

An Elected Legislature

Those who talk about the peoples of our day being given up to robbery and similar vices will find that they are all due to the fact that those who ruled them behaved in like manner.

Niccolo Machiavelli, The Discourses, III (29)

An elected national Parliament or Legislature is a fundamental pillar of any integrity system based on democratic accountability. Its task, simply stated, is: to express the sovereign will of the people through their chosen representatives, who, on their behalf, hold the Executive accountable on a day-to-day basis. Likewise, a government gains its legitimacy from its having won a mandate from the people. The way in which this mandate is won is crucial to the quality of that legitimacy, and to the readiness of the citizens at home, and governments abroad, to accept it.

Watchdog, regulator and representative, the modern Parliament is at the centre of the struggle to attain and sustain good governance and to fight corruption. To be fully effective in these roles, Parliament must be comprised of individuals of integrity. If seen as a collection of rogues who have bought, bribed, cajoled and rigged themselves into positions of power, a Parliament forfeits whatever respect it might otherwise have enjoyed, and effectively disables itself from promoting good governance and minimising corruption – even if it wants to do so.

There will always be people trying to enter politics for the wrong reasons, in the pursuit of personal power and self-interest, and devoid of any real commitment to serve the public. These constitute a fundamental challenge to any integrity system, and special attention is needed if they are to be denied the space to achieve their illegitimate ends.

Elected Parliaments are the essence of democracy: indeed, democratisation in itself presents an opportunity to control systemic corruption by opening up the activities of public officials to public scrutiny and accountability. It has been suggested that democracies, more so than any other political system, are better able to deter corruption through institutionalised checks and balances and other meaningful accountability mechanisms. They reduce secrecy, monopoly and discretion. But they do not guarantee honest and clean government, nor do they eliminate all corruption. They can only reduce its extent, significance and pervasiveness.¹

Criminals win at the polls...

It appears that crime and corruption are non-issues for the voters of Bihar. All the underworld dons and scamsters who contested the polls either from behind bars or from hiding, were elected with big margins. For Surajbhan Singh, Ranjan Tiwary, Dhupal Singh, Sunil Pandey, Munna Sukla, Zakir Ahmed, Suresh Pasi and Rama Singh, all accused of offences such as murder, kidnapping and extortion, the victory came easily as they did not have to bother personally about their campaign... Former Minister for Road Construction Illiyas Husain, arrested by the Central Bureau of Investigation in connection with the bitumen scam, too, won by a handsome margin.

The victory of underworld dons is a clear indication that the expectations of the electorate have been changing with the collapse of the government machinery in the State. "It appears that the people have begun to revere criminals," remarked a senior political leader... Senior BJP leader Kailashpati Mishra and Samata Party leader Nitish Kumar defended their decision to field criminals on the grounds of their "winnability"...

Cover story, Frontline India, "The criminal background" by Kalyan Chaudhuri, 30 March, 2000

A West Australian MP who used his maiden speech to attack the Parliament's "inequitable, discriminatory and over-generous" superannuation scheme, triggered reform. However, this still left it open to existing MPs to continue to benefit under the old scheme, a proviso which provoked public indignation. However, Labour MP Alan Carpenter, married with a young family, opted to refuse to benefit from the old scheme, at a personal cost in excess of US\$300,000. "It was an easy decision because it's the right thing to do and I've no regrets", he said.

The Australian, 2 December 1999

¹ Nor do they necessarily respect the laws they themselves pass with a fanfare and claim that they are to eradicate graft. For example, the Kohl affair in Germany, involved blatant breaches

by the former Chancellor, of laws he had himself guided through the Legislature (Reuters, 26 January 2000).

However, this discussion pre-supposes that democratic institutions have been established and entrenched. As recent events have shown in the emerging democracies of Eastern Europe, a crucial test is whether the process of transition can be accomplished without corruption flourishing in institutional and ethical “vacuums” to the extent that it effectively aborts the whole experiment. It is therefore important, from the outset, to establish the ground rules necessary to achieve a Parliament with moral authority. This theme is dealt with in a later chapter, in a discussion on free and fair elections.

What? No bribery by lawyers?

The American Bar Association, spurred by a federal regulator, has adopted an ethics rule forbidding lawyers from making political contributions as a way to get government work. Opponents said the new rule, targeting a practice known as “pay to play,” will chill free-speech rights and prove unenforceable. But Arthur Levitt, chairman of the Securities and Exchange Commission, contended that investor confidence was at stake.

(<http://news.findlaw.com/News/s/20000215/ababribe/heml>)

Corrupt legislatures feed cynicism

How high are the stakes? The continuing rash of corruption scandals in Western Europe, for one, is seen as likely to benefit extremist parties on both the right and the left. The nature of the political system in many continental European countries – with one or two large parties dominating governments for long periods of time – virtually guarantees that these scandals will continue for a number of years. Nationalists – and unreformed communists on the other side of the political spectrum – appear likely to benefit from the tainting of the “insider” parties, because they have for so long been on the

“outside.” This in turn could translate into significantly increased support for those fringe parties that choose to portray themselves as reformers of a corrupt political system.

