



Codes of Conduct for Parliamentarians

A Comparative Study

**Undertaken by King Prajadhipok's Institute
for UNDP Regional Center Bangkok
February 2008**

Codes of Conduct for Parliamentarians A Comparative Study

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ISBN = 978 - 974 - 449 - 491 - 7

RDD.52 - 42 - 500.0

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Printer: AP Graphic Design & Printing%Co.,Ltd
745 Nakornchaisri Rd, Dusit Bangkok 10300
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Foreword

At present, globalization and democratization have resulted in increasing demands and changes in many respects; economics, politics and society. The ability of social mechanisms to meet such varied demands has been challenged. Given this circumstance, the House of Representatives, as a representative of the people, plays a major role in securing the acceptance and trust of the people affected by globalization and democratization.

King Prajadhipok's Institute (KPI) and UNDP are aware of the importance of people's acceptance of and trust in the House of Representatives, especially toward members of the House—the heart of the parliamentary system. To this end, KPI in collaboration with UNDP conducted surveys and research on codes of conduct for parliamentarians and relevant laws concerning codes of conduct for parliamentarians in the Asia Pacific region based on the premise that the codes of conduct for parliamentarians and relevant laws affect people's acceptance of and trust in the parliamentary system.

The research addresses Australia, Canada, India, Japan, Laos, Pakistan, Philippines, the Republic of Korea, Sri Lanka, Thailand, USA and Vietnam.

The research team hopes that this research will present information about principles of codes of conduct, as well as the strengths and weaknesses of codes with the aim of fostering acceptance of and trust in the parliamentary system and consequently lead to a better society in which everyone can live happily.

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List of Abbreviations

K-PACT	Korean Pact on Anti-Corruption and Transparency
KICAC	Korean Independent Commission Against Corruption
KPI	King Prajadhipok's Institute
MP	member of parliament
NCCC	National Counter Corruption Commission [of Thailand]
UNDP	United Nations Development Program

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Chapter

1

Introduction





Background

Parliaments, with their roles in legislation, oversight, representation, allocation of national resources and establishment of political priorities, are essential to democratic governance. The ability of a country's parliament to perform these functions depends not only on its technical capacity but also its legitimacy. Legitimacy, in turn, appears to depend on citizens perceiving parliamentary institutions and parliamentarians themselves as acting in the public interest instead of private or partisan political interests. Thus it is widely agreed that parliaments should foster integrity, legitimacy and citizens' confidence.

The United Nations Development Program (UNDP) has noted that public trust in parliamentarians and in government is declining in many advanced democracies. In some developing democracies such trust has yet to be established. An attempt to build up the public trust in parliamentary institutions and strengthen the integrity and transparency in governance systems is urgently demanded in order to consolidate national democratic institutions.

UNDP has decided to consider the efficacy of codes of conduct/ethics, particularly for parliamentarians, in fostering ethical behaviour among those public officials to whom they apply. Proceeding from the belief that codes of conduct/ethics can contribute to combating corruption and increasing public trust,¹ UNDP Regional Center in Bangkok wishes to gather comparative information about codes of conduct/ethics for parliamentarians in Asia-Pacific region countries for the purpose of developing democratic governance consolidation program initiatives under its Asia Regional Governance Program.

¹ The Parliamentary Centre, the World Bank Institute and the Canadian International Development Agency. *Controlling Corruption: A Parliamentarian's Handbook* (2nd edition). 2000. <http://www.parlcent.ca/publications/pdf/corruption.pdf>

To this end, UNDP Regional Center, Bangkok, approached King Prajadhipok's Institute (KPI) to undertake a comparative study of codes of conduct for parliamentarians in the Asia Pacific. KPI is an independent, academic public organization under the oversight of Thailand's National Assembly. The institute's researchers provide academic support to the Thai parliament as well as conduct a range of research for various domestic and international organizations. KPI had done considerable work in the area of parliamentary and state institutions, including projects and studies with UNDP in the field of governance and counter-corruption. KPI has already undertaken cross-country comparative research. In addition, KPI has a network of parliamentary contacts in many Asia-Pacific countries.



Objectives

This study aims to present a comparative examination of codes of conduct for parliamentarians with a focus on the Asia Pacific region. In addition, the place of a code of conduct in an integrity system is considered. To this end, mention is made of mechanisms that compliment, supplement or substitute for code of conduct functions, and factors affecting the effectiveness of such mechanisms. Attention is also paid to the role of non-parliamentary actors in implementation of codes of conduct or, more broadly, integrity systems.

The study reviews existing academic work concerning codes of conduct, with special attention to codes of conduct for parliamentarians, but also drawing on work concerning codes of conduct in the public service. From this, and from case studies of certain countries, features of codes of conduct are identified. Particular codes and code-like mechanisms are examined to explore the regulatory foundations, organizational structures and enforcement mechanisms associated with codes of conduct. Conclusions are drawn regarding the efficacy and practicability of codes of conduct for improving the conduct of parliamentarians, with comment about factors influencing effectiveness. Transferability of codes of conduct and similar mechanisms between countries is discussed, addressing the relevance of type of political

system, parliamentary structure and social and cultural conditions to transferability.

Findings are used to inform a set of recommendations for politics and governance practitioners in parliaments and policy-development organizations on how codes of conduct might be usefully incorporated into democratic governance consolidation program initiatives. Recommendations about possible future research and broader encouragement of anti-corruption aims are also mentioned.



Methodology

The primary method of data collection for this study was documentary review, with heavy reliance on documents available on the Internet. Documentary review was supplemented by interviews with academics and professionals in fields relevant to parliamentary ethics (parliamentarians, parliamentary staff members and officials of national anti-corruption agencies), as well civil society practitioners interested in government transparency and ethics. In addition, focus group discussions were held with people in the aforementioned fields.

More specifically, a general literature review on codes of conduct/ethics for parliamentarians was undertaken, drawing on publications by UNDP, the World Bank, parliamentary associations, parliamentary libraries/research units and academic journals.

Several Asia Pacific and other countries were examined in more detail to explore their codes of conduct or other ethics systems. The countries examined were Australia, Canada, India, Japan, South Korea, Laos, Pakistan, the Philippines, Sri Lanka, Thailand, the United States of America and Vietnam. Study of these countries relied primarily on examination of documents available on the Internet. In particular, formal regulations including constitutions, laws, parliamentary orders concerning codes of conduct or supplementary/alternative mechanisms were reviewed. In some cases, documentary research was supplemented by interviews with relevant academics or public officials.

Country examinations were undertaken with the aim first of determining if a country had a code of conduct or supplementary mechanisms, or if any other alternative parliamentary integrity mechanisms were used. Once identified, the particulars of codes of supplementary/alternative mechanisms were examined. The legal status (i.e. law, parliamentary order, etc.) was identified. Then content of the code/mechanism was examined, identifying the formal structures and the formal and informal processes involved in applying the code/mechanism.

Based on the literature review and the country examinations, conclusions were drawn concerning good practices. Factors considered in relation to good practices were the soundness of the code/mechanism's formal expression, the implementation mechanisms and whether the code/mechanism is exercised to its potential, barriers to enforcement, and public and parliamentary acceptance of the code/mechanism.

Recommendations concerning the incorporation of codes of conduct for parliamentarians into democratic governance consolidation program initiatives were then prepared.



Key Definitions

Before proceeding it is necessary to establish some definitions.

This paper occasional uses the term **integrity system**. For these purposes, an integrity system is the collection of institutions, laws, regulations and formal practices intended to prevent, detect and punish corruption, and more broadly promote and ideally ensure good, ethical behaviour in an organization or a polity. The term is used to emphasize the idea that addressing misbehaviour requires a variety of inter-related measures rather than a single “magic bullet” of some sort.

For the purpose of this research, a **parliament** is defined as any legislative, representative body. This is necessary to capture the full

range of legislatures examined in the study, including the bicameral fully elected Australian parliament and American Congress, the bicameral Canadian parliament with its appointed Senate, the freely elected unicameral South Korean National Assembly and the unicameral National Assembly of the Lao People's Democratic Republic, which is filled by election but with only one official state party and limited scope for state-approved independent candidates. **Parliamentarians** are, of course, *members of the parliament*.

The most important term to define is **code of conduct**. In the literature on codes of conduct, and among practitioners, there is a certain amount of ambiguity concerning the term's precise meaning. *Generally, any set of guidelines intended to inspire or impose proper conduct or ethical behaviour among an identifiable group might be considered a code of conduct.* This definition is rather broad, however, and fails to capture some important details. Under this definition, code of conduct can be used synonymously with code of ethics. There is however, a useful distinction that can be made on the basis of level of detail and specificity of content—some guidelines are more specific than others. Even having acknowledged a difference, however, there is some confusion about the terminology that should be used to address it. Based on what appears to be the balance of usage, for the purpose of this paper, more general documents are called codes of ethics while more specific documents are called codes of conduct.

For this paper, **code of ethics** is defined as *a set of ethical principles, ideals or values of an organization*. As such, codes of ethics address principles rather than particular rules, and typically do not include mechanisms for implementation or enforcement.² Codes of ethics are usually vague in what they prescribe and proscribe.³ The

² Commission on Government. Commission on Government, Report No: 3, Perth, Western Australia, 1996, p. 148.

³ Sinclair. "Improving Ethics Through Organisational Culture: A Comparison of Two Approaches." in C.A. J. Coady and C. J. G. Sampford (eds). *Business Ethics and the Law*. Federation Press. Sydney. 1993. pp 128-148.

National Association of Parliamentarians and the American Institute of Parliamentarians in 2001 jointly endorsed a Code of Ethics for Parliamentarians.⁴ The code addresses what it calls universal standards to which parliamentarians should aspire. These include upholding and maintaining the integrity of the profession, maintaining professional standards, dealing ethically with colleagues and encouraging confidence and respect of clients and the public. Regarding ethical standards, the document calls on parliamentarians to refrain from practices that could reflect adversely on the profession, to avoid gratuitously disparaging colleagues or attacking their motives, and to report violations of these directives to an ethics committee. In addition, the code offers directives concerning ethical standards relating to obtaining appointments. Among these are that parliamentarians shall not misrepresent their credentials, pay anything beyond usual referral service charges in exchange for anyone recommending their services or accept appointments for which they are not qualified. Finally, there are ethical standards related to clients. Among these, the parliamentarian shall adhere to contracts with clients, keep professional information in confidence and advise clients of the proper rules of parliamentary procedure. All these directives are quite general and leave considerable latitude for interpretation.

In contrast, **codes of conduct** are *sets of rules or standards for behavior, generally grounded in the functions of the organizations to which they apply. They are more specific in what they prescribe and proscribe than are codes of ethics.*⁵

⁴ Code of Ethics for Parliamentarians. National Association of Parliamentarians. 2001. <http://www.parliamentarians.org/viewdocument.php?id=49&start=>

⁵ Brien, Andrew. *A Code of Conduct for Parliamentarians?* Politics and Public Administration Group. Parliament of Australia Parliamentary Library. 1998. <http://www.aph.gov.au/LIBRARY/Pubs/rp/1998-99/99rp02.htm>.

Box: Codes of Ethics and Codes of Conduct

The separation line between code of ethics and code of conduct can seem thin. However, some features can help to differentiate them. In a code of ethics, there is no elaboration on procedure or possible punitive measures, even if referral to an ethics committee is mentioned as a sanction for misconduct. This type of document has its roots in guidelines for professional associations (see end of section).

On the contrary, codes of conduct will typically include statements of aspiration, prescriptions and proscriptions, with the latter two groups of items imposed under threat of some sort of sanction (see next chapter).

It is also useful to distinguish between codes of conduct and anti-corruption laws. While it is possible that a code of conduct for parliamentarians may be mandated or enshrined in law, the administration of the code falls under the authority of parliament, not the courts. There is typically a distinction between criminal conduct and conduct addressed in codes of conduct. Most jurisdictions have criminal laws that apply to certain clear forms of corruption, most commonly bribery. Codes of conduct for parliamentarians are meant to address behavior that may not be criminal, strictly speaking, but is nonetheless odious or damaging to the institution of parliament. Jane S. Ley, the deputy director for government relations and special projects in the U.S. Office of Government Ethics described the difference between criminal and code matters as being the same as the difference between a bribe and gift; the bribe is given in exchange for an official act, while a gift is given to predispose the official towards the giver.⁶ Codes of conduct generally exist alongside criminal provisions for dealing with

⁶ Teleconference. Ethics in Government. Organized by U.S. Embassy, Bangkok and Office of the Civil Service Commission, Thailand. 20 December 2006.

office-holders' misbehavior—codes supplement rather than substitute for a body of criminal law concerning abuse of office. Codes of conduct are usually seen as being preventative, aiming primarily to inspire good behavior and prevent misbehavior before it happens. Criminal law, through the courts, is aimed at halting and punishing misbehavior.

This paper also addresses **supplementary and alternatives mechanisms for controlling behavior of parliamentarians**; this broad category includes criminal law and other anti-corruption law, as well as extra-legal, extra-parliamentary mechanisms (like the civil society groups and for encouraging ethical behavior among parliamentarians).

With these definitions established, it is possible to begin a thorough examination of the codes of conduct.

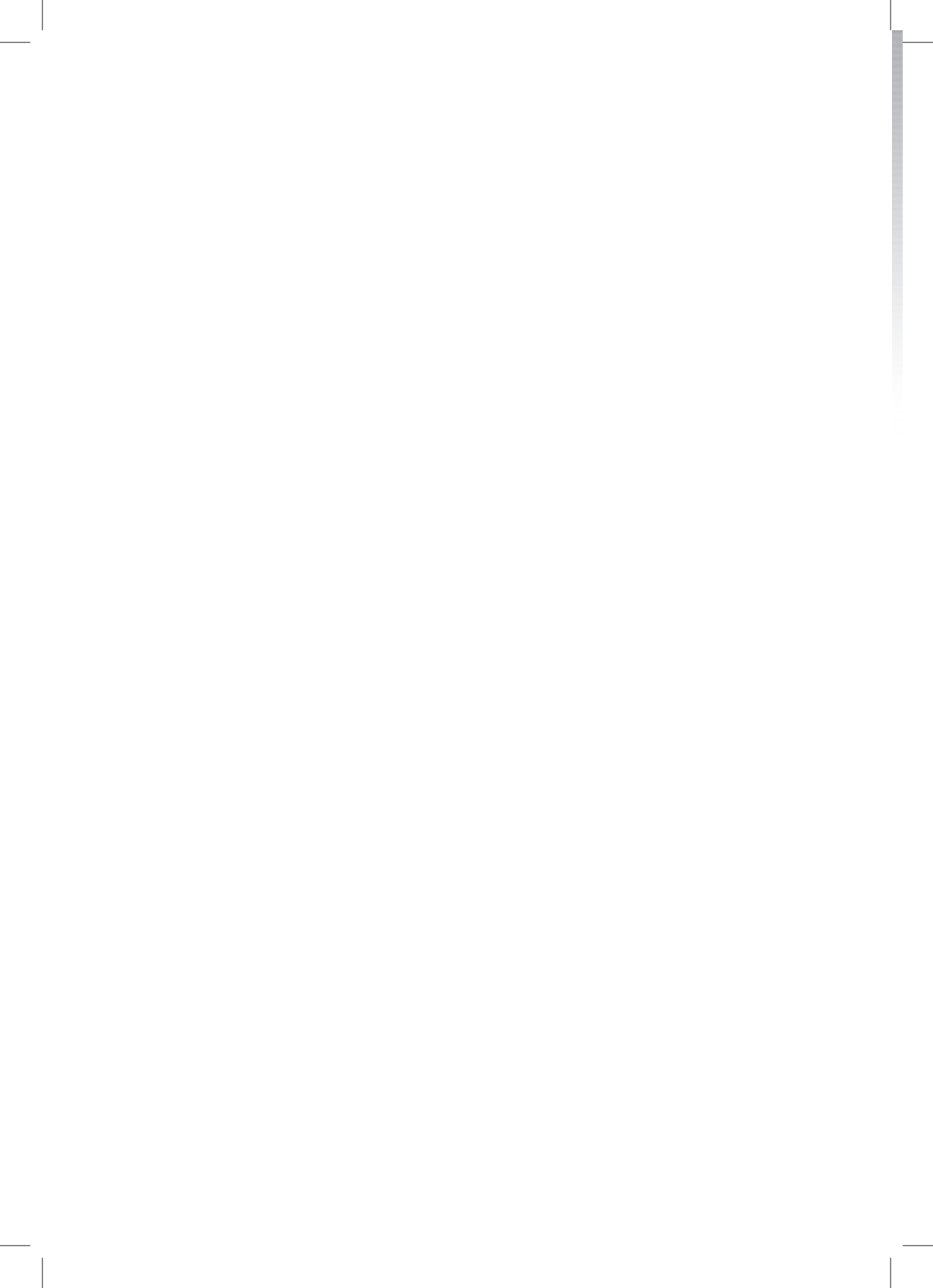
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Chapter

2

Theoretical Background





Origins of codes of conduct

Codes of conduct appear to have originated in professions. The Hippocratic oath, which is believed to have been written in 4 B.C., could be viewed as a sort of code of conduct (or code of ethics) for physicians. Codes of conduct did not feature in historical work concerning politics and governance. There were, however, many guides to being a good—both in terms of effectiveness and in terms of morality—ruler. In western tradition, the works of Plato concentrated heavily on the idea of the proper political order, and Aristotle later wrote about the qualities of good people, citizens and rulers. Later political philosophers continued to examine the qualities of rulers and make recommendations about the things good rulers should do. Eastern philosophy also addressed the behavior of rulers. Confucius addressed governmental morality, and Thailand recognizes the *tohsaphit ratchatham*, or 10 principles of being a good ruler. Most of the guides assert that rulers (in most cases kings) should be morally virtuous. These guides, however, are not codes of conduct partly because they did not actually regulate the behavior or any particular group, and partly because there were no enforceable sanctions for violating the guides; at most, one could call such guides codes of ethics.

In the modern context, Rick Stapenhurst of the World Bank Institute asserts that codes of conduct have become popular as a means for companies to offer the public reassurances about their conduct as globalization has reduced states' ability to regulate the actions of multinational companies.⁷ Industry associations also adopt codes of conduct, guiding the behavior of their members and similarly offering public assurances of good conduct. In the 1990s the public sector, notably legislatures, began adopting codes of conduct, apparently largely in response to concerns about declining public trust in government.

⁷ Stapenhurst, Rick and Pellizo, Ricardo. *Legislative Ethics and Codes of Conduct*. World Bank Institute. 2004. p 5. http://siteresources.worldbank.org/EXTPARLIAMENTARIANS/Resources/Legislative_Ethics_and_Codes_of_Conduct.pdf



Motives for considering codes of conduct

There are four broad motives—one externally imposed and three internally driven—for a state's decision to consider a code of conduct for its public officials (including both parliamentarians and civil servants).

One motive, apparent in developing states, is that foreign funding agencies (such as the World Bank or the United Nations) have recommended or required the implementation of a code of conduct as part of governance programs attached to development funds. This is likely the weakest reason for considering a code of conduct because it is not really part of some internal desire on the part of the state in question; rather, it is more like a procedural hurdle that must be overcome in order to receive other benefits. As such, there is a high chance that there will be little interest in exercising the system once the associated development project has been completed.

There appear to be three other, more internalized, motives for considering codes of conduct.

The first of these internalized motives is a desire to prevent, detect and punish corruption. It is widely acknowledged that corruption is harmful to the state and that measures should be taken to prevent, detect, investigate and punish abuse of public office. World Bank scholars have argued that corruption, beyond the simple misallocation of resources, also harms democratic systems by giving the wealthy additional influence and distorting electoral competition.⁸ Anti-corruption and good governance are addressed by many governments, organizations and academics. Such sources may discuss so-called integrity systems and mention codes of ethics or conduct in the context of such systems, but such sources do not explore codes of conduct in

⁸ Stapenhurst, Rick and Pellizo, Ricardo. Legislative Ethics and Codes of Conduct. World Bank Institute. 2004. http://siteresources.worldbank.org/EXTPARLIAMENTARIANS/Resources/Legislative_Ethics_and_Codes_of_Conduct.pdf

much detail. In general, it is just assumed that codes can prevent wrongdoing.

The United Nations General Assembly, in 1996, adopted the International Code of Conduct for Public Officials and recommended it to member states as a tool for controlling corruption.⁹ The code calls for public officials to be impartial and fair, and to refrain from abuse of power. It specifically discourages public officials from using their offices for self-enrichment or misusing state resources for activities unrelated to official work. The code calls for office-holders to declare any interests in cases of possible conflicts of interest. Implicit in the resolution, titled Action against corruption, is the notion that a code of conduct can in some way reduce corruption, though the basis for that belief is not made clear. Similarly, the United Nations Convention against Corruption,¹⁰ adopted by the General Assembly by resolution 58/4 of 31 October 2003, calls for signatories to endeavor to apply codes of conduct concerning performance of public functions. The convention in fact refers to the 1996 International Code of Conduct for Public Officials.

The World Bank Institute advocates controlling corruption by means of strengthening institutions. Parliamentary codes of conduct/ethics are one part of this approach, which also includes constitutional provisions to strengthen governance institutions, measures to strengthen parliamentary oversight committees and closer relationships between parliaments and civil society.¹¹ Again, it appears to be taken on faith that codes of conduct can be valuable in addressing corruption.

⁹ A/RES/51/59. General Assembly. United Nations. 1996. <http://www.un.org/documents/ga/res/51/a51r059.htm>

¹⁰ http://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf

¹¹ Controlling Corruption: A Parliamentarian's Handbook. Global Organization of Parliamentarians Against Corruption. 2005. p. 12. <http://www.gopacnetwork.org/Docs/CCH%20FINAL%20Aug%2005%20ENG.pdf>

The second internalized motive for considering codes of conduct, prevalent in western democracies, is the desire to bolster public confidence in politicians and the political system. In western, “mature” democracies, interest in codes of conduct appears to be largely parliaments’ response to citizens’ low or declining trust in government and declining engagement in political life. These phenomena have been observed in America,¹² Australia,¹³ Canada, New Zealand and the United Kingdom. In America at least, it has been argued that low political trust not only reflects but even causes dissatisfaction with political leaders.¹⁴ Unsurprisingly, one of the factors contributing to declining trust is scandal involving political representatives.¹⁵ Such scandals may involve outright corruption such as bribery, more subtle abuses of public trust such as misuse of expense accounts or even less clear issues such as campaign financing. In this context, a code of conduct is seen as a mechanism that not only can be used to detect, investigate and punish wrongdoing, but, perhaps more importantly, can be used to pre-empt wrongdoing, assure the public that parliamentarians are not acting out of private interest and broadly foster public trust in the system of government. Similarly, a code of conduct is meant to clarify for voters what is considered misconduct for parliamentarians, and therefore create reassurance that improper actions are not occurring as a matter of course.

¹² Putnam, Robert D. “Bowling Alone: America’s Declining Social Capital.” *Journal of Democracy*. Volume 6, Number 1, January 1995, pp. 65-78.

¹³ Roy Morgan paper 3088. Roy Morgan Research Centre. Australia. 1998.

¹⁴ Marc J. Hetherington. “The Political Relevance of Political Trust.” *The American Political Science Review*, Vol. 92, No. 4 (Dec., 1998), pp. 791-808.

¹⁵ Chanley, Virginia A., Rudolph, Thomas J. and Rahn, Wendy M. “The Origins and Consequences of Public Trust in Government: A Time Series Analysis.” *Public Opinion Quarterly* Vol. 64, No. 3. 2000. pp..239-256.

