

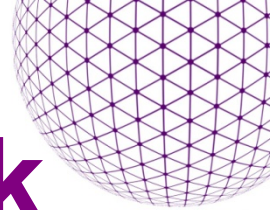
Parliamentary Ethics and Conduct Regimes: An overview

DRAFT version: Not for circulation

Why an ethics and conduct regime?

- Not just about dealing with corruption.
- It should;
 - Establish common standards;
 - Prescribe and proscribe certain forms of behaviour;
 - Contain ways of tackling misdemeanours;
 - But, also provide streetlamps for finding the correct path.

Structure of the handbook



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- Defining the problem
 - What is the regime designed to do?
- Underlying principles
- Detailed rules and content
 - Conflicts of interest
 - Disclosure
 - Restrictions
- Regulation and enforcement

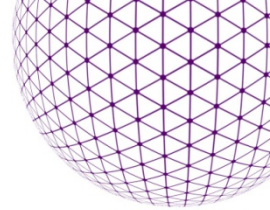
Linking an ethical regime to existing rules

- What should an ethics regime add to the rules?
 - Rules of procedure complex
 - Rules describe process, but not how to behave
 - Frequent lack of understanding in new institutions
- Options for guiding MPs

Principles for ethical behaviour

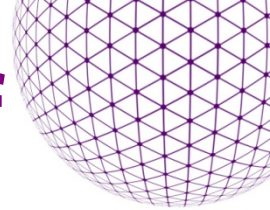
- Should establish the guiding principles within which MPs can work
- Need to be realistic and achievable – they must emerge from the legislature
- But also need to establish widely acceptable standards of behaviour
- These are likely to include: honesty, integrity, abiding by the law, serving the public

Legislators and conflicts interest



- Legislators expected to balance number of competing interests
 - self
 - family
 - nation
 - constituency
 - political party
 - section of society
 - other interests/professions
- Public office is based on a conflict between duty and interest.
 - It involves compromise and partiality
 - It is for legislators to decide how to balance them
 - A code of conduct should provide basis for those decisions

What constitutes a conflict of interest?



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A conflict of interest involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.

OECD Guidelines for Managing Conflict of
Interest in the Public Service

The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

UNCAC, Article 15

Rules governing parliamentary conduct

Detailed rules prescribing and proscribing legislators' behaviour

- **Three main aspects:**
 - Transparency - disclosure and monitoring of outside interests
 - Restrictions - on what legislators may do in the light of their outside interests
 - Prohibition - of certain activities inside and outside parliament

Disclosure and declaration of interests

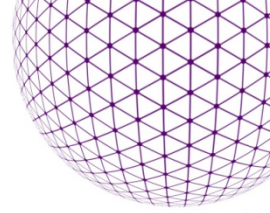
Examples of registrable interests – South Africa

- The number, nature and nominal value of share-holdings;
- The identity of any extra employment (extra employment has to be approved by the MP's political party);
- The identity of any directorship or partnership;
- The identity of remuneration of any consultancy (lobbying is prohibited);
- The source and description of sponsorship;
- Any interest in property;
- Details of foreign travel;
- Pensions;
- Other benefits;
- Gifts and hospitality above the value of R350.

The confidential section requires disclosure of the following items:

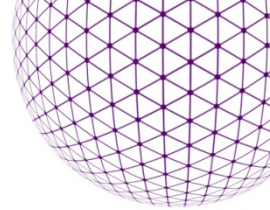
- Remuneration of extra employment; Remuneration of directorship or partnerships; The value of any other benefit; The private residence of an MP; The value of any pension.

Restrictions on outside activity



Post-employment restrictions

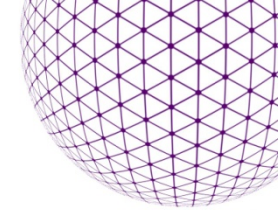
- Public office holders who modify their conduct to improve their post-employment prospects – e.g. favours or bribery;
- Former members and officials who improperly use confidential government information acquired during their employment for personal benefit or to benefit another person or organisation;
- Former members and officials who seek to influence government employees;
- Re-employment or re-engagement of retired or redundant public officials.



Models of regulation

- External regulation – Taiwan, India
 - Judicial or quasi-judicial proceedings against Members
 - Issues over parliamentary sovereignty and immunity
- Self-regulation by parliament – USA, Germany
 - Reports go to a parliamentary officer or committee
 - Issues over independence and effectiveness
- Independent commissioner reporting to parliament – UK, Ireland
 - ‘Ethics commissioner’ investigates cases
 - Parliamentary committee decides on action and sanctions
 - Looks like self-regulation?

Sanctions and enforcement



What sanctions are available?

- Call to order, censure, reprimand, admonish
- ‘Naming’ – and suspension from parliament for defined period
- Loss of seniority, financial penalties, expulsion
- Criminal proceedings



Developing a culture around the rules

Role of the commissioner

Investigation

- Independent and thorough analysis of accusations
- Filter for frivolous or politically motivated cases

Educating and promoting standards of behaviour

- Improving MPs' understanding of the code
- Creating an ethics regime - prevention as well as treatment

Clarification

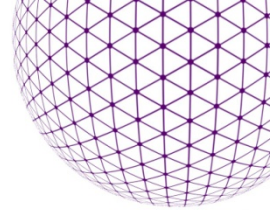
- Offering guidance to MPs and committees
- Interpreting the rules in 'grey' areas

Changing the culture – South Africa

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

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

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



Conclusions

- The effectiveness of a parliament is determined by the attitudes, outlook and behaviour of its members as much as by its constitutional powers.
- A new regime which seeks to influence behaviour must emerge from the specific parliamentary circumstances within which it seeks to be effective.
- The process of developing the new regime is as important as the content that emerges. Developing a detailed set of rules should not be the only objective.
- The creation of the ethics and conduct regime will not, by itself, solve all the problems faced by the institution. The principles, rules and regulations should be viewed as only one part of a wider effort to improve the functioning of the institution.