Long years of party cooperation and – in the case of Austria – grand coalitions involving the two largest parties have fostered a climate of coziness with business interests, breeding opportunities for corruption... In one EU member country, Austria, Freedom Party Jörg Haider ran a successful political campaign in 1999, in part on an anti-corruption plank.... Haider doubled the Freedom Party’s share of the Austrian vote between 1985 and 1999, in part because of his inclusion of anti-corruption as a campaign platform. While extremist parties will not win elections on this platform alone, the corruption issue will give them a fertile voter base to draw on that dovetails nicely with their anti-EU, anti-outsider rhetoric.

Economic troubles would only serve to magnify the voters’ disgust with the traditional parties and will likely continue to plague large parts of continental Europe in the future. This means that we could easily see nationalist or other extremist parties increase their share of the vote into the 20 to 30 percent range, which is usually enough to win a share of power in parliamentary systems based on proportional representation.²

If corruption could pose such a threat to the “old democracies” (or at least those with proportional representation), the challenge corruption presents to emerging democracies can only be significantly greater.

A failure to separate “powers” between the Legislature and the Executive

A major weakness in the integrity systems of a number of countries – from Africa to Latin America – is simply that elected legislators have too much power. Their role is not confined to legislation and taxation: that is, to the passage of laws and to voting on behalf of the people to grant money to the executive, and then of ensuring that it is properly spent.

Rather, in these countries the legislators are actually and actively concerned with the grant-

² *Global Intelligence Update*, 3 March 2000. Critics of proportional representation point out that Hitler rose to power in Germany through such a system. Others point to its advantages, particularly where there may be significant tribal groups who

constitute important minorities who would otherwise be excluded from meaningful representation in the political processes.

ing of contracts and the spending of public funds. With such a confusion of roles – with the “watchdog” becoming the “burglar” – corruption festers and public cynicism abounds.

Where there is a clear separation of roles, and legislators are confined to the tasks of law-making and holding to account, such scandals are relatively seldom to be found. Problems arise with lobbying and with interest groups trying to ensure that legal frameworks are to their liking, but the scandals that are wreaking such havoc in such countries as Colombia and Nigeria are comparatively few.³

It would be trite to suggest that the democracies where such a separation exists are immune from corruption problems. Recent experience in Europe makes this plain. However, these tend to involve the executive and party manipulations – inexcusable and undesirable as these undoubtedly are – rather than the more blatant instances of personal self-enrichment. Where self-enrichment has been involved it is usually the case that, within the parliamentary system, an elected Member of Parliament has become a minister or prime minister, and as such, a member of the executive. The abuses have occurred as a consequence of membership of the executive, not of Parliament. The failures have been those of control and accountability of the executive.

The role of political parties

Why do we have political parties? The answer lies in the nature of political power where groups of individuals congregate around particular leaders, with the group dynamic often wedded to particular lines of ideals and values⁴. Political parties exist in any power structure, with differing degrees of visibility. They are simply the vehicle used in most countries to facilitate the electorate’s identification of different political persuasions, and to enable those aligned with a certain persuasion to organise their arguments and present their case to the people.⁵ Political parties serve a number of functions, including:

- aggregating the interests of diverse groups in society and articulating their demands, although their demands do not always reflect those of the public who can end up being short-changed in the process;
- serving as a link between the decision-making processes and the public;
- contributing to internal stability and peace by enabling various groups to participate in the political process in an orderly and predictable manner;
- playing a major role in the selection, training, grooming and promotion of generalist politicians; and,
- providing an orderly means for legitimate transfers of power.

Too many political parties, as in the case of newly-emerging democracies, can cause confusion and serve to divide rather than unite a society and thereby retard the processes of mobilisation and integration. Solutions to the problem of too many political parties have included:

Colombia Suspends Lawmakers in Anti-Graft Probe

Colombia’s attorney general [has]suspended two top lawmakers from sitting in Congress and opened an investigation into allegations that they and five others headed a multimillion dollar graft scheme. Attorney General Jaime Bernal said he had also opened an investigation into the role five congressional staffers played in the corruption scandal.

According to a list uncovered by government investigators in early March, the Chamber of Representatives spent millions of dollars on over-priced or phantom contracts, including some \$49,000 building a new toilet and more than \$56,000 ironing out millennium bug problems on New Year’s Eve.

Bernal said in some cases contracts were awarded to friends and relatives of lawmakers and that the Senate was not duly consulted on the most expensive contracts.

