

PROJECT VIE/02/007

STRENGTHENING THE CAPACITY OF PEOPLE'S ELECTED BODIES IN VIET NAM

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Parliamentary Engagement in the Fight Against Corruption

International Good Practices

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OFFICE OF THE NATIONAL ASSEMBLY – UNITED NATIONS DEVELOPMENT PROGRAMME

Project VIE/02/007

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PREFACE

This report was prepared to assist Elected Deputies to the National Assembly of Vietnam in enhancing their understanding about the role of MPs and Parliaments in the fight against corruption. This is a reference book, summarising selected international experiences that will be used in capacity development and training efforts. This selection of experiences represents a very basic effort to expose Vietnamese MPs to international practices in the field. As such it is the first initiative of its kind. It comes into live precisely one year after the Anti-corruption Law of Vietnam was passed in November 2005. Consequently, the document is expected to be an important element in the process of raising awareness and strengthening capacity of MPs and parliamentary staff in a field traditionally not subject to debate.

Parliamentary assistance efforts for the period 2007-2012 supported by UNDP, SDC, DfID, Irish Aid and CIDA but leaded by the Vietnamese officials is putting great emphasis in the development of a long-term strategy for the promotion of integrity and ethics. This report is the first stone in a series of many activities designed and scheduled for implementation in the years to come.

The translation of this document into the Vietnamese language will provide the first opportunity ever for MPs of Vietnam to have a comprehensive view on the subject of anti-corruption, precisely, from the specific perspective of an elected representative.

In that sense, we want, also to highlight the potential use that this material will have to promote integrity and ethics within elected representative bodies at sub-national levels – the People's Councils, including its Elected Deputies and staff.

The report also provides a collection of international treaties and resolutions in the area of anti-corruption relevant for the work of parliamentarians. This is the first time these international standards will be disseminated systematically in the Vietnamese Language.

The preparation of this advocacy report has involved several individuals and a long process of consultations. First of all, the report benefited from contributions and suggestions presented to us through the UNDP Democratic Governance Practice Network (DGPNet) in 2004. The report was substantially shaped and initially developed by Dr Heather Marquette (specialist on international development and corruption) from the International Development Department (IDD) at the University of Birmingham (UK) with the assistance of her IDD colleagues - Simon DeLay (member of the UK Chartered Institute of Public Finance and

Accountancy) and Dr. George Larbi (currently Senior Public Management Specialist at the World Bank).

In addition, several individuals reviewed the draft of the report and contributed with very useful comments. These are: Pauline Tamesis (UNDP Anti-corruption Policy Adviser); Thomas Huyghebaert (UNDP Global Parliamentary Programme); Patrick Keuleers (PAR and Anticorruption Policy Adviser) and Sudarshan (Legal Sector Reform Policy Adviser) both from UNDP Bangkok Regional Centre; Martin Chungong (Director, Division for the Promotion of Democracy. IPU), Anne Marie Goetz (UNIFEM), Dao Minh Chau (Swiss Development and Cooperation Agency); Carlos Santiso (DfID Anti-corruption Specialist); Kevin Deveau (MP of the Parliament of Nova Scotia- Canada); Vu Thi Yen (CIDA), Cobus de Swardt (Global Programmes Director – Transparency International); Arusha Stanislaus (UNDP Asia-Pacific Regional Governance Programme); Randi Davis (UNDEF Programme Officer); Jonas Lovkrona (Governance Cluster Head, UNDP Vietnam), Constance Hybsier (UNDP Vietnam), Pernille Friis (UNDP Vietnam) and Shane Sheils (UNDP Sri Lanka).

Our great appreciation is extended to all of them.

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ABBREVIATIONS

ACC	Anti-Corruption Commission
C&AG	Comptroller and Auditor General
CDD	Centre for Democracy and Development
FIAG	Financial Issues Advisory Group
Gol	Government of India
GoM	Government of Malaysia
GOPAC	Global Organisation of Parliamentarians Against Corruption
HRBA	Human rights based approach
INTOSAI	International Organisation of Supreme Audit Institutions
IPU	Inter-Parliamentary Union
MP	Member of Parliament
NAO	National Audit Office
OECD	Organisation for Economic Cooperation and Development
PAC	Parliament Accounts Committee
SAI	Supreme Audit Institutions
TI	Transparency International
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime

INTRODUCTION

Corruption is a problem in all societies and acts as a barrier between people and their aspirations and government services they have a right to. Parliamentarians, as representatives of the people, protectors of their rights and overseers of the Executive have a responsibility to curb corruption and ensure all measures are in place to fight corruption and ensure citizens are not subject to abuse and public servants do not exploit their position of power.

The legislature itself is a reflection of society and must ensure its own actions are beyond reproach and represent the highest goals of society and the citizens they represent. This report is a snapshot of the tools and building blocks available to Parliamentarians in their fight against corruption and provides parliaments and legislatures with a tool to aid and guide their capacity building efforts in anti-corruption activities.

The report looks both outwardly, looking at the role of parliaments in overseeing the executive and the importance of oversight and institutions such as Supreme Audit Institutions in anti-corruption. We also look inwardly at measures to ensure Parliamentarians themselves are beyond reproach. This includes codes of conduct for MPs as well as the monitoring and registration of elected representatives' interests and guidelines for both individual activities as well as parties.

The report also looks closely at the law making function of the legislature and the need to ensure guidelines are in place for the activities of public servants in the operation of their duties as well as in public procurement and the support available from International treaties and network groups in anti-corruption and the role this plays.

It is hoped that this report will aid parliamentarians in developing anti-corruption measures, identifying gaps in existing anti-corruption activities and also provide concrete examples of anti-corruption tools in use through numerous country case studies throughout the report.

"Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a government's ability to provide basic services, feeding inequality and injustice, and discouraging foreign investment and aid".

Kofi Annan, United Nations Secretary-General in his statement on the adoption by the General Assembly of the United Nations Convention against Corruption

1. PARLIAMENTARY OVERSIGHT

A key weapon in a parliament's fight against corruption is its role in overseeing the operations of the executive. Parliaments are able to hold state institutions accountable for their actions and ensure they operate within an ethical and legal framework. This section will look at oversight in general and specifically budget oversight as well as looking at the variety of tools used to monitor the executive. This section also looks at other significant tools available to Parliaments to support their role as overseers of the executive, such as Supreme Audit Institutions.

Inter-Parliamentary Union (IPU) Recommendations for Parliaments and Oversight

Institute and/or reinforce mechanisms within parliament for bringing government to account, including through questions to the government, optimum use of committees to scrutinize government business. In this regard, Parliaments may consider establishing and/or strengthening special committees that deal with public accounts.

Ensure that the process for preparing and executing the national budget is transparent and provides for safeguards against government misuse of public funds and resources: In this regard, strengthen the powers of and resources available to such parliamentary committees as public accounts committees, etc; Promote the creation of watchdog agencies such as the Auditor/Controller General, Ombudsman, etc. and ensure that these agencies are provided with adequate resources and that their reports receive due attention by the parliament and the government.

Ensure that the opposition is adequately represented in the parliamentary structures and processes and that it has sufficient resources and is afforded equitable opportunities to voice their views on the management of public affairs, including denouncing corruption and probing or initiating investigations into alleged cases of corruption.

Institute transparent and stringent mechanisms for the approval of senior government and public officials so as to ensure that only the most competent and morally upright are appointed to public office; institute appropriate mechanisms for sanctioning those public officials who are found guilty of wrong-doing in the performance of their duties. Establish conflict of interest standards for public employees and effective measures against illicit enrichment, including appropriate sanctions for those who use their public position to benefit private interest. *Source: IPU (2001b)*

1.1 Budget Oversight

Approval and control of the budget

Most countries have their government budgets overseen and approved by parliament, however, levels of inclusion and time scales for oversight, approval and monitoring often limits the ability of parliaments to adequately carryout their oversight duties. Inadequate budget oversight or a political system that hampers effective budget oversight, gives the executive the opportunity to manipulate the budget process and hide corruption and poor administration.

In an ideal world the financial calendar and the inclusion of the parliament in the budget cycle would allow for full budget oversight, examination and questioning of the executive on the budget. However, “Budgets are very complex and even in cases where different committees of parliament, focus on different sections, the executive- if it chooses- will be able to hide information and use authorities in ways other than as understood by parliamentarians. The aim of parliamentary oversight might better be interpreted as reducing the likelihood of such behavior” (Parliamentary Centre, 2005:46)

MPs are often limited in their knowledge of how budgets work and the establishment of a Budget or Parliament Accounts Committee (PAC) can substantially support parliaments in budget oversight and enables a continuous strengthening of budget oversight skills in a core group of often cross party MPs. These committees are discussed in more detail further on in this section.

The OECD suggests that “Parliament should have the opportunity and the resources to effectively examine any fiscal report that it deems necessary” (OECD, 2001:9). This can prove very difficult given the limitations of parliamentarians in budget oversight, even those in the committee system. Support in budget oversight from independent agencies, such as Supreme Audit Institutions (SAI), and the strengthening of communication and reporting between parliament and such agencies is central to the parliamentary oversight function (Stapenhurst *et. al.*, 2001).

