

III. Position of witnesses before parliamentary committees

**Report prepared by Mr. Demaree J. B. RAVAL
(Philippines), adopted at the Seoul Session (April
1997)**

I. Preparatory statement

The topic for discussion entitled: "*Immunity of Witnesses Before Legislative Committees Conducting Investigations*" was chosen during the Autumn, 1992 Session in Stockholm. The topic and the first set of Questionnaires were submitted for discussion in the Spring 1993 Session in New Delhi. In the Spring 1994 Session in Paris, the topic was recast to "*Immunity of Witnesses Before Parliamentary Committees*" and the final set of Questionnaires was approved.

The first draft of the Report was submitted for discussion in the Autumn 1996 Session in Beijing. This second draft of the Report – being submitted for approval in the Spring 1997 Session in Seoul – now contains the revisions suggested during the Autumn 1996 Session and the inclusions introduced thereafter.

As a consequence of the revisions and inclusions, the Association agreed to change the topical title to: "*Position of Witnesses Before Parliamentary Committees.*"

Forty-one (41) member-parliaments submitted their answers, although not complete in all respects. Nonetheless, the answers given present a fairly representative number upon which the Rapporteur and the Association can make certain conclusions.

The Rapporteur is now ready to present the Report on the survey of answers. Be it noted that for clarity, conclusions are drawn after every presentation of the answers surveyed to specific questions propounded.

The Rapporteur expresses his heartfelt gratitude to the former Joint Secretary of the Association, Mr Crispin J Poyser, who effectively husbanded the

answers and made possible the translation into English of the answers originally given in French or Spanish.

II. Introduction of the topic

The Constitutions of certain democratic countries provide that "*No person shall be compelled to be a witness against himself*". This right has its roots in the Common Law and is based on humanitarian and practical considerations. It is humanitarian, because it is intended to prevent the State, with all its coercive powers, from extracting from the witness testimony that may convict him. Practical, on the other hand, because a person subjected to such compulsion is likely to perjure himself for his own protection.

In the exercise of its inherent power to conduct investigation on matters germane to the exercise of its powers, the Legislature in some jurisdictions may summon persons, not members of that body, as witnesses at any meeting or hearing of an investigating committee appointed by it with authority to hold, and otherwise compel the production of evidence on matters pertinent to the subject of inquiry. The Legislative branch could also probably exercise the power to punish witnesses for contempt, or to provide punishment for those who fail to obey such summons or refuse to testify.

An initial survey of different jurisdictions, conducted soon after this topic was chosen during the Autumn Session, 1992 in Stockholm, shows that witnesses appearing before parliamentary committees may refuse to answer questions on any of the following grounds:

- (1) That the committee has no power to make the specific investigation in the case of which he was summoned as a witness;
- (2) That a specific question put to him is not material or pertinent to the inquiry;
- (3) He may rely on the privilege as to confidential communication; or
- (4) That his testimony, though not exposing him to criminal prosecution, tends to disgrace him.

As legislatures can exercise these powers to an ever-increasing extent, it is appropriate for the Association to survey, therefore, the different jurisdictions of its member-parliaments, dealing with the privileges and protection of witnesses appearing before parliamentary committees conducting investigations.

III. Questionnaire

(as approved in the Spring 1994 Session in Paris)

I. Legal basis

1. Does your Constitution contain any witness protection clause, or privilege against self-incrimination?
2. Is there any general law in your jurisdiction which grants protection?
3. Is there any provision in the Rules of your legislature which grants protection?

II. Extent of protection

1. Who can grant protection? The entire legislature or a particular committee? If it is by a committee, which committee and what are the functions of that committee?
2. Does protection extend to
 - protection from use of testimony or evidence?
 - protection from criminal prosecution?
3. Can the grant of protection be withdrawn, and under what circumstances?
4. What is the duration of such protection?
5. Who may avail themselves of the protection?

III. Parliamentary investigations

1. What is the usual coverage of parliamentary investigations in your jurisdiction?
2. Can your parliamentary investigations examine private transactions?
3. What questions during parliamentary investigations can be considered pertinent or relevant? Who decides if it is pertinent or relevant?
4. Are there *in camera* parliamentary investigations?
5. At what stage in the investigations may protection be invoked and granted?
6. Can a parliamentary investigation cover a subject matter which is itself pending in a court of law?