Congress long has been viewed by ordinary Colombians as a hotbed of corruption. Earlier this month Pastrana said he would hold a nation-wide referendum in July aimed at dissolving Congress immediately and electing new lawmakers.

Reuters, Bogota, 4 February 2000

3 An inquiry has revealed evidence that Nigeria’s lawmakers had embezzled more than 700m Naira (about \$7.2million) in government funds. The report urged the Senate President to resign. Among other things he had helped himself to a “Christmas bonus” of \$200,000; had spent \$320,000 on furnishing his house; had acquired eight additional cars irregularly, in addition to the 30 official cars he had already acquired; and he had let contracts to a company in which he had an interest at inflated prices. [He was subsequently impeached.] *Independent (UK)*, 3 August 2000.

4 Even within a no-party system (for example, in Uganda) and within a one-party state, such as those of latter-day Eastern and Central Europe or present-day China.

5 This is not to diminish the efforts of national reunification and reconstruction being made by President Museveni in Uganda. There, a decision has been taken to postpone the formal re-introduction of party politics, yet it is an open secret among the populace at large as to where the allegiances of members of the political class lie. It does, however, inhibit them from campaigning as a party.

- the imposition of large financial deposits to limit the number of candidates who can be fielded, although this poses a significant hurdle for parties representing the poor and the dispossessed;
- placement of high thresholds on the number of subscribers required before a new political party can be registered; or,
- the imposition that there be only two parties, one to the left and one to the right. The latter was attempted in Nigeria in 1992 when it was imposed by the then-military regime – but the experiment failed when the military administration objected to the winning candidate and annulled his election as President.

It is also true that political parties can gain a significant and essentially non-democratic grip on public life and political power, acting as agencies of the state and degenerating into self-perpetuating oligarchies. Efforts to avoid this situation have focused on empowering the Electoral Commission to also preside over free and fair elections within party congresses,⁶ and separating the functions of a political party from those of a government to avoid a de facto administrative “merger.”

Paying the Piper – Can corruption endanger democracy?

“...Threat to democracies”

The Kohl affair is a reminder that the United States is not the only advanced democracy where the insatiable demands of campaign finance threaten to undermine democracy. Since the reckless fundraising of the 1996 American presidential campaign, France, Spain, Italy and Britain have all been rocked by fund-raising scandals. It is troubling that this huge scandal is occurring in Germany, which has the most generous system of state financing of political parties in the world – a result of similar scandals in the 1980’s. Clearly, public financing of elections has to be linked to vigorous enforcement...An anti-graft law Kohl himself introduced demands complete transparency in party accounts...

Reuters, 26 January 2000

Although political parties are private organisations, and often corporate bodies, who control their own membership and seek a political rather than a financial profit, it is in the public interest that they should be adequately funded and be held accountable, not only through the ballot box but also in terms of their practices and conduct.

Political parties are expensive to run. They need adequate funding for offices, staff, and for communication with the electorate to galvanise their support and deposits to cover election expenses⁷, and to monitor all aspects of the election process to ensure a fair election process.

It is generally considered legitimate for those involved in political activities to raise money from their supporters – at least to some extent. If they have no supporters, they will have no resources and so unwanted and unnecessary political parties will quickly (and beneficially) wither on the vine⁸.

However, small donations from large numbers of individuals are expensive to collect and in most democracies, the principal source of funding for political parties is the private sector. This is particularly critical when a general election is called. The principal reason why an individual or company would agree to fund a political party is the expectation of enjoying the patronage which that political party will offer, whether in the form of appointment to a public office or parastatal institution or the award of lucrative construction, service or supply contracts, if the party is elected to office.

Often, much of the money that finds its way into the coffers of political parties is illicitly acquired or undeclared to tax authorities. In some countries, criminal elements have found it more attractive to run for office when secure in the knowledge that they will enjoy immunity from suit or legal process if they are elected.⁹

6 For example, the electoral law of 1992 in Ghana.

7 Unfortunately, the latter-day history of democracy is also one of trying to control corruption in election expenses. For example, New Zealand’s original electoral legislation was the Corrupt Practices Prevention Act of 1881.

8 Of course, political parties need more than money. They need energetic and enthusiastic volunteers to organise meetings,

campaign in the streets, etc. Where parties are relatively poor, they may well be able to make up in numbers of volunteers what they may lack in funding.

9 Often quoted is an example from Russia where an accused but popular fraudster escaped prosecution on serious fraud charges simply by engineering his election to the State Duma before the trial could begin. See TI Newsletter, December, 1995.

The entry of substantial sums of illicit money also enables political parties to subvert the electoral process by engaging in questionable practices (for example, an advertising blitz). This dependence on the private sector for its funding invariably inhibits even well-intentioned, reform-willing political leaders from pursuing an anti-corruption strategy that would result in their benefactors being immobilised. In a democracy with a relatively free press, this means that governments fail to respond to public exposures of “grand corruption”, thereby generating a dangerous sense of cynicism within the community.