Country examples

Mexico: Mexico offers an interesting example of Parliamentarians’ limits in budget oversight, with a constitution that unintentionally limits the legislature’s budget scrutiny. Elected representatives to congress are not allowed consecutive terms, limiting the budget oversight experience of representatives. As a result ‘The anti-reelection heritage is a barrier to the development of legislative budgeting experience’ (Lienert, 2005: 17). Though this gap in budget oversight experience could be filled by effective technical support agencies (Meyers, 2000:16), this is dependent upon a good working

relationship between support agencies and the legislature, something that is not always there (Ibid., 1996).

Parliament and the Budget Process

Budgets, where effective, are the device through which the executive sorts out what to actually provide to citizens and how to pay for it – in response to its legislative obligations, policies, political promises and its financial situation. Parliaments must provide authority for the funds and their allocation/application and, typically, do so annually. Parliamentary engagement in the budget process, accordingly, can be used to ensure:

It is informed on all sources of funds and their anticipated magnitude, what each program or activity will produce and what it will cost.

It receives timely information on what resources have been collected, what actually has been spent and what has been achieved.

Discipline by providing only annual authority for most programs, by establishing expert oversight agencies – such as auditors- to review the information the executive has provided is accurate; and,

Internal oversight practices and committees to ensure parliamentarians and the public understand the information, can verify that the results achieved are real and can undertake analyses to check if funds have been wasted in inefficiency or corruption.

Source: Controlling Corruption: A Parliament Handbook, 2005¹

Scotland: One of the first actions of Scotland's new parliament was to reassess the Westminster model of budget oversight. A study of the model by the Financial Issues Advisory Group (FIAG) found that the model i) lacked time for parliament to discuss budget proposals ii) did not enable parliament to influence budget proposals iii) lacked adequate financial information for oversight and iv) MPs lacked adequate capacity and did not receive training to carry out oversight effectively (Midwinter, 2005: 15). As a result the new Scottish parliament moved away from the Westminster model and sort to ensure greater consultation with the executive on the budget and ensuring recommendations are passed from the legislature to the executive during budget drafting. To further strengthen the position of the parliament in budget

¹ Available online at <http://www.gopacnetwork.org/Docs/CCH%20FINAL%20Aug%2005%20ENG.pdf>

oversight and approval, parliament is also able to propose alternative budgets if it is dissatisfied with that proposed by the executive².

Public Accounts Committees

Parliamentary committees are essential for the smooth running of parliament and can enable informed debate and strengthen the oversight system. The Parliamentary Accounts Committee is central to this system and supports and enables effective budget oversight. Most countries have developed a form of PAC due to the increased need to monitor public finances and the ever more complicated nature of public accounts.

In many countries the PAC and the SAI have a key relationship in the fight against corruption and oversight of the budget. SAIs independently audit government finances and report regularly to the PAC. In order to act on these reports and findings many feel that PAC need to have a degree of investigatory power and good access to information as well as adequate skills to analyse this information. At the same time SAIs and their audit reports must be clear and concise and impartial. Finally, a PAC must be able to call the executive to account and a system that ensures the government follows up on recommendations must be in place.

In order for an accounts committee to be fully effective in bringing the executive to account, strong party control must be avoided at all costs or a PAC will simply become a party tool and oversight of the executive will be weakened as will the fight against corruption.

Country Experiences

United Kingdom: The Labour government and Tony Blair have been continuously criticized, including from members of its own party, for over control of the party and reducing Parliaments ability to hold the executive to account. The current Labour government has sort to hand pick and control the selection of candidates for election, has used the party “whip” to ensure Labour MPs vote inline with the party’s policy and has limited the amount of time parliament has to debate key documents. Lord Butler, a cabinet secretary to the last three prime ministers, stated in an interview:

‘We are a country where we suffer very badly from Parliament not having sufficient control over the executive and that is a very grave flaw...We should be breaking away from the party whip. The executive is too free to bring in a huge number of extremely bad bills, a huge amount of regulation and to do whatever it likes – and whatever it likes is what will get the best headlines tomorrow. All that is part of what is bad government in this country’ (Walker, 2004).

² *Ibid.*

Ghana: In 1999, J.H. Mensah, MP and Chairman of the Public Accounts Committee of Parliament in Ghana, issued a lengthy statement to the press, calling on them to join the PAC in demanding greater transparency from the government regarding the purchase of a plane for then President Jerry Rawlings.

Mensah's memo raised several questions regarding misadministration in the Ministry of Finance. Firstly, the Lease Agreement for the plane was not given to Parliament until several months after it was signed, nor did the Minister respond to PAC's request for a copy or a memo of explanation in a timely manner. Secondly, there were several points of inaccuracy between what the Ministry said had taken place and what the Lease Agreement showed to be true: everything from the seller of the plane, the terms of the sale and, in particular the price. Indeed, when the Minister presented the budget to Parliament, on the same day the lease was signed, the plane was not mentioned. Final costs for the plane are said to have topped US\$20 million (Mensah, 1999).

Mensah's statement to the press calls on them and other civil society groups to take the issue on and not let it go until the 'government has fully and properly accounted for its stewardship of the people's money in this regard'. The Centre for Democracy and Development in Accra regards this as a turning point for Ghana's democracy:

'...it highlighted the growing assertiveness of the Parliament of the 4th Republic and the seriousness with which the Finance Committee is conducting its business. And notwithstanding the strict party lines taken by the discussion and vote on the matter, it affirmed the importance of Parliament as a key agency of inter-branch oversight and the gradual but perceptible improvement in governmental accountability in the 4th Republic' (Center for Democracy and Development, 2000: 8).

The Philippines: The Committee on Accountability of Public Officers and Investigations, the 'Blue Ribbon' Committee, has a very strong mandate and has the power to investigate legislative matters and matters of official corruption and crime and is able to force witnesses to testify and submit documents and can detain those who do not comply. It also seeks to investigate:

'[a]ll matters relating to, including investigation of, malfeasance, misfeasance and nonfeasance in office by officers and employees of the government, its branches, agencies, subdivisions and instrumentalities; implementation of the provision of the Constitution on nepotism; and investigation of any matter of public interest on its own initiative or brought to its attention by any member of the Senate' (Sec. 13 par. (37) Rules of the Senate. Eleventh Congress).

In the past the committee has confronted officials at the highest level including a number of presidents (President Marcos and President Estrada). While the committee

has been courageous in those it has sort to bring to justice in its hunt for corruption it has been limited by the fact that it is only able to recommend prosecution and is greatly understaffed (Diamond, 2003: 22).

Supreme Audit Institutions (SAIs)

A countries Supreme Audit Institution (SAI) allows careful monitoring of government agencies and their practices and expenditure and acts as a monitor of corruption and an effective deterrent. In turn, a countries SAI can support and assist the parliament in both its oversight work and reducing corruption. An SAI, a professional and technically able agency, can provide parliaments with audit reports to use in their oversight work and often works closely with the committee structure. In turn, audit can “help reinforce the legal, financial and institutional framework which, when weak, allows corruption to flourish” (Dye & Stapenhurst, 1998).

While SAIs of some form appear in all countries their format and reporting responsibilities often differ. The International Organization of Supreme Audit Institutions (INTOSAI) agreed the Lima Declaration in 1977, which sets out a number of conditions needed to ensure the optimal operations of an SAI in any country and to limited pressure by the executive and limitations in the operations of an SAI. This declaration is of key concern to parliamentarians in their work against corruption as without these foundations for an effective SAI, parliamentarians use of SAIs and their work in anti-corruption will be negated.

The Lima Declaration concerns itself with some of the key points on auditing pre-concepts. The declaration begins by underlining the need for audit and stating that audit and SAIs are part of a larger regulatory system and can not act alone in hunting out corruption.

“The concept and establishment of audit is inherent in public financial administration as the management of public funds represents a trust. Audit is not an end in itself but an indispensable part of a regulatory system whose aim is to reveal deviations from accepted standards and violations of the principles of legality, efficiency, effectiveness and economy of financial management early enough to make it possible to take corrective action in individual cases, to make those accountable accept responsibility, to obtain compensation, or to take steps to prevent--or at least render more difficult--such breaches.” Lima Declaration, 1977³.

Independence is of key importance in the operation of a countries SAI and Auditor Generals. SAIs must not be accountable to the agencies it audits as If SAIs are not independent in both operations and finances, then it can be directed in its auditing work towards less contentious

³ Full text available online at http://www.intosai.org/Level2/2_LIMADe.html

areas and away from wrong doing and corruption, limiting the ability of parliaments to fight corruption and access independent information for its oversight and anti corruption role.

While countries differ in there placing of SAIs, within the executive, parliament or completely independent, Independence can help ensure SAIs are un-manipulated and clear reporting regulations and communication networks back to parliaments and committees will ensure information reaches parliament.

Country Experiences

United Kingdom, National Audit Office (NAO): The introduction of performance auditing in Britain was legislated in response to the demands of the Parliament for audited information extending beyond mere financial audit opinions. Increasing parliamentary concerns about the influence that the executive body, particularly the Treasury, retained over the NAO created the political climate to pass the National Audit Act in 1983, which gave the Comptroller and Auditor General (C&AG), who reports to the House of Commons (Public Accounts Committee), express powers to carry out investigations of how departments use their resources.