7. Can (a) a witness or (b) an investigating magistrate, who has been subpoenaed decline to testify on the ground that his testimony will prejudice a pending court proceeding or a pending inquiry?
8. Are there any other categories of witnesses who are exempt from obeying a summons to attend an investigating parliamentary committee?

IV. Contempt and sanctions

1. (*Insofar as this has not already been answered in Section I above*) Is there any law or other provision which govern the circumstances in which sanctions may be applied to a witness before a parliamentary investigation?
2. By whom can any process of applying sanctions be initiated or carried out?
3. What steps can be taken to compel a witness to attend a parliamentary investigation? What sanctions can be imposed on a witness who refuses to attend?
4. What steps can be taken to compel a witness to answer questions posed during a parliamentary investigation? What sanctions can be imposed on a witness who refuses to answer questions?
5. Is holding a witness in contempt one of the sanctions?
6. Is arresting the witness and placing him in detention one of the sanctions?
7. Where a witness is held to be in contempt what is the usual mode of punishment? And what is the duration of the sanction?

IV. Survey and discussion

I. Legal basis

1. *Does your Constitution contain any witness protection clause, or privilege against self-incrimination?*

<i>Country</i>	<i>Yes</i>	<i>No</i>
Algeria		x
Australia	x	
Austria	x	
Belgium	—	—
Brazil		x

Constitutional and Parliamentary Information

28

<i>Country</i>	<i>Yes</i>	<i>No</i>
Bulgaria		x
Canada	x	
Czech Republic	x	
Denmark	--	--
Estonia	x	
European Parliament	x	
Finland	--	--
France		x
Germany	x	
Greece		x
India	x	
Ireland		x
Israel		x
Italy		x
Japan	x	
Kenya		x
Republic of Korea		x
Lithuania	x	
F. Y. R. of Macedonia		x
Mali		x
Netherlands	x	
New Zealand		x
Niger		x
Norway		x
Philippines	x	
Peru		x
Poland		x
Portugal		x
Romania	x	
Spain	x	
Sudan		x
Switzerland		x
United Kingdom	--	--
United States	x	
Zambia		x
Zimbabwe		x

Most of the member-parliaments who responded state that their Constitutions do not contain any witness protection clause or privilege against self-incrimination. Some among them, (e.g., Kenya and Zimbabwe), however,

declared that their Constitutions mandate the enactment of laws setting out the privileges and protection of witnesses appearing before the assembly or any of its committees, or delegate the power to grant such privileges and protection to an act of parliament. Under the German Constitution the Rules of Criminal Procedure apply *mutatis mutandis* to the taking of evidence by parliamentary committees of inquiry; hence, every witness has a right to refuse to testify with respect to questions which would render him liable to criminal prosecution.

The question is inapplicable to the United Kingdom since it does not have a codified Constitution.

The member-parliaments who answered in the affirmative varied in the kind of protection accorded to the witnesses under their Constitution. The usual protection given to a witness appearing before an investigating body is the right not to be compelled to testify against himself, or more popularly known as the privilege against self-incrimination. This is prevalent in the United States, Philippines, Germany, India, Japan, Lithuania, Netherlands and Spain. Canada and Australia, whose system of government is closely similar to that of the United Kingdom, grant protection to a witness from the use in any criminal prosecution of the testimony or evidence he may have given before a parliamentary committee or, more broadly, protection from criminal prosecution for giving such testimony or evidence.

In the case of Finland and Denmark, the question is considered irrelevant since neither their parliaments nor any of their parliamentary committees have the power to summon a person to appear as a witness. In Finland, persons representing necessary spheres of interest can only be heard as experts and not as witnesses.

2. *Is there any law in your jurisdiction which grants protection?*

Country	Yes	No
Algeria		x
Australia	x	
Austria	x	
Belgium	x	
Brazil		x
Bulgaria	x	
Canada	x	
Czech Republic	x	
Denmark	—	—
Estonia	x	

Constitutional and Parliamentary Information

30

<i>Country</i>	<i>Yes</i>	<i>No</i>
European Parliament	x	
Finland	—	—
France		x
Germany	x	
Greece	x	
India		x
Ireland		x
Israel	x	
Italy	x	
Japan	x	
Kenya	x	
Republic of Korea	x	
Lithuania	—	—
F.Y.R. of Macedonia	—	—
Mali	x	
Netherlands		x
New Zealand	x	
Niger		x
Norway		x
Philippines	x	
Peru		x
Poland		x
Portugal	x	
Romania	x	
Spain		x
Sudan	x	
Switzerland	x	
United Kingdom	x	
United States		x
Zambia	x	
Zimbabwe	x	

It is notable that almost all of the member-parliaments who answered in the negative to the preceding question have passed legislations that grant protection or immunity to witnesses appearing before the courts or certain investigatory bodies. In the case, for example, of Sudan, the Evidence Act and Criminal Procedure Code govern the matter of protection.