Whatever the fundraising process may be, it is important that it does not distort the political system, skewing the democratic structures in favour of those with access to money. Many countries have implemented mechanisms to monitor this situation, but these mechanisms have often been ineffective. As has been noted, even Germany, with the most generous state funding of political parties in the world, has been wracked by scandals. An outgoing head of government persistently refused to disclose the identities of those who funded him generously over the years on the grounds of promised confidentiality, feeding speculation as to what the motives of these anonymous benefactors might have been. As we have seen, too, in Italy, the heirs of the discredited Craxi publicly defend his flagrant violations of electoral funding laws as being noble, and being justified by the morality of the platform on which he was standing.

What has been going wrong?

If the funding process is not transparent and political parties are not required to disclose the sources of sizeable donations, then the public is left to draw its own conclusions when it sees those suspected of funding political parties openly benefiting from handsome contracts and other government business.

The election process can quickly degenerate into a form of auctioning potential political power. Aspiring parties raise funds from supporters who believe them likely to win, and thereafter well able to repay their supporters’ investments several times over through the award of lucrative government contracts. Individuals do likewise where legislators have ‘executive’ powers in the granting of contracts. Transparency in political donations has become a major issue in virtually every democracy.

In some countries, the costs of political campaigning have become so high that they are above the limits prescribed by law. Therefore, in some, if not many countries, political parties quietly flout the laws in a silent conspiracy to circumvent them. Complaints made to international election observers by political opponents frequently concern this kind of “cheating”, but those complaining generally show no willingness to raise the matter officially!¹⁰

The worst scenarios are when election fundraisers target international business. Political parties in Britain, Germany and Australia have been hard pressed to explain why massive sums have been given to them by foreign individuals and corporations.

In Korea, the institutional foundation of the country’s economic dynamism was also a major

European dream justified slush funds, say Craxi heirs

The grand projects of creating the European Union and launching a single currency justified the [corrupt] methods employed by Helmut Kohl, François Mitterrand and Bettino Craxi, according to the son and political heir of the disgraced Italian Prime Minister who died last week in exile in Tunisia.

Vittorio “Bobo” Craxi said that the “Three Patriarchs of Europe” accused of being united in their use of corruption to stay in power should be judged not by “petty” allegations of illegal political slush funds, but by their “huge achievement” in building the foundations of a peaceful and stable continent towards the end of a century scarred by the “bloodshed and inhumanity” of fascism and communism. Signor Craxi said: “There is a huge difference between taking money in exchange for favours and taking money for one’s political movement, to build political stability.

“Kohl, Mitterrand and Craxi not only built Europe, they also fought to resolve regional conflicts and bring peace to areas such as the Middle East. They made the world safer for all of us.”

Signor Craxi, who held power from 1983 to 1987 and presided over Italy’s economic boom, was one of the main targets of the “Clean Hands” (Mani Pulite) anti-corruption drive in the early 1990s. Condemned to nearly ten years in jail for bribery, corruption and illegal party financing through the maintenance of slush funds, Craxi fled to Tunisia in 1994. Here he never ceased to maintain that he had been unjustly singled out as a scapegoat for “Tangentopoli” (“bribe city”). As he lay dying in the palm-fringed villa, the disgraced former Italian leader watched with fascination the unfolding Kohlgate scandal and insisted that “the enemies of Kohl” were trying to do to the Christian Democratic Union what his own enemies had done to his Socialist Party.

Times (UK), 26 January 2000

¹⁰ E.g. Elections in Bangladesh in 1991 where Commonwealth observers received persistent complaints from all the contesting parties, but none was prepared to lodge a formal complaint

with the Election Commission – presumably because all were ignoring the law.

source of corruption, creating the collusive economic system that powered its growth. Major Korean business groups who undertook directives for export-led manufacturing activities from the 1960s onwards developed an intimate relationship with state officials in a position to dispense favours to businesses. This combination, of rapid economic growth and endemic, quasi-institutionalised corruption, for a time challenged the otherwise universal belief that corruption is economically dysfunctional.¹¹

How should public funding for parties be apportioned?

Treating every party equally is, of course, not an option. It is hardly democratic – or feasible – to fund a very small party to the same extent as one which is a major national institution. There will be a limit to the size of the financial “cake” which a society can afford to invest in its democratic structures. How can this most fairly and effectively be shared out? In some countries, public funds are allocated to parties in proportion to the votes they have won at the preceding election. This enables parties to borrow funds from supporters with a reasonable expectation of knowing (on both sides of the equation) what they may be able to repay.