The final internalized motive for considering a code of conduct is to guide parliamentarians concerning what is and is not acceptable behavior. This is different from deterring corruption—the intent to abuse office—because it is more aptly described as helping avoid the unintentional abuse of office. Public life can be complex, and codes are seen as fostering consensus regarding the bounds of acceptable behavior and expressing where those boundaries are. When parliamentarians avoid unintentional misconduct and consequent scandals, public trust in parliamentarians could be expected to grow, or at least not decline drastically.



General features of codes of conduct

As previously mentioned, codes of conduct tend to be preventive rather than punitive in nature. They aim to inspire desirable behavior, describe particular actions required of their subjects and prohibit certain other actions deemed undesirable. It is useful to consider these features as aspirations, prescriptions and proscriptions. Aspirations are general principles to which parliamentarians should aspire. Prescriptions are particular rules that the code establishes for parliamentarians to follow. Proscriptions are particular actions or behaviors that are forbidden under the code.

Aspirations

Aspirations generally include the exhortation to behave in a manner befitting a public representative, uphold the public trust, act honestly, act in the public interest and make decisions objectively. Since these directives are quite general, it is probably more appropriate to consider them as ethical standards to which parliamentarians are expected to aspire rather than rules parliamentarians are required to follow. Still, where the aspiration is quite clear, such as to uphold the law, there is some overlap with prescriptions.

Prescriptions

Prescriptions are things the code requires parliamentarians to do, generally under the threat of sanction of some sort.

One common prescription is the disclosure of private interests, often in the form of written declarations. Private interests generally include shares in private companies, property, other assets and debts. Some codes require precise details concerning amounts while others simply require that an interest be declared without quantification. Declarations are usually made available to the public in some form, either published or on request. Sometimes the public information has values and quantities omitted even if the parliamentarian was required to provide details in the declaration. Timing of the declarations can also vary, though they are typically required upon assuming one's seat in parliament, leaving the seat, annually during one's time as a parliamentarian and often upon any appreciable change in interests. The underlying principle is to ensure that the parliament and the public have the ability to judge whether a parliamentarian's private interests have influenced decision-making.

Similarly, codes often require parliamentarians to disclose relationships—financial and non-financial—with organizations and sometimes individuals in cases when they are called on to make decisions involving or affecting those organizations or individuals. It is often expected that the parliamentarian excuse him or herself from any of parliament's deliberations in such situations.

Proscriptions

Codes of conduct usually contain many proscriptions, or directives concerning things the parliamentarian is forbidden from doing.

A common proscription is that parliamentarians are limited in their latitude for accepting gifts. Often, limits are set on the types and monetary value of gifts a parliamentarian can receive. Parliamentarians

may be required to report receiving gifts (all, or those above a certain monetary value). Some codes forbid parliamentarians from accepting gifts altogether—in the not-uncommon case that a parliamentarian receives a keepsake when visiting some organization, that gift becomes property of the parliament rather than the recipient. Regardless of the implementation details, the aim of such a proscription is to prevent parliamentarians from accepting things of value on the grounds that such gifts may be or be seen to be given in return for or in anticipation of favors.

Abuse of public office or authority for personal enrichment are commonly proscribed. Codes are meant to catch actions that are abusive but not necessarily criminal. Office could conceivably be abused in many ways. A minister ordering a civil servant to have the ministry contract with the minister's family company without public tender is pretty clearly an abuse of power, but a parliamentarian using inside knowledge about yet-to-be-tabled legislation in order to benefit his family business also qualifies.

Similarly, codes often proscribe the use of state resources for non-official or personal purposes. On a small scale, this could include mailing personal or blatantly partisan communications through the parliamentary office (and budget). Perhaps more seriously, it also includes taking personal trips using budgets allocated for traveling between the parliament and the constituency as representatives. Plainly, in both examples it could be difficult to decide what exactly constitutes improper use of the resources. Thus, some countries choose to deal with these under a code of conduct rather than a criminal statute.

Sanctions

Sanctions of some sort are generally suggested for violation of the code of conduct. Intuitively, one would expect that sanctions would be a necessary part of implementing a code and getting practical value from it. Interestingly, however, it has been suggested that the presence or absence of sanctions does not affect the effectiveness of the code—it is the mere existence of the code that is important. The observation is

made in Stapenhurst and Pellizo, based on Willa Bruce's work with local government officials.¹⁶ Nevertheless, a code will typically mention sanctions of some sort (see boxed insert Possible Sanctions).

Imposing sanctions on parliamentarians can be a difficult matter. In a sense, parliament is a law unto itself. Parliamentarians are often protected from criminal and civil action under the judicial system. It can be argued that the ultimate sanction is the voice of the electorate—that parliamentarians revealed to have conducted themselves badly (though not criminally) will not be re-elected. This, however, is not always the case, and there is no shortage of examples of politicians who are perceived to be crooked getting re-elected.

Box: Possible Sanctions for Parliamentarians

In practice, parliament is responsible for policing its members, and parliaments have a great deal of latitude for imposing sanctions on members deemed to have violated a code of conduct or otherwise misbehaved; in accordance with the principle of separation of powers, parliaments have considerable power over how they conduct their internal affairs.

A parliamentarian in violation of the code may be reprimanded (with no other practical effect), have rights or privileges withdrawn (for example, be denied various allowances), be restricted from participating in proceedings related to the matter of their code violation, be restricted from participating in parliamentary proceedings entirely, be removed from parliamentary positions (such as seats in house committees), or be fined or possibly even expelled.

¹⁶ Stapenhurst, Rick and Pellizo, Ricardo. Legislative Ethics and Codes of Conduct. World Bank Institute. 2004. p. 14. http://siteresources.worldbank.org/EXTPARLIAMENTARIANS/Resources/Legislative_Ethics_and_Codes_of_Conduct.pdf

Sanctions will likely involve a parliamentary committee of some sort, standing or ad-hoc, which will consider the accusation against the parliamentarian and then decide what, if any, action is to be taken against the accused. It is possible that a parliamentary committee may decide to refer the matter to the criminal justice system, stripping the parliamentarian of parliamentary protections. Once a matter enters this realm, parliament will probably strip the member of protections and then step aside for the criminal justice authorities to work. The parliamentarian will likely be investigated, and may be charged, arrested, prosecuted and convicted. Outcomes depend on the justice system but almost certainly include public embarrassment, and possibly fines or even jail sentences.

Beyond these general characteristics of a code of conduct, there has been some work regarding more technical characteristics. In describing the likely properties of a well-drafted code of conduct, Andrew Brien, in a study for Australia's parliamentary library, asserts that it would first have to meet American law philosopher Lon Fuller's eight criteria for a workable legal or regulatory system that can guide behavior and establish standards of conduct: evaluation of action must be grounded in rules rather than done ad hoc; the rules must be publicized; rules cannot be made retroactively; rules must be understandable; rules could not be contradictory; rules must be such that citizens have the ability to obey; rules must maintain a degree of stability over time; and rules as written and publicized must be in agreement with their actual administration.¹⁷ Further, Brien, speaking of the situation in western democracies, asserts that codes of conduct for parliamentarians should have some additional properties in order that they will be acceptable to parliamentarians and the public.

¹⁷ Brien, Andrew. *A Code of Conduct for Parliamentarians? Politics and Public Administration Group*. Parliament of Australia Parliamentary Library. 1998. <http://www.aph.gov.au/LIBRARY/Pubs/rp/1998-99/99rp02.htm>.

Box: An Ideal Code of Conduct

A code should aim to:

- Foster trust, in parliament, parliamentarians, and the system of parliamentary democracy
- Promote the functioning of parliament
- Be capable of being honored, and in fact, actually work
- Refocus public attention from the conduct of parliamentarians and their ethics and place it on policy and deliberation
- Avoid litigation about powers of the code and interpretation
- Improve parliament's position as the creator of law and as a check on the executive
- Be open yet allow for the protection of privacy
- Allow for knowledge and acceptance of the code by parliamentarians and citizens
- Have stable, fair, public enforcement mechanisms
- Fit within an existing culture of discipline mechanisms
- Be and be seen to be, impartially administered.¹⁸

Most of these criteria should similarly apply in developing democracies even though such states may be more concerned with preventing corruption than improving public confidence in the political system. The requirement of fitting within an existing culture of discipline mechanisms, however, may not be relevant in settings where the motive behind considering a code of conduct is to battle endemic corruption by instituting a new, more effective counter-corruption system. In such cases, though, it would still be necessary to consider how a code would fit within an integrity system.

¹⁸ Brien, Andrew. *A Code of Conduct for Parliamentarians?* Politics and Public Administration Group. Parliament of Australia Parliamentary Library. 1998. <http://www.aph.gov.au/LIBRARY/Pubs/rp/1998-99/99rp02.htm>.



Administration and oversight

Since a key feature of a code of conduct, as opposed to a code of ethics, is detailed prescriptions and proscriptions, there must be some mechanism for overseeing and administering to code to see that the prescribed actions are performed and the proscribed actions are avoided.

Administration

There are usually three broad duties involved in administration of a code of conduct—practical administration, investigation and advising. Literature on the subject mostly deals with these functions in the context of duties of ethics commissioners (see below), but they could be the responsibility of whatever body is responsible for oversight.

Obviously, one duty is to administer or implement the code of conduct. In practice, this usually means collecting parliamentarian's interest/asset declarations, gift receipt declarations and interest disclosures, reviewing them and taking action in cases where a declaration appears to suggest something is or might be amiss.

Another function is to conduct investigation of parliamentarians' actions to see if the code has been violated. An investigation may be prompted by the contents of an interest/asset declaration, or it may be initiated in response to a request, possibly from a member of parliament, parliament as a whole, the Speaker or even from the public. Parliamentarians may request investigation of their own actions in order to clear themselves of allegations of wrongdoing.¹⁹ Investigative powers vary, but to be meaningful, they should include the authority to demanding public records, non-public records of state agencies and possibly records of private organizations, and to summoning

¹⁹ Evans, G. et al. "Round Table: Ethics and Conflict of Interest." *Canadian Parliamentary Review*. 18. 1995-1996. <http://www.parl.gc.ca/Infoparl/english/issue.htm?param=155&art=474>

parliamentarians, state officials and perhaps private citizens to give testimony.

The third function is to advise parliamentarians as to how possible actions being considered would be viewed in light of the code of conduct. This role is largely preventive—it is meant to help parliamentarians avoid doing something objectionable. The function also is meant to help protect the reputation of parliament—if a parliamentarian does do something objectionable, the scope for claiming ignorance is reduced.

Oversight

Ultimately, parliament will oversee the code in some way, but the options can be categorized into two broad categories.

First, parliamentarians themselves may oversee the code. One option in this category is that oversight may be the responsibility of a standing ethics committee. Such a committee would typically include members of, or even be chaired by, the parliamentary opposition. Powers of parliamentary committees to summon and question parliamentarians, civil servants and private organizations and citizens, of course, vary from country to country. Another form of oversight by parliamentarians could theoretically be to have the house speaker or chairman oversee the code, but in practice this does not seem to happen.

Regardless of the particulars of the system, oversight by parliamentarians has the general advantage that parliamentarians themselves are likely to accept the system because they control it quite closely. There are several general disadvantages. Such a system may be prone to being subverted—if there is a general will among parliamentarians to evade the code they can do so easily. This system is also prone to being politicized—the party that controls oversight may try to use the system to attack opponents or protect its own members. Parliamentarians are subject to a variety of concerns and responsibilities that may distract them from any oversight duties they

may have—with no malicious or subversive intent, a busy parliamentarian may not be a thorough exerciser of oversight. As a consequence of all these reasons, this system does not necessarily do much to build public trust in parliamentarians, especially if parliamentarians are not considered trustworthy to begin with.

The other oversight option is to have an independent officer, commonly called an ethics commissioner, responsible for implementing and enforcing the code. The ethics commissioner is a non-parliamentarian appointed by the parliament or possibly the executive (i.e. the prime minister/cabinet). The main advantage of this system is that the ethics commissioner has a degree of independence from the parliament. An independent commissioner will have the mandate and opportunity to examine parliamentarians' asset, interest and other declarations carefully. Since parliamentarians are not overseeing themselves, the arrangement may help foster public confidence in the oversight system. The main disadvantage of this arrangement is that an improperly constituted ethics commissioner position can be impotent, or may be (or be seen to be) politically biased. Another complication is that as an independent parliamentary official, an ethics commissioner will likely not have the power to impose sanctions on parliamentarians but instead must rely on parliamentarians themselves, usually by means of an ethics committee, to decide on and impose sanctions. Appointment of an independent ethics commissioner appears to be the preferred option in western democracies that have codes of conduct for parliamentarians.

Quite possibly, a code is overseen by a mixture of these methods, most likely with parliamentary ethics committees existing alongside an ethics commissioner. In such cases it is probably useful to establish a clear relationship between the committees and the commissioner, and to try have their functions complement rather than compete. Typically, the ethics commissioner will administer the code and determine when sanctions are called for, and the ethics committee will decide on the particular sanction to be exercised.

It is worthwhile mentioning that supplementary or alternative mechanisms to a code of conduct may be overseen by some body external to parliament. Anti-corruption laws typically fall under the scope of the judiciary, either through the ordinary court system or through a special court for parliamentarians or parliamentarians and civil servants. An advantage of this approach is that in many countries the judiciary is, or is seen to be, neutral and objective, so the system helps build public trust in parliament and parliamentarians. There are, however, several disadvantages. Having judges oversee the actions of parliamentarians as a matter of course arguably blurs the line between the judiciary and the legislature (and depending on whether ministers are subject to the code, also the executive), undermining division of powers. Parliamentarians often enjoy some sort of protection from becoming the subjects of legal proceedings, so it may be difficult to overcome such protections without the support of parliament. Another problem is that putting code-like matters before the judiciary criminalizes, or at least creates the impression of criminalizing, actions that may not warrant such strong sanction. One purpose of a code of conduct is to address behavior that is questionable or undesirable rather than clearly criminal, and this purpose is undermined by vesting oversight and enforcement with the same body responsible for overseeing the criminal law. Also, putting oversight of the code under the judiciary may create opportunities for imposing procedural delays on consideration of matters under the code.



To whom a code applies

A code of conduct for parliamentarians will, obviously, apply to members of parliament. In systems with strict division of powers, such as in the United States, where the legislative branch of government is clearly divided from the executive branch, there is no question about whether a code of conduct for parliamentarians applies to cabinet members; in such cases the executive will possibly be subject to a separate code of conduct. In parliamentary systems, however, where members of the executive are also sitting members of parliament, the executive members will likely be subject to the provisions of the code

for parliamentarians, and quite possibly also to another (perhaps more stringent) code specifically for cabinet members or, more broadly, members of the executive branch of government (including civil servants).

Close relatives of parliamentarians will often also be subject to the code of conduct. This is based on the rationale that the private interests of parliamentarians and those of their close relatives likely coincide and are not easily separated (South Korea's code of conduct for public officials even covers parents of office-holders). Spouses and dependent children will frequently be required, or at least encouraged, to submit interest/asset declarations either included in or in addition to those of their spouses.



Status

A proper code must have some formal existence or status.

Codes may be maintained as creatures of the chambers to which they apply, formalized as resolutions or standing orders. In such situations, the chamber has close control of the content of the order (note that control of content and exercise are separate issues, especially if an independent ethics commissioner is responsible for exercising the code). Given the close control of content, members of the chamber are likely to accept the terms of the code. A disadvantage of this approach, however, is that the code may do little to increase public confidence in parliament and parliamentarians, especially if public confidence is already low. Also, resolutions and standing orders are usually relatively easy for parliamentarians to modify, so there could be a risk that parliamentarians may subvert or politicize the code.

A code of conduct may actually be enshrined in law. Canadian provincial legislatures have generally taken this approach.²⁰ Parliament

²⁰ Evans, G. et al. "Round Table: Ethics and Conflict of Interest." *Canadian Parliamentary Review*. 18. 1995-1996. <http://www.parl.gc.ca/Infoparl/english/issue.htm?param=155&art=474>

devises the details of a code of conduct and passes them as a law. The advantage of this approach is that laws are generally more difficult to amend or abrogate than house resolutions, so parliamentarians will not be able to change the terms of the code to subvert or avoid it. Another strength may be that the public might have greater appreciation for the importance of a law than a house resolution, so the public confidence-building function of a code of conduct may be enhanced. A disadvantage of enshrining a code in law is that doing so may blur the distinction between the judicial and legislative branches of government. Also, putting the code in law may create the possibility of parliamentarians mounting legal-procedural challenges to avoid being disciplined under the code.

Hybrid approaches are also possible. A code of conduct for parliamentarians may be mandated in a law or even a constitution, with the details left to be established as parliamentary resolutions or house orders. The legislative mandate for a code of conduct may or may not establish some outlines or minimum terms of what the code should address.



Are Codes effective?

Empirical evidence of the effectiveness of codes of conduct in general is scarce. Regarding behavior and public perception of civil servants, there is evidence that codes of conduct positively affect behavior and increase the public's perception of ethicality.²¹ Unsurprisingly, however, there does not appear to have been any empirical study of whether codes of conduct for parliamentarians actually achieve the aims for which they are implemented.

²¹ Bruce, Willa. "Codes of Ethics and Codes of Conduct : Perceived Contribution to the Practice of Ethics in Local Government." *Public Integrity Annual*. CSG & ASPA. 1996. Also West, Jonathan et al. "Ethics Training in U.S. Cities: Content, Pedagogy and Impact." *Public Integrity*. Vol. 6 No. 3. 2004. pp 189-206.

E.N. Hughes, speaking as the ethics commissioner of Canada's province of British Columbia, declared that he believed that conflict of interest legislation (codes of conduct) in Canada had been substantially successful in meeting the aims of the legislators who enacted them, mainly as a response to declining public trust in government.²²

Still, it is recognized that codes of conduct are not a magic bullet that can transform governance in a state. As integrity commissioner of the province of Ontario, Canada, Mr. Gregory Evans commented, "No administrative rules or codes of conduct are required to monitor the conduct of an honorable member, nor will they restrict the misbehavior of the member who lacks the requisite moral integrity."²³ The sentiment is reflected in Skelcher and Snape's work, which asserts that compliance with a code of conduct can likely discourage but not eliminate corruption in a decision-making environment.²⁴

Stapenhurst asserts that political culture is important to the functioning of a code of conduct. He says that three cultural conditions are necessary for a code to work as intended—shared attitudes and values among the individuals being regulated; shared understanding of what problems the code is meant to address; and shared understanding of how those problems can be fixed.²⁵ Thus he concludes that it is essential to promote common civic attitudes and ethical values among a country's parliamentarians. This can be pursued through training to clarify definitions of misconduct, show the damaging effects of

²² Evans, G. et al. "Round Table: Ethics and Conflict of Interest." *Canadian Parliamentary Review*. 18. 1995-1996.

²³ Ibid.

²⁴ Skelcher, Chris and Snape, Stephanie. "Ethics and Local Councilors: Modernising Standards of Conduct." *Parliamentary Affairs*. 2001, pp. 72-78.

²⁵ Stapenhurst, Rick and Pellizo, Ricardo. *Legislative Ethics and Codes of Conduct*. World Bank Institute. 2004. p. 17. http://siteresources.worldbank.org/EXTPARLIAMENTARIANS/Resources/Legislative_Ethics_and_Codes_of_Conduct.pdf

misconduct and raise awareness about the importance of and mechanisms for eliminating misconduct.

It is likely that any jurisdiction implementing a code of conduct for parliamentarians with the sole aim of controlling corruption will be disappointed with the results. Instead, a code of conduct is more properly seen as part of an integrity system. When the aim is to actually reduce corruption in a country, rather than primarily to improve public perception of parliament, the code should be accompanied by other measures to build a homogeneous political culture that is intolerant of corruption.

Effectiveness of a code of conduct would appear to depend on civil society, media, free press, integrity of the civil service, existence of integrity system, commitment of parliamentarians, and commitment of leaders to its use. More internally to the code, simplicity/accessibility of code and oversight structure also appear to be important. A code should include reporting of parliamentarians' interests, and provisions to make the reports public. An independent oversight body or individual is probably superior to oversight by an internal parliamentary committee. There should also be public reporting of oversight agency's activities—investigation reports, complaints registered. A code should be primarily preventive rather than suppressive.

Within democratic systems there does not seem to be any major difference based on the specifics of the parliamentary system (bicameral, unicameral, presidential, Westminster, etc.). What does likely make a difference is that the parliamentary system is embedded in a democratic polity.

While the effectiveness of codes of conduct at improving behavior of parliamentarians is unclear, and likely dependent on many factors in the political, social and institutional environment, implementation of a code of conduct is unlikely to do harm. To the extent that harm is possible (beyond the risk of politicization and biased application), it would be that a code of conduct instituted but left unimplemented, or implemented with clear political bias, could cause public disillusionment.



Criticisms of Codes

Some general criticisms are made concerning the use of codes of conduct for parliamentarians. Many are dismissed fairly easily.

One such criticism is that codes of conduct are unsuitable for a parliamentary setting; unlike in professions, where codes originated, parliamentarians come from diverse backgrounds and lack a shared set of values, so codes are inappropriate given the nature of parliament as an institution. The response to this is that parliaments as institutions do have shared values arising from the democratic system, parliamentary tradition in general and the particular histories of the individual parliaments. Codes should promote the functioning of parliament and the democratic process.

Another criticism is that parliamentarians are representatives who require some independence to perform their duties properly, and codes of conduct would restrict that independence. This criticism is also misguided. Certainly parliamentarians require autonomy to properly represent their constituents, but codes of conduct do not strip parliamentarians of that autonomy. Rather, codes help increase transparency and impose accountability, both of which are compatible with the traditional role of parliamentarians.

Another class of criticism is perhaps less easily dismissed, but still does not seem to justify disregarding codes of conduct.

Some argue that it is unlikely that the code would be implemented, i.e., the sanctions would not be exercised against parliamentarians, and that this would just increase public cynicism. This may be true in some places. As previously mentioned, codes cannot stop misbehavior, especially if the political culture of the jurisdiction accepts, condones or even encourages misbehavior. But in such a situation any mechanism aimed at improving the behavior of parliamentarians is going to be very difficult to implement successfully. Furthermore, to discard codes of conduct on grounds that parliament would not implement them is to admit that parliament is incapable of regulating itself. This position

undermines the very foundation of representative democracy—if representatives cannot be trusted to act honestly in their constituents' interests, one might as well discard the idea of parliament altogether. Instead, it is probably more useful to grant parliament as an institution some benefit of the doubt and accept that it can properly regulate the affairs of its members while encouraging it to do so in a transparent manner, in conjunction with other aspects of integrity systems to help address corruption and other misbehavior.

Another criticism is that a code could be misused as a political weapon to attack opponents. Again, this is a possibility. Nevertheless, this criticism could be made for any law, but this does not suggest laws should be abandoned. While a code may be abused, the best defense against such abuse is the public investigation of complaints by an impartial investigator. This suggests the value of systems that use independent ethics commissioners, rather than suggesting that codes are not useful.

Thus, while codes of conduct alone are not going to solve a parliament's corruption or perception problems, they are likely useful as a part of broader effort towards that goal.

Codes of Conduct for Parliamentarians A Comparative Study



Chapter

3

**Cross-National Survey of Codes of Conduct
Good practices of effective codes**



This chapter reviews the main details of codes of conduct and supplementary/alternative mechanisms in the countries examined as part of the study. Apparent good practices are identified. In each country presentation, brief summary information about the country's political system is presented before examination of codes of conduct and supplementary/alternative mechanisms.