Again, the protection accorded to a witness differs from country to country. This time, however, the grant of protection is more prevalent mostly in coun-

tries such as Australia, Canada, Kenya, Republic of Korea, Philippines and Zimbabwe. In the case of Bulgaria and Switzerland, their laws grant protection only to the Members of their parliament.

On the part of Belgium and Israel, their laws provide only for the right against self-incrimination of witnesses.

Under the laws of Italy, a person who gives significant assistance to judicial authorities particularly in cases of terrorism and organised crime is entitled to a reduction of penalty. This principle is also applicable to witnesses appearing before parliamentary committees.

On the other hand, in India, Netherlands, Spain and the United States, while it is indicated that they do not have laws granting protection, the protection of witnesses particularly the right against self-incrimination has already been embodied in their respective Constitutions.

In Peru, there is only certain regulation about professional reserve, mainly in cases of physicians, lawyers, journalists etc, which can be understood as a privilege against self-incrimination and which is contained in the penal laws.

The laws of Spain do not generally grant protection except only in relation to certain crimes such as terrorism, armed activity or rebellion.

In sum, it can be concluded that the right against self-incrimination is generally provided for in the Constitutions of countries. Protection is generally granted by laws enacted by their parliaments.

3. *Is there any provision in the rules of your Legislature which grants protection?*

<i>Country</i>	<i>Yes</i>	<i>No</i>
Algeria		x
Australia		x
Austria	x	
Belgium	x	
Brazil		x
Bulgaria	x	
Canada		
Czech Republic	x	
Denmark	Not applicable	
Estonia		x
European Parliament	x	

Constitutional and Parliamentary Information

32

<i>Country</i>	<i>Yes</i>	<i>No</i>
Finland	Not applicable	
France		x
Germany		x
Greece	x	
India		x
Ireland		x
Israel		x
Italy	x	
Japan		x
Kenya		x
Republic of Korea		x
Lithuania		x
F.Y.R. of Macedonia	Not applicable	
Netherlands		x
New Zealand		x
Niger		x
Norway		x
Philippines	x	
Peru		x
Poland		x
Portugal	x	
Romania	x	
Spain		x
Sudan		x
Switzerland		x
United Kingdom	x	
United States		x
Zambia	x	
Zimbabwe	x	

Apart from their laws or statutes, the rules of the parliaments of Italy, United Kingdom, Zambia and Zimbabwe grant protection to persons or witnesses appearing before parliamentary committees. In the United Kingdom, a witness has no privilege against self-incrimination and cannot refuse to answer questions; however, both Houses of Parliament consider the bringing of legal proceedings against any person on account of any evidence which he may have given to the House or to one of its Committees as a breach of parliamentary privilege and the courts are likely to refuse to entertain such actions if the Parliament considers such as a breach of privilege. A committee in the Italian

Parliament can impose "functional secrecy" on the evidence submitted by a witness to the committee, i.e., such evidence cannot be used against the said witness or against any other person. The rules of the Bulgarian legislature grant protection to the members of parliament only.

As regards the rules of the legislatures of Belgium and the Philippines, a witness appearing before the parliamentary committees is entitled to invoke the privilege against self-incrimination. Their rules are silent as to the grant of protection. Under Philippine laws, however, a witness may be granted protection from criminal prosecution.

Nonetheless, while the rules of the legislature of most of the countries listed in the above tabulation (Australia, Canada, India, Israel, Japan, Kenya, Republic of Korea, Lithuania, Netherlands, New Zealand, Spain, Sudan and United States) may not contain any provision granting protection to witnesses, their constitutions or laws, as indicated in the two preceding questions, grant protection or the privilege against self-incrimination to witnesses appearing before the parliamentary committees. On the other hand, the Rules of Procedure of the German Bundestag does not contain any witness protection clause, because witness protection is covered by federal law, which takes precedence over the Rules of Procedure.