Using “real names”

The Government of South Korea took a unique approach to stamp out not only political corruption but other forms of financial abuse. Decree No. 13957 banned the use of fictitious or “borrowed” names in financial deals. Under the old system, Koreans using fictitious names could easily hide assets, avoid taxation, bribe officials and make illegal campaign contributions. Under the decree, a “real names” accounting system is applied to all financial transactions, including deposits and savings, and stocks and bonds. Effective immediately, those holding assets under false names were required to convert these to real name accounts within two months and those intending to open bank accounts – or to withdraw large sums – had to register their real names by presenting their national identity cards. Failure to do so results in investigation by the tax authorities and penalties of up to 60 per cent of the accounts.¹²

More recently the government of the People’s Republic of China has announced that it intends to enact similar provisions, albeit to improve tax collection.¹³

Monitoring the propriety of legislators

Once elected, Legislators must be held accountable for their exercise of power. Managing conflict-of-interest situations and monitoring the assets, income, liabilities and business interests of legislators is essential, as it is for all public officials. However, there are two additional elements which are especially important in the case of legislators. First, as Parliament makes the laws, it frequently falls to legislators to determine matters effecting their own personal interests. The electorate may be less than impressed when they hear legislators arguing in favour of their own privacy, of containing disclosures to levels which the public knows will be ineffectual, and of being unenthusiastic about measures designed to ensure ethical behaviour.¹⁴

11 *Corruption, Development and Maturity: A Perspective on South Korea*, by Dr. Tim Beal and Dr. Sallie Yea, a paper presented to the Fifth AFBE (Asian Forum on Business Education) Conference, Rangsit University, June 1997.

12 The Real Names Law and a detailed description appears in the Best Practice section in Internet version of this Source Book. See also World Law Bulletin, February 1994 (Law Library of Congress).

13 “China Moves to End Opening of Bank Accounts Under False

Names”, 20 January 2000, Agence France Presse.

14 For example, in late 1999 and for some months into 2000, the Nigerian Legislature refused to enact a major anti-corruption measure which was the centre-piece of President Obasanjo’s anti-corruption drive. Although some were concerned with the procedural aspects of the measure, there was a belief – however unfounded – that among those opposing the measure were some doing so to preserve the corrupt status quo, not to advance the quality of democratic practices.

In the Westminster parliamentary tradition the approach has been not to criminalise the unethical actions of legislators but to leave these actions to be dealt with by the Parliaments themselves. Such an approach respects the niceties of the separation of the legislative from the judicial power.

However, this “gentlemen’s agreement” (for male in character the Parliaments have overwhelmingly been) appears to have broken down, and a number of countries now expressly criminalise the bribing of legislators. The prohibition takes the following form in Australia:

73 A. Corruption and bribery of Members of the Parliament.

(1) A member of either House of Parliament who asks for or receives or obtains, or offers or agrees to ask for or receive or obtain, any property or benefit of any kind for himself or any other person, on an understanding that the exercise by him of his duty or authority as such a member will, in any manner, be influenced or affected, is guilty of an offence.

(2) A person who, in order to influence or affect a member of either House of the Parliament in the exercise of his duty or authority as such a member or to induce him to absent himself from the House of which he is a member, any committee of that House or from any committee of both Houses of the Parliament, gives or confers, or promises or offers to give or confer, any property or benefit of any kind to or on the member or any other person is guilty of an offence.

Penalty: Imprisonment for 2 years.

Australian Federal Crimes Act, 1914. This section was added in 1982.

The law and any leadership code merely establishes minimum standards of behaviour. Reluctance on the part of an influential majority in a Legislature to practice transparency should not be seen as a barrier to those with opposing views. Indeed, there may be political mileage to be won by acting voluntarily, and by challenging political opponents to match this honesty and openness with the voters.¹⁵

Relationships between Ministers of government and civil servants

One of the most difficult aspects of monitoring the propriety of legislators is the relationship between senior civil servants and their Minister. On the one hand, civil servants are public employees and are there to promote and serve the public interest and not the interests of the Minister and his or her political party. On the other hand, they necessarily have a close working relationship with the Minister, to whom they owe loyalty, and, when the Minister is acting on their advice and promoting policies which they, the civil servants, have developed, there is a very natural affinity between the two. Although Ministers have to give fair consideration and due weight to informed and impartial advice from their civil servants, they must refrain from asking them to do anything which may call into question their political impartiality or give rise to the complaint that public funds are being used to pay for political party interests. Therefore, civil servants should never attend, much less take part in, political party conferences or conferences organised by political parties.¹⁶

In addition, one of the functions of the civil servant is to monitor the performance of the Minister in his/her official capacity and, if necessary, initiate action if corruption is in evidence.

¹⁵ However, the British experience is that a voluntary register of interests does not, in the end, fulfil the job. Disclosure requirements have to be made mandatory for the system to function

as any meaningful form of protection.
¹⁶ See, for example, Questions of Procedure for Ministers (Cabinet Office, UK; May 1992) in the Best Practice Section.