Australia

The Commonwealth of Australia is a federal parliamentary democracy of the Westminster tradition. The country's six states and two territories have regional parliaments. The federal parliament is bicameral, with a 150-member House of Representatives and a 76-member Senate. Members of the House of Representatives are elected from single-member constituencies through a preferential voting system to serve terms of at most three years, renewable. Representation in the Senate is based on territory, with 12 senators from each of six states and two from each of two territories; senators are elected through a proportional representation election system. State representatives serve six-year terms (half the seats go up for election every three years) and territory representatives serve three-year terms. The head of state is formally the Queen of Australia (United Kingdom), represented by a governor general. The head of government is the prime minister, who is the leader of the majority party or majority coalition in the House of Representatives. Cabinet ministers are chosen by the prime minister from among parliamentarians. The legal system is based on English common law, and the highest court is the High Court, consisting of a chief justice and six other high court justices.

Code of conduct

Institution of a code of conduct has been discussed for several decades, mainly with the aim of increasing public trust in parliamentarians. Codes of conduct were addressed in the Report on Declaration of Interests, prepared by the Joint Committee on Pecuniary

Interests of Members of Parliament and tabled in both chambers in September 1975. In 1979 the Bowen Committee recommended the adoption of a code of conduct for ministers, parliamentarians, public servants and statutory office-holders. In 1994, an informal all-party working group proposed a draft code for members of the House of Representatives and senators. In June 1995 a proposal titled A Framework of Ethical Principles for Members and Senators was tabled in both Houses—the document expressed ethical values that citizens should expect from their representatives, addressing integrity, personal conduct, primacy of public interest and proper exercise of influence.²⁶ Nevertheless, the proposal has not been adopted and there is no comprehensive code of conduct for federal parliamentarians. Several state legislatures do, however, have codes of conduct.

Supplementary/alternative mechanisms

- **Register of Pecuniary Interests**

Parliamentarians are required to register their pecuniary interests. This requirement serves the interest declaration function commonly addressed in a code of conduct, and the mechanisms used to implement the registration bear considerable similarity to mechanisms that would be used to implement a code of conduct. The House register was adopted in October 1984, and the Senate register was adopted in March 1994. The terms of both were amended in 2003, November and September respectively, removing the requirement to declare potentially conflicting interests before voting and increasing the value of gifts that had to be declared. Members of the House of Representatives and the Senate must report their pecuniary interests within 28 days of taking office, within 28 days of the beginning of the first period of sittings each calendar year and within 28 days of alternation of registrable interests.

²⁶ McKoewn, Deirdre. *Codes of Conduct in Australian and some overseas parliaments*. E-brief: online only. <http://www.aph.gov.au/library/intguide/POL/CodeConduct.htm>. issued 1 December 2003.

House members must declare any known registrable interests from a long list of registrable items belonging to themselves, spouses and dependent children regarding shareholdings in public and private companies, partnerships, family and business trusts and nominee companies, real estate, savings, liabilities real estate, any other sources of substantial income, savings, gifts, valuable assets, sponsored travel and hospitality and liabilities. The declarations are submitted to the Registrar of Members' Interests, an officer of the Department of the House of Representatives appointed by the Speaker; Registrar of Members' Interests also serves as the Clerk to the Committee of Members' Interests. The Registrar keeps a complete register of members' interests, and the Chairman of the Committee of Members' Interests tables this register in the House as needed to accommodate changes in members' interests. The register shall be available for inspection by any person subject to conditions set by the Committee of Members' Interests. Furthermore, members must declare any relevant registrable interests at the beginning of any speech during debate in the House or parliamentary committee. Originally members also had to declare relevant interests as soon as practically possible after division is called if the member intended to vote, but this provision was removed by an amendment in 2003.

The terms of Senate register of interests are similar to those of the House register, with the list of registrable items being essentially the same. In addition, however, the Senate resolution specifies that failure to report or knowingly reporting inaccurate or misleading information makes the senator guilty of contempt of the Senate, and punishable accordingly. The officer in charge of the register is the Registrar of the Senate, an officer of the Department of the Senate appointed by the President; the registrar also serves as the Secretary of the Committee of Senators' Interests. The register is to be tabled by the Chairman of the Committee of Senators' Interests as soon as possible after the beginning of each parliament, and at six-month intervals thereafter. The register is to be available for inspection by any person subject to conditions set by the Committee of Senators' Interests.

- **Commonwealth Criminal Code**

Corruption and bribery of parliamentarians is prohibited under Commonwealth Criminal Code, Division 141.1 Bribery of a Commonwealth Public Official, 142.1 Corrupting benefits given to, or received by, a Commonwealth public official and 142.2 Abuse of public office. Giving or receiving bribes is punishable by up to 10 years imprisonment. Giving or receiving corrupting benefits is punishable by up to five years imprisonment. Abuse of public office is punishable by up to five years imprisonment.

- **A Guide on Key Elements of Ministerial Responsibility**

Briefly, in cabinet discussions ministers must announce any private interests, held by them or family members, that could raise a conflict with their public duties, and cabinet may excuse them from the discussion. Ministers must be honest in public matters and should not mislead the public. When in doubt about whether a course of action is appropriate, a minister should consult the prime minister. Ministers may not work in any other profession or business. They must resign directorships in public companies, and can remain directors of private companies only if that position is unlikely to conflict with public duty. Ministers must divest themselves or give up control of shares or other interests in businesses related to their cabinet portfolios—transferal to spouses or dependent family members does not qualify as divestment. Ministers may not take actions that could create the appearance of improper influence, and may not exercise their public authority to create improper benefits for themselves or others. Dealings with lobbyists must be conducted in ways that do not create conflicts of public and private interest.

Review of practices

While Australia does not have any code of conduct for federal parliamentarians, the mechanisms it does have are of interest in a consideration of codes of conduct. The two houses' registers of members' pecuniary interests are indicative of what interest declaration

portions of a code can look like. The registers aim to have parliamentarians publicly reveal their (and their immediate family members') financial and material interests, especially when those interests could have bearing on matters being deliberated by the house or some committee on which a member serves. Enforcement of the registration provisions, however, appears weak, with any action apparently being up to the respective houses' Committees of Members' Interests. As such, while the system may increase transparency and help improve public confidence in parliamentarians, it would probably do little to reverse any pre-existing cynicism or presupposition those parliamentarians are corrupt and unable police their own affairs. Also worthy of note is that cabinet members are subject to a separate, additional interest declaration requirements by virtue of their cabinet positions. Laws exist to deal with clear abuses of office.



Canada

Canada is a federal parliamentary democracy of the Westminster tradition. The country has 10 provinces and three territories, all with regional parliaments. The federal parliament is bicameral, with a 308-member elected House of Commons and an appointed Senate that normally has 105 members. Members of the House of Commons are elected in single-member constituencies, based roughly on population, by direct popular election (first-past-the-post) to terms of at most five years. Senate seats are assigned on a regional basis: four regions—Ontario, Quebec, the Maritime provinces, and the Western provinces—receive 24 senate seats each, Newfoundland and Labrador receive six seats, and the Northwest Territories, Yukon and Nunavut receive one seat each. Senators are appointed by the governor general (a formality) at the suggestion of the prime minister. Once appointed, senators serve until aged 75. Canada's head of state is the Queen of Canada (United Kingdom), represented by a governor general. The head of government is a prime minister, who is the leader of majority party or majority coalition in the House of Commons. Cabinet ministers are nominated by the prime minister, usually from among parliamentarians. The legal

system is based on English common law, except in Quebec, where it is based on French civil law. The highest court is the Supreme Court of Canada, consisting of a chief justice plus eight junior justices, appointed by the governor general at the suggestion of cabinet.

Code of conduct

Interest in codes of conduct in Canada appears to be largely motivated by a desire to increase public confidence in parliamentarians. There has been some concern about actually preventing and detecting corruption, but such interest appears to be aimed more at public officials (cabinet members and senior civil servants) rather than at parliamentarians in general. There is, of course, some overlap because in Canada's parliamentary system, members of cabinet are generally selected from among the governing party's sitting parliamentarians. The system has been changing in recent years, largely in response to an incident dubbed the federal sponsorship scandal, which concerned abuse of a program for promoting federalism in Quebec in the wake of the 1995 sovereignty referendum. The Jean Chretien and Paul Martin Liberal governments made changes to conflict of interest regulations with the aim of increasing public confidence in the government, and the current government, led by Conservative Stephen Harper, has made further changes in accordance with his election promises to make government more accountable. The Harper government passed the Federal Accountability Act in December 2006, imposing more changes that are to be phased in over time. For one, the Ethics Commissioner (described below) will become a Conflict of Interest and Ethics Commissioner.

- **Conflict of Interest Code for Members (of the House of Commons). An appendix to the Standing Orders of the House of Commons**

While there is nothing called a code of conduct for parliamentarians, there is a Conflict of Interest Code for Members of the House of Commons, which for practical purposes is a code of

conduct. This code exists as part of the Standing Orders of the House of Commons. The code deals primarily with having members of parliament disclose private interests relevant to their public duties to an Ethics Commissioner, who is appointed under the Parliament of Canada Act, S.72.01.

The code's declared purpose (S.1) is to maintain public confidence in members and demonstrate to the public through a transparent system that members are required to put public interest before private interest. The code is also meant to guide members in reconciling private interests and public duties by creating common standards for doing so.

A principles section (S.2) sets out various aspiration statements. Members are expected to serve the public interest, do their duties honestly, arrange their affairs in a way that bears public scrutiny, avoid and prevent real and apparent conflicts of interest, resolve any arising conflicts of interest in a way that protects the public interest, and not accept any gift or benefit that could be seen as compromising their judgment or integrity. The code covers members, their spouses or common-law partners, and minor (under age 18) and primarily dependent children of members and their spouses/partners. It also applies whether members are ordinary members of the House of Commons or hold additional positions as cabinet members or parliamentary secretaries.

Clear definitions are established concerning what does (S. 3.2) and does not (S.3.3) constitute furthering private interest—the former includes increasing the value of a person's assets, reducing the amount of liabilities, increasing a person's income from certain sources, acquiring financial interests, becoming a director of a corporation, association or trade union, or becoming a partner in a partnership. Members are not permitted, in the course of their parliamentary duties, act in any way to further their own, their family members' or other persons' private interests (S.8). It should be noted that MPs who are not cabinet members or parliamentary secretaries are permitted to engage in

professional employment, carry on businesses, hold directorships or be engaged in partnerships, providing they do not use their parliamentary position to further private interests (S.7); they may also hold non-significant amounts of securities in public corporations—if significant securities are held, they may be placed in a trust approved by the Ethics Commissioner (S.17). Members are also forbidden to use or share insider information not generally available to the public for the purpose of furthering private interest (S.10). Limits and/or disclosure requirements are also established concerning gifts that members may accept and travel paid for by other persons or organizations. In addition, members may not make contracts with federal agencies under which they receive benefits.

Members are required to file private interest disclosure statements with the Ethics Commissioner upon being elected and annually thereafter (S.20), as well as within 30 days of any material change in the information required (S.21.3). In the statements, members and their families must identify and quantify assets and liabilities, state the past year's income and anticipated next year's income (specifying the sources of the income), state any benefits from private corporations in which private interests are held, and list all partnerships, corporations, associations or trade unions in which officer or director posts are held.

The Ethics Commissioner keeps these statements confidential (S.20.3), but will prepare a disclosure summary that is placed on file at the Office of the Ethics Commissioner for public inspection (S.23.1). The summary discloses sources and nature of income, assets and liabilities but does not disclose value; it identifies contracts and describes their subject and nature; it lists organizations affiliated with the member. Certain items are omitted from the summary, including principal residence, cash bank accounts, and other things deemed private and irrelevant to the member's parliamentary duties(S.24.3).

Members are to excuse themselves from house debates and votes concerning matters in which they have private interests, and must disclose those interests to the Clerk of the House who in turn informs the Ethics Commissioner (S.12).

Members can approach the Ethics Commissioner for advice as matters of obligation under the code (S.26). The opinion is confidential, but binding on the Ethics Commissioner in any subsequent consideration of the particular matter.

The Ethics Commissioner, either at the request of a member or on his own initiative, may conduct inquiry into a member's fulfillment of obligations under the code (S.27). If the Ethics Commission discovers or finds reason to believe that the matter in question involved a breach of a law, or is already subject to investigation to determine breach of law, or if a charge is laid in connection with the matter, the Ethics Commissioner suspends the investigation immediately. Upon completing the inquiry, the Ethics Commissioner reports to the Speaker, who presents the report in the House at the next sitting. The report is also available to the public once it is tabled in the House, or if the House is adjourned or prorogated, once it is received by the Speaker; if the House is dissolved, the Ethics Commissioner makes the report public (S.28). Three conclusions are possible—there was not contravention of the code; there was contravention of the code but it was inadvertent or trivial, or the member took all reasonable measures to avoid it, in which case the Ethics Commissioner can suggest that no sanctions be imposed; the member contravened the code, in which case the Ethics Commissioner can recommend appropriate sanctions. The Ethics Commissioner can also make general recommendations for interpretation or revision of the code.

A member who is the subject of an inquiry report has the right to make a statement to the House after the report is tabled in the House. Following the tabling of the report in the House, the House may move to concur (and thus conduct a debate), and if no such motion is made within 10 sitting days, the report is deemed to have been moved and adopted.

Supplementary/alternative mechanisms

- **Parliament of Canada Act**

The Parliament of Canada Act sets out rules concerning the operation of parliament. Of relevance to this study, it deals with both the Ethics Commissioner and the Senate Ethics Officer.

In 2004, the Office of the Ethics Commissioner was addressed in an amendment of the Parliament of Canada Act. The Ethics Commission has two broad functions: govern the conduct of members of the House of Commons in regard to their official duties in accordance with duties and functions assigned by the House of Commons, and to administer the ethical rules or principles set by the Prime Minister applicable to ministers and other public officer holders. More specifically, the Ethics Commissioner administers the Conflict of Interest Code for Members of the House of Commons and the Conflict of Interest and Post-Employment Code for Public Office Holders.

The role of the Ethics Commissioner in the former capacity has already been addressed in the examination of the Conflict of Interest Code for Members of the House of Commons. In administering the ethics rules for public office-holders, the Ethics Commissioner also provides confidential advice to the Prime Minister and public office holders regarding ethical issues. Members of the House of Commons or the Senate may ask that the Ethics Commissioner examine cases where public office holders are suspected of not following the ethical principles established by the Prime Minister. In such cases, the Ethics Commissioner prepares a report that is sent to the Prime Minister, the member making the request and the subject of the investigation; the report is also made available to the public. For such investigations, the Ethics Commissioner has the power to summon witnesses and require them to give evidence under oath. The Ethics Commissioner is appointed by the governor general after consultation with all parties in the House of Commons and with approval recognized by resolution of the House of Commons. The term of office is five years, renewable; the

Ethics Commissioner may be removed for cause by the governor general at the request of the House of Commons. While carrying out duties in connection with the House of Commons, the Ethics Commissioner has all the privileges and immunities of the House and its members. The Ethics Commissioner may employ staff as necessary for the operation of the Office of the Ethics Commissioner.

The Senate Ethics Officer is appointed by the governor general after consultation with leaders of all recognized parties in the Senate and after an approval by resolution of the Senate. The Senate Ethics Officer's term is seven years, renewable, but may be removed by the governor general, at the request of the Senate, for cause. The Senate Ethics Officer controls and manages the Office of the Senate Ethics Officer, and may employ staff necessary for that purpose. The Senate Ethics Officer is responsible for carrying out duties assigned by the Senate for the purpose of governing the conduct of senators in their official duties.

- **Conflict of Interest and Post-Employment Code for Public Office Holders**

This code was prepared by the Prime Minister and approved by the House of Commons and the Senate. This code establishes rules for public office holders (who include cabinet ministers) regarding avoiding and disclosing potential conflicts of interest and also the types of positions they are permitted to take after leaving public service. This code was most recently revised in 2006.

- **Federal Accountability Act**

In December 2006, the Federal Accountability Act was passed. It enacts the Conflict of Interest Act, applying to public office holders. The content is similar to that of the Conflict of Interest and Post-Employment Code for Public Office Holders. The law also amends the Canada Elections Act to limit private contributions to political parties. In addition, the law amends the Lobbyists Registration Act to make the activities of lobbyists more transparent and allow a

Commissioner of Lobbying to investigate those activities. The Federal Accountability Act will institute position of Conflict of Interest and Ethics Commissioner, basically replacing the position of Ethics Commissioner. The new Conflict of Ethics Commissioner, who must be a former superior court judge or holder of a government position dealing with conflicts of interests, will serve a term of seven years (can be removed for cause) renewable. The role of the Conflict of Interest and Ethics Commissioner vis-?-vis parliamentarians appears to be basically unchanged from that previously described in the Parliament of Canada Act and the Conflict of Interest Code for Members. The commissioner's role vis-?-vis political office holders is addressed in the new Conflict of Interest Act, but remains similar to that already described under the Parliament of Canada Act and the Conflict of Interest and Post-employment Code for Political Office Holders.

- **Criminal Code**

Corruption and bribery of parliamentarians is prohibited under Canada's Criminal Code, Article 119.(1). The law makes it illegal for parliamentarians to accept, agree to accept or attempt to obtain for themselves or others some valuable consideration in exchange for some act or omission relating to their official duties. The same article also makes it illegal to offer such valuable consideration. Violation is punishable with up to 14 years imprisonment.

Review of practices

Canada's Conflict of Interest Code for Members of the House of Commons is quite exemplary of a code of conduct. It provides for public disclosure of interests and provides guidance to help members arrange their interests in appropriate ways. It identifies the mechanisms, in this case primarily the Ethics Commissioner, responsible for administering and overseeing the system. The Ethics Commissioner's role conforms closely with theory about oversight of codes of conduct—the functions are administrative, investigative and advisory. With the independent oversight, the system can reasonably be expected to be more effective at increasing public confidence in parliamentarians

than a purely Commons-administered system would be. In addition, the code is set in the context of separate legislation that helps guarantee the independence of the Ethics Commissioner. While actual imposition of sanctions for violating the code remains the responsibility of the House of Commons, the disclosure and administration environment is such that the system appears highly reassuring. Cabinet members are subject to additional requirements. In addition, there are also provisions in criminal law to deal with blatant abuse of office. Canada can reasonably be presented as a best practice in terms of system structure, though the legal framework surrounding the position of Ethics Commissioner could be simplified if a system were being designed from the ground up.



India

The Republic of India is, according to its constitution, a socialist democratic republic. The country operates as federal parliamentary democracy in the Westminster parliamentary tradition. There are 28 states and seven union territories, all with their own legislatures. The federal parliament, called the Sansad, is bicameral, with a lower house called the *Lok Sabha* (House of the People) and an upper house called the *Rajya Sabha* (Council of States). The *Lok Sabha* is composed of up to 552 members, with up to 530 representing states, up to 20 representing territories and up to 2 representing the Anglo-Indian community. With the exception of the two Anglo-Indian representatives, who are nominated by the President of India, members are directly elected from the states/territories on a proportional representation basis, with the number of representative reflecting population. *Lok Sabha* members serve a term of five years. The *Rajya Sabha* has 250 members: 12 are appointed by the President of India on grounds of their expertise in social service, arts, science and literature, and the remainder are elected by state and territorial legislatures with the number of representatives reflecting the population of each state or territory. Members sit for a term of six years, with one-third of members facing re-election every two years. The central government is formally called the Union Government. The head of state is a president,

elected to a five-year term by members of the two chambers of the federal parliament and the state legislatures. The presidency is in principle quite powerful, but in practice is like the position of a constitutional monarch whose powers are exercised by a prime minister and a cabinet. The prime minister is appointed by the president; the appointee must be someone expected to enjoy the support of the majority of members in the *Lok Sabha*, and in practice the prime minister is chosen by members of the majority or coalition-leading party after house election (specifically, the leader of the majority or coalition-leading party). While the prime minister serves at the pleasure of the president, the prime minister is not removed as long as his or her party enjoys the support of the majority in the lower house. Members of the cabinet are appointed by the president at the recommendation of the prime minister. The legal system is based on English common law, and statutory law. The highest court is the Supreme Court, consisting of a chief justice, appointed by the president on the basis of seniority, and 25 associate justices, appointed by the president at the suggestion of the chief justice; Supreme Court judges serve until age 65.

Code of conduct

- **Code of Conduct for Members of the *Rajya Sabha*, 2005**

There exists a code of conduct for members of the *Rajya Sabha*, though in the terms of this study, it is more a code of ethics than a code of conduct. The code articulates several aspirations, though many are worded much like prescriptions and proscriptions. Members are expected to maintain high standards of morality and dignity, work diligently for the benefit of the people, uphold the dignity of their offices, ensure that private financial interests do not conflict with their public duties, refrain from accepting gifts or fees for execution of their official duties.²⁷

²⁷ Code of Conduct for Members of the Rajya Sabha. 2005. <http://rajyasabha.nic.in/code.htm>

● **Model Code of Conduct for the guidance of political parties and candidates**

There is also a model code of conduct applying to the activities of political parties and candidates. The code deals largely with preventing political parties from engaging in destructive conflict. To this end, parties and candidates are prohibited from inciting hatred or tension among followers, and criticizing one another on any basis save policies, past record and work. Procedures for arranging party meetings and processions are also addressed, along with polling day procedures. The code touches of code of conduct matters relevant to this study in that it mentions that corrupt practices are to be scrupulously avoided. Special prohibitions are placed on the party in power regarding use of state resources in partisan political activities, and making certain types of promises during election campaign periods.

Supplementary/alternative mechanisms

Sunil Sondhi addresses the history and state of anti-corruption measures in India.²⁸ Since colonial times, the focus appears to have been largely legalistic, depending on laws and special departments under the police force. States have anti-corruption bureaus empowered under the Police Act. There is a central investigation agency empowered under the Delhi Special Police Establishment Act, 1946.

Review of practices

India's Code of Conduct for Members of the Rajya Sabha is more of a code of ethics than a code of conduct, as defined in this study. It contains a fairly standard set of exhortations towards good governance principles.

²⁸ Sondhi, Sunil. *Combating Corruption in India: The role of civil society*. Prepared for XVIII World Congress of Political Science Association. 2000



Japan

Japan is a unitary parliamentary democracy. The parliament is the National Diet of Japan, a bicameral legislature consisting of the House of Representatives and the House of Councilors. The House of Representatives has 480 members, elected on the same day for terms of most four years; 180 are elected by proportional representation from party lists in 11 multi-member constituencies, and 300 are elected by popular election in single-member constituencies. The House of Councilors has 242 members who serve six-year terms; alternating halves of its number are elected every three years. At each election, 73 members are elected from the 47 prefectural districts by single non-transferable vote, and 48 members are elected by proportional representation from national party lists. Membership of the Diet is open to citizens who are at least twenty-five in the case of the House of Representatives and thirty in the case of the upper house, and no one may be a member of both houses at the same time. The head of state is the Emperor of Japan. The head of government is a prime minister, selected by both houses of the Diet, each conducting its own voting under a run-off system. Cabinet consists of the prime minister plus up to 14 ministers of state appointed by the prime minister. The legal system is based mainly on European civil law, with influence from Chinese historical legal tradition. The highest court is the Supreme Court, composed of 15 justices appointed by cabinet.

