

# UNCAC: A WAY OF LIFE

## ROLE OF THE LEGISLATIVE BRANCH

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### **Background and Context**

At the December, 2003 signing ceremony in Merida, Mexico, the Chair<sup>1</sup> of the Global Organization of Parliamentarians Against Corruption (GOPAC) announced its support for the UN Convention Against Corruption. He also noted that parliamentarians were not recognized at the event as a distinct group, but that they needed to be actively involved in its implementation. For the UNCAC to become ‘a way of life,’ (using the words of the conference) parliamentarians must be engaged in its implementation, as must governments and citizens.

GOPAC – an organization of parliamentarians committed to combating corruption through strengthening the effectiveness of parliaments and parliamentarians – had little difficulty in deciding to support the UNCAC. Such parliamentarians tend to see criminalizing corrupt activity, improved prevention, and better international cooperation as necessary. They also see their direct roles in shaping legislation, allocating resources, and overseeing the administration’s use of its powers and resources as essential. What is less obvious, and what is addressed in this paper, is what they can do to be most helpful.

Since the signing ceremony GOPAC has held a number of regional chapter meetings where the UNCAC has been on the agenda, typically including a presentation by a UNODC representative. The Africa chapter of GOPAC also has been actively pursuing the ratification of the African Union Convention Against Corruption and examining the legislative impacts of doing so. The Latin American chapter decided to consider the OAS-organized reports of country implementation of provisions of the Inter American CAC.<sup>2</sup> Our Southeast Asian chapter has looked at the UNCAC as well as the ADB-OECD Asian Anti Corruption initiative. A number of other parliamentary groups also have been active in exposing parliamentarians to this UN initiative, including the IPU (Inter Parliamentary Union) at its recent meeting at the UN in New York. And earlier this week, three years after the Merida signing ceremony, at the December Conference of State Parties on the UNCAC, in Jordan, Dr Naser Al Sane, Vice Chair of GOPAC<sup>3</sup>,

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<sup>1</sup> The founding and current Chair of GOPAC is the Hon. John Williams, Member of Parliament, Canada.

<sup>2</sup> Although the Latin American chapter has not yet followed up on this plan, it promises to be a useful role that parliamentarians could play – encouraging the government to make improvements and alerting the public to the value of such improvements.

<sup>3</sup> Dr Al Sane is also the Chair of a GOPAC regional chapter, the Arab Region Parliamentarians Against Corruption (ARPAC).

chaired a small side meeting of parliamentarians aimed at developing a plan as to how parliamentarians might play an effective role in its implementation.<sup>4</sup>

GOPAC and other parliamentary groups, accordingly, have been acquainting their parliamentary colleagues with the provisions of the UNCAC, examining its importance in combating corruption, and engaging each other in thinking about how they can better support it. By noting similarities to related regional conventions and initiatives, they have helped reinforce the view that corruption is not simply a local or regional problem, but rather one which requires both international cooperation and cooperation among sectors of society.

Such improved understanding is important for a number of reasons. It conveys the idea that corruption is not simply a failure of social values, an inevitable result of poverty, or due to an unfortunate colonial past. Moreover, the message of the UNCAC does not suggest that the solution is either simple or requiring only a short attention span. But, on the other hand, it does hold out hope that the problem can be addressed – that it is not inevitable. Extending such an understanding of corruption to parliamentarians and through them to the public, I believe, is very helpful and needs to continue.

I am emphasizing the value of improved understanding, not only because it is important, but also to help ensure that I am not interpreted as criticizing what parliamentary groups are doing to be supportive. Such broader understanding is very important, but I will argue in this paper that effective implementation of the UNCAC requires parliaments to become more effective in their core roles – that is, for parliamentarians to do more. And, the global initiative to implement the Convention provides an excellent opportunity for members of GOPAC as well as other parliamentarians to do so. It also requires that parliamentarians think deeply as to how their own actions might encourage, rather than discourage, corruption. Does the legislation, for which they ultimately are responsible, provide in their country a legal and institutional framework that encourages integrity in governance? Are they undertaking their oversight role effectively in the interest of citizens? Does their own behaviour add credibility to parliament in representing citizens' interests? While I am confident that many individual parliamentarians do consider these matters deeply (and perhaps so too do certain groups of parliamentarians), there is a need to do this collectively across jurisdictions and in a way that is recognized by the other sectors of society working toward the same result.

The next section outlines GOPAC's own efforts and plans to take some such further steps. It is called the Arusha Agenda, after the host city of the GOPAC Conference which developed the resolutions mandating this agenda. The central theme of the actions outlined, in addition to thinking deeply and collectively, can be thought of as 'political leadership'. The final section looks at the kinds of incentives that parliamentarians face in exercising political leadership and improving parliamentary performance and also muses about ways these might be enhanced.