For this reason, it is always undesirable for a Minister to have too much freedom in appointing people to his or her immediate staff. A good number of impartial staff who are not necessarily “insiders” will have a stabilising influence on the establishment.

A free debate

An important element in a democratically elected assembly is that its elected members can speak and argue freely, immune from being sued in the courts for defamation. In various Legislatures around the world, scandals have been forced into the open, not by an energetic and investigative media but by principled and courageous legislators.

However, immunities can be abused and there should always be remedies available to those who are not involved in the debates and are unable to defend themselves. For example, the Right of Reply Scheme in the Legislative Council of New South Wales (Australia) provides:

“A cancer eating at our democracy....”

Polish officials said on Monday they would wage war on a culture of corruption said to infect government from local authorities to politicians in Warsaw charging millions to block bills in Parliament.

The co-ruling Solidarity bloc (AWS) said it had prepared a bill that would create a Central Anti-Corruption Office, a special police unit to probe fraud, which authorities said deters foreign investment and hampers economic reform.

“Corruption is like a cancer eating at our democracy,” AWS deputy Mariusz Kaminski told a news conference.

The World Bank had said in a report last month that Poland had a serious corruption problem and should curb graft in Parliament, ministries and local authorities.

The report, based on talks with parliamentarians, local administrators, judges and other officials, said, for example, that the fee for blocking bills in Parliament had increased to \$3 million from \$500,000 in 1992.

“Corruption deters foreign investors and tourists...We are taking measures to fight it,” Interior Minister Marek Biernacki told the news conference.

He said his ministry would cooperate with the anti-corruption group Transparency International to identify laws that encourage corruption and eradicate legal loopholes.

“Poland Says to Crack Down on Rampant Corruption”, Warsaw, April 4 2000, Reuters.

- Any person who has been referred to in the House by name, or in such a way as to be readily identified, may make a submission in writing to the President [of the Council], on any one or more of the following grounds, claiming:
 - that they have been adversely affected:
 - in reputation;
 - in respect of dealings or associations with others;
 - that they have been injured in occupation, trade, office or financial credit; or
 - that their privacy has been unreasonably invaded, and requesting that they should be able to include an appropriate response in the parliamentary record.
- Where a person makes a submission to the President, the President must, as soon as practicable, consider the submission and decide whether:
 - to refer the submission to the Standing Committee on Parliamentary Privileges and Ethics (referred to as “the Committee”) for inquiry and report; or
 - it is inappropriate to be considered by the Committee on the grounds that the subject matter of the submission is trivial, frivolous, vexatious or offensive in character.
- The President must inform the person in writing of the decision.¹⁷

In some instances, however, immunities may need to be broadened rather than narrowed. For example, in Britain a Member of Parliament was sued by a convicted murderer after criticising the prisoner for starting court proceedings against a sub-postmistress for failing to deliver the Financial Times to the prison library, which was in the MP’s constituency. The case was struck out but the MP was left with legal costs of about \$4,000. Had the comments been made in Parliament, and not outside, they would have been absolutely privileged and beyond review in court.¹⁸

17 The full text of the resolution appears in the section on Best Practice in the Internet version of this Source Book.

18 The U.K. solution is not to change the law, but to introduce an insurance scheme or offer free advice from government

lawyers. The scheme will not help MPs in cases relating to their personal life or conduct, or to court actions which they initiate themselves. *Daily Telegraph*, 21 February 2000.

Recall of Member by constituents

In an age of increased pressure on accountability, discussion is beginning to focus on whether the voters in a particular constituency should have the right to formally recall their member of Parliament, or at least force a by-election, when he or she has lost the confidence of the constituency.

Not surprisingly, the proposition has enjoyed little support among the political parties, and certainly one could see how, in particular scenarios, this process could be highly destabilising, especially where an administration has a slender majority. A less adventurous proposition was floated in Tanzania where concern was expressed that Members of Parliament were seldom seen in their constituencies. It was proposed that parliamentarians should be obliged to visit their constituencies for the purposes of public consultations with those represented, if a sufficient number of registered voters in the constituency petitioned the Speaker of Parliament.¹⁹

"Crossing the floor" – Defections by party members

In some Legislatures, members of the Legislature elected to represent a particular party, defect to join another party whether their constituents approve or not. This behaviour seriously diminishes electoral accountability and also feeds corrupt parliamentary practice. Several countries have implemented legislation designed to specifically combat this problem. For example, the practice of defecting to another party was a widespread feature of Indian politics, frequently toppling state governments who had been thought to be stable. More often than not, these defections were engineered by rivals who found it easy to persuade legislators to leave their original parties by offering them large sums of money. By the Constitution (52nd Amendment) Act of 1985, the Indian Parliament banned the practice.²⁰

