start of every new parliamentary mandate. Education around the provisions of the regime should be included in any induction programme for all new MPs. Instilling the key values and an understanding of the rules at the start of a parliament is most likely to shape the dominant culture.

The last element in ensuring the ethics and conduct regime is understood is to establish an official and permanent source of guidance and advice for Members. Given that the rules are likely to be complex, and in some instances open to interpretation, they will need access to sources of expert advice. This role is usually performed by a committee - as in South Africa, where the Committee on Members' Interests both interprets the code of conduct and advises Members on its content - or by a Parliamentary Commissioner

for Standards who acts as the guardian of the code and the main source of advice to individual MPs unsure about any aspect of the rules.

Summary – Influencing parliamentary behaviour

An ethics and conduct regime by itself will not change parliamentary behaviour. That behaviour must develop from and reflect the internal dynamics of the institution. The very development of a new system will be an important feature in this process. Simply developing an ethics and conduct regime may act as a catalyst for setting certain standards of behaviour.

Ultimately, it is impossible to develop a new system which is capable of governing the behaviour of MPs in every single set of circumstances. Most of the time, MPs will be expected to use their own judgement to determine which is the correct course of behaviour. This means that the way in which the institution educates and trains its members, so that they understand and accept the regime, should be an essential part of any new framework.

Key questions

- What provisions will be made to ensure that MPs understand the ethics and conduct regime?
- How far will the key figures within the institution be involved in the development of the ethics and conduct regime?
- To what extent will the political parties shape the content of the regime and be used to instil its central values? Can the parties be used to deliver training to Members?

- Will training on the new system be included as part of an induction programme for all Members?
- Where will MPs be able to get impartial and authoritative advice on the rules and regulations?

“No set of rules can bind effectively those who are not willing to observe their spirit, nor can any rule of law foresee all possible eventualities which may arise or be devised by human ingenuity.

This Code of Conduct has been formulated in as simple and direct a manner as possible. Its success depends both first and last on the integrity and good sense of those to whom it applies.

Therefore, where any doubt exists as to scope, application or meaning of any aspect of this Code, the good faith of the member concerned must be the guiding principle.”

South African National Assembly, Code of Conduct

SECTION 6

CONCLUSION

Just as there is no blueprint for an all-encompassing ethics and conduct regime that will be suitable for every parliament, neither is there an exact right way of developing a new system. An ethics and conduct is ultimately a political document.

Its success does not lie in its contents alone, but in the way they are understood, observed and enforced. As such, the process of developing the ethics and conduct regime is as important as what goes into it.

This is a highly political process that needs to ensure the final document is regarded as legitimate by MPs. Even if they do not agree with all of its provisions, they must respect its authority.

The purpose of this guidebook is to provide an overview of the stages involved in developing an ethics and conduct regime. The process of defining the problem that the new regime seeks to address through the development of principles, detailed rules and an effective enforcement regime means negotiating numerous objections. That process will be shaped by the existing political conditions, the cultural values within the institution and the attitudes of the key parliamentary figures.

However, it is worth emphasising the four basic tenets around which a regime should be built;

- First, the effectiveness of a parliament is determined by the attitudes, outlook and behaviour of its members as much as by its constitutional powers. As such, the new system must focus on changing behaviour as much as changing the rules.

- Second, a new regime which seeks to influence behaviour must emerge from the specific parliamentary circumstances within which it seeks to be effective. MPs must feel a degree of ownership of the rules if they are to regard them as legitimate and authoritative.
- Third, the process of developing the new regime is as important as the content that emerges. Developing a detailed set of rules should not be the only objective. If the rules are to be effective the process must also engage with MPs to build a set of core institutional values.
- Fourth, the creation of the ethics and conduct regime will not, by itself, solve all the problems faced by the institution. The principles, rules and regulations should be viewed as only one part of a wider effort to improve the functioning of the institution.

Ultimately, this guidebook can only offer suggestions as to how these might be achieved. Their application is down to politicians themselves.

SOURCES

- Brien, A., (1999) *A Code of Conduct for Parliamentarians? Research Paper 2*, Department of the Parliamentary Library, Parliament of Australia
- Carney, G., (1997) *Working Paper: Conflict of Interest: Legislators, Ministers and Public Officials*, Transparency International
- Davies, M., 'Ethics in Government and the Issue of Conflicts of Interest Fostering Transparency and Preventing Corruption in Jamaica', quoted in PIMS/IDASA, (2004), *Government Ethics in Post-Apartheid South Africa*
- Gay, O. & Leopold, P., (2004), *Conduct Unbecoming: The Regulation of Parliamentary Behaviour*, London: Politico's
- Global Organisation of Parliamentarians Against Corruption, Arusha Declaration, 23rd September 2006
- IPU/UNDP, (2006), *Parliamentary Immunity: Background Paper, UNDP Initiative on Parliaments, Crisis Prevention and Recovery*
- Mancuso, M., (1995), *The Ethical World of British MPs*, Quebec: McGill Queen University Press
- NDI, (1999), *Legislative Ethics: A Comparative Analysis*, Legislative Research Series Paper 4
- Pelizzo, R., (2006), 'A Code of Conduct for Indonesia: Problems and Perspectives', *SMU Social Sciences & Humanities Working Paper Series, Paper no 11*
- Stapenhurst, R. & Pelizzo, R., (2004), *Legislative Ethics and Codes of Conduct*, World Bank Institute
- Toornstra, D., (2001), *Rules on Parliamentary Immunity in the European Union Parliament and the Member States of the EU*, Brussels: ECPRD
- Toornstra, D., (2001), *Parliamentary Codes of Conduct in Europe: An Overview*, Brussels: ECPRD
- UN Office on Drugs and Crime, (2004), *United Nations Convention Against Corruption*, available at: http://www.unodc.org/documents/treaties/UN-CAC/Publications/Convention/o8-50026_E.pdf
- UN Office on Drugs and Crime, (2004), *Legislative Guide for the Implementation of the United Nations Convention Against Corruption*, available at: http://www.unodc.org/pdf/corruption/CoC_Legislative-Guide.pdf
- USAID, (2006), *Parliamentary Immunity Brief: A summary of case studies of Armenia, Ukraine and Guatemala*
- Van Der Hulst, M., (2000), *The Parliamentary Mandate*, Geneva: IPU
- Wigley, S., (2003), "Parliamentary Immunity: Protecting Democracy or Protecting Corruption?" *Journal of Political Philosophy* 11, no. 1, pp. 23-41.