Code of conduct

Japan has a sort of code of conduct for parliamentarians, in the form of the National Public Service Officials Ethics Code, which applies to a broad range of public officials including parliamentarians. The code provides guidelines for standards of ethical behavior. Briefly, public officials must perform their duties and treat the public without discrimination, preference or prejudice. They are expected to keep personal affairs separate from public affairs, and to refrain from using their positions to get personal gain. They are not to act in any way that

would undermine public confidence in the fairness of the state. The code establishes a long, detailed list of “interest parties” (largely business organizations or recipients of state funds) with whom public officials potentially have dealings, and then asserts that public officials must not receive certain benefits from such interest parties. This list of prohibited benefits includes gifts of money, goods or real estate, loans, free use of real estate or goods, free services, hospitality, meals and travel (with certain exceptions allowing benefits of negligible value). Further exception can be made if the public official has a private relationship, free of official implications, with the interest party. The code provides for the existence of an Ethics Supervisory Officer, with whom public officials can confer to check if an action under consideration would violate the code. The code overall is overseen by a National Public Service Ethics Board, the members of which are appointed by cabinet with approval of the Diet. The board has administrative, investigative and disciplinary functions.

Supplementary/alternative mechanisms

According to the constitution, the two houses of the Diet are responsible for dealing with internal disciplinary matters concerning their members (Article 58). Under the Diet Law, Article 41, the House of Representatives and the House of Councilors shall each have a standing Committee on Discipline. Furthermore, each house is required, under Article 124-III, to have a Deliberative Council on Political Ethics to deal with ethical questions related to members’ activities outside the Diet; these Deliberative Councils were established in 1985. Both houses have a “Principles of Political Ethics,” which provides for the correct mental attitude of members and a “Standards of Conduct,” which functions as the criteria for the Deliberative Council’s examinations. There are also “Regulations of the Deliberative Council on Political Ethics,” which provide for the steering methods of the Deliberative Councils.

In the House of Representatives there is also a Council on the Parliamentary System, which functions as an organ to discuss from a

broad perspective parliamentary ideals and such problems connected with the National Diet as may arise from time to time.²⁹

Review of practices

Japan does have a code of conduct that applies to all state officials, including parliamentarians. The code expresses the aspirations that state officials should perform their duties fairly and avoid conflicts of interest or use of public office for illicit personal gain. Under this system, Japan appears to treat parliamentarians much as other public. The houses of the Diet do have responsibility for policing their members' behaviors both inside and outside the Diet, but the system does not appear to be very open to the public. With oversight of parliamentarians' behavior in the hands of parliamentarians themselves, the system is open to the criticism that parliamentary committees may be less than enthusiastic about investigating parliamentarians' actions. Even assuming the best of intentions, parliamentarians, whose main functions are supposedly legislation and representation, may not have time for thorough exercise of oversight.

A notable weakness in the Japanese system is the absence of a mechanism requiring parliamentarians to declare their personal interests related to their public functions, or to declare assets. This may be due to the fact that the code applies to a wide range of public officials, and implementing such a system is a huge undertaking

The Japanese system implies some interest in fostering public confidence in state officials, but doing so does not seem to be of great concern. There does not seem to be much evidence of any strong desire to increase transparency or parliamentarians' affairs or to reassure the public that parliamentarians behave ethically. Public protest in the face of political scandal or alleged abuse of political office does not seem to feature prominently in Japan's political culture. There do not appear to be strong demands for transparency or strong expectations that public officials must separate their private interests from their public duties.

²⁹ http://www.shugiin.go.jp/index.nsf/html/index_e_guide.htm



Laos

The Lao People's Democratic Republic is a nominally democratic socialist republic, or communist state. The National Assembly is the country's unicameral legislature, currently consisting of 115 members elected on a constituency basis for five-year terms. It must noted that there is only one state-approved political party (the Lao People's Revolutionary Party), though a the state also approves a small number of independent candidates (currently there are two state-authorized independents in the National Assembly. The head of state is a president, elected by the National Assembly to a five-year term. The head of government is a prime minister, nominated by the president and approved by the National Assembly for a five-year term. Cabinet members are nominated by the president and approved by the National Assembly. Genuine power lies, however in a nine-member Politburo and a Central Committee. The legal system is based on socialist practice, traditional customs, and French legal norms. The highest court is the People's Supreme Court; the president of the People's Supreme Court is elected by the National Assembly on the recommendation of the National Assembly Standing Committee, and the vice president of the People's Supreme Court and the judges are appointed by the National Assembly Standing Committee.

Code of conduct

Laos does not have a code of conduct for parliamentarians. There exist several laws addressing corruption and abuse of office, but few measures are aimed at parliamentarians in particular. The National Assembly claims to be considering adopting some sort of code of conduct, but the impetus seems to be pressure from international funding agencies rather than any internal desire to address misbehavior or increase public confidence in parliament.

Supplementary/alternative mechanisms

- **Anti-corruption law**

The Anti-corruption law addresses some aspects of conduct and ethics for public officials. The law applies to leaders at all levels, administrative staff, technical staff, the staff of State enterprises, civil servants, soldiers, [and] police officers who have position, power or duties in party organizations, State organizations, the Lao Front for National Construction, mass organizations, State-owned enterprises, State-mixed enterprises, State-partnerships, technical units, administrative units, [and] all forms of organizations established by the State to engage in business [or] production, including chiefs of villages and persons who are officially authorized and assigned to exercise any right or duty. The law requires that such people act as role models in strict implementation of laws and regulations, conduct their lives transparently, and be free of corruption. Corruption is defined as embezzlement of state property, bribe-taking, abuse of power, and a variety of other offenses. The law also provides a list of forbidden actions, including receiving money or items from any organization or individual for something that damages the interests of the state, its citizens or society, exercising one's power or influence for personal benefit, appointing relations to official positions in any way that could create conditions for corruption, misusing state funds or resources and disclosing state secrets. Such acts are punishable by "re-education" and disciplinary measures, or other sanctions as provided for by law. In addition, public officials must, upon receiving a position, made a declaration of debts and assets covering themselves, their spouses and their children.

Overseeing the system is a Counter-Corruption Organization, a ministry-level-status independent investigatory agency (there are also lower-level provincial counter-corruption organizations). The organization receives and investigates claims that public officials have engaged in corruption or are unusually wealthy. The Counter-Corruption Organization can issue warnings or disciplinary measures

including suspension or removal from office in minor cases, or pass serious cases to public prosecutors. The Counter Corruption Organization is also responsible for reviewing corruption-prevention-related policies and conducting corruption prevention activities.

- **Penal law**

The Penal law addresses misconduct by civil servant in Part VIII Breach of Civil Servants' Responsibilities, specifically Articles 142- 146 on Abuse of Power, Abuse of Authority, Abandonment of Duty, Negligence in the Performance of Duty, Bribery and Corruption; such misbehaviors are punishable by fines or imprisonment. In addition, people offering bribes to civil servants may be fined or jailed. The law also provides for fines and imprisonment for irresponsible management of state property (Article 105), unlawful possession of state property (Article 106) and abuse of state property (Article 108).

Review of practices

In Laos, there is no code of conduct for parliamentarians or public officials. Laos takes a very legalistic approach to overseeing the behavior of public officials, including parliamentarians, addressing behavior of public office-holders mainly under Anti-Corruption Law and Penal Law, overseen by a Counter Corruption Organization and the courts, respectively. The Anti-Corruption law, in particular, imposes many requirements one might expect under a code of conduct, such as aspirations for good behavior, asset declaration requirements and restrictions on receiving gifts and exercising official authority for personal gain. All measures are framed in terms of anti-corruption—there appears to be little specific concern about public confidence in public officials or parliamentarians. This is perhaps unsurprising considering that the country is a communist state with limited democratic practices; communist regimes do not typically approach public confidence issues by opening up the mechanisms to government to citizens.

Even though many features of codes of conduct are present, they cannot really be called good practices. By essentially criminalizing all aspects of overseeing behavior of public officials, Laos restricts the scope for dealing with matters that may be objectionable but not blatantly corrupt.

Laotian officials say that a code of conduct is being considered. Impetus appears to be pressure from development funding agencies rather than any internalized belief that a code is needed.



Pakistan

The Islamic Republic of Pakistan is a federal republic with four provinces with provincial assemblies, one territory and one capital territory. The federal parliament, called *Majlis-e-Shoora*, is bicameral, with a 342-member National Assembly and a 100-member Senate. Of the 342 seats in the National Assembly, 272 are filled by direct election, 10 are reserved for religious minorities, and 60 are reserved for women and allocated on the basis of proportional representation; the maximum term of the National Assembly is five years. Senators are indirectly elected by provincial assemblies and territories' representatives in the National Assembly; they serve a six-year term, with half the seats being turned over every three years. The head of state is a president, currently Pervez Musharraf who installed himself as Chief Executive in 1999 and has since assumed the position of president with the endorsement of the legislature, though formally the president is to be chosen by an electoral college composed of members of the National Assembly and provincial assemblies. The head of government is a prime minister, generally the leader of the largest party in the National Assembly. Cabinet is selected by the prime minister. The legal system is based on English common law, with influence from Islamic legal tradition. The highest court is the Supreme Court, with justices appointed by the president, but there is also a Federal Islamic court.

Code of conduct

Abuse of public office has long been considered a problem in Pakistan, and in the democratic period beginning 1988, four successive governments left office before their terms were complete largely due to corruption accusations.³⁰ There is no specific code of conduct for parliamentarians. The constitution's Sections 62 and 63, however, establish certain qualifications for parliamentarians, including moral qualifications. Parliamentarians must be of good character, knowledgeable of Islamic teachings, observant of Islamic religious duties, abstentious of major sin and free of crimes of moral turpitude. Furthermore, grounds for disqualification include acting or propagating any opinion contrary to morality, being found guilty of a corrupt or illegal practice, or of being party to a contract for provision of goods or services to the government. Thus the constitution emphasizes that the parliamentarians must be good citizens and have good characteristics as well as be free of conflicts of interest. Backgrounds of the MPs are checked before they are inducted as parliamentarians, and after MPs are can be disqualified after becoming MPs if their qualifications are inspected and found wanting.

Alternative/supplementary mechanisms

● Rules of Procedures and Conduct of Business in the National Assembly

There is a set of Rules of Procedures and Conduct of Business in the National Assembly, but its focus is primarily procedural, and to the extent that it addresses parliamentarians' behavior it only forbids disorderly or disruptive behavior. A Standing Committee on Rules,

³⁰ Khan, Sha Kakakhel and Dubnik. Prosecuting Corruption: the case of Pakistan. 2004 American Ethics Forum. American Society for Public Administration. Portland, OR. 2004. <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN019113.pdf>

Procedures and Privileges is responsible for overseeing and enforcing these rules.

- **National Accountability Bureau**

The National Accountability Bureau was established in 1999 under the National Accountability Bureau Ordinance. Under the law, the aim of the agency is to deal with incidences of corruption and abuse of power, recover state money lost to corruption, and educate the public about the causes and effects of corruption. The law applies to all public office-holders, including parliamentarians. Sanctions include fines and imprisonment.

Review of practices

While there is no particular code of conduct or ethics, the constitution sets out certain ethical principles applying to parliamentarians. This has definite strengths as it makes these matters highly visible to all citizens. The principles are also stated clearly and are easy to understand. Anti-corruption efforts have been pursued largely through legislation aimed at criminalizing corruption.

The system in Pakistan does not appear to contain any best practices in the area of codes of conduct. At best, one can say that the National Accountability Bureau appears quite independent, which is probably an advantage in exercising an oversight function.

As a weakness, the integrity system such as it exists, seems to deal with problems after the fact through warnings, disciplinary measures and ultimately prosecution. There seems to be little concern with the preventive function that codes of conduct serve.

Integrity of state officials and parliamentarians does not seem to figure prominently in Pakistan's political culture. The public does not appear to hold the parliament or government to high transparency or integrity standards. Therefore, the public confidence-building function of codes of conduct would likely be of little importance.



The Philippines

The Republic of the Philippines is a democratic republic. The legislature is a bicameral Congress consisting of a 250-seat House of Representatives and a 24-seat Senate. Of the members of the House of Representatives, 206 are elected from single-member constituencies, and the remainder are sectoral representatives elected through a party list system. For both constituency and sectoral members, term of office is three years, and members may only serve for three terms, after which they become ineligible for election. Members of the Senate are elected through nationwide popular election to a six-year term, with half the seats going up for election every three years. The head of state and head of government is a president, elected directly by citizens (with ties being resolved by a vote by Congress) to a six-year term of office. Strictly speaking, the president is allowed to serve only one term, but a president who has come to office through constitutional succession and has served for no more than four years may stand for election. The legal system is based on a mixture of civil law, common law, Islamic law and indigenous law. The highest court is the Supreme Court, consisting of a chief justice and 14 associate justices, appointed by the president to serve until age 70.

Code of conduct

- **Republic Act No. 6713: Code of Conduct and Ethical Standards for Public Officials and Employees (accompanied by Rules Implementing the Code of Conduct and Ethical Standards for Public Officials and Employees)**

The Republic Act No. 6713 went into effect in March 1989. This law covers elective and appointive officials and employees, including members of the military and police. In its preamble, the legislation is described as a code of conduct and ethical standards for upholding public trust in public office, prohibiting and establishing

penalties for certain acts, and establishing rewards for exemplary service. The law later declares that public officials shall be accountable to the people, and shall behave integrity, competence, patriotism and justice. Later still, commitment to public interest, professionalism, political neutrality in the delivery of public services, commitment to democracy and modest/simple lifestyle are also listed as standards of personal conduct.

Regarding the rewards for exemplary service, a Committee on Awards to Outstanding Public Officials and Employees is created with the responsibility to conduct periodic performance reviews and establish a system of annual incentives and awards.

The law prohibits public officials from having financial interest, contracts, private employment or similar private interests with activities and agencies related to their public office, and the prohibition continues for one year after the official leaves office. Officials are also prohibited from using confidential information for private gain. They are also prohibited from accepting or soliciting gifts and favors, with certain limited exceptions. Officials must also avoid conflicts of interest, defined as being a substantial stockholder, board member, officer, owner or partner in any business affected by the performance of the official's duties. In cases of conflict of interest, officials must divest themselves of their non-official interest and/or resign from their conflicting positions.

Under the law, public officials must file asset and liability declarations, covering themselves, spouses and minor children, upon assuming office, annually while in office, and upon leaving office. The declarations must list real and personal property, other assets such as cash, stocks and bonds, liabilities and all business interests. In addition, officials must declare all known relatives in government positions. Senators and congressmen file these statements with the secretaries of their respective chambers. The declarations are to be available for public inspection. It is the responsibility of designated committees in the respective chambers to determine if their members have properly complied with declaration requirements. A detailed description of the

asset declaration process is presented in 2007 paper by Assistant Ombudsman Pelagio Apostol.³¹

Violation of the law is punishable by fine, suspension, removal from office, criminal prosecution and ultimately imprisonment.

Supplementary/alternative mechanisms

- **Republic Act No. 3019: Anti-Graft and Corrupt Practices Act**

The Republic Act No. 3019 was enacted in 1960. It prohibits a range of acts and omissions deemed to be corrupt; such acts or omissions include giving undue favor, unreasonably denying public service, soliciting or accepting gifts in exchange for service, entering contracts or agreements obviously disadvantageous to the state, and otherwise acting in ways contrary to the interests of the state. The act addresses the behavior of public officials and others interacting with public officials. Members of congress are mentioned specifically in a section that prohibits them from acquiring pecuniary interest in any business that benefits from any law or resolution approved by congress during the congress member's term. Asset declarations are required under the law. Penalties for violation include removal from office, fines and/or imprisonment for up to 10 years. In addition, there is a specific section on removal from office for acquisition of unusual wealth while in office.

- **Congressional Committees**

In the Philippines, the House Committee on Ethics and Privileges the Senate Committee on Ethics and Privileges appear to be particularly active. In principle, these committees are important in ensuring the good behavior and accountability of the country's parliamentarians.

³¹ Apostol, Pelagio. Experience of Asset Declaration in the Philippines. 2007. <http://www.oecd.org/dataoecd/5/54/39367966.pdf>

By the Rules of the House, The House Committee is composed of 25 members and deals with all matters relating to duties, conduct, rights, integrity and reputation of the House and its members. Members of the committees are chosen by and from among members of their respective chambers, without regard to political affiliation; specifically, there is no requirement for minority parties to be represented on the committees. This, in practice, the committees tend to be dominated by the party that controls the chamber. The committees set their own operating rules, so they have considerable latitude in their work. The jurisdiction of the House Committee on Ethics and Privileges is apparently limited to the term of the congress that is in session—complaints of ethics violations under previous congresses are beyond the committee’s jurisdiction.³² A committee can choose to produce a report for submission to the House, and it is up to the House to act on any recommendations in the report. During the 13th congress, the House Ethics and Privileges committee received 22 ethics complaints and produced six reports in response. In only one case did the committee recommend a sanction, specifically a 45-day suspension for the member concerned; the House never enforced the suspension, and the member has subsequently been elected as a senator.³³

● **Constitution of the Republic of the Philippines, 1987**

Under the Constitution’s Article VI on the Legislative Department, each chamber of Congress may determine its rules proceedings and punish members for disorderly conduct by suspension or expulsion.

The Constitution, in Article XI on Accountability of Public Officers, provides for impeachment of the President, the Vice-president, members of the Supreme Court, Members of Constitutional Commissions and the Ombudsman, but not for members of the House

³² Nicks, Denver. Ethics Complaint vs JVD Doomed. News-break. 15 October 2007. http://www.newsbreak.com.ph/index.php?option=com_content&task=view&id=3851&Itemid=88889268

³³ Ibid.

of Representatives or the Senate. The same article also provides for creation of an Office of the Ombudsman, headed by an Ombudsman, that will investigate suspicious acts or omissions by public officials. The Ombudsman can direct relevant offices to take appropriate action in cases of wrongdoing.

● **Executive Order No. 317 Describing a Code of Conduct for Relatives and Close Personal Relations of the President, Vice President and Members of the Cabinet**

This executive order was adopted in 2000, under the Estrada government. The order declares that relatives of members of the executive are not allowed to solicit or accept gifts or invoke their relatives' status to influence public officials or public processes, or otherwise obtain special favor from the state. The order mentions penalties, interestingly specifying that public officials who tolerate or take part in any violation of the order are subject to suspension and removal from office.

Review of practices

While the code of conduct in the Republic Act No. 6713 appears reasonably good on paper, there is little evidence that it has been exercised to much effect, especially in regard to parliamentarians. The act applies to a wide range of public officials, so non-specificity may be a barrier to effective implementation. Alternatively, given that implementation provisions appear to put oversight of parliamentarians in the hands of parliamentary committees, it may be a case of parliamentarians being unwilling or unable to police themselves, or that the policing mechanisms are politicized and exercised for partisan political battle rather than defense of the public interest.

Given the country's experiences with so-called "people's power", one might expect the Philippines to be particularly concerned with public-confidence-building aspects of a code of conduct. There is no doubt that there are many active public interest groups, and an active press that seeks to investigate and reveal incidents of official

misconduct. Nevertheless, public expectations regarding the behavior of parliamentarians do not seem particularly high, and people in general appear quite tolerant of questionable activity, up to a point. The fact that people's power events centered on acts of the executive may suggest that there could be a sort of disinterest with the affairs of the legislative branch of government.



South Korea

The Republic of Korea is a federal democratic republic, with nine provinces and seven metropolitan cities that have semi-autonomous executive and legislative bodies. The federal legislature is a unicameral National Assembly consisting of 299 seats—243 filled on the basis of direct election in single-member constituencies, and 56 filled on the basis of proportional representation in a formula based on the number of constituency seats won. Members of the National Assembly serve a four-year term. The head of state is a president, elected by popular vote to a five-year term. The head of government is a prime minister, appointed by the president with the consent of the National Assembly. Cabinet, called the State Council, is appointed by the president on recommendation of the prime minister. Legal system combines elements of civil law systems, Anglo-American law, and Chinese classical justice systems. There are two significant courts. The Supreme Court (the highest court) is composed of a Supreme Court Chief Justice (appointed by the President with approval of the National Assembly) and 13 other Supreme Court Judges. Court of last resort, with final appellate jurisdiction. The Constitutional Court (an independent court) is composed of nine justices appointed by the President (three selected directly, three from candidates selected by the chief justice of the Supreme Court and three from candidates selected by the National Assembly). The Constitutional Court is mainly concerned with reviewing constitutionality of laws, though it has some administrative court functions in ruling on disputes involving governmental entities. It also makes final decisions on impeachments and dissolution of political parties.

Codes of conduct

Koreans appear to be very concerned with corruption and the behavior of public officials. Public reaction to incidences of proven and apparent misconduct by elected political figures has been strong. Still, South Korea does not have a specific code of conduct for members of the National Assembly. Ethics and behavior of members of the National Assembly are, however, addressed in the Constitution and the National Assembly Act, and there is a core code of conduct that serves a model applying to all public officials (theoretically including parliamentarians, but not in practice).

- **Constitution of the Republic of Korea**

The duties of members of the National Assembly are established in the Constitution, Article 46. This brief article declares that members have a duty to maintain high standards of integrity, to give preference to national interests, and perform their duties in accordance with conscience. Also members are forbidden to abuse their positions to acquire rights, property or positions, or to help others acquire these things, through state agencies.

- **National Assembly Act, Chapter XIV on Ethics Review and Discipline**

Article 155 declares that a Special Ethics Committee may investigate when an assembly member acts in a way contrary to ethical principles or ethical practice regulations. Several matters addressed in elaboration of this statement turn out to be largely procedural, for example speaking in the Assembly on matters that are not on the agenda, or address violations of House confidentiality (revealing contents of closed or classified meetings) or House discipline (missing Assembly sessions without excuse or ignoring directives from the Speaker). Foremost in the list, however, is violation of the Constitution's Article 46. Violating the Public Service Ethics Act is also grounds for action. In such instances, the Speaker of the Assembly refers the matter to the Special Ethics Committee. Assembly members

may also ask the Speaker to submit a matter for review, though such requests must bear the signatures of at least 20 Assembly members, though there is another provision allowing an Assembly member who has been insulted to seek a review without having to get approval of other members. The Special Ethics Committee can also decide on its own initiative to undertake a review, but it must report its action to the Speaker of the Assembly. Meetings on ethical review and discipline are closed to the public, unless the Assembly specifically resolves otherwise. The Special Ethics Committee can summon and question the subjects of reviews, but members under review are otherwise not allowed to attend sessions or committee meetings related to their reviews. Once a matter is accepted for review, the Special Ethics Committee must make report to the Speaker within three months. The Special Ethics Committee can absolve a member of ethical misconduct accusations, conclude that a member has acted wrongly but that no disciplinary action should be taken or recommend disciplinary action. Possible disciplinary actions are warning, requiring an apology, suspension from meetings for up to 30 days, or expulsion from the National Assembly. The Speaker must present the report to the Assembly as soon as possible. The Assembly then considers the report and, if disciplinary measures are called for, decides on the measures. Members who are expelled may not run in the by-election to fill the newly-vacated seat.

● **Public Service Ethics Act**

The Public Service Ethics Act establishes specific regulations concerning public officials' acquisition of property, acceptance of gifts and employment after leaving public service. The law applies to a wide range of public officials including members of the National Assembly, members of the State Council (cabinet), the prime minister and the president. In addition, registrations are required of people seeking to be candidates for election to the National Assembly.