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<sup>4</sup> A summary can be found at [http://www.gopacnetwork.org/Programming/programming\\_UNCAC\\_en.htm](http://www.gopacnetwork.org/Programming/programming_UNCAC_en.htm)

## **The GOPAC “Arusha Agenda”**

Although GOPAC as an idea was confirmed at a conference in Ottawa, Canada in late 2002 and was formally incorporated in 2003, it still sees itself as very much an organization under development. Funding is limited and the time of parliamentarians is voluntary. However, GOPAC is uniquely focused on combating corruption by strengthening the effectiveness of parliamentarians in their traditional legislative, oversight and representation roles.

GOPAC is a global organization of individual parliamentarians and former parliamentarians. It initially focused on developing a global voice, extending membership primarily through developing its regional chapters, and building links with international organizations with complementary objectives. The seminal event for GOPAC was a global conference in Tanzania in September, 2006, in partnership with the Parliament of Tanzania and the African regional chapter. In addition to the conventional networking and educational objectives, the conference identified 8 areas of activity for its Board and Executive to pursue. The areas included were:

- International Conventions Against Corruption
- Parliamentary oversight
- Anti-money laundering
- Transparency, access to information and media
- Codes of conduct for parliamentarians
- Parliamentary immunity
- Resource revenue transparency
- Engaging parliaments in overseeing development cooperation assistance

We did not get the list by reviewing UNCAC provisions or anti-corruption checklists, nor were they based on a disciplined discussion of the core roles of parliamentarians. Rather, they emerged directly from issues and interests raised at a number of regional events and the views of the members of the Conference Program Committee<sup>5</sup> and the Chair of GOPAC. Although a number of other specific items were raised in these discussions, the only one that was seen as equally important, but excluded for practical reasons, was fair elections. In each area a workshop was held at the conference to review the relevant issues. In addition, a resolution regarding what GOPAC should seek to do was debated and prepared for consideration by the Conference plenary. The proposed resolutions were accepted and serve as direction to the GOPAC Board of Directors.

All these areas, I believe, are linked to the implementation of the UNCAC, although one might question the inclusion of the development assistance and immunity issues. Development assistance often is seen as a source of funds for corrupt officials and the central issue of the workshop was parliamentary oversight of such funds expended through government agencies. Parliamentary immunity in some jurisdictions is similar –

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<sup>5</sup> The Conference Program Committee was chaired by Dr Naser Al Sane, and included representatives from the African, European, Latin American and south east Asian chapters.

a license provided to parliamentarians to pursue corrupt activity with a reduced risk of legal consequences. It also can be a weapon available to a dominant executive to discipline parliamentarians seeming perhaps to playing their oversight role too vigorously. In addition to this direct link, where parliamentary immunity is used improperly, it has a negative effect on citizens' trust of parliamentarians as credible representatives. Without such credibility the capacity of parliament to serve as an agent of integrity in governance is considerably reduced. A number of parliamentarians also see a close link between immunity and the need for a parliamentary codes of conduct that aim at strengthening the credibility of parliamentarians by helping them focus on their core roles and on avoiding improper activity, as well as making this more visible to citizens.

There likely is little need to discuss the inclusion of the other items since they are quite clearly linked to the implementation of the UNCAC, particularly as related to prevention. The experience of the GOPAC Conference does indicate that, among parliamentarians with a commitment to combating corruption, the actions that come directly to their minds tend to line up well with those needed for effective implementation.

### **Political Leadership<sup>6</sup>: A Parliamentary Anti-Corruption Workplan:**

While each of these areas is being assigned to a global or a Board of Directors task force and a few specific actions were included in the wording of the resolutions, what could they actually do beyond the in-depth exploration of each issue and informing their colleagues? The words that seem to best capture the anticipated additional activity are 'political leadership', 'building consensus' and 'developing a bigger coalition'.

GOPAC, although a developing organization, has developed an approach to such political leadership. It works with experts where possible and on on-going initiatives, encourages task force members to pursue related initiatives in their regions or countries, and undertakes work to build understanding and trust while developing regional champions. This has emerged from three "perspectives":

The first is an ancient Chinese adage: *"Tell me and I'll forget; Show me and I'll understand; Involve me and I'll remember."* Although I think it applies rather more broadly, it certainly aligns well with our experiences in dealing with parliamentarians.

