



Parliamentary Immunity and Democracy Development

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Practically all democracies provide for some sort of immunity from prosecution for members of the legislature.

This is to allow legislators to express themselves and adopt policies without fear of politically motivated retribution. However, broad protection from prosecution can allow legislators to engage in illicit behavior with impunity. Overly politicized legislatures, on the other hand, can override the legitimate protection immunity is supposed to provide. The manner in which democratizing countries design and apply parliamentary immunity, accordingly, has implications for the integrity of the democratic process, touching on appropriate checks and balances, control of corruption, and political legitimacy. It has become a focus of public debate, and often discontent, from Armenia to Zambia. As recently as July 2007, President Yushenko of Ukraine called on all political parties to renounce parliamentary immunity.

Parliamentary immunity has also become a focal point for international parliamentary associations. In April 2006, the Inter-Parliamentary Union completed a study on parliamentary immunity as part of the United Nations Development Programme Initiative on Parliaments, Crisis Prevention, and Recovery; in July 2006, the Organization for Security and Co-operation in Europe Parliamentary Assembly adopted a *Resolution on Limiting Immunity for Parliamentarians in Order to Strengthen Good Governance*,

Public Integrity and the Rule of Law; and in October 2006, the Global Organization of Parliamentarians against Corruption called for countries to examine procedures for waiving parliamentary immunity.¹

This brief highlights parliamentary immunity issues pertinent to developing democracies, using illustrations from the past decade, including research in Armenia, Ukraine, and Guatemala.² It argues that some form of parliamentary immunity is necessary to protect free speech and prevent undue influence by the executive branch. Moreover, legal restrictions on the scope of immunity will have limited effect on abuses unless they address larger issues related to the balance of powers, legislative ethics, and corruption. It concludes with recommendations aimed at establishing balanced immunity guidelines within an institutional context of accountability.

What Is Parliamentary Immunity?

Parliamentary immunity grants members of a legislature partial immunity from prosecution for civil or criminal offenses. Often, this immunity is addressed in a country's constitution and delineated in internal rules of procedure. Its purpose is to reduce the possibility of a member being pressured to

¹ Research for the latter effort was sponsored by the U.S. Agency for International Development (USAID); http://www.gopacnetwork.org/Programming/programming_PI_en.htm.

² Carmen Lane and Jeremy Kanthor of DAI researched parliamentary immunity systems for USAID in 2006 (paper currently under peer review); related research was conducted by Charlie Wise and Trevor Brown of Indiana University (Ukraine), Jack Bournazian (Armenia), and Nerea Aparicio (Guatemala).



change his or her official behavior (voting, policy orientation, exposure of government corruption) by threat of prosecution. Before prosecuting—or, in some cases, investigating—a member, the immunity must be removed, usually by a vote of the legislature itself.

Parliamentary immunity traditionally takes one of two forms. Countries such as the United States adopt a narrow scope, restricting protection to actions and statements undertaken in the legislator’s capacity as an elected representative. If a legislator engages in illegal activity outside his or her role as a member, he or she is subject to investigation, prosecution, trial, and punishment. Similarly, the British model—practiced in such countries as Armenia, Bangladesh, Liberia, Nepal, and Zimbabwe—protects legislators from civil actions (such as charges of slander and libel) arising from their official duties. The “Continental” model, based on the French system, provides deputies with broad immunity, including protection from civil and criminal prosecution inside and outside their roles as parliamentarians. Most developing democracies embrace a broad scope of immunity, presumably to protect the legislative institution and its members against the authoritarian abuses of the past.

Whether generally narrow or broad, each country’s system may have peculiarities related to how immunity is lifted, how investigations may be conducted (and by whom), and whether immunity may extend beyond a member’s mandate in the legislature.

Typical Abuses of Parliamentary Immunity

Corrupt politicians may use a seat in parliament to cloak illicit activities. In Armenia, there is a strong public perception that many members join the National Assembly to protect their corrupt business interests, a perception reinforced by the fact that despite numerous accusations of corruption against members, government officials have sought to lift immunity only twice since the democratic transition. The situation breeds cynicism: a 2003 poll by IREX/ProMedia found that 64 percent of Armenians would like to do away with parliamentary immunity.

In Ukraine, government official Pavlo Lazarenko, accused of corruption and money laundering, won a seat in parliament in 1998, reportedly to claim the shield of immunity. His supporters in parliament—backed by the executive—were able to vote down the first attempt to remove his immunity. After his transgressions became more obvious to the public and he lost the support of then-President Leonid Kuchma, a second attempt succeeded. He fled to the United States, where he was prosecuted. While serving his eight-year sentence in the United States, Lazarenko ran for and won another seat in the Ukrainian Parliament in 2006.

Peru, too, has seen allegedly corrupt government officials seeking to avoid prosecution by getting elected to Congress. In 2005–2006, the Congress tried to end this unintended use of immunity by ruling that immunity does not cover members for crimes committed prior to their election. The regulation remains contested in Congress, though, and subject to possible reversal.

A powerful executive may violate the letter or spirit of immunity to silence critics. In 2005, the Cambodian National Assembly lifted the parliamentary immunity of three opposition members accused of defaming the Chairman of the National Assembly and Prime Minister. While freedom of speech does not extend to slanderous remarks in many constitutions or immunity frameworks (including Ukraine, Yemen, Poland, Germany, Mali, Mozambique, Uruguay, and Guatemala), local and international human rights groups believed the Cambodian charges were effectively reprisals by the ruling party. Bowing to international and public pressure, the Assembly reinstated immunity for the three members a year later, halting their prosecution and allowing opposition leader Sam Raimy to return from exile.