Under the law, such people, as well as subjects spouses, parents and children (excluding married daughters) (Article 4(1)) must

register various types of property, notably real estate, cash, bank deposits, valuables such as gold and jewelry, memberships in clubs, vehicles and shares and securities. Significant changes in registered assets must also be registered periodically (basically annually). Registration is also required upon leaving office. Different officials register with different agencies; members of the National Assembly must register with the National Assembly Secretariat (Article 5 (1)1.), while would-be candidates must register with the Election Commission (Article 10-2 (1).) Refusal to register is a crime, punishable by up to one year imprisonment and a fine of up to 10 million won (Article 24 (1)). Submitting false materials can be similarly punished (Article 25).

Details of the registrations are examined by the Public Service Ethics Committee (Article 8 (1)) in the body relevant to the registrant; several different bodies, in addition to the National Assembly, each have their own Public Service Ethics Committee (Article 9 (1)). The National Assembly's Public Service Ethics Committee's terms of appointment and service fall under National Assembly regulations (Article 9 (4)1).

In the course of examination, the committee can demand material from registrants, ask registrants written questions and conduct further investigation to confirm facts (Article 8 (3)) and summon registrants and their close relatives for testimony (Article 8 (6)). The committee may also demand reports or materials from state agencies and other public institutions (Article 8(4)). Refusal to appear before committee is punishable by up to six months imprisonment and/or a fine of up to 5 million won (Article 26). If the committee concludes that the property reports are falsified, erroneous or contain omissions, it can issue warnings and dictate corrective measures, impose fines for negligence, publish the false information in newspapers, or seek disciplinary action or dismissal from the body to which the registrant belongs (Article 8-2).

In addition, the Public Service Ethics Committee shall make the content of registrations public through publication in the Gazette or

in public bulletins. Furthermore, the National Assembly's Public Service Ethics Committee must make an annual report to the National Assembly (Article 20-2).

Elsewhere in the act, public officials are required to report to the heads of their organizations gifts received from foreign individuals or governments (Article 15). There are also provisions restricting post-retirement employment in companies connected with officials' duties (Article 17). Public officials are also prohibited from taking employment in private for-profit enterprises connected with their official duties for a period of three years after retirement, though in some cases they can seek permission to be employed from the relevant Public Service Ethics Committee. Illegitimate post-retirement employment is a crime, punishable by up to one year imprisonment and fine of up to 10 million won (Article 29).

Supplementary/alternative mechanisms

● Korean Independent Commission Against Corruption (KICAC) and Code of Conduct for Maintaining the Integrity of Public Officials

The Korean Independent Commission Against Corruption was created in 2002, under the Anti-Corruption Act, 2001. The organization is responsible for handling whistle blowing in all cases of alleged corruption involving public officials. It investigates allegations and may then recommend disciplinary action to the appropriate supervisory agencies, or even send cases to public prosecutors for criminal prosecution. In addition, KICAC is responsible for formulating anti-corruption policies and devising enforcement plans. It supervises anti-corruption systems and senior level anti-corruption compliance officers in all state agencies. While initial efforts have been aimed at corruption detection and prosecution, KICAC plans to broaden its prevention activities, including work with codes of conduct and education programs.

KICAC has produced a core Code of Conduct for Maintaining the Integrity of Public Officials. The code was enacted as a presidential decree in 2003. Under the code, public officials may not give preferential treatment to anyone, may only use state funds for legitimate purposes, may not promote their personal affairs through their official positions, may not use their positions to realize unjust profits, may not use officials information for personal purposes. Also, officials may not accept money or other gifts, nor may they offer such gifts beyond certain limits. Some state agencies use the code as is, though there are provisions to allow state agencies to modify the code to make it more specifically applicable to their activities.

● **Political Fund Act, Political Parties Act, Public Official Election Act**

Individuals cannot donate money to politicians directly, and political parties can't accept money at all from individuals or companies. Politicians can establish a foundation to receive donations, but there are reporting requirements. The system produces an incumbent advantage—new candidates can only begin raising funds (through a foundation) after registering to run for office, while foundations of incumbent parliamentarians can be active at any time.

● **K-PACT**

The Korean Pact on Anti-Corruption and Transparency (K-PACT) is a joint initiative aimed at improving transparency and creating anti-corruption alliances across the public, political, private and civil society sectors. The K-PACT Council includes representatives of all sectors, including the country's most senior political figures. The organization advocates and advises on measures for improving anti-corruption systems, strengthening public and private sector ethics, improving integrity and transparency in the political environment, and increasing accountability in the public, political, private and civil society sectors.

Review of practices

South Korea is very serious about anti-corruption measures, and although there is no code of conduct for parliamentarians, there is a developing code of conduct practice in other areas of the public sector. In addition, there appears to be strong public, or at least civil society, interest in the integrity and good behavior of public officials. The strong culture of public intolerance of corruption exerts considerable pressure on public office holders. While relevant agencies speak of education and awareness-raising, officials agree that this culture has arisen organically, not as a result of intentional efforts by the state. In summary, although South Korea does not offer a code of conduct for parliamentarians, other aspects of its integrity systems are strong and worthy of consideration. Furthermore, the country highlights the importance of public interest in the good behavior of public officials. South Korea presents an interesting political environment and integrity system that applies code of conduct-like functions without holding parliamentarians to an actual code of conduct.

Many measures that one would expect from a code of conduct are actually enshrined in the cross-connecting network of the Constitution, the National Assembly Act and the Public Service Ethics Act. Together, they present a system that suggests good practices in codes of conduct. The Constitution expresses aspirations regarding high standards of integrity and avoidance of abuse of public office for personal benefit. The Public Service Ethics Act requires asset declarations from parliamentarians (and other public officials), their spouses, and their children and parents. It also imposes restrictions on employment after vacating office, restrictions that are not commonly seen in Asia. Measures applying to parliamentarians under the Public Service Ethics Act are especially code-like because administration of the measures rests largely with the National Assembly, through a Special Ethics Committee.

This, however, points to a serious weakness in the system. The Special Ethics Committee in the National Assembly responsible for

dealing with ethics matters regarding members, including dealing with the asset declarations, is not independent and seems to have been largely inactive in pursuing ethics matters with parliamentarians. Ethics issues are dealt with internally, and neither the asset declarations nor ethics proceedings in general seem to receive much public attention. In practice, the Special Ethics Committee has not been seen to act to restrain misbehavior among parliamentarians.

More broadly, the code-like requirements are not specific to parliamentarians but rather apply to a wide range of public officials. The Code of Conduct for Maintaining the Integrity of Public Officials, under the Korean Independent Commission Against Corruption (KICAC), could in theory apply to parliamentarians, but in practice it does not. Under the system, agencies are able to prepare and apply modified versions of the code that are suitable to their specific situations; were this practiced with parliamentarians a more specific system could easily be put in place.

South Korea, among the countries considered in this study, has perhaps the strongest public culture of holding public officials to account for questionable actions. In 1997 massive public protests ensued when a son of President Kim Young-Sam was charged with tax evasion and bribery. Similar protests occurred in 2001 when the son of President Kim Dae Jung was indicted on bribery charges. The importance of public legitimacy is highlighted by K-PACT, a joint anti-corruption body involving leaders of the government, parliament and industry, as well as civil society. That a civil society initiative could engage such participants shows the importance of appearance of ethical behavior. Theory suggests that such an environment would be fertile ground for a code of conduct that helps assure the public of parliamentarians' transparency and ethics.



Sri Lanka

The Democratic Socialist Republic of Sri Lanka is a unitary republic, though there are nine provinces (a presidential directive to merge two of the provinces was voided by the Supreme Court in October 2006), each administered by a directly-elected provincial council. The country's legislature is called the Parliament of Sri Lanka. It is a unicameral body, with 225 members—196 elected through a proportional representation system from 22 constituencies, and 29 members elected through national party lists. The term of parliamentary office is six years. The head of state and head of government is a president, elected by popular vote to a six-year term. Cabinet members are chosen from among elected members of parliament by the president in consultation with the largely ceremonial prime minister (leader of majority party in parliament). The legal system uses a mixture of customary, Islamic, Roman-Dutch, Sinhalese, and English common law. The highest court is the Supreme Court, with judges chosen by the president.

Code of conduct

Sri Lanka does not have a code of conduct for parliamentarians, but it does have a variety of mechanisms that perform code-like functions. Counter corruption efforts have been pursued for many decades, largely through law. A Bribery Law criminalizing bribery was passed in 1954 and subsequently amended several times. A Declaration of Assets and Liabilities Law was passed in 1975. In 1994, the Commission to Investigate Allegation of Bribery or Corruption, Act No. 19 was passed, establishing a Bribery Commission with wide powers to investigate and prosecute bribery.

Supplementary/alternative mechanisms

- **Declaration of Assets and Liabilities Law, 1975**

This law requires a variety of senior appointed and elected

officials, including parliamentarians, to file declarations of their assets and those of their spouses and children. Declarations are made to the Auditor General, the Bribery Commission, the Department of Inland Revenue, the Department of Exchange Control and the Attorney General. Failing to file a declaration or filing an inaccurate declaration are punishable by a fine or up to one-year imprisonment. The law is silent on public access to the declaration, but copies of the declarations are available to anyone for a prescribed fee.³⁴

● **Commission to Investigate Allegations of Bribery or Corruption**

The Commission to Investigate Allegations of Bribery or Corruption was created under the Commission to Investigate Allegations of Bribery or Corruption Act No.19, 1994. Consistent with its name, the commission investigates and prosecutes bribery cases. In addition, it performs an education function, teaching the public about the harm caused by bribery and corruption.

Review of practices

While Sri Lanka and its parliamentarians show an interest in addressing corruption, they have not opted to do so through codes of conduct. In addition, the measures that exist seem to focus on detecting and punishing corruption as something harmful to the state, rather than on considering the matter as something that undermines public confidence in parliament. Sri Lanka has no code of conduct for parliamentarians, and code-like mechanisms that exist appear to be applied largely in a punitive rather than preventive manner.

The main code-like function is the requirement for public officials (including parliamentarians) to submit asset declarations covering themselves, their spouses and their children. The declarations, however, are dealt with by very formal legal bodies, and are clearly part

³⁴ Weliamuna, J.C. Fighting Corruption: Lankan setback and global approach. <http://lakdiva.org/suntimes/021124/columns/jc.html>

of a system that aims to criminalize and punish corruption rather than avoid conflicts of interest and bolster public confidence in parliamentarians.

Although corruption issues do have some prominence in the public awareness, outcry against abuse of office appears to be organized by political parties and undertaken for political ends. There does not seem to be an especially high level of genuine public interest in such matters.



Thailand

The Kingdom of Thailand is a constitutional monarchy, administered as a unitary state. Since the end of absolute monarchy in 1932, the country has alternated between periods of military and democratic government. The country is currently under the rule of a military-installed government in the wake of the September 2006 coup. The ethics system described below, however, was developed and implemented during a democratic period in which the country was governed under the 1997 Constitution as a democratic parliamentary democracy based largely on the Westminster tradition. Under this system the legislature was a bicameral National Assembly, consisting of a 500-member House of Representatives and a 200-member Senate. In the House of Representatives, 400 seats were filled by direct election on a constituency basis and 100 seats were filled on the basis of proportional representation on a separate national party list ballot. The maximum term of the House of Representatives was four years. Senators were elected on the basis of provincial constituencies, with provinces receiving seats roughly in proportion to their population though it is worth noting that candidates were forbidden from having affiliation to political parties and barred from most campaigning activities; senators served for a single six-year, non-renewable term. The head of state is the King of Thailand. The head of government was a prime minister, the leader of the governing party or majority coalition in the House of Representatives. Cabinet members were selected by the

prime minister, and were expected to come largely from among party list members of the House of Representatives, though members had to resign their seats in the House in order to take up cabinet posts. The legal system is based largely on European civil law, with some influence from common law traditions. The highest court is the Supreme Court, though there was a separate Constitutional Court with authority over considering constitutionality of legislation and making judgments regarding impeachment of political office-holders.

Code of conduct

Corruption scandals and their effects have figured prominently in Thailand's modern political history, being instrumental in the collapse or overthrow of several governments. The 1997 constitution, along with accompanying enabling legislation, imposed a rather elaborate integrity system designed to oversee political office-holders and detect and punish abuse of state power. Included as part of the system was a code of ethics for parliamentarians.

● Code of Ethics

The 1997 constitution stipulated that both chambers of the National Assembly were to enact codes of ethics for their respective members and committee members. In 1999, the House of Representatives made a code of ethics in the form of a parliamentary order, and the Senate followed suit in 2002. However, the two codes of ethics were scrapped with the dissolutions of the two houses in the 19th September 2006 coup. The present National Legislative Assembly is in the process of drafting a new code of ethics for its members and committee members.

The annulled House Code of Ethics contained three parts: the ideal principles, the performing of duties, and the relations involving family members and other people.

The ideal principles expressed six aspirations for House members and committee members. Members are expected to be loyal to

the nation, religion, and the King, and behave as a good example in respecting and maintaining the democratic system with constitutional monarchy; they shall set a good example of observing the constitution, the law, and meeting regulations; they shall work idealistically and with their greatest efforts, responsibility, integrity, and sacrifice for the benefit of the nation and to serve the people; and in both personal and public affairs they shall conduct themselves with ethics, virtue and morality.

The duties section imposes 13 duties on MPs, though the distinction between some of these and the preceding principles is not entirely clear. The duties include upholding the integrity and dignity of parliament and the country, upholding the national interest and giving fair and equal treatment to the people, respecting other people's rights and freedoms and behaving politely, respectfully and honorably. Other rather general duties are to refrain from associating with wrong-doers, to refrain from misrepresenting state information to mislead the public or to realize personal benefit, to refuse to cooperate with persons or organizations in pursuing interests in conflict with official duties, and to expose any information about misconduct concerning state agencies to the appropriate authorities. Perhaps somewhat more specifically, MPs must refrain from using their status or position as MPs to interfere in recruitment, appointment or transfer of permanent civil servants. Also, MPs must maintain the secrecy of matters discussed in closed sessions, attend House meetings and avoid excessive and unnecessary absenteeism, deliberate bills and conduct other House affairs quickly. MPs should consult with the people and listen to their problems and complaints, and also take responsibility for personal failure and wrongdoing.

The code's section on relations involving family members and other persons declares that MPs shall not allow any members in the family or other people to use one's position wrongly, shall not use state secrets to benefit oneself or other persons except as allowed by law, and shall not demand gifts or other interests in exchange for the benefits of one's actions, nor allow family members to make such demands.

For the Senate, a similar code of ethics was also enacted in the form of parliamentary order to strengthen its public image and public trust in the organization. The contents of the code are more or less the same as those of the House of Representatives, except the senators also have to be politically neutral. The House members and committee members are identified with parties and must observe party discipline. In addition, the senatorial code of ethics would like senators to conserve and maintain traditions, culture and national identity in accordance with the Senate's function as the institution for maintaining continuity.³⁵ The House, on the other hand, is to function as a liberal institution, and more attuned to the changing wind of the days.

Since both the House's and the Senate's codes of ethics were in the form of parliamentary orders, the mechanisms to promote and enforce the codes of ethics were an intra-organizational commission. In practice, the codes were not strictly followed, and the ethics commissioners were highly politicized and dominated by partisanship. In sum, they were not effective tools for controlling deviant behavior of parliamentarians.

Supplementary/alternative mechanisms

The 1997 constitution mandated and established the framework for an elaborate integrity system, spanning several pieces of legislation and oversight organizations.

Under the annulled 1997 constitution of Thailand, parliamentarians, both members of the House of Representatives and senators, were subject to certain prescriptions and prohibitions. The prescriptions, members of the House of Representatives and senators are required to submit an account showing particulars of assets and liabilities of themselves, their spouses and children who have not yet become *sui juris* to the National Counter Corruption Commission within 30 days from the day taking and vacating the office, and one year after vacating the office. Members of the House of Representatives

³⁵ The Senatorial Code of Ethics, 2002.

or senators found to have intentionally failed to submit their accounts, or to have submitted the account late or to have intentionally submitted false accounts, or concealed pertinent facts were subject to dismissal from office and were barred from taking any political or public office for a period of five years.³⁶

Regarding proscriptions, members of the House of Representatives and senators were forbidden to interfere or intervene in the recruitment, appointment, reshuffle, transfer, promotion and elevation of the salary scale of a government official holding a permanent position or receiving a permanent salary,³⁷ or otherwise abuse their delegated power. If they were found unusual wealthy, indicative of committing corruption, malfeasance in office, malfeasance in judicial office, or caught intentionally exercising power contrary to the provisions of the constitution or law,³⁸ parliamentarians were subject to impeachment and being barred from political or public office for five years³⁹ In addition, they could also be subject to prosecution in a court of justice.⁴⁰ Parliamentarians were not allowed to accept gifts, with a few exceptions for gifts of negligible value or appropriate gifts from family members.⁴¹ Parliamentarians who violated the declaration shall be imprisoned of not more than three years, fined of not more than 60,000 baht, or be

³⁶ Organic Law on Prevention and Suppression of Corruption, B.E. 2542 [1999].

³⁷ Constitution of the Kingdom of Thailand, B.E. 2540 [1997], Articles 111 and 128.

³⁸ Constitution of the Kingdom of Thailand, B.E. 2540 [1997], Article 303.

³⁹ The Organic Law on Prevention and Suppression of Corruption of B.E. 2543, Article 65.

⁴⁰ *Ibid.*, Article 70.

⁴¹ *Ibid.*, Article 103, and The Declaration of the National Counter Corruption Commission on the Criteria of the Public Officials' Acceptance of Assets and Interests Under Ethical Practice B.E. 2543, Item 4.

both imprisoned and fined.⁴²

Enforcement responsibilities were spread among several organizations. In case of violating the provisions on asset and liability declarations, the National Counter Corruption Commission (NCCC) will act as indictment officer, while the constitutional court will perform the function of adjudication.⁴³ For cases involving impeachment, the NCCC will perform the duty of judging prima facie evidences, while the Senate is in charge of making the decision whether or not to impeach.⁴⁴ For cases involving violation of criteria on gift acceptance, the NCCC upon being informed of the case has to be submitted it to Prosecutor General for instituting prosecution in the Supreme Court of Justice Criminal Division for Persons Holding Political Positions. The Supreme Court, thus, has the duty to consider and decide the case.⁴⁵

Presently, though there are no members of the House of Representatives and senators, the law and declarations are applied to the appointed national legislators as they are acting on behalf of the members of the two houses, and are subject to the same regulations.⁴⁶

Review of practices

Thailand, under the 1997 Constitution, had a complex and, at least on paper, comprehensive integrity system. Codes of ethics for parliamentarians were part of that system, with many code of conduct-like functions being picked up under legalistic mechanisms.

⁴² The Organic Law on the Prevention and Suppression of Corruption, B.E. 2542, Article 122.

⁴³ Ibid., Article 34.

⁴⁴ Ibid., Article 64.

⁴⁵ Constitution of the Kingdom of Thailand, B.E. 2540 [1997], Article 308.

⁴⁶ Reform Council Under Constitutional Monarchy Order No. 15, September 21, 2006.

The codes mandated under the constitution and created as parliamentary orders of the House of Representatives and the Senate were codes of ethics rather than true codes of conduct because they expressed aspirations without imposing requirements or restrictions. Still, the aspirations were expressed in ways that could conceivably have been grounds for action. In practice, however, the codes were largely ignored, and the public had little, if any awareness of them. This is likely because the codes were overseen by commissions in the House of Representatives and the Senate, and thus the proceedings were shrouded from public view.

Code-like functions, on the other hand, were more prominent in the public eye. In particular, asset declarations, enshrined in Constitution, expanded upon in Organic Law on Prevention and Suppression of Corruption, received more public attention, but even for these, it was declarations filed by the prime minister and members of cabinet that were of greatest public interest.

While the asset declaration system was quite comprehensive and transparent, it should not be identified as a code of conduct good practice. The parliamentarians' declarations received little attention from the overworked NCCC. Even if they did, the declarations were part of a legalistic process aimed at detecting and punishing corruption, rather than preventing questionable behavior. The system did temporarily bar several politicians, some moderately powerful, from office, but in its greatest test—the 2001 asset declaration trial of Prime Minister Thaksin Shinawatra—it was seen to have placed political considerations over legal ones by absolving Thaksin of wrongdoing even though other defendants had been convicted in similar circumstances.

In Thailand, corruption issues sometimes receive considerable public attention, but the broad public will to hold office-holders to account for even clearly corrupt, never mind “merely” questionable, actions is not very strong. Thais do not seem to have very high expectations regarding the morality of their parliamentarians or their

standards of behavior. Similarly, political figures are not very sensitive to public expressions of dissatisfaction. In general, the political culture is not one in which a mechanism for increasing public confidence in parliamentarians would be of much importance.



United States of America

The United States of America is a democratic federal republic with 50 states, each with its own state legislature. The federal legislature is a bicameral Congress consisting of a 435-seat House of Representatives and a 100-seat Senate. Members of the House of Representatives are directly elected by popular vote on a constituency basis to serve two-year terms. Members of the Senate are directly elected by popular vote on a statewide constituency basis (each state has two senators) to a six-year term, though one-third of seats in the Senate go up for election every two years. The head of state and head of government is a president, elected by an elector college, the members of which are directly elected on a statewide basis; the president serves a four-year term, renewable once. Cabinet is appointed by the president with the approval of the Senate. The Federal legal system is based on English common law, and while state legal systems differ, most are rooted in English common law. The highest court is the Supreme Court, consisting of nine justices appointed by the president with the approval of the Senate to serve for life.

Code of conduct

The United States does use codes of conduct for federal parliamentarians. In fact, there appear to be at least two applicable codes for members of the House of Representatives, in addition to a large number of attached obligations addressed in material connected with the codes.

Since 1958 there has been a Code of Ethics for Government Service. It is presented verbatim below.

● **CODE OF ETHICS FOR GOVERNMENT SERVICE**

Any person in Government service should:

1. Put loyalty to the highest moral principals [sic] and to country above loyalty to Government persons, party, or department.
2. Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.
3. Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.
4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.
5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.
6. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.
7. Engage in no business with the Government, either directly or indirectly which is inconsistent with the conscientious performance of his governmental duties.
8. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.
9. Expose corruption wherever discovered.

10. Uphold these principles, ever conscious that public office is a public trust.

Since the character of the code is largely aspirational, and no sanctions are mentioned, this is rightly considered a code of ethics rather than a code of conduct.

● **Code of Official Conduct**

The Code of Official Conduct for members of the House of Representatives is currently enshrined in Rule XXIII of the 110th Congress. This code is deceptively brief. It begins by stating that members must conduct themselves in a way that reflects well upon the House, and that they shall follow the spirit and letter of House rules. Members must not abuse their positions for personal benefit, nor may they accept gifts or honoraria. Members must separate personal and campaign funds, and not use campaign funds for personal use. Conditions and restrictions on retaining employees are addressed, and discrimination in hiring on a wide variety of grounds, excluding political affiliation, is prohibited. Members convicted of crimes for which the sentence can be two or more years imprisonment are expected to withdraw from participation in business of House committees and refrain from voting on business before committees or the House. Further stipulations address invoking the official identity or Congress in correspondence, accessing classified information and inserting earmarks into bills. Most of these stipulations, however, include qualifications and references to other rules, hinting at the expansive system that underlies this short code.

Under the Ethics in Government Act, 1978, the Code of Official Conduct falls under the jurisdiction of the Committee on Standards of Official Conduct. This committee is a 10-member bipartisan body with equal representation by all parties. The committee has administrative, advisory and enforcement functions.

Also under the Ethics and Government Act, 1978, members of the House of Representatives and candidates to the House are required

to file financial disclosure statements. There are also rules concerning receipt of gifts.