As a result the C&AG is now able to provide assurance about performance and about whether public money has been spent properly and for the purposes intended by Parliament. However, the C&AG are not entitled to question the merits of policy objectives; examinations are focused on the means employed to achieve the policy objectives set by the government and approved by Parliament.

1.2 Parliamentary Tools for Accountability and Executive Oversight

Question time

Parliamentary question time is an important way for MPs to engage in public debate and gain information on government finances and management allowing parliament to hold the executive and the government to account. Question time enables the public to see MPs in action and is seen by many as one of the keys to democracy.

In order for question time to operate fully and contribute to parliamentarians fight against corruption the executive and agencies of the government must be required to respond. Their response should be clear and open and not oblique in an attempt to hide information. If question time is well reported and coupled with the media it can become a very strong tool in parliamentary oversight and anti corruption efforts as pressure is brought on the executive to implement appropriate and efficient policies and uses of public funds and to address official wrong doings.

Questions within question time may be asked orally without notice or in writing with notice. Some countries have a system of interpellations, where written questions are given to ministers and then replies are given to the questioning MP and parliament in person within a fixed or agreed time period.

Country Experiences

Australia: Parliamentary Question Time in Australia is popular with citizens and the media and is shown on national television. It gives an opportunity for Ministers to display their political skills and to portray their stewardship of government in a positive light. Other Members, especially the opposition shadow ministry, through skilled questioning, hope to reveal the weaknesses in the performance of Ministers and represent themselves as an alternative government.

South Africa: Conversely, Question Time in South Africa is seen as tedious and sterile. Though the government remains supportive of question time it has sort to limit questions. According to the Cabinet, the Deputy President has asked how to resolve 'questions that may be vexatious and repetitive, require personal information about employees, and demand such detailed research that they could bog down personnel and prevent them from fulfilling other core functions, particularly to service citizens' (GCIS, 2005).

The media recognises such attempts at control as a limitation of the question time system and overseeing the executive by the parliament. An editorial in a South African news paper, the Mail & Guardian, 'Note the technocratic hint that because it takes time and research, answering MPs' questions hampers efficient governance. And who decides whether questions are "vexatious and repetitive"? They may be vexatious, from a minister's standpoint, because they are embarrassing; and repetitive because he or she has not previously given an adequate response' (Mail & Guardian, 2005).

Votes or motions of no confidence

Though motions or votes of no confidence are often political tools of the opposition to embarrass standing governments, prime ministers or ministers, they do offer a powerful tool for parliaments against corruption. Votes of no confidence themselves, especially in a two party system are rarely successful as a majority is required for their passage, and as they are used mainly by the opposition, this rarely occurs. However, where there are slim majorities and coalitions they can succeed and may cause a government change its policies rather than be defeated through a vote of no confidence.

The defeat of a supply bill, concerning the spending of money, can cause the resignation of the government or the dissolution of Parliament, as happened in Australia in 1975. This acts much as a vote of no confidence and halts the government spending money.

Country Experiences

Sweden: The Riksdag can force a minister's resignation by declaring that the minister no longer has its confidence. The procedure for a declaration of no confidence is as follows:

- For a vote on a declaration of no confidence to be held, at least 35 members of the Riksdag must collectively support a proposal for such a vote.
- At least 175 members - just over half the members - must vote in favour of a declaration of no confidence if the Riksdag is to declare that the Government or a minister no longer has its confidence.
- If the members of the Riksdag vote in favour of a declaration of no confidence in the Prime Minister, the entire Government has to resign unless it opts for an extraordinary general election instead.
- If the members of the Riksdag vote in favour of a declaration of no confidence in a minister the minister must resign.

To date, there have been five votes on declarations of no confidence, but on each of these occasions the Riksdag voted against the motion. Twice, however, the mere risk of a declaration of no confidence has led to resignation, first of the Government, in 1981, and then of the Minister of Justice, in 1988⁴.

The Parliamentary Ombudsman

A parliamentary ombudsman, often a variety of ombudsmen in different areas, offers the public a direct channel to lodge complaints on unfair treatment and abuse of power by the executive and its agencies, officials and institutions. While in many the countries the ombudsman may have little direct power, its findings after investigating complaints and the publication of its findings is a powerful tool in the fight against corruption and can make public officials wary of malpractice.

Country Experiences

Sweden: In Sweden anyone can make a complaint to the Parliamentary ombudsman about i) Central government agencies (including courts of law) ii) Municipal agencies iii) Officials employed at central government and municipal agencies and iv) Other institutions which are entrusted to exercise public authority. The ombudsman is then

⁴ From http://www.riksdagen.se/templates/R_Page_____5848.aspx

able, if he finds wrong doing, to bring charges against public officials for breaches of duty and can also call for disciplinary action against public officials.

- The Parliamentary Ombudsmen receive some 5000 complaints every year.
- They are politically neutral.
- The Ombudsmen are chosen by the Riksdag.
- There are currently four Ombudsmen - two women and two men.
- The Parliamentary Ombudsmen have existed in Sweden since 1809.
- Sweden was the first country in the world to establish an Office of the Parliamentary Ombudsmen. Today there are similar institutions in hundreds of countries. They are even referred to using the Swedish word "ombudsman" in English and several other languages.

2. LAW MAKING AND LEGISLATIVE FUNCTIONS

A strong legal system itself is essential for fighting corruption and it is here that legislatures have the best chance in their fight against corruption. A consideration of corruption and anti-corruption when drafting legislation should also be ensured. An anti-corruption law in itself is only one part of a comprehensive anti-corruption legislation base. This section will review a range of legislative functions that can be implemented to ensure corruption is curbed and kept in check and also includes an examination of the variety of anti-corruption legislation as well as the role of codes of conduct and procurement legislation for the public service to ensure the actions of public servants keeps within the boundaries of that which is acceptable not just by parliaments but society as a whole.

The legislature can ensure strong anti-corruption through a focus on several other areas, such as:

- Criminalise corrupt activities;
- Enable tracing, seizure, freezing and forfeiture of illicit earnings from corruption;
- Require public officials to regularly declare assets;
- Identify, prevent or resolve conflicts of interest;
- Protect whistle-blowers;
- Improve access to information (allowing citizens to obtain information from the state);
- Regulate implementation of constitutional right of freedom of expression and association;
- Define basic principles for decision-making in public administration (objectivity, impartiality, equality, obligation to justification, right to appeal); and
- Enhance transparency in public procurement (UNDP, 2004: 27).

Some of these are direct methods for tackling corruption, including criminalisation, conflicts of interest, and so on, but others are more indirect. Improving access to information allows both parliamentarians and citizens to make better decisions about the allocation of funding,

improving service delivery and so on, but also allows for greater vertical accountability, for a more responsive and positive relationship between MPs and citizens.

In other words, legislation that promotes the above mentioned values as part of the fight against corruption is important because it allows parliamentarians to hold the executive to account, while also allowing citizens to hold parliament to account. This in turn allows improvement in the quality of interaction between citizens and state organisations and also ensuring the development of a responsible and responsive government.

Parliamentarians can also enact legislature to strengthen oversight mechanisms. They can ratify international agreements and conventions and can translate these conventions into national legislation, covered in more detail further on in this section. They can streamline existing legislation to eliminate the red-tape that opens up corrupt opportunities. Finally, they can provide social legislation - such as social security, minimum wage, ensuring employment equity, and so on - that improves pay and conditions, both generally and for public sector workers in particular, and reduces the need to use corruption to plug holes in inadequate salaries (IPU, 2001: 2).

Inter-Parliamentary Union Recommendations for the Development of Legislation to Curb Corruption

‘Vote appropriate anti-corruption legislation that criminalizes corruption and provides for appropriate punishment and other deterrent measures. In particular, incorporate provisions into the criminal code, administrative law and all other areas of law to reduce the scope of corruption and related offences, and introduce penalties that deter potential offenders;

Vote integrity legislation for members of parliaments and other public officials, including members of government and other government officials and see to it that this legislation is enforced. This legislation would include, inter alia codes of ethics/conduct, declaration of interest, conflict of interest, etc;

Ensure that appropriate oversight legislation is adopted to ensure transparency and accountability in government and public affairs;

Lobby governments to sign and/or ratify relevant international instruments and see to it that the provisions of these instruments are written into national legislation and enforced as such;

Promote the passage of freedom of information legislation that allows for the disclosure by government of information considered necessary for the conduct of parliamentary business, especial in investigating cases of corruption;

Promote party-funding and electoral campaign legislation that fosters transparency in the electoral process and thus increases the legitimacy of the elected parliament. Such legislation should, among other things oblige political parties and groups to declare the sources of their funding and should institute heavy penalties for those who infringe it;

Promote legislation that addresses areas which have a potential for corruption, through: adequate social security for every citizen; introducing public service pay structures which are not conducive to corruption; establishing speedy and transparent bureaucratic procedures; guaranteeing that all participate equitably in the decision-making process;

Streamline and ensure the equity of laws and regulations on government procurement procedures, taxation, the administration of justice, etc.

Source: IPU (2001b)

2.1 Anti-Corruption legislation

An essential element the control of corruption by the Legislature and an area they can have direct impact is in the design and implementation of anti-corruption legislation. In turn once legislation is in place it is essential to continue to monitor corruption and update legislation accordingly to ensure that it remains relevant and reduce ambiguities and inconsistencies.