Similarly, the law in Trinidad and Tobago was amended so that anyone who wishes to transfer party loyalties must first resign their seat and then fight a by-election. The 1994 Constitution of Malawi also attempts to constrain the practice by providing that the Speaker declare vacant the seat of any member of a political party who leaves that party and joins another. The same legislation also retains a member's "absolute right" to exercise a free vote (a vote contrary to party recommendations) without having his or her seat declared vacant.²¹

Crossing the floor is less likely to occur where party lists and proportional representation are employed. In this case, a defecting member should automatically be replaced by the next person on the list, diminishing the potential for corrupt forces to increase the political "weight" of one side over the other. The basic argument is that by crossing over to a party to which the member was not elected, the member has broken the "contract" that existed between Parliament and the electorate. To revive this contract and the level of trust and accountability associated with it, the member must be re-elected to the new party.²²

Taiwan to tackle 'gangster' MPs

The justice minister, Chen Ting-nan, has been planning to tackle corruption in the island's politics. Corruption and money politics is one of the main issues which swept president-elect, Chen Shui-bian, to victory in last month's elections, ending 50 years of rule by the nationalist KMT party. With their often bulky figures and readiness to trade blows with anyone who challenges them, Taiwan's gangsters have staked out a distinctive place in the island's political bodies.

Mr Chen reckons there are at least 10 of their representatives in Taiwan's central parliament, and many more in regional assemblies. In a BBC interview, he acknowledged that bringing them to justice would be a daunting task. So far it has been impossible to persuade assemblies to discuss requests from the judiciary to take action, let alone get them to vote to lift the immunity which such deputies enjoy.

Mr Chen said that if other parties failed to back such moves, they would have to be accountable to the voters. But he urged them to follow his Democratic Progressive Party in implementing selection rules to weed out candidates with underworld connections.

BBC World Service, Francis Markus in Taipei, 23 April 2000

19 Arusha Integrity Workshop, Arusha, Tanzania, 10-12 August 1995. See Patricia Langan and Brian Cooksey, *The National Integrity System in Tanzania* (EDI-World Bank and Transparency International, Washington, 1995).

20 See Commonwealth Law Bulletin vol. 11 (1985) 308.

21 Section 65 of the 1994 Constitution of Malawi

22 The New Zealand parliamentary reforms which introduced the German system of proportional representation in place of the British system of "first past the post" in 1996, surprisingly failed to close this loophole, and there was public outrage when "list" Members, once sworn in as Members of Parliament, were able to defect to other parties, even to sustain those other parties in office.

Monitoring the assets and liabilities of political parties – By their own members

South Africa is presently undergoing one of the most remarkable transitions in the history of Parliaments around the world. The apartheid state was characterised not just by racism, but by some of the worst financial and non-transparent excesses of one-party rule.

Within a short time after being elected, the ANC introduced codes of conduct – the “Asmal Code”, named after Prof. Kader Asmal, now Minister of Education – an asset declaration for all of its office holders and elected members. In undertaking this novel initiative, the majority party in the South African Parliament effectively positioned itself as a model for the rest of Parliament, and subsequently legislation was enacted covering all Members of Parliament.²³

Enhancing Parliamentary practices and procedures

The inauguration of public accountability through Parliament in South Africa practically demonstrates the worst features of a secretive and highly corrupt form of governance during the apartheid years, and the best features of open government in recent years. Indeed, the progress made has been spectacular.

The South African reform process has centred on rendering the entire parliamentary process as open to the public and the press as possible, and on empowering select committees, particularly the Public Accounts Committee, to hold the Executive accountable. All select committees must meet in public, and if they wish to go into a closed session they must publicly debate the reasons for doing so. Legislators have been empowered to call civil servants to account while the budgetary estimates have been passing through the democratic process – a frightening experience for senior civil servants who were previously accustomed to getting approval literally “on the nod”! Not only does the constitution of the country actually guarantee open, fair and transparent government procurement, it also assures access to information and other rights of due process. In the hands of a newly transparently appointed and high-powered constitutional court, these constitutional provisions can be expected to take a bite out of parliamentary corruption.

Finance committees should ensure that governments present, in a timely fashion, annual comprehensive budgets. These should include disclosure of the amounts to be spent in each department and programme, in addition to reporting on the monies collected and spent. Failure to present budgets in this way facilitates corruption and maladministration in government departments by allowing it to go unchecked.

The following questions are among those that should be asked in the course of parliamentary debates about the government’s budget:

- Who benefits, and why?
- How will they benefit?
- What would be their immediate needs?
- What will their benefits be in the future?
- Who will bear the costs and the risks, and why?
- What costs and risks will there be immediately?
- What costs and benefits will there be in the future?
- Who would be accountable and to whom, and for what will they be accountable?²⁴

23 Discussions with Dr. Frene Ginwala, Speaker of the South African Parliament. For details, see the report of the Transparency International mission to South Africa, December 1994 (Transparency International, Berlin).