In Ukraine in 2001, then-President Kuchma directed the Procurator General (head of prosecution) to ask that Parliament lift the immunity of Member of Parliament Yulia Tymoshenko, a former government official and vocal reformer. Ms. Tymoshenko called the charges a political reprisal for her plan to organize mass demonstrations demanding early presidential elections. At Kuchma’s

behest, the Procurator General arrested Tymoshenko before receiving Parliament’s consent to detain her (in apparent violation of the Constitution). Although this abuse of immunity protection occurred in an era of more dictatorial than democratic tendencies, the Procurator General’s office remains vulnerable to such political intimidation—an issue taken up by the Council of Europe as part of its reform effort in Ukraine.

Personalized politics often trump the legal definition or scope of immunity. In Armenia—which has a narrow immunity system—legal arguments by the prosecutorial arm of the executive branch to waive immunity of Assembly members tend not to focus on whether the alleged crimes fall within the scope of immunity but rather on the “seriousness” of the crime. For example, four opposition deputies participating in a 1996 rally against the government had their immunity challenged on the basis of the gravity of the charge (treason), regardless of whether the activities fell within their role as deputies. In this case, votes to waive or sustain immunity fell almost completely along party lines. Some progress seems to have occurred since: in October 2006, wealthy MP Hakob Hakobyan, under investigation for tax evasion, was charged with inciting a brawl that led to a gun battle. Despite his status as a member of the majority faction, Hakobyan’s immunity was lifted in a vote of 56 to 22 after extended debate but little defense from his own party. According to media sources, he subsequently cut a deal with the President’s office to avoid a prison sentence.³ He was, nevertheless, re-elected to parliament in 2007.

In Guatemala, Colombia, and Burundi, the Supreme Court rather than the legislature must lift a legislator’s immunity. This constitutional strategy to depoliticize immunity may avoid the pitfalls of legislative “self-policing,” but it does not guarantee an apolitical review of immunity. In Guatemala, for example, Congress is highly influential in selecting Supreme Court magistrates, many of whom feel indebted to a particular party or politician—and have voted accordingly on several cases of immunity.

Politicized judicial systems can undercut punishment of officials even when immunity is lifted. In a notorious 2001 case known as “Guatagate,” Guatemala’s politicized Supreme Court did remove the immunity of then-President of Congress General Rios Montt and 22 ruling party members accused of secretly reducing taxes on alcoholic and other beverages in exchange for kickbacks. Intense pressure from the media and non-governmental and human rights organizations succeeded in forcing the Supreme Court to act against its political patrons but despite the lifting of immunity, these individuals were not convicted—thanks to what many observers considered a compromised prosecutorial and court system.



Recommendations

Immunity systems offer important protections for members of opposition parties in democratizing societies. The abuse of these protections, however, threatens the integrity of often nascent legislative institutions and imperils democratization. While the instinct to end parliamentary immunity altogether is compelling, that option risks undermining a key role of the legislature: overseeing the executive branch. This role is especially relevant in political cultures where the autocratic urge to silence dissent remains strong. Accordingly, democracy reformers should focus on strengthening parliamentary immunity regulations with a holistic view that combines public education, clearly defined parameters, and safeguards to ensure a depoliticized process for lifting immunity and pursuing prosecution:

- In countries with pervasive corruption and weak checks and balances between branches of government, parliaments must do more to control members’ behavior so as to build public confidence in the legislature. For example, legislative reforms should promote **parliamentary codes of conduct**—publicized inside and outside of parliaments—to establish minimum standards of behavior for members. Similarly, legislatures should mandate **disclosure of assets and income** to narrow the scope for abusing immunity.

³ Radio Free Europe/Radio Liberty (www.armenialiberty.org)



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- Parliamentary leaders should develop procedures for **ethics investigations** to ensure these are depoliticized (such as through internal ethics committees or external ombudsmen) and that sanctions are enforced.
- Regional parliamentary organizations already promote model codes of conduct for government and parliamentary leaders. Moreover, political party institutes and international parliamentary networks have begun to lay out recommendations for **minimum immunity standards**. These efforts should be expanded and formalized to provide parliamentarians, civil society, and media with guidelines to identify abuses of immunity. Donors could provide additional resources to identify the need for stronger institutional **checks and balances** between the executive and legislature and to put immunity standards in context.
- Political parties should publicize **criteria for candidate selection** and promote rule changes that allow for **open party electoral lists** (so voters know the individuals as well as the parties they are voting for, including their record of integrity). This measure may make it more difficult for corrupt candidates seeking immunity to run for or win a seat.
- Media play an indispensable role in drawing attention to politically motivated investigations or to parliamentarians benefiting from the impunity provided by their positions. **Media-strengthening initiatives should train journalists on parliamentary immunity**, the rules and institutions involved, and how to pursue investigative journalism so they can bring corruption to light.
- Rule-of-law reforms should include political immunity considerations, especially defining the **roles and responsibilities of prosecutors**, advising governments

on how to **insulate legal decisions from political influences**, and **training members of parliament on how to enforce oversight of prosecutorial offices and courts**.

The role of immunity in a democracy is not to protect an individual legislator but to protect the legislative *institution*, on behalf of the people. Ultimately, for parliamentary immunity to be effective, key stakeholders—including the legislature, the public, and the government—must accept and internalize the true purpose of parliamentary immunity. A key role of the legislature is to serve as a check on the executive—often a new phenomenon in emerging democracies. This role requires adequate space for legislators to speak freely and to criticize policies and practices they deem counter to the public interest. This freedom, not cover for criminal activity, is the rationale for parliamentary immunity, and should be the focus of parliamentary immunity reforms.

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