Anti-corruption legislation acts as a deterrent for both the recipient of corrupt payments and the payee of such payments. As a result sanctions and legal redress must address both parties to an extent that reflect the gains from the corrupt activity.

Anti-corruption legislation is in itself just one step and a strong enforcement arm is essential to ensure corruption is deterred and caught. An independent judiciary and prosecution are of paramount importance, while some countries have successfully implemented independent anticorruption commissions or inspector generals reporting to the parliament.

Developing Anti-corruption Legislation

In developing a successful anti-corruption strategy or anti-corruption laws it is essential to take a broad approach. The areas below have been identified by Transparency International in their work in anti-corruption.

Civil and/or criminal law provisions: These regulate specific bribery and corruption offences and provide for sanctions in cases of guilt. It is important that corruption be regulated as an offence both in its active and passive forms and that both public and private sector corruption is covered. Offences falling under criminal law jurisdiction should be accompanied by adequate criminal procedure provisions regulating the

detection, investigation and prosecution of cases. This first category is most commonly found in a country's civil/criminal code.

Specific anti-corruption laws: These are increasingly being adopted worldwide, but particularly in transition countries, where legislation is often being revisited as a whole and where new laws are being introduced to replace obsolete regulations. These laws can provide a framework for a range of prevention and enforcement aspects, as well as for the establishment of special anti-corruption institutions and agencies. International comparative expertise on such legislation is gradually emerging and should be consulted before and during the drafting process.

Other legislative pieces: These are laws regulating such issues as access to information, conflict of interest, whistleblower protection, freedom of expression and media freedom. Such legislation is almost, if not equally, as important as the laws directly regulating corruption offences. If effective, they can act both as an important deterrent to corruption and contribute to an environment in which further remedies can be developed.

Complete legal framework: In summary, for individual laws to be effective they need to be considered in terms of an entire legislative package. Their sum total should reach beyond traditional criminal law provisions and lay the legal framework for prevention, punishment and cure of corruption.

Transparency International Anti-Corruption Handbook – Government Anti-Corruption Strategies⁵

Country Examples

Kenya: The Kenyan Parliament passed the 'Anti-Corruption and Economic Crimes Act' and the 'Public Officer Ethics Act' in 2003, which confronted abuse of office, conflict of interest, nepotism, tribalism, misappropriation and theft of public resources. The codes of conduct also include provision for declaration of assets and liabilities, and cover all public servants, including the President. Public officials who do not comply face a number of penalties, which have been regularly enforced.

United Kingdom: The United Kingdom has a long tradition of anti-corruption legislation, including the 'Prevention of Corruption Act, 1889'. However, there was a need to update this legislation to take into account the current environment for corruption. In 2001, Parliament passed 'The Anti-Terrorism, Crime and Security Bill', which includes

⁵ Available online at http://ww1.transparency.org/ach/dnld/gov_ac_strat_full_text.pdf

a new offense of the misuse of public office, as recommended by the Commission on Standards in Public Life, also known as the 'Nolan Commission' (Broadbridge, 2001).

Sierra Leone: The 2000 Anti-Corruption Act establishes the Anti-Corruption Commission, which includes among its functions:

- To examine the practices and procedures of Government ministries, departments and other public bodies, in order to secure a revision of those practices and procedures which in the opinion of the Commissioner may lead to corrupt practices, and to advise the heads of such Ministries, departments and other public bodies thereon;
- To instruct, advise and assist any person or authority on ways in which corrupt practices may be reduced or eliminated;
- To educate the public against the evils of corruption; and
- To enlist and foster public support in combating corruption.

However despite a strong will to fight corruption the 2003 Global Corruption Report illustrated why good legislation and a strong Anti-Corruption Commission, working with parliament, is not enough, and all of the pillars of integrity need to function together.

In June 2002, Sierra Leone's deputy anti-corruption commissioner criticised the attorney-general for rendering the anti-corruption commission ineffective by not acting on its recommendations. Of the 57 cases submitted to the attorney-general's office since the commission was established in January 2001, three-quarters had not yet been acted upon. The most prominent was that of former minister of transport and communications Momoh Pujeh, who, following an investigation by the commission, was arrested in November 2001 for illicit mining and the possession of conflict diamonds. Corruption charges were not brought against him until August 2002. (Transparency International, 2003: 219).

Malaysia: The Malaysian legislation on corruption is similar to that in Sierra Leone. It established the Anti-Corruption Commission (ACC), whose head is formally chosen by the Yang di-Pertuan Agong (the head of state), in conjunction with the Prime Minister. Its functions are also similar, but set out in the legislation in more detail. According to the Act, the ACC shall,

- a) receive and consider any report of the commission of an offence under this Act and investigate such of the reports as the Director-General or officers consider practicable;
- b) detect and investigate-

- i. any suspected offence under this Act;
 - ii. any suspected attempt to commit any offence under this Act; and
 - iii. any suspected conspiracy to commit any offence under this Act;
- c) examine the practices, systems and procedures of public bodies in order to facilitate the discovery of offences under this Act and to secure the revision of such practices, systems or procedures as in the opinion of the Director-General may be conducive to corruption;
- d) instruct, advise and assist any person, on the latter's request, on ways in which corruption may be eliminated by such person;
- e) advise heads of public bodies of any changes in practices, systems or procedures compatible with the effective discharge of the duties of the public bodies as the Director-General thinks necessary to reduce the likelihood of the occurrence of corruption;
- f) educate the public against corruption; and
- g) enlist and foster public support in combating corruption (Government of Malaysia, 1997).

2.2 Fighting the Corrupt Activities of Nationals Overseas

While domestic anti-corruption legislation help parliaments within their countries to curb corruption, globalisation has meant a countries nationals can be involved in corruption abroad which can have a significantly negative effect at home. We discuss further on International treaties and parliamentary networks in the fight against corruption but a number of countries have taken a step further by making corrupt activities of nationals abroad punishable at home.

Country Experiences

United States: Following a number of scandals involving US companies making illegal payments to foreign government officials, Congress enacted the Foreign Corrupt Practices Act (FCPA) in 1977. This made it illegal for US companies, or any company trading on the US stock exchange, 'to make a corrupt payment to a foreign official for the purpose of obtaining or retaining business for or with, or directing business to, any person' (US Department of Justice, 2004).

Since the FCPA was enacted, the US has lobbied the OECD to put pressure on its members to enact similar legislation. This led, in 1997, to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

United Kingdom: In 2003, the government presented a draft corruption bill that introduces a provision for UK nationals committing corrupt acts outside the UK, a change from the 1889 legislation. It also subjects MPs to the criminal law on bribery and corruption, and includes provision for parliamentary proceedings to be used in prosecuting corrupt offenses by MPs (Home Office, 2003). At the time of this report, the legislation is still pending.

2.3 Codes of Conduct for Public Servants

The establishment of codes of conduct for public servants can also assist in the fight against corruption. Codes of conduct offer a means to define what is morally acceptable or unacceptable within the executive and for public servants, and can help lay the framework for anti-corruption within the executive. A number of areas where codes of conduct can cover may be difficult to put into anti-corruption legislation, such as registration of interests of public servants and ensuring public servants are impartial.

Some countries also place limitations on post public service employment to ensure that public servants are not compromised and rewarded after their public service tenure. As a result codes of conduct may serve a number of purposes beyond anti-corruption but which help to ensure corruption is avoided:

Palidauskaite (2005), identified the following underlying reasons and aims of codes of conduct for public servants:

- The promotion of ethical behaviour and deterrence of unethical behaviour.
- The provision of a set of standards, a written benchmark against which to judge behaviour.
- The provision of guidance when a person is faced with difficult decisions. For example, an employee faced with competing values, loyalties and interests expects to find guidance to help deal with a specific situation in a code. An ideal code will distinguish the priority values or principles, as serving public interests should have higher priority than loyalty towards organization or internal rules.
- The establishment of rights and responsibilities. These are useful when facing illegal requirements or expectations. In such, potentially ambiguous, situations they provide a defence for a person facing groundless accusations.

- A statement of principles indicating what the profession or organization stands for (equity, impartiality, etc.).
- The creation of a contract between professionals and their clients.
- A statement of professional and moral development. Codes may be used in the process of professional socialization, seeking to develop employee's sensibility towards ethical issues.
- Legitimation of professional norms and justification for sanctions when those norms are ignored or unethical conduct occurs.
- Enhancement of the status of a profession. The prioritised values and standards may create an impression that employees of the organization or members of the profession are trustworthy, as they follow prescribed principles. Depending on the content, codes of conduct for government officials and their implementation may increase public trust and respect.
- A statement of professional conduct, identifying client expectations

This framework also makes it easier for public servants to avoid and stand up to the harassment that corruption and an attempt to corrupt ultimately forces upon public servants.

Country Examples

Germany: Germany adopted a code of conduct for civil servants and public officials in 1998, with a key aim to “to make employees aware of dangerous situations, in which they can unintentionally be drawn into corruption.... to motivate employees to fulfill their duty and obey the law.....and to increase awareness of corruption”. The codes of conduct address a number of areas, both for the individual and their actions, the public sector unit and manager as well as a wider set of codes of conduct or principles for the public sector as a whole (Hine, 2004).