The second comes from an experienced Canadian Parliamentarian who, when asked how he decided which way to vote on certain issues, responded: *"At each session of parliament, I vote approximately 3000 times. I only seriously look at about a dozen issues over a year. So, what I do on the other occasions is take the advice of colleagues I trust."*

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<sup>6</sup> Political is used in this paper in its sense of developing consensus on actions to respond to a particular problem that is broadly accepted as a problem. It is not used in the sense of promoting a particular position on an issue.

The third is from evaluations of a number of AML sessions provided for parliamentarians that GOPAC has conducted together with World Bank, IMF and other experts. At these events there have been both speakers with technical expertise and parliamentarians who were knowledgeable about the related legislation and political debates. Participants certainly valued the experts and their knowledge, but *emphasized the great importance of also receiving the perspectives provided by their political colleagues.*

My interpretation of these perspectives as they apply to guiding the work of the task forces is that:

- experts and parliamentarians should work together on issues and products – in each task force, therefore, we are looking for one or more expert organizations to play a central role in each task force;
- face-to-face communication is important to develop the essential personal trust and build consensus; and
- knowledgeable parliamentary champions are required to be able to build the coalitions needed to make actual changes.

The task forces, and therefore their plans, are still being developed. However, a couple of initiatives might illustrate some of the activities being considered. The anti-money laundering task force is currently the best developed. One proposed task is to prepare a position paper on the current international anti-money laundering initiatives focused specifically on parliamentary action, and doing so together with experts from the several international organizations actively engaged in combating money laundering. They also will be looking at whether there would be value in upgrading the FATF<sup>7</sup> principles to an international convention. Such an activity including face-to-face meetings is aimed at developing a shared understanding and knowledgeable regional champions. Therefore, in addition to developing coalitions around extending the application of the FATF principles to more countries, it will consider the value of a more formal international instrument.

A possible activity of the Parliamentary Immunity task force is to undertake a few implementation case studies. Parliamentary immunity is a matter that the IPU and others have studied in considerable depth. There also are detailed case studies of problems and actions needed in particular countries. Yet, on the whole, there seems to be very little improvement on such obviously undesirable parliamentary practices in several countries. With this in mind the emerging task force is looking at the feasibility of undertaking a number of ‘implementation studies’, perhaps initially within a single region. While a parliamentarian or a small team in each case study country would lead an initiative to change the regime, it would be supported by an expert organization and the task force. The team would also monitor activities and results to learn what works or does not work in making clearly beneficial changes in parliamentary practices.

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<sup>7</sup> FATF, the Financial Action Task Force is based in Paris and works closely with the OECD. It developed 40 principles (now updated and extended) for controlling money laundering that have been adopted by OECD countries and increasingly more broadly.

## **Some thoughts on incentives for parliamentarians:**

There are stories of individual parliamentarians that have been physically attacked for their actions in fighting corruption. In some cases, the situation might indeed require such dedication. However, if such extreme dedication is needed, it is certainly not 'a way of life'. Personal values and interests, the views of the electorate, and the position of one's political party likely play the determining role in what parliamentarians do. However, I believe it is worth looking at whether there might be other incentives that would encourage more parliamentarians to support anti-corruption initiatives. If such changes in incentives are possible, one would expect more parliamentarians to play their legislative and oversight roles more vigorously, more actively engage citizens in governance, as well as being part of coalitions to lead specific anti-corruption initiatives.

Criminalization as outlined in the UNCAC, and effective prosecution and courts provide incentives to improved behaviour. So too would a legislated (or equivalent) oversight framework for government. Such a framework, illustrated in Annex A, would incorporate incentives for officials to pursue integrity in financial administration. Better understanding on the part of parliamentarians of the negative effects of corruption, especially if understood by voters as well, would help. Simple membership in organizations such as GOPAC may be of value, providing both personal support and a degree of protection. While there undoubtedly are several other incentives, I suggest two that might make provide additional value: a) membership in the "right clubs"; and b) documenting parliamentary performance.

Many observers have noted the incentives provided by the need to meet conditions for membership in certain organizations. The more obvious are the European Union, the World Trade Organization. Belonging to the governments that have ratified the UNCAC also seems attractive. Unfortunately, the UNCAC provisions are not directly aimed at parliaments. If such conditions could be added or a sister parliamentary convention created, it might serve as a comparable desirable "club". There could also be less vivid variations.

The second incentive is the more formal and open measurement of parliamentary performance. There can be little doubt that the Transparency International Perceptions Index is an effective incentive. Would something similar focused on parliaments have a comparable positive effect? We all are aware of the some of the ways measurement and reporting of indicators of performance can be misused, but there is now considerable experience with such weaknesses and how they can be mitigated.