In all, the system is very complex, so much so that even the summary of ethics rules⁴⁷ is quite lengthy and legalistic. The rules cover members, officers and employees of the House of Representatives. Such persons are prohibited from receiving gifts valued over \$50, with exceptions for commemorative items, gifts from family or other members, and information materials. There are elaborations on the attendance of events permitted under the gift restriction rule. Restrictions on accepting paid travel/accommodations—sponsored travel is allowed within limits but must be reported. Campaigning out of a congressional office is prohibited. Also, subjects are not allowed to solicit or accept political contributions while inside any House building. Members are allowed to be employed by or volunteer for outside entities (i.e. companies of charities) as long as it does not conflict with official House duties.

Members, officers and employees who receive salary over \$111,675 (“senior staff”) are prohibited from receiving honoraria, but may have sponsors donate money to a charity instead. On conflicts of interest, the guiding principle is that official position may not be used for personal gain. Members cannot vote on matters in which they have pecuniary interest. They also have limited ability to contract with federal agencies, with details under criminal law. Members’ spouses and family members are generally free to work wherever they want, but members must not do any special favors for them. “Senior staff” are allowed to earn up to \$25,000 per year in outside income, but cannot work in law, real estate, insurance sales, financial services, consulting or advising, or for any firm that provides such services. Members are not permitted to hold paid board memberships.

Financial Disclosure Statements must be filed with the Standards Committee annually, within 30 days of beginning House

⁴⁷ Highlights of House Ethics Rules. Committee on Standards of Official Conduct. <http://www.house.gov/ethics/Highlights2007.htm>

employment and within 30 days of leaving House payroll. Members must disclose income (earned and unearned), assets, liabilities, transactions in securities and real property, certain gifts, travel expenses, outside positions, and agreements. Spouses' and dependent children's financial info must also be disclosed. If the Committee determines, by vote of a majority of its members, that there is reason to believe that an individual has willfully failed to file a Statement or has willfully falsified or willfully failed to file information required to be reported, then the Committee shall refer the name of the individual, together with the evidence supporting its finding, to the Attorney General pursuant to section 104(b) of the Ethics in Government Act. Such referral shall not preclude the Committee from initiating such other action as may be authorized by other provisions of law or the Rules of the House of Representatives.

There are also post-employment restrictions. A member may not communicate with or appear before a member, officer, or employee of either House to try influence official action on behalf of anyone else. Members may not represent or advise a foreign government or a foreign political party. Violations of post-employment restrictions is a felony and may be punishable by fines or imprisonment.

Senate

The Senate also has a Code of Official Conduct, entrenched in Senate Rules 34-43. The terms are quite similar to those described in the Highlights of House Ethics Rules prepared by the House of Representatives' Committee on Standards of Official Conduct. The Senate rules, however, are overseen by the Senate Select Committee on Ethics; like the House committee, the Senate committee is bi-partisan, with its six positions split evenly between the two parties. Particulars of the rules are laid out in a Senate Ethics Manual⁴⁸ that exceeds 500 pages in length.

⁴⁸ <http://ethics.senate.gov/downloads/pdf/manual.pdf>

Alternative/supplementary mechanisms

Criminal law can be exercised against members of congress, and there are provisions dealing with abuse of office, bribery and other criminal offenses.

With America's strict separation of powers, oversight of the executive falls to a completely different body, the U.S. Office of Government Ethics. This office is responsible for establishing and overseeing the ethics regime for the entire government service, including the president and the cabinet. As this system is completely separate from the rules applying to the legislature, it has little relevance to this report. Still, behavior and reporting requirements are roughly similar to those applying to members of the legislative branch.

Review of practices

While the ethics system applying to American parliamentarians is comprehensive and long-standing, it appears that it does not seem to be particularly effective at either building public confidence in the parliamentarians or punishing wrongdoing. For the House of Representatives' Committee on Standards of Official Conduct, of about 25 cases investigated by the committee between 1997 and 2004, only one resulted in any action taken by the House—one member was expelled after being convicted of conspiracy to violate bribery statutes, receipt of illegal gratuity, obstruction of justice, defrauding the government, racketeering and tax evasion.⁴⁹ It is tempting to conclude that the complexity of the system, coupled with the fact that matters are managed almost entirely internally by House and Senate committees, are barriers to effective implementation of the code.

⁴⁹ Historical Summary of Conduct Cases in the House of Representatives. Committee on Standards of Official Conduct. 2004. http://www.house.gov/ethics/Historical_Chart_Final_Version.htm



Vietnam

The Socialist Republic of Vietnam is communist single-party socialist republic. The country's legislature is a unicameral National Assembly that constitutionally has no more than 500 seats (currently 498). Members are elected by popular vote, but only candidates from the Communist Party or one of a few other parties approved by the Communist Party are permitted to run. Assembly members serve a term of five years. The head of state is nominally (though largely ceremonially) a president, elected by the National Assembly from among its members to a five-year term. The head of government is a prime minister appointed by the president from among members of the National Assembly. Cabinet is appointed by the president upon the recommendation of the prime minister and with endorsement by the National Assembly. In practice, however, the Communist Party genuinely wields power. The legal system is based on a mixture of Communist theory and French civil law. The highest court is the Supreme People's Court, but it is answerable to the National Assembly. The chief justice of the Supreme People's Court is elected by the National Assembly on recommendation of the president to a five-year term.

Codes of conduct

Vietnam does not have any formal code of conduct for parliamentarians. In interviews with Vietnamese parliamentarians, questions about code of conduct elicited information about procedural meeting regulations and speaking etiquette in the National Assembly.⁵⁰ There is, however, an anti-corruption law that has code-of-conduct-like functions.

⁵⁰ Interview. Various Asian parliamentarians. November 2006. Bangkok, Thailand.

- **Law No. 55/2005 QH 11: Anti-Corruption Law, and Decree No. 120/2006 ND-CP**

This law and the subsequent decree are aimed at preventing and detecting corruption involving state officials, including members of the National Assembly, and their relatives.

To this end, the law requires public officials and their relatives to file annual asset declarations. Among the assets that must be listed are houses, land use rights, money, jewelry and bank deposits. Punishment for filing inaccurate declarations can take the form of reprimand, salary reduction or removal from office.

To the extent that ethics conduct is addressed elsewhere, the Standing Committee of the National Assembly oversees a huge range of affairs (listed in Article 91 of the 1992 Constitution) including actions of parliamentarians. Otherwise, the constitution seems largely silent. The Law on Election of the Deputies of the National Assembly stipulates, in Article 3, that members of the National Assembly must be loyal to the country and have good morals. Article 29 disqualifies people being prosecuted, serving penal sentences or serving administrative punishments.

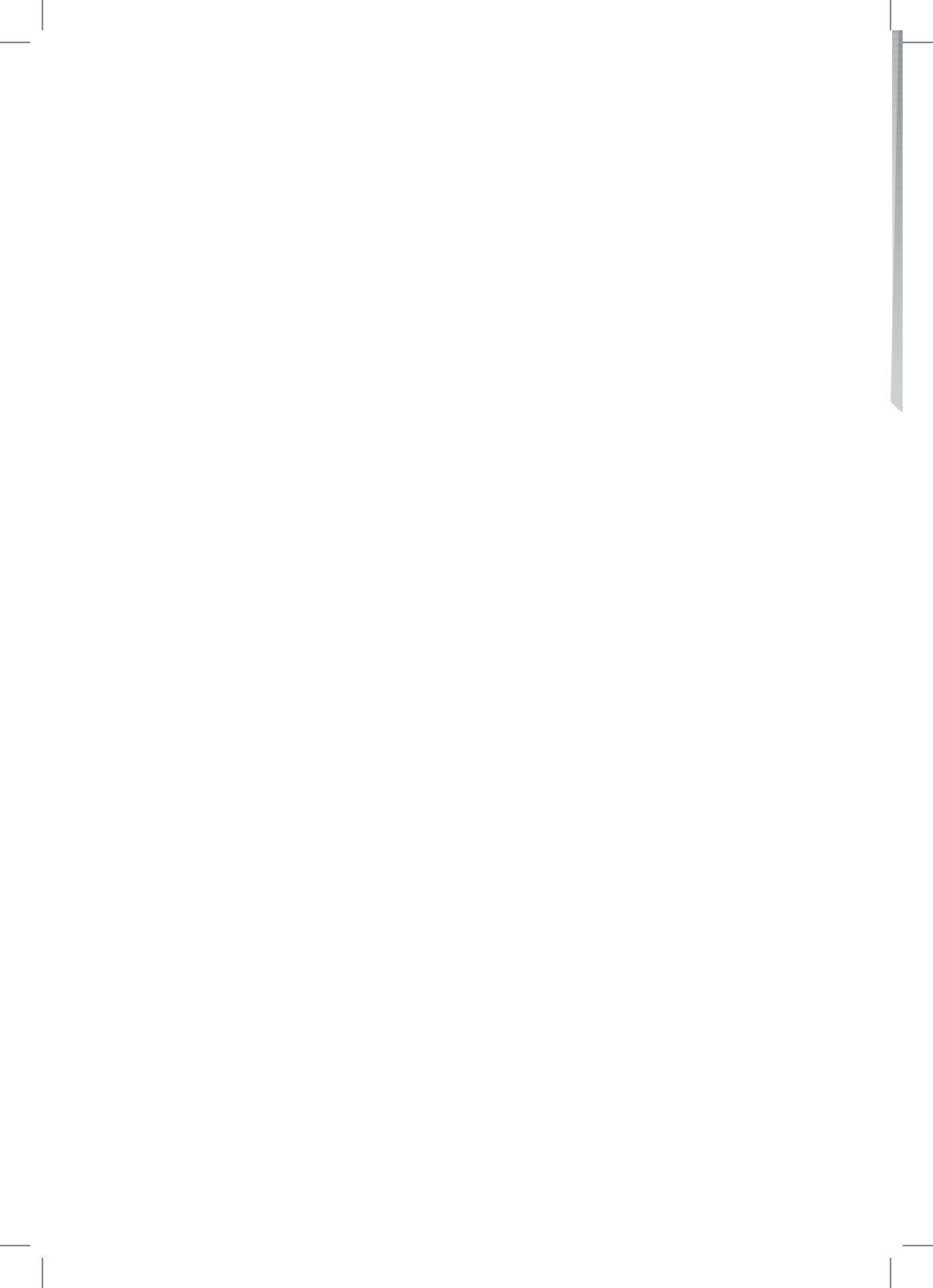
Alternative/supplementary mechanisms

- **Penal Code**

The Penal Code, starting in Article 277, addresses something called position-related crimes committed by office-holders, including elected representatives, in the course of their official duties. Under Article 278, embezzlement can carry penalties of between two years imprisonment up to life imprisonment and even execution depending on severity of the offense. Similar penalties are prescribed for bribe taking under Article 279. Offering bribes is criminalized under Article 289, with consequences ranging from one-year imprisonment to life imprisonment or execution. Other sections address other abuses of office with similar consequences.

Review of practices

Vietnam does not have a code of conduct for parliamentarians. Behavior of public office-holders seems to be addressed mostly through the Penal Code. The application of these measures is legalistic and clearly aimed at punishing offences. To the extent that parliamentarians' behavior is addressed outside the penal code, the details are quite general and vague. This may reflect a lack of concern about the public confidence-building function of codes of conduct. It may also reflect that culture of proper behavior is probably determined in the Communist Party, which is not clearly addressed in the formal mechanisms of governance.



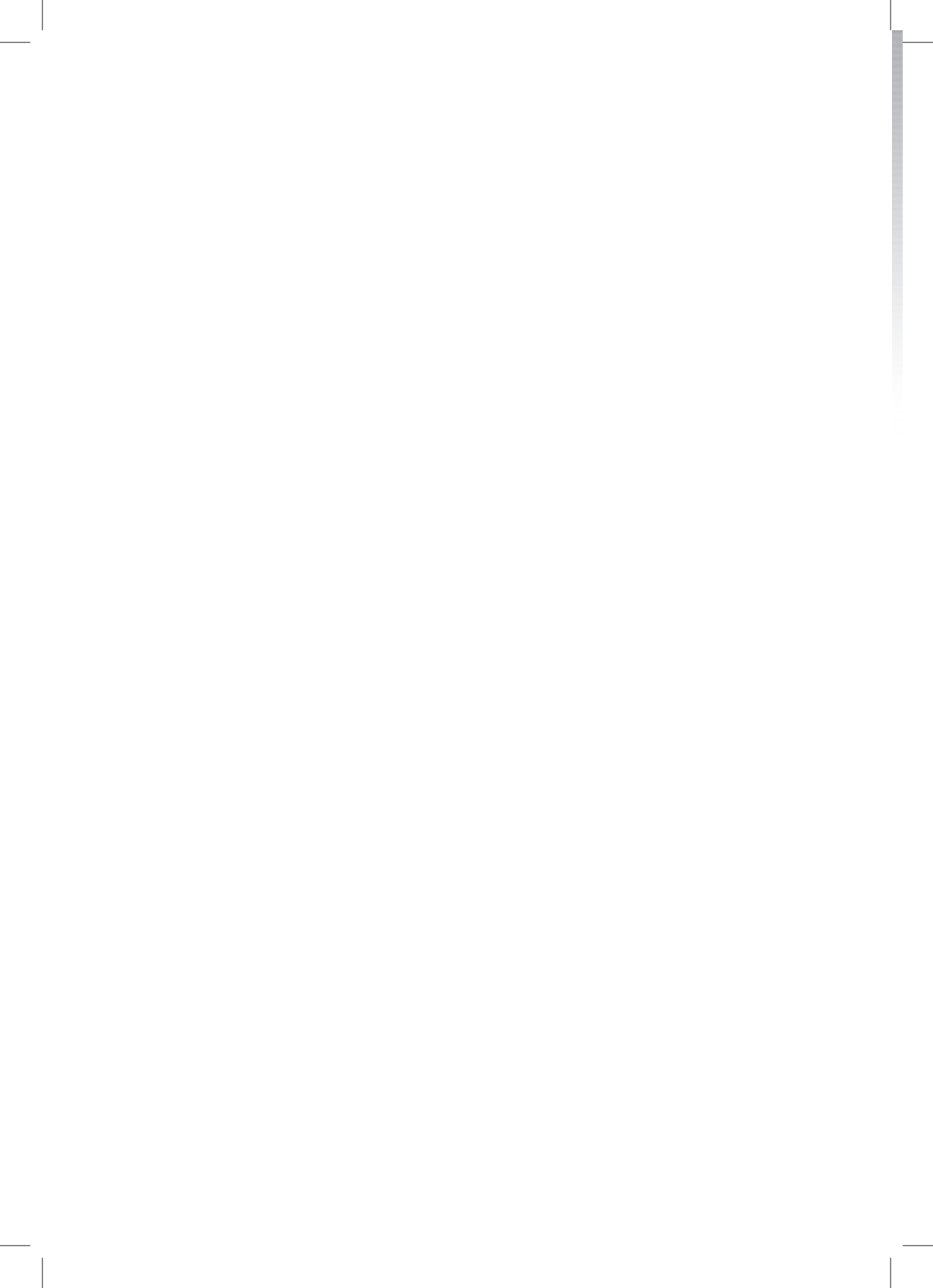
Codes of Conduct for Parliamentarians A Comparative Study



Chapter

4

Illustrative cases



In order to make sense of the often-technical details of codes of conduct for parliamentarians and equivalent mechanisms, it should be useful to look at some examples of these mechanisms in action. Ideally, one would seek out instances of codes working properly to desired effect and also instances of codes failing to perform their functions. Unfortunately, there is a complication. Since codes of conduct for parliamentarians are largely meant to provide boundaries and guidelines for proper behavior in order to avoid impropriety in the first place, if codes do work they will be largely invisible to the public eye. One does not see newspaper headlines like: Politician implicated in no suspicion of wrongdoing. Consequently, this chapter will, by necessity, dwell largely on instances where codes of conduct and equivalent mechanisms have apparently failed or under-performed.

Before turning to such cases, though, it is worthwhile considering an anecdote written by Robert C. Clark, former (provincial) ethics commissioner for Alberta, Canada.⁵¹ Mr. Clark related a story of a provincial cabinet minister approaching him for an investigation when allegations emerged that inside information may have been involved in the purchase of Syncrude Canada Ltd. shares by a company, the president of which was the minister's brother. Mr. Clark said that he conducted the investigation and found that the minister had not violated conflict of interest laws. The investigation effectively put an end to the matter in the press and cleared the air of suspicions of impropriety. Similarly, Mr. Clark also related an incident where a provincial parliamentarian went to him asking for an investigation and admitting to having violated the conflict of interest law when his private company did a job for Public Works. After the investigation, Mr. Clark concluded that the violation was not intentional and that the parliamentarian had paid back the profit from the work, so he recommended no sanctions. The process drew very little media attention, but upheld the integrity of the individual parliamentarian and the provincial legislature.

⁵¹ Evans, G. et al. "Round Table: Ethics and Conflict of Interest." Canadian Parliamentary Review. 18. 1995-1996. <http://www.parl.gc.ca/Infoparl/english/issue.htm?param=155&art=474>

In both these incidents, the proper functioning of the conflict of interest law, essentially a code of conduct of a sort, neutralized situations that could have been scandals damaging to individual parliamentarians and the institution of parliament. With action having been taken and lack of impropriety (or at least intentional, damaging impropriety) assured, the matters were effectively resolved and thus disappeared from the media. Indeed, without Mr. Clark's anecdote, published as part of an article on ethics and conflicts of interest, they would not have appeared in this study (reference to the cases was not to be found on-line). This illustrates the difficulty of presenting case studies of the successes of codes of ethics.

With that in mind, this study now turns to breakdowns in codes of conduct and code-like mechanisms.



The Grand-Mère affair

It is important to note that the approval of an ethics official is not always enough to end controversy. This is illustrated in the case of Jean Chrétien, a former Canadian prime minister; this matter was documented by Canada's public broadcaster, the CBC.⁵² In 1988, Chrétien, already a veteran parliamentarian, and some partners bought the Grand-Mère hotel and golf course in Chrétien's home riding of Saint Maurice, Quebec. Chrétien was subsequently elected leader of the Liberal Party in 1990, setting him up to become prime minister when the Liberals won the election in October 1993. Shortly before the election, in April 1993, Mr. Chrétien and his partners sold the hotel to an old friend and fellow-Liberal, Yvon Duhaime. Shortly after the election, in November 1993, Chrétien sold his stake in the golf course to a real estate tycoon. Complicating the transaction, Chrétien was not paid immediately for the golf course shares (he eventually was paid in 1999), a fact he disclosed to the federal ethics councilor in 1996. The

⁵² In depth: Jean Chretien, L'Affair Grand Mere. CBC News Online. Updated 25 Jan 2006 <http://www.cbc.ca/news/background/chretien/shawinigan.html>

timing is significant, in that it suggests that Chrétien may have retained a personal interest in the property long after formally divesting himself of it. Also in 1996, Chrétien phoned and met with the president of the Business Development Bank of Canada (a federal agency) to discuss a loan sought by Duhaime for the purpose of expanding the hotel. The bank rejected the loan as too risky, but in early 1997 Chrétien contacted the bank president again about a scaled down loan request, which was granted; in addition, Duhaime secured a grant from the Human Resources Department. In 1999, amidst accusations of conflict of interest, the federal ethics councilor absolved Chrétien of conflict of interest accusations, though at the time the councilor was not aware of Chrétien's contact with the Business Development Bank of Canada. When Chrétien did eventually reveal in 2000 that he had talked to the bank, the ethics councilor declared that the calls did not breach the federal ethics code. This did not lay the matter to rest, as political opponents loudly questioned the objectivity of the ethics councilor, who was a Chrétien appointee. Despite the controversy, Chrétien again was re-elected in his riding, leading the Liberals to another election victory in late 2000. Parliamentary opposition members continued to pursue the matter in the House of Commons, and in 2001 produced a letter from the bank president, dated 1999, complaining of interference in the Duhaime loan application and asserting that he was fired after suggesting that the loan should be called in; the ethics councilor again absolved Chrétien of wrongdoing. In 2004, the former bank president won a wrongful dismissal lawsuit. Throughout the whole process, the media followed the matter in news and editorial pages. Among political observers there was considerable cynicism, and the affair certainly did not increase Canadians' confidence in the integrity of their federal executive, though the effect on confidence in parliamentarians would be harder to gauge.

This case illustrates several points. One is the fact that office-holders subject to disclosure requirements may not disclose their actions or interests completely. In this case, Chrétien only revealed the facts over time, and due to pressure from parliamentarians debating the matter in Commons and from the media. This is a reminder of the

warning that no system will be able to stop office-holders who intentionally misbehave; it may also suggest that an ethics official should have some sort of investigation powers that can be exercised at his or her own discretion.

Another point illustrated is that the rulings of an ethics official will not contribute to improving public confidence or reducing concerns of wrongdoing if the ethics official is not independent. At the time, the federal ethics councilor was appointed directly by the prime minister, creating the possibility of an appearance of bias.

This leads to the third point—that cases of apparent impropriety can help motivate reform of integrity systems. These events were part of the motivation for Canada’s adoption of its current parliamentary ethics oversight system, described in this paper, which features a more independent chief ethics official.

Finally, it is worth noting that political competition can help reveal instances of questionable action by political figures. In this case, the Opposition pursued the matter in parliament and the media as part of its attack on the Liberal government. Similarly, the attentions of the Opposition helped push for reform of the oversight system. While political competition can play a role in revealing wrongdoing and promoting systemic change, it cannot be depended on to do so, as the next two cases illustrate.



Cayetano and the Ethics and Privileges Committee

The case concerns Alan Peter Cayetano, a former member of the House of Representatives of the Philippines and an opponent of the President Gloria Arroyo. In August 2006, Cayetano, then a member of the House, accused Jose Miguel Arroyo, the husband of President Arroyo, of holding considerable funds in a secret German bank account. The bank denied the existence of the account, and Cayetano

was not able to prove his claims. The House of Representatives Ethics and Privileges committee investigated Cayetano over his accusations and eventually voted overwhelmingly to recommend that Cayetano be suspended from the House of Representatives for 45 days;⁵³ of 22 ethics complaints filed during the term of the Congress, this was one of six that resulted in a committee report, and the only one in which a member was sanctioned.⁵⁴ The House of Representatives never implemented the suspension. Cayetano went on to run for and win a Senate seat in the May 2007 Senate election.

This case illustrates that code of conduct-like transparency mechanisms can be exercised as weapons in partisan political conflicts. The Ethics and Privileges committee was filled with members of parties who supported President Arroyo, and some observers complained of bias. Whether Cayetano's accusation against Mr. Arroyo was made in good faith or wrongfully as part of a political attack, the ethics committee's response has been condemned as partisan. It would seem that the risk of weaponizing ethics affairs is increased when those affairs are in the hands of partisan bodies or individuals. This suggests the value of independent ethics and conduct oversight mechanisms. More generally, it shows that political transparency does not necessarily result from political competition.

Another point of interest here is that voters were evidently not particularly discouraged or upset about the suspension over Cayetano's case, considering he was soon elected to the Senate. It is not clear exactly what this suggests—perhaps voters were indifferent to Cayetano's alleged wrongdoing, or perhaps they disagreed with or were indifferent to the Ethics and Privileges committee's conclusion.