The focus, throughout the document, which runs to some 7,000 words, is on measures to combat corruption and on the identification of situations of risk. It addresses a wide range of practical issues including: best-practice procedures on the internal transparency of decision-making; the development of decisional audits (the so-called four- or six-eyes principle); the rotation of staff; internal financial audit procedures; behaviour in situations with the potential to generate corruption opportunities; the obligation of heads of service to inform a public prosecutor's office when corruption is reported by subordinates, and suspicions are confirmed; dealing with offers of gifts; sponsorship; and the establishment of special anti-corruption units at agency level. (Ibid.)

Canada: In 2005, the Canadian Parliament passed whistle bower protection in the form of order 'to establish a procedure for the disclosure of wrongdoings in the public sector, including the protection of persons who disclose the wrongdoings'. The Bill was introduced following a scandal in which the government was accused of paying over CA\$100 million to advertising firms who did little or no work for the money. Those who broke the scandal were in the position at the time of having no one to report to other than the very government who was implicated in the scandal in the first place.

The Bill establishes the President of the Public Service Commission (PSC) as the 'neutral' to receive and investigate reports of possible wrongdoing. The PSC is an independent agency that reports directly to Parliament and has a strong reputation in Canada for integrity (House of Commons of Canada, 2004).

2.4 Procurement

Public sector procurement offers the unscrupulous the opportunity to use corruption to gain profitable public contracts and may see public resources wasted as public officials fail to choose the cheapest or most efficient procurement option.

There are several ways to manipulate the procurement process including (OECD, 2005):

- Collusion to fix bid prices;
- Promote discriminatory technical standards;
- Interfere improperly in the work of evaluators; and
- Offer bribes.

Before contracts are awarded, the purchaser can also:

- Tailor specifications to favour particular suppliers;
- Restrict information about contracting opportunities;
- Claim urgency as an excuse to award to a single contractor without
- competition;
- Breach the confidentiality of supplier offers;
- Disqualify potential suppliers through improper prequalification; and
- Take bribes.

Parliamentarians ensure that the procurement process is i) transparent ii) efficient iii) accountable, and that there is iv) competency and integrity in procurement ensuring parliaments can set out a framework that avoids corruption in procurement.

Country examples

Australia: Australia has been working on improving its legislation in this area. Procurement legislation in Australia falls under a broader fiscal management framework. Procurement processes are to take into account the principles of 'value for money'. This 'requires a comparative analysis of all relevant costs and benefits of each proposal throughout the whole procurement cycle...Value for money is enhanced in Government procurement by:

- encouraging competition by ensuring non-discrimination in procurement and using competitive procurement processes;
- promoting the use of resources in an efficient, effective and ethical manner;
- making decisions in an accountable and transparent manner' (Government of Australia, 2005).

By approaching procurement legislation in this way, Parliament emphasises both the need for money to be spent non-corruptly and for it to be spent in a way that offers the public 'value'.

2.5 Corruption and Crime

While corruption itself is a crime there is also a clear link between corruption, crime and organized crime, both international and domestic. Corruption is strongly linked to i) human trafficking, ii) sexual exploitation iii) slavery iv) drug trafficking and v) smuggling. This in turn leads to other forms of crime which impact upon social and political stability and even terrorism. To tackle this UN General Assembly adopted the United Nations Convention against Corruption in October 2003. The convention provides countries with guidance on the prevention of corruption and the criminalization of corruption. It also addresses the link between crime and corruption:

The Convention requires countries to establish criminal and other offences to cover a wide range of acts of corruption, if these are not already crimes under domestic law. In some cases, States are legally obliged to establish offences; in other cases, in order to take into account differences in domestic law, they are required to consider doing so. The Convention goes beyond previous instruments of this kind, criminalizing not only basic forms of corruption such as bribery and the embezzlement of public funds, but also trading in influence and the concealment and

laundering of the proceeds of corruption. Offences committed in support of corruption, including money-laundering and obstructing justice, are also dealt with. Convention offences also deal with the problematic areas of private-sector corruption⁶.

The Nathanson Centre for the Study of Organized Crime and Corruption⁷, established to analyse and research the link between crime and corruption in Canada and countries around the world underlines the linkages between corruption and organized crime found that ‘Since organized criminals seek out countries known to have less effective regulatory and enforcement systems, any jurisdiction that does not have adequate defences is at risk and may cause risk to other countries. As perhaps never before, the policies and enforcement capabilities of any one country have direct consequences globally’⁸.

Therefore a strong and committed parliament and legislation to fight against corruption can also help to fight crime domestically and to discourage those engaged in globalised crime from basing themselves within a particular country. The legal system must recognise corruption as a crime. An approach that recognises corruption as interrelated to other forms of crime - such as money-laundering, drug trafficking, illegal political campaign finance, and so on – rather than in isolation, is more likely to be effective.

2.6 International treaties and Networks for the fight against corruption

International treaties seek to address the cross border nature of corruption and offer parliaments a range of tools and guidelines to follow to address corruption. These tools and guidelines include:

- **Binding legal instruments** setting concrete requirements or standards that are in the nature of legal obligations, binding on States Parties to the instrument concerned in international law;
- **Normative legal instruments** that set standards that are legal in nature but not legally binding;
- **Normative instruments** that set standards that are not legal in nature, for example, the allocation of resources to combat corruption; and

⁶ Available online at http://www.unodc.org/unodc/en/crime_convention_corruption.html

⁷ See <http://www.yorku.ca/nathanson/default.htm>

⁸ *Ibid.*

- **Other documents or instruments** that may contain, for example, political commitments, mandates for the creation of instruments or other actions against corruption, and similar subject matter (UNODC, 2004: 412).

Relevant Cases

The United Nations Convention against Corruption⁹:

The United Nations Convention against Corruption, finalized and adopted by the General Assembly in 2003, is a major step forward in the fight against corruption and offers parliamentarians a strong foundation to base their fight against corruption and for UN member states to adopt a common approach to fighting corruption.

The convention covers a range of key areas, including:

- *Prevention of corruption:* This includes the outline of a number of model preventative policies such as anticorruption bodies, transparency and the financing of political parties. The convention also seeks to ensure that states ensure that their public sectors and services are efficient and transparent including the advocacy of the use of codes of conduct for public sector workers, as well as financial disclosures. Transparency in public finances is also addressed including financial transparency and disclosure and procurement practices.
- *Criminalisation of corruption:* the convention also seeks to ensure a range of corrupt activities are made illegal if not already crimes under domestic law. The convention goes further than previous measures in criminalising the trade of influence and concealment and laundering of corruption proceeds as well as dealing with offences committed in support of corruption, such as money-laundering and obstructing justice.
- *International cooperation in the fight against corruption:* Under the convention countries have agreed to cooperate in fighting corruption especially in prevention, investigation and the prosecution of offenders and support measures to support the tracing of, freezing and confiscation of corruption proceeds.
- *Asset recovery:* Of major concern to developing countries, the agreement to assist and cooperate in the recovery of plundered state assets is a major step forward. This assists countries in regaining lost assets as well as sending a strong message that corrupt assets can not be hidden within other countries.

The United Nations International Code of Conduct for Public Officials, 1996:

⁹ Available online at http://www.unodc.org/unodc/en/crime_convention_corruption.html

Recognising the need for a strong framework for public servants to operate within and establishing the boundaries for their work, the UN adopted a series of codes of conduct for public servants. These enable parliaments to lay out a framework of integrity, loyalty, efficiency and effectiveness for public officials in their work. Codes of conduct also seek to avoid preferential treatment in public servants work and the responsible use of public funds. The UN codes of conduct also call for the disclosure of assets and the refusal of gifts and protection of confidential information.

The United Nations Declaration against Corruption and Bribery in International Commercial Transactions, 1996:

This declaration further strengthens the fight against corruption by attacking and laying out a framework for action to confront corruption and bribery in international commercial transactions. The declaration as with the United Nations Convention against Corruption, calls for a legal framework prohibiting bribery in international transactions and the criminalisation of the bribery of public officials.

OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 1997:

Several countries have ratified the OECD convention combating the bribery of foreign public officials. This convention is similar to The UN convention above on Bribery in International Commercial Transactions and calls for countries to implement effective measures to deter and prevent the bribery of foreign public officials. The convention is solely focused on bribery and does not address other areas of corruption.

European Union, Criminal Law Convention on Corruption, 1998:

The Criminal Law convention on corruption was adopted by European member countries in 1998 and is open to non-members for ratification, which the United States has done. The Convention is aimed at a broad range of occupations and circumstances affected by corruption but is narrow in the actions or conduct that state parties are required to criminalize. Once signed the convention is legally binding.

Criminalization focuses on both active and passive corruption in the private and public sectors as well as transnational corruption and the bribery of foreign public officials. The convention focuses only on bribery and does not address other forms of corruption such as extortion, embezzlement and does not seek to criminalise corruption in general (UNODC, 2004: 421).

ADB/OECD Anti-Corruption Initiative for Asia-Pacific¹⁰:

In recognition of the problems and damage done by corruption, over 25 countries in the Asia-Pacific region have committed themselves to the goals set out in the Anti-Corruption Initiative for Asia-Pacific. The initiative acts as both a regional initiative and Action plan against corruption as well as a networking tool within the region for countries to share their experiences and learn from each other through the sharing of policy dialogues, analysis and capacity building initiatives.