24 “Controlling Corruption: A Parliamentarian’s Handbook” prepared by the Parliamentary Centre, Canada in conjunction with the EDI of the World Bank and CIDA, at page 33.

The South African experience has shown that by taking the necessary steps towards reforming or enhancing parliamentary practices and procedures, no matter how entrenched corrupt practices have become, the path towards accountability and transparency can restrict corruption in the democratic process to a minimum.

There are various ways in which the Legislature exercises its oversight role. Ministers can be questioned in Parliament, motions may be tabled for debate drawing out explanations for actions, and the parliamentary committees can develop specialist skills and insights in particular areas of administration. In addition, there are various watchdog agencies who are generally accountable to Parliament. The Auditor-General is pre-eminent, but other anti-corruption agencies may be subject to parliamentary, rather than executive, oversight as a means of ensuring their accountability while ensuring their independence.

The Public Accounts Committee of the Legislature

Of all the various Committees, perhaps the most important for present purposes is the Public Accounts Committee.

The requirement that the Executive must seek parliamentary approval for its budgetary spending is the basis for parliamentary oversight. The Executive has to justify the principles, policies and purposes for which the funds are required before its budget is approved, and the right to raise the revenue is granted on behalf of the people. Having granted the Executive the funds, Parliament is then entitled to hold the Executive to account for their proper expenditure. This role is generally performed, not by the whole Parliament, but by a special committee of its members. Thus a “Public Accounts Committee” scrutinises government expenditures with the assistance of the Auditor-General. The reports of the Auditor-General are also handled by this Committee.

Effective oversight is challenging because it requires detailed information about government activities which the Executive or civil servants are not always keen to disclose. It also places the Legislature in an adversarial position vis-à-vis the Executive. Therefore, the Committee’s competence must rise to the level of its adversary. It is also essential that the Committee has the power to call for relevant documents and officials, to administer oaths for the taking of evidence, and, where necessary, to call on the Ministers for questioning.

Evidently, the Chair of the Committee should ideally be a member nominated by the Opposition in Parliament, as is the general practice in the “Westminster” democracies, or at least be a member with an independent mind and disposition.²⁵

Public access to the Legislature and participation in policy-making

The hallmark of a democracy is the degree to which a Legislature interacts with the public. If a Legislature is to rationalise competing interests, it is essential that these be given a fair hearing and a reasonable opportunity for interested parties to state their cases. A Legislature should ensure that the public is kept fully informed of proposals it may be considering. Where these proposals affect particular interests or classes of people, it should make sure that the Legislature’s agenda is informed, thereby affording these interest groups an opportunity to comment in time, for their views to be taken into account.

25 The functioning of a Public Accounts Committee is a useful indicator of the health of a legislature and of a democracy. Under the firm leadership of the Hon. Augustine Ruzindana, the

Ugandan Parliament’s Public Accounts Committee has uncovered a series of financial scandals and has brought ministerial careers to an end where mismanagement has been exposed.

Modern technology is assisting this process in a number of countries. Some Legislatures are establishing web-sites that are used to post details of proposed legislation in order to enable members of the public who wish to comment on these proposals, e-mail the relevant committee considering the draft law in question.²⁶

Some indicators for assessing the performance of the Legislature as an integrity pillar

- Are there clear and well-understood conflict of interest laws which are an effective barrier to elected members of the legislature using their positions for personal benefit?
- Are there arrangements for the monitoring of the private interests and personal incomes of elected officials and members of their immediate families?
- Do legislators who oppose the government have a reasonable opportunity to express their views in the Legislature? Are debates open to the public?
- Do select committees meet in public? Are their reports made public? Do they make a practice of hearing submissions from members of the public and civil society organisations?
- Are the recommendations of the Public Accounts Committee generally accepted and acted upon by the Executive? Does the Public Accounts Committee have power to call officials (including Ministers) for questioning? As a matter of practice or requirement, is the chair of the Public Accounts Committee chaired by a Member who is independent of the government of the day?
- Is the executive entitled to appoint members in addition to those who have been elected? Are they entitled to vote? If so, are the numbers such that they are likely to distort the broad will of the people as expressed at the polls?
- Are convicted criminals barred from running for election?
- Is the legislature generally ready to lift the immunity enjoyed by one of its members, regardless of the party to which the member belongs, where there are serious grounds for believing that he or she may be guilty of a serious criminal offence?

26 For example, on the Estonian parliament's web site, every visitor can express his/her opinion in the web site's guest book or send an e-mail directly to a committee. South Africa also provides for direct access to its Committees in this way. The Indian

web site is one which lists the personal e-mails of every single member of parliament. The web-site www.polisci.umn.edu/information/parliaments/index.html lists most parliamentary web sites.