

Parliamentary Immunity

Context

Parliamentarians enable the will of a nation through three key roles: legislation, parliamentary oversight and representation of citizens. To carry out these roles they are however typically provided with a degree of immunity from certain legal actions to protect them from improper or excessive external influences. Such immunity is sometimes abused when parliamentarians are protected from criminal investigation and prosecution. And, even where not abused, it may reduce public trust in parliamentarians because the parliamentary immunity mechanism, as a contribution to democratic government, is not well understood.¹

There are two main expressions of parliamentary immunity: in the Westminster model, it is commonly associated with the freedom of speech; and, in the French model it also includes freedom from arrest. ²Freedom of speech is often termed *non-liability* or *non-accountability*. Freedom from arrest is generally referred as *inviolability*. In 2006 at the Arusha Conference, the Global Organization of Parliamentarians Against Corruption (GOPAC) supported the OSCE Parliamentary Assembly resolution for a limiting approach to immunity.

GOPAC efforts on a limiting approach to immunity are set in the context of the broader initiative to support the United Nations Convention Against Corruption (UNCAC) as illustrated by decisions at various conferences and events.

- In Arusha in 2006 GOPAC established a Global Task Force on the UNCAC
- Later that year, in December 13 2006, at the Conference of State Parties at Dead Sea, Jordan GOPAC and its participating members supported the enhancement of “legitimacy, credibility, and standards of integrity of Parliaments and parliamentarians in their fight against corruption...and *more balanced parliamentary immunity regimes.*” ³
- In January 2008, at the UNCAC Conference of the States Parties in Bali, GOPAC and its regional chapters recognized that parliaments and parliamentarians are essential in the fight against corruption.

The GOPAC approach therefore promotes balanced parliamentary immunity regimes and better ethics practices as part of the efforts to combat corruption. Both immunity and ethics are now the focus of the GOPAC Parliamentary Immunity and Parliamentary Ethics Global Task Forces. Furthermore, in June 2008, GOPAC and its Latin American chapter sponsored a workshop of parliamentarians and experts to review a number of immunity practices among participating countries, typically those regarding inviolability. Participating parliamentarians examined the feasibility of initiating corrective action.⁴ Participants noted that reforming immunity might best be pursued in the context of broader parliamentary reform initiatives in the region.

¹ Transparency International Barometer Report 2007

² <http://www.gopacnetwork.org/Docs/Global/IPU%20-%20UNDP%20Immunity%20Paper.pdf>

³ Declaration Forum for Parliamentarians Conference of State Parties
<http://www.gopacnetwork.org/Docs/Jordan/PARLIAMENTARY%20ACTION%20ITEMS.pdf>

⁴ The work was supported by USAID and the Andean Parliament.

Position Statement

- The legitimate purpose of parliamentary immunity is to allow legislators to perform their parliamentary legislative, oversight and representation roles without fear of criminal or civil sanctions, including those that might be politically motivated.
- Freedom of expression and vote (non-liability) are essential rights and duties of parliamentarians in democratic societies. The use of freedom of expression for defamatory purposes should be discouraged.
- Freedom from arrest – inviolability – is only justifiable where it is used to protect the effectiveness of parliament, as a corporate body that reflects the electoral distribution of majorities and minorities from politically motivated prosecution.⁶ Inviolability is not justifiable as a personal privilege, and should not shield criminal acts as defined in national laws and multilateral international and regional anti-corruption treaties. It may provide parliamentarians with protection in countries where there are doubts about the impartiality of the judiciary system and the courts, or where the legislature is seen as dominated by an over-powerful executive.
- Parliaments should limit parliamentary immunity to the electoral term and to the parliamentary precinct, unless there are clearly justified special reasons for extension in a particular country.
- Institutional public outreach should be encouraged: the general public should be informed and educated about the provisions on parliamentary immunity and its legitimate purpose.
- Where the investigation of a parliamentarian requires authorization from Parliament, there should be clear parameters to ensure a depoliticized process to protect a member from politically motivated prosecutions while at the same time ensuring parliamentarians are held accountable before the law without delay.

Resolution

Aware of the above Context and GOPAC Position Statement, GOPAC resolves to:

- call upon its members and chapters where trust in parliamentarians is seen an impediment to carrying out their democratic roles effectively:
 - to examine parliamentary immunity rules and practices;
 - for regional chapters to consider regional task forces to encourage corrective action collectively where immunity regimes are similar;
 - to inform citizens as to the essential reasons for an adjusted immunity regime; to document practices and lessons learned from initiatives on immunity; and
- direct the GOPAC Global Task Force to:
 - prepare informational material regarding effective parliamentary immunity regimes;
 - maintain an updated website on relevant information and lessons learned; and
 - seek to link research and guidance to that related to GOPAC's Parliamentary Ethics and Conduct work.