The anti-corruption Action plan under the initiative lays out three pillars to fight against corruption, firstly, the development of effective and transparent systems of public services, secondly, the strengthening of Anti-Bribery Actions and Promoting Integrity in Business Operations and thirdly, Supporting Active Public Involvement.

¹⁰ Available online at <http://www1.oecd.org/daf/asiacom/>

Three pillars for Anti-corruption

Pillar 1 - Developing effective and transparent systems for public service¹¹

Integrity in Public Service: Establish systems of government hiring of public officials that assure openness, equity and efficiency and promote hiring of individuals of the highest levels of competence and integrity through the establishment of ethical and administrative codes of conduct that proscribe conflicts of interest, ensuring the proper use of public resources, and promoting the highest levels of professionalism and integrity. Accountability and Transparency: Safeguard accountability of public service through effective legal frameworks, management practices and auditing procedures through:

Pillar 2 – Strengthening Anti-Bribery Actions and Promoting Integrity in Business Operations

Effective Prevention, Investigation and Prosecution: Take effective measures to actively combat bribery including sanctions and enforcement against corruption and bribery and ensuring prosecution capabilities. Corporate Responsibility and Accountability: Take effective measures to promote corporate responsibility and accountability on the basis of existing relevant international standards and promote good corporate guidance and codes of conduct for public servants and protection in reporting corruption.

Pillar 3 – Supporting Active Public Involvement

Public discussion of corruption: Take effective measures to encourage public discussion of the issue of corruption through awareness campaigns and support of civil society in promoting integrity and fighting corruption. Access to information: Ensure that the general public and the media have freedom to receive and impart public information and in particular information on corruption matters in accordance with domestic law and in a manner that would not compromise the operational effectiveness of the administration or, in any other way, be detrimental to the interest of governmental agencies and individuals.

Public participation: Encourage public participation in anti-corruption activities.

Source: ADB/OECD Anti-Corruption Initiative for Asia-Pacific Action plan¹²

¹¹ Available online at <http://www1.oecd.org/daf/asiacom/ActionPlan.htm#actionplan>

¹² ADB/OECD Anti-Corruption Initiative for Asia-Pacific Action plan
<http://www1.oecd.org/daf/asiacom/ActionPlan.htm#actionplan>

International Networks for Parliamentarians Fighting Corruption

One element of international practice that has been important has been the use of networks. Parliamentary networks are seen by some as helpful tools in the fight against corruption. Networks enhance shared learning opportunities; offer individual parliamentarians vital support in what is, in many countries, a dangerous activity in which to engage; and enhances the professionalism of parliamentarians, just like membership in an internationally-recognised professional body can do for doctors, accountants and academics, for example. Professionalised parliamentarians, providing peer support (and pressure), are less likely to engage in corruption themselves and more likely to support anti-corruption efforts. As Ruzindana (1999: 3) points out, 'Quite apart from its value as a learning tool, networking of this kind can be a tremendous boost to parliamentary morale'.

The Inter-Parliamentary Union: The first such organisation, on a multilateral level, was the Inter-Parliamentary Union, which first met in 1899. Its mission is:

- To foster peace and security through political dialogue
- To promote democracy and respect for human rights
- To contribute to the development of representative and effective legislative institutions (IPU, 2001: 1).

There are several opportunities for parliamentarians to network and collaborate with others within the IPU. For example, there are three standing committees that meet regularly to assist the IPU Assembly with its work: the Standing Committee on Peace and International Security, the Standing Committee on Sustainable Development, Finance and Trade and the Standing Committee on Democracy and Human Rights.

There are also other committees that meet to discuss human rights, women parliamentarians, and international law, among others. There is a regular schedule of meetings, including such topics as the role of parliaments in the reconciliation process in Africa, the role of parliaments in the Information Society, and on the WTO.

Although the IPU does not indicate fighting corruption as one of its main areas of activity, it has provided key guidelines for parliamentarians, some of which have been highlighted in this report.

Global Organisation of Parliamentarians Against Corruption (GOPAC): This is a Canadian non-profit organisation, which made up of a global Secretariat and a number of regional chapters. These include:

- The African Parliamentary Network Against Corruption (APNAC),¹³
- The Arab Region, Canadian Parliamentarians Against Corruption (CanPac),
- Caribbean Parliamentarians Against Corruption,
- European Parliamentarians Against Corruption,
- Latin American Parliamentarians Against Corruption (LAPAC),
- Newly Independent States Parliamentarians Against Corruption,
- North East Asia Parliamentarians Against Corruption (NEAPAC),
- Parliamentarians for Parliamentary Control (Russian chapter),
- South Asia Region, South East Asia Parliamentarians Against Corruption (SEAPAC)
- The South Pacific Parliamentarians Against Corruption¹⁴

GOPAC focuses on three main areas of support for parliamentarians:

- *Peer Support*: protecting individual parliamentarians who are engaged in anti-corruption activities;
- *Education*: training parliamentarians on their role and responsibilities as parliamentarians;
- *Clear objectives, measurable results*: having each chapter of GOPAC identify and develop its own objectives and expecting it to be accountable for the results.

¹³ APNAC is a pioneer in regional cooperation to fight corruption. Its objectives are 'to build capacity of member parliaments to exercise accountability; to share information on lessons learned and best practices; to undertake projects to control corruption; and to cooperate with organisations in civil society' (Ruzindana, 1999: 3).

¹⁴ Available online at http://www.parlcent.ca/gopac/regional_chapters_e.php

3. REPRESENTATION

Strong parliamentary representation of citizens interests and a will to bring citizens into the political process is often overlooked as a tool in the fight against corruption. MPs should engage citizens in public deliberation and debate on matters of public policy. This will strengthen citizens' perception of the Parliamentary system and will raise the integrity of MPs and the government.

Further more, citizens will feel empowered to reject corrupt powers and raise concerns about the corrupt practices of politicians and officials. It also acts as a tool to engage citizens in the fight against corruption. This is underlined in a recent GOPAC study on Parliaments and corruption:-

Effective representation helps the public understand the incidence of corruption, its impacts on their lives, achieving redress in certain cases, and effectively setting the public standards and expectations. It can be a device for learning how others have dealt with corruption and its results. Moreover, it can help in some cases in creating the expectation that something can be changed, often a key step. (Mcanthony et. al., 2002)¹⁵

The GOPAC study outlined a framework for ensuring representation and including citizens in the fight against corruption.

- Establishing consensus and **public expectations for what is acceptable behaviour** for conduct of elected/appointed officials.
- **Acting in ways that are consistent with those expectations**
- Ensuring **citizens complaints** regarding the use of parliamentary authority and resources are visible to the executive and monitoring executive response
- Rendering visible **minority views** (including minority reports of committees).

¹⁵ Available online at

<http://www.gopacnetwork.org/Docs/Parl%20Fighting%20Corruption%20a%20conceptual%20overview%20EN.pdf>

- Limits of parliamentary **privilege**
- Party and **election financing** practices
- Party **consensus building practices** that do not undermine parliamentary functioning

Parliamentarians must be active in ensuring that there is effective representation and that citizens rights are ensured and they have a voice in the fight against corruption. MPs can facilitate this interaction and assist citizens in voicing complaints and denouncing corrupt practices.

A Human Rights Based Approach (HRBA)¹⁶

Strongly linked to representation is the assurance by Parliamentarians that citizens human rights are ensured and that corruption is fought with a view to ensuring citizens human rights. While on one hand anti-corruption can remove the harassment from public servants it is often forgotten that corruption is a direct attack on citizens' human rights. Corruption reduces accountability of the government and parliaments to their citizens, limits citizens ability to empower themselves to improve their lives and participate in society, and is especially detrimental on already disadvantaged groups such as women and the poor.

'First, corruption dilutes human rights in a significant way, although it is rarely observed and understood from this perspective.

Second, an institutionalized form of corruption creates mass victimization resulting in a threat to rule of law, democratic governance and the social fabric in Indian society.

Third, human rights discourse is a powerful resistance to violation of various rights and the problem of corruption can be addressed by framing it from the standpoint of it being a human rights violation.

Fourth, the benefit of developing corruption as a human rights issue will be enhanced due to development of international human rights law, along with national developments in constitutional rights, legal rights and judicially recognized rights.

Fifth, the corruption problem, when framed as a human rights issue, can empower the judiciary to enforce certain rights for the citizenry and to demand a transparent, accountable and corruption free system of governance in India and also help monitor the process (Raj Kumar, 2003).

¹⁶ See UNDP, The impact of corruption on the human rights based approach to development http://www.undp.org/oslocentre/docs05/Thusitha_final.pdf

Corruption comes between citizens and their access to services, services they have a right to access such as education and health. This especially affects the poor and their access to public services. Corruption can also have serious effects on the lives and health of citizens as decisions are steered towards the payee's needs and not the environment and health needs of the population. Business may be able to pay off public servants and implement lower environmental standards which have a larger negative impact on the population and significant externalities.

Corruption also dis-empowers the poor and places increased power in corrupt officials especially where a service is essential to the life of a citizen. Increased awareness of what is corrupt and the rights and entitlements that are removed by corruption and a clear path for complaint can re-empower citizens rights and strengthen the fight against corruption by making citizens part of the fight.