My own sense of the situation is that several approaches to documenting the performance of parliaments would provide the best combination of incentive and direction. Of the many ways to measure performance, I believe there is value in including one that directly engages parliamentarians themselves in defining the indicators, the approaches to measurement and the mechanism of reporting. Perhaps it could be linked to a parliamentary code of conduct, if such a code included what parliamentarians should do, as well as what they should not do. Public credibility of any resulting reports might be

weaker than independent approaches, but engaging parliamentarians directly, as we have seen in training and orientation events, would be more likely to actively engage them in thinking about their performance and how it might be measured. Such engagement, as noted in the Chinese adage the previous section helps build understanding. It might also help develop a group of champions to build a coalition around instituting such an initiative.

GOPAC has a commitment to engage its members to track parliamentary anti-corruption measures in countries and regions where it has active chapters and members. The idea is one of developing a degree of comfort that changes are possible and indicating which changes might be the most likely to succeed. If this proves feasible, it provides a base from which to begin to make judgements about the importance of these changes.

It also is important to recognize the sometimes limited capacity of parliamentarians to respond, regardless of the incentives they face. Although I suspect that the portion of capacity building resources development cooperation agencies direct to improving the parliamentary function is small in comparison to that allocated to the executive branch of government, it is likely that these resources do make a substantial difference. Perhaps they could be expanded.

## **Conclusions and Observations:**

If the UNCAC is to become a ‘way of life’ (sustainable effective implementation), the core legislative, oversight and representation roles of parliamentarians must be played well. In many jurisdictions, this is not now the case. And in some jurisdictions parliaments are seen more as part of the problem than as part of the solution. Accordingly, the inevitable conclusion I believe is that *making the UNCAC a way of life requires improving the effectiveness of parliaments.*

This in turn requires enhancing the capacity of individual parliamentarians. There are initiatives to educate and orient parliamentarians, but perhaps too few and perhaps not sufficiently emphasizing political leadership and coalition building. The peer support, learning and coalition building on specific initiatives beginning to be provided by GOPAC seem to be valuable additions. Building capacity of parliaments through improved access to technical experts, staff support and adjusted parliamentary procedures is needed, but *building capacity of parliamentarians should also consider improved access to peer support networks and opportunities to be actively engaged in international initiatives.*

Finally, I believe public expectations as to the democratic roles of parliamentarians need to be clarified for citizens and incentives developed to re-enforce these roles. This clearly is an area where other sectors of society must also play key roles. The two suggested approaches in the preceding section render parliamentary behaviour as related to their roles more publicly visible. But looked at from another perspective and more generally, *non-parliamentary sectors of society must provide the incentives encouraging*

*parliamentarians to play their key roles more effectively – becoming more effective partners with other sectors of society in making the UNCAC a way of life.*

## **Annex A: An Anti-Corruption Legislative Framework**

*The following is an informal tool used by the GOPAC Secretariat to outline the areas of legislation (and equivalent authoritative rules) shaping governance. The numbers in parentheses identify UNCAC articles that relate to this framework.*

|   |   |
|---|---|
| <b><u>Criminal (and related Enforcement) Law</u></b>                      |   |
|   | Criminal law (15 to 36)   |
|   | Police and prosecution: (11)  |
|   | Appointment of judges: judicial independence: (11)  |
| <b><u>Electoral Law</u></b>   |   |
|   | Voter access to candidate information and voting  |
|   | Multi-party options   |
|   | Fair party/candidate funding/spending   |
|   | Election management and oversight   |
| <b><u>Transparency, Citizenship Rights, and Media</u></b>                 |   |
|   | Access to government information: (6, 9, 10, 13)  |
|   | Communication of citizen rights and public services   |
|   | Redress procedures  |
|   | Media independence  |
| <b><u>Parliamentary Oversight Framework</u></b>                           |   |
|   | Government financial admin: consolidated budget, procurement, accounting and reporting, independent audit: (5, 6, 7, 9, 10) |
|   | Public service: appointment, compensation, accountability: (7, 8)   |
|   | Parliamentary procedures for parliamentary oversight: (5, 6, 10)  |
|   | Parliamentary procedures for preparing budgets and granting supply  |
|   | Parliamentary procedures for enacting legislation   |
|   | Parliamentary conduct   |
| <b><u>Governance Provisions in Other (Socio-Economic) Legislation</u></b> |   |
|   | Governance provisions in socio-economic legislation (anti-money laundering, asset recovery): (14, 31, 51-57)                |
|   | Potential for “economic rent” in socio-economic legislation   |
|   | Incentives related to the “underground economy”   |