

The Global Organization of Parliamentarians Against Corruption – GOPAC
2nd Global Conference of Parliamentarians Against Corruption
Tanzania, September 19 - 23

Background Paper in Preparation for Panel: *Parliamentary Immunity: Is it too Broadly Defined?* September 21-22, 2006

Practically all established and emerging democracies provide for some sort of immunity from prosecution for members of the legislature or parliament; often these rights are addressed in a country's constitution, and delineated in Rules of Procedure. The legitimate purpose of parliamentary immunity is to allow legislators to freely express themselves and adopt policy positions without fear of politically motivated retribution. However, broad protection from criminal and/or civil prosecution can allow some legislators to engage in corrupt or illicit behavior with impunity; alternately, an overly-politicized legislature and/or executive and judicial branches of government can override the legitimate protection that immunity is supposed to provide.

The issue of the existence of parliamentary immunity, and how it is defined and/or practiced, is receiving increased attention by international donors and parliamentary associations. In 2005, the U.S. Agency for International Development (USAID) funded a conference in Latin America to discuss egregious abuses of official immunity with the aim of creating regional legal standards for limiting the scope of immunity.¹ In April 2006, the Inter-Parliamentary Union completed a paper on Parliamentary Immunity as part of the UNDP Initiative on Parliaments, Crisis Prevention and Recovery. In July 2006, the OSCE Parliamentary Assembly adopted a *Resolution on Limiting Immunity for Parliamentarians in Order to Strengthen Good Governance, Public Integrity and the Rule of Law*² as part of its 15th annual session. In addition, the immunity issue has become a focus of public discontent in some developing democracies. For example, a public opinion poll in Armenia revealed that the majority of citizens would like to do away with parliamentary immunity altogether, directly equating it with corruption and special privileges, not rightful political protection.³

Finally, the Global Organization of Parliamentarians Against Corruption (GOPAC) recognizes the parliamentary immunity issue as a key topic of debate in the promotion of anti-corruption and greater transparency amongst its membership. Members of Parliament have a crucial role to play in setting an example of integrity, and in maintaining their own credibility as the primary institution responsible for holding government accountable for its actions. Parliamentary immunity relates to anti-corruption initiatives in two major ways:

- *Individuals may seek a seat in parliament specifically to avoid prosecution of alleged illegal or corrupt activities; or once in parliament, the cloak of immunity may serve as temptation for deputies to become involved in corrupt activities.* This issue has been raised by civil society particularly in countries of the former Soviet Union and in Latin America; however this issue is not restricted to developing democracies. For example, the French parliament has seen controversy in 2004 and 2005, where the actual and

¹ USAID/America's Accountability/Anti-Corruption Project-sponsored international conference, held October 24-26, 2005 in Lima, Peru with 12 regional country participants.

² Brussels Declaration, July 2006; pages 32-33.

³ According to a poll conducted by IREX/ProMedia in 2003, 64% of the population opposes immunity.

The Global Organization of Parliamentarians Against Corruption – GOPAC
2nd Global Conference of Parliamentarians Against Corruption
Tanzania, September 19 - 23

proposed election of some Senators (by electoral college) were criticized as a way of preventing them from being prosecuted for existing allegations of corruption and misuse of public funds.

-- *On the positive side, immunity laws may protect deputies who go up against powerful government officials with allegations of corruption --in performance of their oversight duties -- by preventing government officials from retaliating against deputies by punishing them based on false counter-charges.* However, even where immunity protection exists, those in power may in some cases manipulate bodies (such as committees with parliament who recommend lifting of immunity, or the responsible judicial institution) to lift immunity in order to punish their critics. In that instance though, the very process of having to lift immunity can force controversial cases into the public domain.

Accordingly, ***Parliamentary Immunity: Is it too Broad?*** will be one of nine workshop topics/panel discussions at the upcoming 2nd Global Conference of Parliamentarians Against Corruption. A sub-set of the group of Members of Parliament participating in the panel discussion will address the topic in-depth and draft a resolution in a pre-conference working group session sponsored by the US Agency for International Development (USAID) and the Inter-Parliamentary Union (IPU).

The panel Chair will offer an overview of the issues discussed in the pre-conference working group. During part one of the discussion on September 21, the discussion will be guided by several case study presentations: **Former Member of Congress of the National Assembly of Costa Rica (1994 – 98; 2002 – 2006), Mr. Luis Gerardo Villanueva Monge**, will offer an overview of his immunity research in his country on the government and parliament, drawing comparisons to other Latin American countries; **Ms. Carmen Lane, a Legislative Development Specialist with Development Alternatives, Inc.** will discuss recent parliamentary immunity case studies of Armenia, Ukraine and Guatemala conducted with funding from USAID; and **Ms. Ingeborg Schwarz, Secretary of the IPU Committee on the Human Rights of Parliamentarians**, will discuss the IPU's research and engagement on the issue of parliamentary immunity. During part 2 of the panel, the Chair will summarize the discussion from part 1 and table some actionable items for GOPAC's consideration, including a task force for further study and ideas for engaging GOPAC's regional entities.

Topics for group discussion include:

- What are the pros and cons of a system of broad immunity (including inviolability) vs. one of narrow immunity in practice? Should/how should immunity be limited to the parliamentary mandate?
- How do political factors – such as the role of majority vs. minority parties in controlling parliament or government institutions -- weigh in?
- What role may the institution of parliament, and individual MPs, play in limiting abuses of immunity? In what cases have parliamentary Codes of Conduct or ethics legislation, such as laws governing statements of assets, limited the potential abuse of the immunity privilege?
- What have been the experiences of regional/global parliamentary bodies in shaping immunity standards, as it relates to corruption?
- How can the importance of some form of immunity as a protection/public good be communicated to the public, while limiting its equation with opportunity for corruption?
- What specific actions can GOPAC take to carry the discussion forward?