By making participation in the political system, the economy and also society as a whole dependent upon a citizens ability to buy his way in, seriously limits citizens' ability to participate and make themselves heard. This will have serious constraints on the political system, parliaments and governments legitimacy as well as damaging any movement towards greater democracy.

4. PARLIAMENTARY ETHICS AND INTEGRITY

Although holding the government to account is a very important part of a parliamentarian's business, so too is ensuring that members hold themselves to the highest standard of ethical behaviour.

This section will look closely at tools to ensure that parliamentarians themselves operate under the utmost integrity. These tools include the role that codes of conduct for parliamentarians play as well as the use of parliamentary standards committees and the registration of parliamentarians interests as tools to ensure the highest level of integrity within parliaments and to establish boundaries for parliamentarians to go about their work. This section will also examine political corruption as well as the debate surrounding the role of gender in the fight against corruption within parliaments.

4.1 Codes of Conduct, Standards Committees and Registered Interests

International experience shows that parliamentary codes of conduct provide parliamentarians with a template of behaviour, and also give society a basis for measuring whether or not parliamentarians are themselves conducting their work in an ethical manner. Codes of conduct also provide new parliamentarians with guidelines as to the behaviour that is expected of them. These codes should be drawn up, applied and enforced in a non-partisan manner for success to be achieved. They should be made publicly available and disseminated in such a way that ordinary citizens are aware of the codes, and the media should play an important role in showing how parliamentarians observe these codes.

Codes of conduct should be as detailed as possible in order to cover the wide-ranging work of parliamentarians. With this in mind, the following examples provide excerpts of codes from different countries, each with a different focus.

Country Experiences

Codes of Conduct

United Kingdom¹⁷: The Committee on Standards in Public Life identified seven principles of public life which it believes should apply to all in the public service and which it included in the codes of conduct for Members of Parliament in 1995. These are:

- **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.
- **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.
- **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.
- **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.
- **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.
- **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.
- **Leadership**: Holders of public office should promote and support these principles by leadership and example

Further more the codes of conduct call on Members of Parliament to ensure they act ethically and in the interests of the public they serve and not themselves. This includes:-

¹⁷ Available online at <http://www.parliament.the-stationery-office.co.uk/pa/cm199697/cmselect/cmstand/688/code.htm>

- Members shall base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, at once, and in favour of the public interest.
- Members shall at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of Parliament and never undertake any action which would bring the House of Commons, or its Members generally, into disrepute.
- The acceptance by a Member of a bribe to influence his or her conduct as a Member, including any fee, compensation or reward in connection with the promotion of, or opposition to, any Bill, Motion, or other matter submitted, or intended to be submitted to the House, or to any Committee of the House, is contrary to the law of Parliament.
- Members shall fulfill conscientiously the requirements of the House in respect of the registration of interests in the Register of Members' Interests and shall always draw attention to any relevant interest in any proceeding of the House or its Committees, or in any communications with Ministers, Government Departments or Executive Agencies.
- In any activities with, or on behalf of, an organisation with which a Member has a financial relationship, including activities which may not be a matter of public record such as informal meetings and functions, he or she must always bear in mind the need to be open and frank with Ministers, Members and officials.
- No Member shall act as a paid advocate in any proceeding of the House.
- No improper use shall be made of any payment or allowance made to Members for public purposes and the administrative rules which apply to such payments and allowances must be strictly observed.
- Members must bear in mind that information which they receive in confidence in the course of their parliamentary duties should be used only in connection with those duties, and that such information must never be used for the purpose of financial gain.

United States¹⁸: The House of Representatives Gift Rule prohibits acceptance of any gift unless permitted by one of the exceptions stated in the rule. Gifts allowed by the exceptions include:

¹⁸ Available online at http://www.house.gov/ethics/Gifts_and_Travel_Chapter.htm

- Any gift (other than cash or cash equivalent) valued at less than \$50; however, the cumulative value of gifts that can be accepted from any one source in a calendar year is less than \$100;
- Gifts having a value of less than \$10 do not count against the annual limit;
- 'Buydowns' are not allowed -- i.e., a gift valued at \$55 cannot be accepted merely by paying \$6;
- Gifts from relatives, and gifts from other Members or employees;
- Gifts based on personal friendship (but a gift over \$250 in value may not be accepted unless a written determination is obtained from Standards Committee);
- Personal hospitality in a private home (except from a registered lobbyist);
- Free attendance at charity, political, or officially-related 'widely attended' events if offered by sponsor, and free attendance at receptions;
- Anything paid for by federal, state, or local government.
- Members and staff may never solicit a gift, or accept a gift that is linked to any action they have taken or are being asked to take.

Uganda¹⁹: Members shall observe the general principles of conduct specified below:

- **Selflessness:** Members should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends;
- **Integrity:** Members should not place themselves under any financial or other obligation to outside individuals or organizations that might influence them in the performance of their duties;
- **Objectivity:** In carrying out business, including making recommending public appointments, awarding contract, or recommending individuals for rewards and benefits, Members should make choices on merit;
- **Accountability:** Members are accountable for their decisions and actions to the electorate and must submit themselves to whatever scrutiny is appropriate;

¹⁹ Available online at http://www.parliament.go.ug/rules_procedure_AppendixC.htm

- **Openness:** Members should be as open as possible about all the decisions and actions that they take and should give reasons for their decisions and restrict information only when the public interest clearly demands;
- **Honesty:** Members have a duty to declare any private interests relating to their parliamentary duties and to take steps to resolve any conflicts arising in a way that protects the public interest;
- **Leadership:** Members should promote and support good governance by leadership and example.

Global Organization of Parliamentarians Against Corruption (GOPAC). Draft Code of Conduct for Members of Parliament

- A member should not try to secure business from the government for a firm, company, or organization with which s/he is directly or indirectly concerned.
- A member should not unduly influence government officers of the ministries in a case in which s/he is interested, either financially or indirectly.
- A member should not receive remuneration of any kind for any work that s/he desires or proposes to do from a person or organization on whose behalf the work is to be done.
- A member should not proceed to take action on behalf of his/her constituents on some baseless facts.
- A member should not write recommendation letters or speak to government officials about employment or business contracts for any of his/her relations (Campbell & Stapenhurst, 2005: 2).

Standards Committees and Registered Interests

United Kingdom: The Committee on Standards in Public Life is an independent committee established to investigate standards in public life in response to a series of concerns that some MPs were acting unethically. Before the establishment of the committee allegations of failure to declare or register financial interest were dealt with by a Select Committee on Members' Interests, with sanctions being brought by the House of Commons under parliamentary privilege rules established to regulate its own affairs.

In 1995 the House of Commons established new procedures to oversee members interests and conduct. The main changes included:²⁰

- **'paid advocacy'** should not be allowed for MPs - that is, speaking on behalf of, putting a question for, or arranging or going as part of delegations concerning, interests for which the MP is receiving payment
- **a new post of Parliamentary Commissioner for Standards** was created - to keep the Register of Members' Interests, advise MPs on their conduct and to investigate complaints.
- **a new Committee on Standards and Privileges** was established with various functions, including the investigation of complaints against individual Members, and oversight of the work of the Parliamentary Commissioner for Standards.
- **a new Code of Conduct for members** was subsequently published as HC 688 1995/96 and agreed by the House on 24 July 1996. A new version of the Code of Conduct was agreed by the House on 14 May 2002.

The Committee on Standards in Public Life also considers other matters in relation to the conduct of public-office holders including the funding of political parties. The committee also looks at the role of the executive and in 2003 issued a report, "Defining the Boundaries within the Executive" which looked closely at the relationships between Ministers, Special Advisers and the civil service. The committee has also reported on 'Standards of Conduct in the House of Lords'. However the Committee on Standards in Public Life has no powers to investigate individual allegations of misconduct.

South Africa: The Committee for Ethics and Members interests oversees MPs disclosure of registrable interests, which is undated after the opening of each parliamentary session. The kinds of interest to be registered are very broad and detailed and include²¹:

- shares and other financial interests in companies and other corporate entities;
- remunerated employment outside Parliament;

²⁰ Available online at <http://www.parliament.uk/works/standards.cfm#sppriv>

²¹ Available online at http://www.parliament.gov.za/pls/portal/web_app.utl_output_doc?p_table=portal30.www_document&p_doc_col=blob_content&p_mime_col=mime_type&p_name=336.DOC

- directorships and partnerships;
- consultancies;
- sponsorships;
- gifts and hospitality from a source other than a family member or permanent companion;
- any other benefit of a material nature;
- foreign travel (other than personal visits paid for by the member, business visits unrelated to the member's role as a public representative and official and formal visits paid for by the state or the member's party);
- ownership and other interests in land and property; and
- pensions

Further more MPs “declare any personal or private financial or business interest that that member or any spouse, permanent companion or business partner of that member may have in a matter before a joint committee, committee or other parliamentary forum of which that member is a member” as well as “withdrawing from the proceedings of that committee or forum when that matter is considered, unless that committee or forum decides that the member's interest is trivial or not relevant”.