⁵³ De Quiros. Conrado. "Footnote to a Farce." *Inquirer.net*. 13 February 2007. http://opinion.inquirer.net/inquireropinion/columns/view_article.php?article_id=4907

⁵⁴ Nicks. Denver. "Ethics Complaint vs JDV Doomed." *Newsbreak*. 15 October 2007. http://www.newsbreak.com.ph/index.php?option=com_content&task=view&id=3851&Itemid=88889268



Misbehaving Congressmen

Partisan fighting is not the only possible failing of an oversight mechanism overseen by the people whom it is meant to police. Another possible pitfall is illustrated by cases from the United States of America.

In the section on the United States, it was mentioned that between 1997 and 2004 the House Ethics Committee took action against one member; that member was Democrat congressman James A. Traficant Jr. Traficant was indicted in 2002 on charges of taking campaign funds for personal use, and though he maintained his innocence, he was convicted of 10 felonies including bribery, racketeering and tax evasion. After Traficant was convicted, the House Ethics Committee recommended that he be expelled, and the House then voted to expel him; he was later sentenced to eight years imprisonment.

Traficant was the first congressman to be expelled from Congress since the Civil War. Congressman Walter Tucker faced expulsion in 1995 after being convicted of extortion and tax evasion, but he resigned his seat before the House could vote.⁵⁵

More recently, Democrat representative William Jefferson was indicted in 2007 on charges of bribery, racketeering, money laundering, wire fraud, obstruction of justice and conspiracy.⁵⁶ The indictment came two years after America's Federal Bureau of Investigation raided Jefferson's home and found US\$90,000 in his freezer. Jefferson was being investigated on suspicion of having solicited bribes and having

⁵⁵ Historical Summary of Conduct Cases in the House of Representatives. Committee on Standards of Official Conduct. November 2004. http://www.house.gov/ethics/Historical_Chart_Final_Version.htm

⁵⁶ Congressman indicted in bribery investigation. NBC News and news services. 4 June 2007. <http://www.msnbc.msn.com/id/19031423/>

bribed a Nigerian official. Upon Jefferson's indictment, the House quickly voted to direct the House Ethics Committee to begin an investigation into his affairs.⁵⁷

All three cases indicate unwillingness on the part of the House and the House Ethics Committee to take action until after a member accused of criminal wrongdoing has actually been convicted. The Traficant and Tucker cases suggest that the committee is willing to expel members convicted of crimes relating to office, but the fact that conviction precedes action suggests a weakness in the process. This is clearly a reminder that a system cannot prevent wrongdoing on the part of someone who intends to misbehave. Furthermore, a system that only takes action once the full weight of criminal law has been brought to bear likely will do little to inspire citizens' confidence in the integrity of representatives.

While the measure of expulsion is very rarely exercised, the House Ethics Committee does sometimes take lesser measures against congressmen it deems to be errant.

Newt Gingrich is no stranger to the House Ethics Committee. In 1990 he was directed to amend his financial disclosure statements and oversee use of official stationery after being investigated on accusations that he made improper use of official resources to prepare a book, and that he used a book partnership to avoid outside income limits and get impermissible gifts or contributions. 1997 was a particularly busy year for Gingrich and the House Ethics Committee. Gingrich, at the time the Speaker of the House, was reprimanded and directed to reimburse the House US\$300,000 for investigative expenses after the committee concluded that he made misleading statements to the Standards Committee in connection with an investigation of whether Gingrich misused official resources in preparing a college course. Also, Gingrich got in trouble concerning book royalties and though the committee

⁵⁷ House Launches Ethics Probe Into Congressman William Jefferson's Charges. Fox News. 6 June 2007. <http://www.foxnews.com/story/0,2933,278573,00.html>

decided that he did not violate rules, it questioned the appropriateness of what it thought could be described as an attempt to capitalize on his office. In yet another matter, Gingrich was accused of misusing the services of a political volunteer for official purposes; the committee decided that there was an appearance of improper use, but did not take any action. Gingrich again avoided sanction even though the committee concluded that he improperly used a House 1-800 number and also made improper statements on the House floor for political purposes.⁵⁸ In this instance, part of the committee's reasoning for not giving sanctions was that the questionable actions were widespread among members of the House. This is by no means a full account of Gingrich's dealings with the House Ethics Committee. It does, however, serve to show that Gingrich's activities, in particular those relating to use of official resources, were brought repeatedly to the attention of the Ethics Committee and the Ethics Committee signaled on several occasions that those activities were questionable. Still, Gingrich remained a congressman, and indeed occupied the Speaker's chair.

The cumulative incidents suggest that the committee was unwilling, or unable, to take strong action against someone whose dealings repeatedly appeared to violate if not the letter then at least the spirit of regulations concerning congressional ethics. Perhaps Gingrich's stature made him a target for politically-motivated accusations, although the committee's conclusions suggest that there were grounds for concern, but that stature also may have protected him from stronger sanction. Again, it is hard to imagine that those citizens who noticed the repeated investigations were inspired to have faith in congressmen's ability to police their own behavior.

⁵⁸ Historical Summary of Conduct Cases in the House of Representatives. Committee on Standards of Official Conduct. November 2004. http://www.house.gov/ethics/Historical_Chart_Final_Version.htm



Resignation and the Removal of Politicians from Office in Thailand

There have been few cases of Thai courts removing parliamentarians from office for wrongdoing. In One case, the Supreme Court's Criminal Division for Persons Holding Political Office sentenced a former minister of public health to six years imprisonment for possessing unexplainable wealth totaling 238,880,000 million baht, which the court concluded was a bribe received from a drug company. Another case was that of a former senator who was sentenced jailed for 16 years for having sex with a girl under the age of sixteen. These are cases that concluded with court convictions. There are several cases that were brought to the public attention in the parliament, with censure debates leading to parliamentarians' resignations. Removal from political office has also resulted from National Counter Corruption Commission proceedings leading to Constitutional Court convictions, though some politicians have escaped this process through political means. The 1997 constitution established many independent bodies to hopefully control parliamentarians and state officials, but these bodies were not entirely successful. A major problem is that the appointment or recruitment processes for these bodies can be manipulated by the politicians who the bodies are supposed to control.

Recently, several Thai ministers resigned from their posts in the Surayud Chulanond government due to provisions in the 2007 constitution that prohibit ministers to hold stakes in excess of five percent of any company, especially those companies that do the business with the government or ministry, even though there were exceptions for the Surayud cabinet written into the constitution. Though these ministers are not parliamentarians, their actions have shown that the Thai public is becoming more concerned about accountability and ministers' potential wrongdoing.

Pasuk Phongpaichit and Sungsidh Piriyanarangsana have studied corruption and democracy in Thailand and have compared the voting

preference between Bangkok and the rest of the country. In 1992 election, Bangkok voters plumped overwhelmingly for the political leader (Chamlong) who promoted himself as Mr. Clean, whereas upcountry voters still largely selected their local jao pho (jao mae) or influential persons.⁵⁹ In the 2007 election, or any election in the past, many voters at the grassroots level will vote whoever has done some things good for them, without much concern about whether the candidate is responsible for serious wrongdoing. Many voters say that all politicians are corrupt but are ready to ignore wrongdoing of those who make their lives better or improve the economy.

One can see that most Thai politicians come to office either by election or through coup, and already possess some power beforehand, either in the form of guns or money. With that power, either through vote buying or coup, many of them have become very wealthy after being in office for some time. Van Roy⁶⁰ explained the existence and continuity of corruption in Thailand as a carryover of patron-client style relationships from the pre-modern sakdina⁶¹ period. Once appointed to a senior position, a Thai bureaucrat will tend to treat his office as a private domain and as a legitimate tool for generating revenue. Many politicians who were once state officials continue this practice of self-enrichment upon entering politics.

Pasuk and Sungsidh suggest that three strategies are needed to control corruption. First is to improve drastically the formal machinery for monitoring officials and politicians. Second, the political will is required to implement such machinery; this can only be generated by popular pressure. And third, the public must be educated to exert moral

⁵⁹ Pasuk Phongpaichit and Sungsidh Piriyaarangsarn. *Corruption and Democracy in Thailand*. Silkworm Books, Chiang Mai, Thailand. 2005.

⁶⁰ Van Roy, Edward (1970), "On the Theory of Corruption", *Economic Development and Culture Change*. 19:1. 1970.

⁶¹ Sakdina is the term used for the system of aristocrat-officials in the absolute monarchy period

and political pressure to outlaw corruption. It seems that the most important mechanism of the system to control politicians or parliamentarians in Thailand is public understanding and public pressure on politicians. It is therefore quite important to build up the value system of the Thai people, defining what constitutes a good politician and good member of the parliament worthy of one's vote. Once this becomes the norm, parliamentarians will hopefully not be able to withstand the pressure of the public.



Resignation of Korea Politicians

In South Korea, the practice of political office-holders resigning from office over controversy seems to be more prevalent than in many other countries. One reason for resignation is to prevent a scandal from causing damage to the country or one's political group. Scandal does not necessarily have to directly involve the political office-holder's actions in office.

For example, Finance Minister Lee Hun-jai resigned from his job after heavy criticism of an allegedly illegal land transaction by his wife, Jin Jin-sook; she is alleged to have made a six billion won profit buying and selling farm land but not meeting residency requirements for that land. Mr Lee, who was also the deputy prime minister, insisted that his wife had done nothing illegal but said he was stepping down because the controversy was damaging the credibility of the government. There was considerable public pressure for his resignation.

Similarly, President Roh Moo Hyun accepted the resignation of his prime minister, Lee Hae Chan, after the prime minister caused a scandal by playing golf during a national railway strike. Mr. Lee previously been criticized for golfing through other national crises, specifically when a wildfire destroyed a 1,300-year-old Buddhist temple, and when heavy rains struck southern parts of the country. In the final incident, one of Mr. Lee's golfing companions was a businessman with a criminal record for rigging stock prices, and shortly

thereafter was fined for fixing flour prices. Some opposition critics suggested the golf partner tried to persuade Mr. Lee to bail him out of the mess. Another of Mr. Lee's golf companions, the vice education minister, Lee Gi Woo, soon also resigned after less than three months in his position.

Choi Yeon Hee resigned as Grand National Party secretary general and faced calls for him to also resign his seat in parliament after drunkenly groping a female reporter.

South Korean President Kim Dae-Jung apologized to the nation and for a scandal concerning his sons and resigned from his party. Kim Dae-Jung came to office promising to fight corruption, following a scandal concerning influence-peddling by the son of former president Kim Young-sam. Subsequently, several state officials became the subjects of bribery cases, and Kim Dae-Jung's sons were alleged to have engaged in influence-peddling.

Another reason given for resignation is to make way for a more capable person. Lee Jong-seok, South Korea's cabinet minister in charge of relations with North Korea, offered to resign to take responsibility for North Korea's nuclear test. Lee Jong-seok was a strong supporter of engagement with North Korea, and critics accused him of being pro-Pyongyang. The resignation offer was made even though the South Korean government never questioned its policy of engagement.

Thus it is evident that South Korean politicians do practice some sort of accountability for wrongdoing. Indeed, the idea of resigning over one's choice of golf partners would be unthinkable in many countries. Similarly, politicians in many nations would be aghast at the idea of being held accountable for actions of relatives, even when those actions do not involve direct connection with themselves. The practice of resignation exists in the absence of any specific code of conduct for members of the National Assembly. The media and public pressure appear to play an important role in prompting such resignations. This illustrates the importance of norms regarding acceptable behavior in

office, and the significance of media and public pressure in seeing that parliamentarians and other office-holders conform to those norms.



Resignation of leaders in Japan

During the administration of former prime minister Shinzo Abe, there were several political scandal involving members of his government that eventually forced him to resign. Masaaki Homa, his head of a government tax panel, resigned after it was discovered that he had been living in a taxpayer-subsidized room with his mistress. The minister for administrative reform, Genichiro Sato also resigned amid allegations of irregular funding. The health minister, Hakuo Yanagisawa called women “breeding machines,” leading to calls for his resignation and affecting the image of the prime minister. The agriculture minister, Toshikatsu Matsuoka, committed suicide over claims he had links to a political funding scandal. He was found hanged in his Tokyo apartment hours before he was to face questions in Parliament over allegations that he had received election campaign donations from a businessman linked to a bid-rigging scandal. Also, Mr Matsuoka was accused of claiming more than 28 million yen in utility fees for his parliamentary office, though utility costs are free. Another agriculture minister, Takehiko Endo, resigned only a week after being appointed after it was revealed that the farm group he headed had illegitimately received 1.15 million yen by padding membership numbers in its application for a crop damage compensation program. Defence Minister Fumio Kyuma resigned over controversy sparked by his remark that the US atomic bombings of Japan were necessary to end WWII. After initially saying he did not think an apology for the remark was necessary, the minister apologized the same day, and days later resigned, saying he did not want to be a liability to the government. In all, from September 26, 2006 to September 12, 2007 five ministers of the Shinzo Abe administration and one other administrator under his leadership either resigned or committed suicide due to accusations about their unacceptable behavior.

The media was instrumental in forcing the resignations. Masaaki Homa was urged to resign by cabinet members after his actions were reported by the media, and Genichiro Sato admitted wrongdoing after local media reported that a support group for Sata told the state it spent 78 million yen in office maintenance expenses, even though the office did not exist.

The actions of these ministers exhibit a sort of integrity that politicians and citizens in other countries should learn. These actions are arguably the product of Japan's tradition and culture rather than some formal, written code of conduct. Interestingly, these people acted to take responsibility in the absence of formal findings against them, compared with other countries, like Thailand, where wrongdoing must be clearly proven before office-holders take responsibility. The practice of accountability in Japan can be seen since WWII when the army minister committed suicide upon Japan's surrender. One of the strong mechanisms must be a public that can make parliamentarians and ministers do something that they do not want to do.

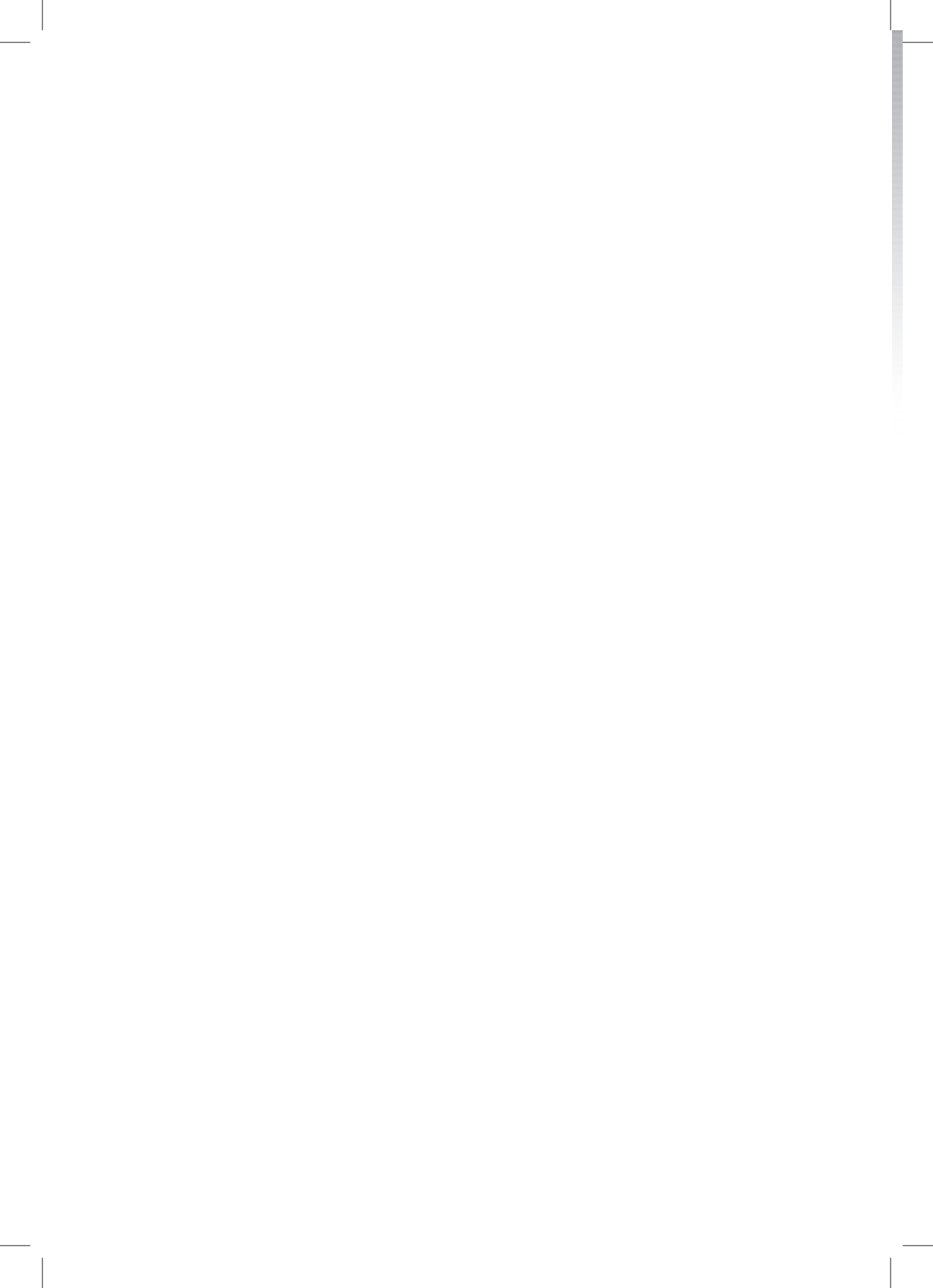
Codes of Conduct for Parliamentarians A Comparative Study



Chapter

5

Gaps in Asia



In light of findings expressed in Chapter 3 and Chapter 4, the gaps hindering better code of conduct practices in the Asian countries considered in this study can be identified.



Lack of awareness of codes of conduct

The first thing that was striking among Asian parliamentarians interviewed in the study was that their first reaction to questions about codes of conduct tended to focus on procedural rules of parliament rather than ethics. This was seen among Cambodian,⁶² Sri Lankan,⁶³ Vietnamese⁶⁴ and Laotian⁶⁵ parliamentarians. Respondents immediately began to speak of attendance rules, voting procedures, speaking etiquette and similar matters of parliamentary process. Only when the researchers brought up the term “counter-corruption” did discussion turn to measures meant to guide and control the ethical behavior of parliamentarians, and then the approach was generally legalistic and punitive. There seemed to be little notion of using codes of conduct to proscribe desired behavior, establish boundaries of acceptable behavior or establish the norms of desirable, acceptable political practice.



Absence of codes

Most of the Asian countries considered do not actually use codes of conduct. Instead, their integrity systems rely on more legalistic

⁶² Interview with Cambodian parliamentarian (name withheld) attending KPI Congress XIII. Bangkok, Thailand. November 2006.

⁶³ Interview with Sri Lankan parliamentary delegation (names withheld) attending KPI Congress XIII. Bangkok, Thailand. November 2006.

⁶⁴ Interview with Vietnamese parliamentarian and parliamentary assistant (names withheld) and attending KPI Congress XIII. Bangkok, Thailand. 2006.

⁶⁵ Interview with Laotian parliamentarians (names withheld). Vientiane, Laos. February 2007.

mechanisms, such as penal codes and anti-corruption laws. By criminalizing ethics matters, the scope for avoiding ethics-related problems before they happen is reduced. Distasteful but technically legal behavior cannot be dealt with under criminal laws. Borderline issues may be ignored either for lack of evidence or out of a desire to avoid risky, possibly lengthy and possibly embarrassing court action.

Laws are possibly better for forcing compliance than for building shared political culture. Theory suggests that a major function of codes of conduct is to build or reinforce a culture of good practices within a group. A code of conduct, complimented with some independent advisor to guide members regarding what would be acceptable or questionable under the code, could conceivably help improve practices of ethics and transparency because the stakes involved in complying with or circumventing a code are likely lower than with criminal sanctions; poor practices may be admitted and then modified rather than denied and concealed.



Content of codes

Codes and code-like mechanisms can fail to improve public ethics and transparency because the measures provided may be inadequate to the task. In most of the countries studied, there are statements of aspiration of some sort, generally calling for public office holders to be virtuous. The particulars of how virtue is defined vary, and affect the direction in which public office holders are guided. Most countries also have measures to forbid public officials from abusing office for unfair personal advantage. Again, this is very broad, and there is much scope for deciding what is and is not legitimate. Many countries restrict public office-holders' ability to accept and give gifts. Some countries require their public office holders to prepare statements of assets. All these practices have the potential to encourage benefits in transparency and ethics, if they are implemented appropriately. Absent from the Asian study countries' codes are requirements to declare interests in debates before the parliament. Also absent are clear

channels for public disclosure of information concerning the proceedings under the code/mechanisms, and especially for making parliamentarians' interests highly visible to the public. These shortcomings undermine any possible public confidence-building function of codes or other mechanisms, and can even undermine application of the mechanisms.

Since there is no empirical evidence regarding effectiveness of codes of conduct for parliamentarians, a certain amount of supposition and intuition is required in identifying good practices. That said, the existence of an independent oversight agency could be considered a good practice. The American and Thai experiences with house committees overseeing their respective codes suggests that parliamentarians may be less than enthusiastic about taking action against alleged wrongdoers, or even investigating alleged wrongdoing. Even aside from this, it is conceivable that given the many duties of parliamentarians, those on parliamentary committees overseeing codes might be distracted from that function. Thus it is likely that an independent overseer responsible specifically for overseeing a code of conduct would have more opportunity for diligent oversight than would a parliamentary committee.

Similarly, the existence of a code of conduct advisor is also likely a good practice. First, it is consistent with the theoretical function of providing objective advice regarding interpretation of the code to help prevent violations before they happen. Furthermore, to provide extra assurance that advice is objective, it is sensible to have that advice provided by someone who is not himself a parliamentarian.

Restrictions on gifts would seem to be a good practice as well, since receipt of benefits implies some sort of relationship with the giver. Gifts also create the impression of "payment" for favor received or inducement to grant future favor. Gifts contribute to an atmosphere where there is an impression that public policy can be influenced or bought. The Japanese system addresses this, but perhaps does not go far enough in restricting gifts that come from givers who do not fall under the definitions of "interest parties."



Implementation of codes

Where codes of conduct do exist, there appears to have been poor implementation. This does not relate to the actual content of the code, but the matter of whether the code is actually observed. Thailand is a particularly clear example. Codes of ethics exist for members of both houses, but the codes are virtually ignored to the point that there is little, if any, awareness of them. In South Korea, code-like functions are overseen by a Special Ethics Committee within the National Assembly, and in practice the committee has not been active in taking action against questionable behavior. The code for public officials is not even applied to members of the National Assembly, even though it theoretically could include them as public officials.

Even the best possible code of conduct will be useless if it is not observed. Theory, and the Thai and Korean cases, suggest that parliamentarians may be lax in practicing oversight over themselves. This in turn suggests that some sort of independent oversight mechanism is useful in making effective use of codes of conduct.



Implementation of supplementary systems

A code of conduct is not likely to have much effect if even the criminal sanctions that supplement it in cases of clear abuse of power are not implemented effectively. Thailand's experience suggests this to be the case. On paper, Thailand's integrity system was fairly comprehensive and elegant—there were several mutually supporting pillars of oversight that should have helped ensure that the entire system remained objective. Nevertheless, during Prime Minister Thaksin Shinawatra's time in office, many of the oversight agencies appeared to become politicized and subverted to the point where public confidence had dissolved and elements of the military felt justified in overthrowing the system. Hence, it is unlikely that more subtle and

persuasive mechanisms like codes of conduct could have much effect if even the strong integrity mechanisms in a country are incapable of addressing misbehavior of public officials.