4.2 Parliamentary Immunity

Several countries provide special privileges and immunities to their members of parliament. Parliamentary privilege and immunity are intended to ‘protect members of parliament from legal action resulting from an opinion expressed or vote cast’ and to protect ‘parliamentarians against civil or criminal proceedings for acts undertaken outside the exercise of their parliamentary function’ (Myttenaere, 1998). In countries where MPs have immunity, it is there to ensure that parliamentarians feel free to conduct the essential business of parliament without worrying if things that they say in the course of their parliamentary business will land them in legal hot water. It can also stop important parliamentary business from being interrupted if an individual parliamentarian is accused of a civil or minor offence.

Immunity and privilege can often only be stripped by parliament itself, although this depends upon the country. There are wide variations among countries in regards to how and why. This means that if an MP is suspected of acting corruptly, it may be up to Parliament to decide whether or not he or she should be subject to criminal investigation by choosing whether or not to strip the MP of immunity. Likewise, if an MP is unfairly accused of

corruption, and Parliament is satisfied that the charges are indeed false, Parliament can uphold immunity to prevent an awkward and unnecessary court case.

However, in some cases immunity can mean that parliamentarians avoid investigation and prosecution for engaging in corruption. It can be used to protect both corrupt parliamentarians and to cover practices that are non-transparent. In some countries, parliamentarians have been accused of running for office simply to avoid pending or likely prosecution. For example, in a workshop for civil society and community leaders in Sierra Leone on 'Corruption, Local Government and Decentralisation', the participants agreed that parliamentary immunity should be stripped, either generally or especially in cases where the MP is accused of corruption. This reflects how, in Sierra Leone, immunity is seen as subject to abuse by corrupt MPs (Campaign for Good Governance, 2000).

Country Experience

Turkey: In the last Turkish election, leading political parties promised that parliamentary immunity would be lifted as part of wider anti-corruption strategies, but this has not yet happened. Their argument is that Turkey's entire justice system needs to be reformed, and lifting immunity should wait until this has taken place. They have been accused of stalling it intentionally, as there are 208 cases filed against 117 parliamentary deputies pending (Southeast European Times, 2005).

Sweden: MPs in Sweden have immunity with regard to statements and actions by members of parliament in the performance of their duties. The question of waiving parliamentary immunity has only arisen once since 1865, when, in 1994, a member of parliament was accused of corruption during the performance of his duties. He was accused of receiving payment through a company he owned for services that were part of his duties as a parliamentarian; however, Parliament ruled however that the payment was for services outside of his parliamentary duties, and because of this, there was no need for immunity to be waived (ECPRD, 2001: 43).

4.3 Gender Equality

Whether gender plays an important role in the level of corruption within a country remains debated. Some have found that the level of parliamentary representation within a country and the level of corruption within a country are strongly linked (Dollar *et. al.*, 1999) and that the increased participation of women within parliaments and governments leads to reduced levels of corruption (Swamy *et. al.*, 2000). They argue that women tend to lean towards voting on social issues, score higher in integrity tests and take a stronger stance on ethical behaviour.

Others argue (Alatas *et. al.*, 2006) that the link is purely coincidental and that the linkage is as much cultural and that attitudes toward corruption within society shape the attitudes of women (Sung, 2003). They also warn against using the gender lowers corruption argument as an anti-corruption policy. Others see this argument as based on assumptions of women's inherent probity and that the relation between women in the political system and corruption is based more on how women enter the political system rather than their entry alone (Goetz, 2003).

However, gender equality and equality in representation remains a valuable goal within parliaments. Whether either of these arguments is correct is a distraction from the fact that women are affected differently by corruption and it can limit the level of equality within society. The Utstein anti-corruption resource centre identified the following three impacts of corruption on women²², including the impact of crime and corruption on women:-

Access to decision-making: Corruption undermines a level playing field for women and men in decision-making. When political parties can be bought and sold, when officials are elected through vote-buying and when promotion within the civil service or corporate sector is related to personal connections rather than merit, there is less chance that women can increase their representation in Parliament or at management levels within the public or private sector.

Protection and advancement of women's rights: Corruption is often associated with endemic disregard for human rights and a rise in organised crime, including human trafficking. Minority groups and less-advantaged groups such as women and girls will suffer disproportionately in a context where human rights violations are ignored by a corrupt law enforcement system. Moreover, a corrupt judiciary will reinforce existing explicit or implicit gender discrimination. Women's civil rights are often grossly inequitable with regard to marriage/divorce, allegations of adultery/rape, child custody, inheritance, property rights and financial independence. Because women generally lack access to resources, "he" who can pay will win any case brought to remedy such discrimination by corrupting the prosecutors and/or judges. An independent media is one of the most important tools for promoting equal rights for women as well as for combating corruption. When the state, political parties or private interests control the media, or when it can be bought, it will be less likely to give fair coverage of women's issues.

Access to and control over resources: Corruption reduces public revenues, often resulting in lower levels of spending on basic services such as education, health care, family benefits and other social services, which predominantly affect women's and

²² Utstein Anti-corruption Resource Centre, <http://www.u4.no/helpdesk/helpdesk/queries/query98.cfm>

children's welfare (although men, particularly if they are the primary care-givers and home-managers, are affected too). Corruption also increases the obstacles for women entrepreneurs, by distorting access to credit and making it more difficult to obtain the necessary licenses and permits. Corruption in the water and energy sectors that reduces access to clean water and affordable household energy will particularly impact poor women, who often bear the burden of seeking water and fuel for their families. Corruption in the water and energy sectors that reduces access to clean water and affordable household energy will particularly impact poor women, who often bear the burden of seeking water and fuel for their families.

4.4 Political corruption

Political corruption can seriously limit a government's commitment to its anti-corruption policy and without a will to end corruption from the party in power the use of any anti-corruption tool detailed in this report is seriously negated. Party funding offers a starting point for a detour away from anti-corruption strategies as lobbyists and party funders gain the support of politicians whom they fund. Codes of conduct for political parties may be one way to control party financing and limit corruption within parties. These codes of conduct can include:

Disclosure rules: enable the public to monitor funding and track policy possibly steered by party funding. The amount registered varies from country to country as does the actual degree of openness of the register and who monitors it.

Contribution limits: To curb undue influence of an individual on a party, many countries set maximums on single contributions as well as limiting amounts that can come from overseas supporter and from anonymous contributors, as well as limits on corporate donations.

Expenditure limits: these limits try to ensure and reduce the need for money by political parties by capping the amount each party can spend in a campaign or in its daily operations. Some countries also limit the types of expenditure that can be made.

Of course the success of these measures, and others discussed here, is highly dependent upon the political will within a country to fight corruption²³.

Country Experience

Greece: Greece has undertaken a number of legislative reforms to control political expenditure over last 2 decades. These have now established a framework to control party financing looking at:-

²³ Available online at <http://www.u4.no/helpdesk/helpdesk/queries/query8.cfm>

Disclosure rules: Parties must now publish their balance sheets annually, while both MPs who are elected and also runners up must disclose their expenditures during the election period.

Contribution limits: There are significant limitations on contributions including:

- 600 euro limit on anonymous donations.
- Limits on contributions from non-Greek nationals.
- 15,000 euro annual contribution limit for individuals to single parties.
- 3,000 euro election period limit to candidates.

Expenditure limits: During election periods candidates election spending is limit and calculated according to their constituency size. The state supports parties who have candidates in the Greek and European parliaments and can investigate the expenditure of candidates after elections²⁴.

²⁴ Available online at

http://www1.transparency.org/in_focus_archive/policy/download/case%20studies/political_corruption_party_financing_greece.pdf

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6. USEFUL WEBSITES

African Parliamentarians Network Against Corruption <http://www.apnac.org>

Anti-Corruption Network for Transition Economies <http://www.anticorruptionnet.org>

Financial Action Task Force (money laundering) <http://www.oecd.org/fatf>

Governance Resource Centre <http://www.grc-exchange.org>

Inter-Parliamentary Union <http://www.ipu.org/>

International Chamber of Commerce <http://www.iccwbo.org>

International Criminal Police Organisation (ICPO-Interpol) <http://www.interpol.int>

Nathanson Centre for the Study of Organized Crime and Corruption

<http://www.yorku.ca/nathanson/default.htm>

OECD Anti-Bribery Convention

http://www.oecd.org/topic/0,2686,en_2649_34859_1_1_1_1_37447,00.html

OECD Anti-Corruption Division <http://www1.oecd.org/daf/nocorruptionweb>

Parliamentary Centre – GOPAC http://www.parlcent.ca/gopac/index_e.php

Transcrime – Joint Research Centre on International Crime at Università degli Studi di Trento & the Università Cattolica del Sacro Cuore <http://www.transcrime.unitn.it/index.dhtml>

Transnational Crime and Corruption Center at American University

<http://www.american.edu/traccc/>

Transparency International <http://www.transparency.org/>

UNDP – Parliamentary Development <http://www.undp.org/governance/sl-parliaments.htm>

UNDP – Public Administration Reform & Anti-Corruption <http://www.undp.org/governance/sl-par.htm>

UN Global Programme Against Corruption <http://www.unodc.org/unodc/en/corruption.html>

Utstein Anti-Corruption Resource Centre <http://www.u4.no>

World Bank – Anti-Corruption <http://www.worldbank.org/publicsector/anticorrupt/>

World Bank Institute – Governance <http://www.worldbank.org/wbi/governance>

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