Lack of specificity

In several countries considered, the integrity mechanisms that exist apply to all, or at least broad ranges of, public officials in the country. The roles and responsibilities of parliamentarians, however, differ from those of cabinet members, or those of senior civil servants, or directors of state enterprises, or other types of public officials that are often treated uniformly under integrity systems. Legislators' opportunities for questionable or unethical conduct differ from the opportunities available to different sorts of public officials. It is reasonable, therefore, to suppose that measures meant to encourage and foster ethical behavior among parliamentarians will differ in some ways from measures intended to achieve the same aim among members of the executive or lower-ranking civil servants. Theory suggests that codes of conduct are best applied to groups that share the same characteristics. Groups are more likely to identify with and accept ethics measures aimed specifically at themselves rather than broader systems meant to cover wide varieties of subjects. In addition, a system that is specifically tailored to avoid extraneous material should have the advantages of simplicity and specificity, making it both easier to understand and comply with the system, and more difficult to obscure misbehavior through technical interpretation.



Political culture

The political cultures in some Asian countries are accepting, even encouraging, of practices that are often considered unethical or corrupt. Japan and Thailand both have political traditions in which political representatives are expected to deliver very tangible, personal benefits to their supporters. It is difficult to curb practices such as gift-

exchanging when the actors involved (politicians and citizens) do not consider such practices wrong, or even consider them necessary parts of the political relationship. For such matters, a code of conduct forbidding such exchanges would be unlikely to produce changes because it would contradict the existing political culture—so it would probably be ignored—and thus it would lack the authority to compel changes in behavior. In this sort of case, a code of conduct would have to exist along side a system of criminal laws; in this way the laws (if enforced) could compel a change in behavior while the code of conduct could help shape the new political culture that develops in response to the change in political environment.

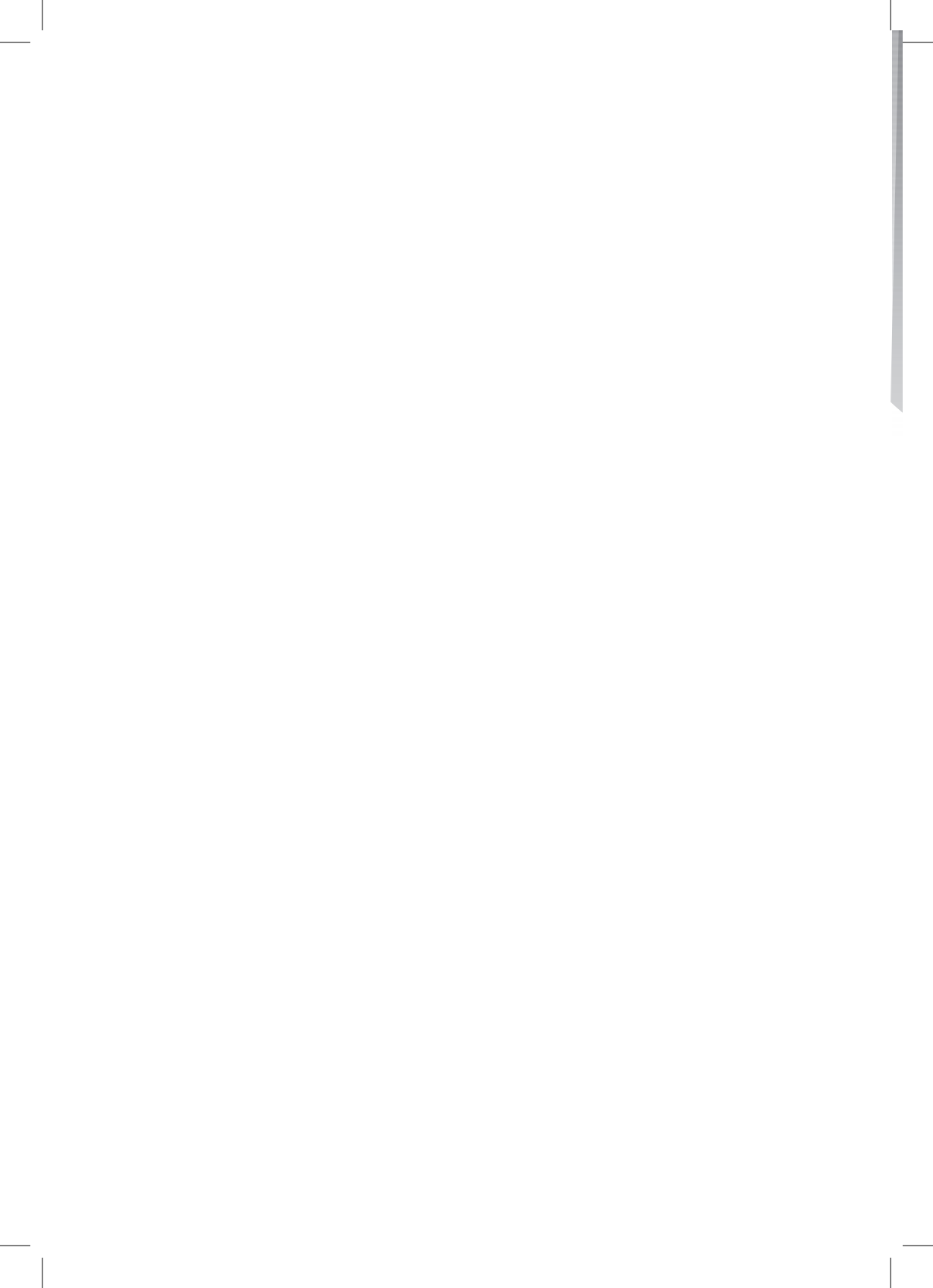


Lack of regard for public confidence in parliamentarians

A feature common to most of the countries in this study is arguably a lack of regard among public office holders for public confidence in parliamentarians. This is not surprising concerning certain communist states where democratic practices do not genuinely determine the wielding of executive power. The observation also holds true, to some extent, in more democratic countries where politicians are not very sensitive to public opinion. Pakistan and Sri Lanka do not have much tradition of public movements forming to influence or protest the parliament or the government. Citizens have tended to be relatively passive, or even indifferent to the actions of their political representatives. The case is similar in Thailand; while there have been instances of public movements forming around particular issues, such groups have tended to be relatively small, and politicians and governments have tended to be largely insensitive to their feelings.

Theory suggests that a major purpose of a code of conduct for parliamentarians is to build public confidence in political representatives by providing an assurance that those representatives are concerned with ethical issues and are actively policing themselves. If

politicians do not feel a need to provide such an assurance or similarly build public confidence, a major justification for considering a code of conduct is absent. South Korea (and to some extent Japan) provides an example of a place where public opinion does seem to be genuinely important to public office-holders. Thus public office-holders there seem more sensitive to scandal and consequent public pressure than do office-holders in other study countries. It is in such an environment that codes of conduct might have the greatest culture-building and confidence-building effects.



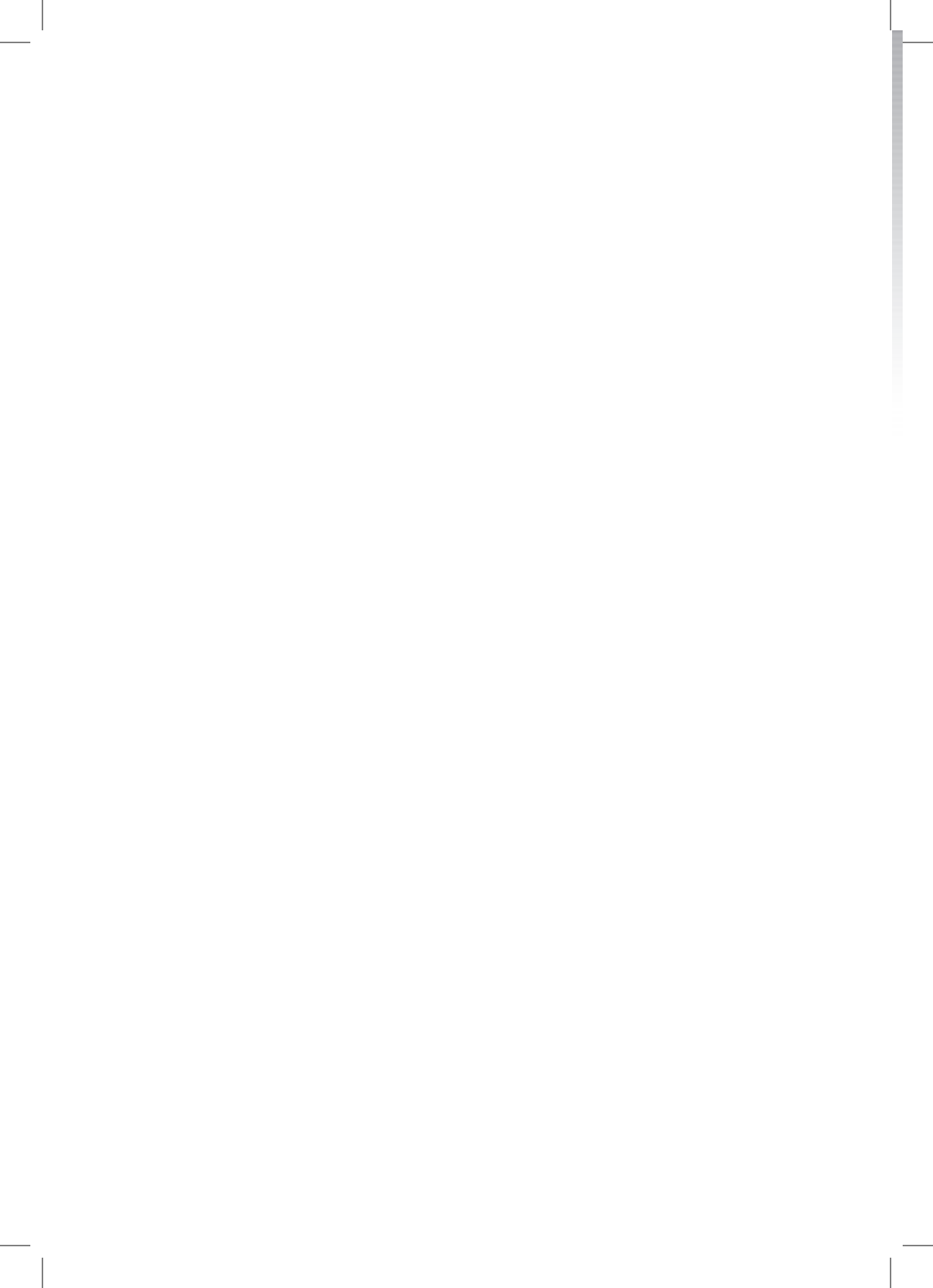
Codes of Conduct for Parliamentarians A Comparative Study



Chapter

6

Conclusions and Recommendations



Having explored the theory behind codes of conduct for parliamentarians and examined the situations in several Asian and other Pacific Rim countries, it is possible to formulate some recommendations on whether and how codes of conduct could be usefully pursued.

There exists general agreement that misuse of official power is harmful to a country. Possible harmful effects can include waste of public funds, abuses of human rights, or, more subtly, erosion of expectations and confidence concerning democratic governance. Corruption fighting is an important aspect of the agendas of international development agencies.

In Southeast Asia, there is already considerable awareness of and concern with corruption-fighting among national governments. All countries examined in this study have some measures meant to investigate and punish corruption in various forms. Parliamentarians and officials interviewed in this study, when prompted on the theme of counter-corruption, invariably produced statements out of the anti-corruption discourse advocated by development agencies like UNDP and the World Bank. Most countries do not have codes of conduct for parliamentarians, but many countries do use other mechanisms that exhibit some code-like characteristics. Some countries, notably South Korea, have adopted codes of conduct for other areas of public service and are talking about, or at least quietly considering, codes of conduct for parliamentarians.

Codes of conduct can play a role in integrity systems, but they are specialized tools, the main purpose of which is probably not corruption fighting in an immediate sense. The corruption-controlling aspects of codes of conduct are perhaps not so significant. For controlling behavior, criminal measures can have strong effect, codes of ethics weak effect, and codes of conduct somewhere in between. If a country wishes to address corruption directly and punitively, for instance removing corrupt parliamentarians or other officials from office and recovering misappropriated state assets, then a code of

conduct is probably not the appropriate tool; anti-corruption laws administered through courts are probably more appropriate. If the objective is to build a culture of intolerance of certain practices, develop consensus on what is ethical behavior, build citizens' confidence in government, and build politicians' commitment to public good, then a code might be a good tool.

Codes of conduct for parliamentarians appear to matter if politicians care what the people think, and people care what the politicians do. A certain degree and character of public interest in parliamentary affairs, public attitudes towards ethics of parliamentarians, and parliamentary attitudes towards the importance of public opinion must be present if a code of conduct is to have any beneficial effect.

This points to a certain interesting situation. While the larger part of a code of conduct's purpose is culture-building and confidence-building, for a code to be of any use there must already exist a certain culture and degree of public confidence in (or at least expectations regarding) parliamentarians. Where people have low expectations of their political representatives and there is no culture of the public holding representatives to account for questionable actions, there seems to be little purpose in increasing transparency of parliamentarians' affairs. Similarly, where political representatives have no culture of being accountable to citizens, it would likely matter little if their activities are opened up to public scrutiny. Public oversight of government and parliament is difficult in non-democratic countries, and codes of conduct would appear to have little purpose if there is no imperative for parliamentarians to show their accountability.



Recommendations Regarding Codes of Conduct

Assuming that a code of conduct for parliamentarians is going to be adopted, theory and experience suggest that certain features will

increase the likelihood of it having some positive effect on governance, transparency and conduct of parliamentarians.

Use a written, formal code

It nearly goes without saying, but for a country to adopt a code of conduct for parliamentarians, it is necessary to formalize and record the code. All political cultures include informal practices—to merely say that parliamentarians should engage in certain behaviors and refrain from others does not constitute having a code of conduct. Furthermore, the written formal code must reside somewhere, be it as a parliamentary order or a full act of law. Mandating a code of conduct in a constitution, then putting the detail in some other location is an intuitively appealing option. It is not clear whether there are any real advantages to having a code of conduct reside as a law or in a lesser regulation. Generally laws have an advantage of being comparatively difficult to change as control of parliament changes hands. If establishing a code in law, however, be aware of the risks of dragging parliamentary affairs under the jurisdiction of the judiciary, and opening the possibility for court challenges to the code. Ultimately, it may not be very important exactly where the code resides, providing that it is formalized somewhere, and that parliamentarians and the public can find the details of the code easily.

Use a code specific to its subjects

The function of parliamentarians differs from the function of cabinet members (dual roles in parliamentary systems notwithstanding) or lesser members of the executive branch of government, like civil servants. Similarly, the scope and character of abuse of public office can differ significantly across positions. Measures relevant to one group are not necessarily relevant to another. Since parliamentarians do not really exercise state power directly, it may be sufficient to simply ensure that their private interests can be publicly known, and that they do not engage in personal dealings that could compromise their objectivity. Detailed public disclosure of all assets, for instance, may

not be needed. Note, however, that in order to give reassurances about the interests of parliamentarians it is probably necessary to remember that affairs of individual parliamentarians and their close relatives (spouses, minor children and possibly parents) are intertwined, and thus such close relatives should be subject to most of the prescriptions and proscriptions applied to the parliamentarians.

Take into account the political culture

Codes should be designed in accordance with the purposes of culture-establishing and confidence-building. Thus they should set out a somewhat idealized set of aspirations for good behavior, accompanied by more specific prescriptions and prohibitions applying to their subjects. Nevertheless, the details should be consistent enough with the political culture of the code's subjects so that measures are not routinely disregarded or circumvented.

Raise the ethics and transparency standards

For the code to do any positive good, the measures should raise standards of ethics and transparency. In terms of content, the code should include aspirations, prescriptions and proscriptions as discussed in the literature review chapter. An aspiration to transparency, honesty and responsibility in public office is a good starting point, and serves to set the tone for specific measures. Prescriptions should probably include some formal, public declaration of assets and interests, since such declarations are key to allowing the parliament and the public to know if parliamentarians' decisions have been affected by their private interests. Similarly, parliamentarians should be required to declare any gifts they receive. Important proscriptions include restrictions on the type and value of gifts that can be accepted and restrictions on the use of public resources for personal matters. Restrictions on employment or activities of parliamentarians while in and upon leaving office may also be useful. The importance of specific sanctions for violating the code is not completely clear, but it is probably not a disadvantage to specify punishments for violating the code, providing there is some realistic

expectation that the penalties will be enforced. Probably more importantly, a code should have provisions for an advisory function to help guide parliamentarians through their duties in regard to the code and to help parliamentarians structure their affairs in compliance with the code. In order to contribute to confidence-building, a code of conduct must give the public a window into the affairs of parliamentarians, to create assurances that the parliamentarians are required to behave in ethical ways.

Have independent oversight and administration

Experience suggests that an independent oversight official or body is an important and perhaps even essential feature if a code of conduct is to have any positive effect. Leaving parliamentarians to oversee themselves introduces several opportunities for a code of conduct to be ignored or subverted. Parliamentarians may politicize code of conduct matters, turning a tool for transparency into a partisan political weapon, and in the process seriously undermining the public-confidence-building function of the code. Parliamentarians may leave a code unexercised, possibly through malicious neglect or possibly because of less malign preoccupation with other concerns. A non-parliamentarian oversight official should have the time and focus necessary to see that the code of conduct is exercised properly. Furthermore, a non-parliamentarian would be expected to have sufficient knowledge and expertise in the system to help guide parliamentarians through it (remembering that a major function of a code of conduct is to help parliamentarians avoid questionable situations in the first place). It is probably useful to grant the oversight official some powers of investigation that can be exercised at the official's discretion. Having a non-parliamentarian serve as oversight official also offers a possibility for continuity that is not afforded by having elected parliamentarians perform the oversight function. Neutrality is important, so measures should be taken to ensure that the official is, and is seen to be, politically neutral. Of course, the official should be provided adequate resources for performing his administrative, investigative and advisory functions.

Avoid conflicting processes

Whether a country is designing an integrity system from the ground up, or establishing a code of conduct for parliamentarians where other elements of an integrity system already exist, it is probably useful to avoid duplicating requirements imposed on parliamentarians, especially if such duplication imposes different standards for the same subject area. For example, if parliamentarians are required to report their assets to some sort of independent agency or court, it is probably unwise to require them to make separate reports with different standards to a code of conduct oversight agency. Multiple, conflicting systems increase the chance of confusion (on the part of parliamentarians and the public) and also for intentional obfuscation. Ideally, components of integrity systems should be harmonized to work together, supporting each other rather than competing.

Keep processes public, simple and understandable

Important to the confidence-building function is transparency—the public must be able to be aware of proceedings under the code. For a code of conduct to be useful, the public must be aware of it, and be able to know its details. Byzantine complexity in a code of conduct undermines its confidence-building purpose; a code should be quite simple and preferably brief. Simplicity and brevity not only foster understanding, but also facilitate compliance. Furthermore, a code of conduct for parliamentarians, administered in secret by parliamentarians, will likely not do much to influence behavior of its subjects (because social pressure would be absent) and it would not do anything to increase public confidence in the parliament or the system of government. Public disclosure of code administration proceedings is therefore essential. Spotlight events, for instance an annual ethics review, could be considered.

Consider indicators for monitoring and measuring a code of conduct

While this report has not addressed means of monitoring the exercise of a code of conduct, other than to say that reports and proceedings under the code of conduct must be available to the public, it may be worth considering ways in which such monitoring could be accomplished. Public records and summary reports of the number, character and subjects of code of conduct exercises could be a useful start. Other things that could be considered are annual public reports, best practice awards, and other tools to put code of conduct affairs into the public consciousness.



General Recommendations

Foster public participation

Utility of code of conduct depends on public participation—readiness and ability to see it exercised. Other factors may also be important. The level of economic development in a country, and the degree of citizens' reliance on the state for their livelihoods, may affect people's willingness and ability to hold representatives/leaders responsible. Thus it may be useful to develop the quality of the people and their livelihoods. Eradicate poverty so people can rely on themselves instead of asking help from politicians or depending on the state. Educate people regarding their civil rights, the role of citizens, and the harm of abuse of public office. This leads to the complex area of national development, but suffice to say that programs for economic development, civic development and personal development may be advantageous in creating conditions where codes of conduct for parliamentarians can have maximum beneficial effect.

Ensure a favorable civil service environment

Civil service is also important in ensuring good behavior of parliamentarians. If civil servants do their duties objectively and honestly, there are fewer opportunities for politicians to abuse power. South Korea's standard Code of Conduct by KICAC for public servants is a good practice example—one of its strengths is that it provides for specific codes for different agencies, modeled on the core code. Each agency has an official responsible for overseeing the code; KICAC offers support and training.

Promote the media as an overseer

The media could also be important in creating an environment conducive to effective codes of conduct for parliamentarians. Media is an instrument for dissemination of knowledge and information, and can allow people to be able to participate in politics. Free media is essential for oversight—not only to disseminate information released by the state, but also to independently investigate matters of questionable nature. Media thus needs access to information tools that make investigation possible. The media also needs freedom from influence from government. Freedom from private bias is also important, so there should be measures for the public to support the media. A social engineering approach would advocate having the state promote an institutionalized, independent, professional and ethical media. It may be possible for the state to promote a free and professional press by means of some sort of fund for media promotion

Strengthen civil society capacities

Civil society is important in forcing parliamentarians to have ethical behavior. Self-interest is a powerful motivator, and groups of people gathering together of their own accord to act in a shared cause can be very determined and potentially influential. Local governments/administrations can promote civil society. The state can undertake education and training programs and offer support to civil society

through endowments and by creating legislative frameworks that facilitate formation and activities of civic groups.

Create a favorable environment and a regulatory framework

Even the best possible codes of conduct for parliamentarians—or any formal rules or laws for that matter—will not be able to prevent misbehavior if parliamentarians are determined to misbehave. Parliamentarians operate in complex social and political systems that offer opportunity for abuse of power. Preventing abuse of power requires an environment in which such abuse is not considered acceptable. Creation of this sort of environment is no easy matter, but it probably involves a regulatory framework that criminalizes and punishes corruption, a value system that considers abuse of power wrong, oversight mechanisms and bodies that oversee exercise of power and a public that has interest in the behavior of parliamentarians, access to information that allow public view of parliamentarians' activities, and freedom to criticize behavior that is found questionable. A code of conduct can contribute to the creation of such an environment by clarifying (for parliamentarians and the public) what is expected of parliamentarians, and by requiring parliamentarians to keep their affairs transparent.

Institute an integrity system

Similarly to the above, a code of conduct alone is probably unlikely to produce important changes of behavior in parliamentarians. There should be stronger, legalistic mechanisms to detect and punish undesirable behavior. Integrity systems including courts, investigation agencies, and other checks on the powers of political office are necessary to break habits of misbehavior. A code of conduct can help guide and shape more desirable behavior that emerges.

Hold a long term and holistic approach

International agencies should consider helping states establish integrity systems, but keep in mind that the best system will not be used or be of benefit unless there is a political/social culture that supports it. Social expectations concerning good behavior of parliamentarians appear to be essential. Keep in mind that for success, trying to engineer integrity systems will involve building the political culture, which takes time. Education would likely play an important part in the process. Political environments are complex—changes aimed at achieving certain ends may have unanticipated consequences. Mechanisms have to be reviewed from time to time because systems are dynamic. The subjects will adapt to any oversight system in attempts to achieve their ends, so it may become necessary to change the oversight measures. A holistic, integrated, long-term approach is necessary.

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