The above question is inapplicable to Denmark and Finland, whose parliaments are not empowered to summon witnesses to appear before their parliamentary committees.

II. Extent of protection

1. *Who can grant protection? The entire legislature or a particular committee? If it is by a committee, which committee and what are the functions of that committee?*

<i>Country</i>	<i>Legislature</i>	<i>Committee</i>
Algeria	Not applicable	
Australia	—	—
Austria		x (Committee on Protection)
Belgium	Not applicable	
Brazil	Not applicable	
Bulgaria	Not applicable	
Canada	(automatic by virtue of parliamentary privilege)	

Constitutional and Parliamentary Information

34

<i>Country</i>	<i>Legislature</i>	<i>Committee</i>
Czech Republic		x (Parliamentary Investigative Committee)
Denmark	Not applicable	
Estonia	Not applicable	
European Parliament		x
Finland	Not applicable	
France	Not applicable	
Germany		x
Greece		x
India	(granted under the Constitution)	
Ireland	Not applicable	
Israel	Not applicable	
Italy		x
Japan		x
Kenya	(automatically covered by virtue of a law)	
Republic of Korea		x
Lithuania	Not applicable	
F. Y. R. of Macedonia	—	—
Mali	—	—
Netherlands	Not applicable	
New Zealand	(granted by law)	
Niger	—	—
Norway	(no one can grant protection)	
Philippines/H. Reprs.	Not applicable	
Philippines/Senate		x
Peru	(none can grant protection)	
Poland	Not applicable	
Portugal		x
Romania	(granted under the Constitution)	
Spain	Not applicable	
Sudan		x
Switzerland	(all committee sessions are confidential and unpublished)	
United Kingdom	(protection is automatic under the Bill of Rights)	
United States		x

<i>Country</i>	<i>Legislature</i>	<i>Committee</i>
Zambia	(Speaker in case of a witness before (Chairman in case of a Committee) the Assembly)	
Zimbabwe		x

The power to conduct investigation is generally lodged in the parliamentary committees. Consequently, the power to grant protection is usually entrusted to the committee conducting the investigation. This is explicit in the case of the legislative or parliamentary set-up of Germany, Italy, Japan, Republic of Korea, Philippines, Sudan, United States, Zambia and Zimbabwe. In the Philippine Senate, the grant of protection is merely recommendatory; thus, any standing committee may recommend a witness to avail himself of the "Witness Protection Program" provided for by law. Strictly, there is no direct bestowal of the power to grant protection. In the United States Congress, only the privilege against self-incrimination may be asserted by a witness and the same may be granted by the full House or the investigating committee, but the effect is only the non-giving of the testimony.

By contrast, in the case of Australia, Canada, Kenya, New Zealand and United Kingdom, protection need not be granted. Witnesses appearing before the committees or the entire parliament or legislature, as the case may be, are automatically entitled to protection by virtue of statutory enactment.

In other countries such as Belgium, India, Israel, Lithuania, Netherlands and Spain, while their legislatures or the latter's standing committees are not empowered to grant protection, witnesses appearing therein are not without protection. Their constitutions or laws grant such witnesses the right against self-incrimination. In the case of Switzerland all committee sessions are held confidential and unpublished. In Austria, requests for consent to the prosecution of a parliamentarian by an authority must be forwarded by the Committee on Protection which in turn submits a report to the parliament in time for it to vote on them not later than the penultimate day of the eight-week period.

On the contrary, there is no grant of protection or the privilege against self-incrimination to witnesses spoken of in the legislative set-up of Algeria, France, Niger, Norway, and Peru. In Bulgaria, nothing also suggests any grant of such rights to a witness, protection being granted only to the members of the parliament.

Constitutional and Parliamentary Information

36

2. Does protection extend to:

Protection from use of testimony or evidence? Protection from criminal prosecution?

<i>Country</i>	<i>Use of Testimony/ Evidence</i>	<i>Criminal Prosecution</i>
Algeria	Not applicable	
Australia	x	
Austria	x	x
Belgium	x	
Brazil	Not applicable	
Bulgaria	Not applicable	
Canada	x	x
Czech Republic	x	x
Denmark	Not applicable	
Estonia	Not applicable	
European Parliament	x	
Finland	Not applicable	
France	Not applicable	
Germany	x	
Greece	x	
India	x	
Ireland	Not applicable	
Israel	Not applicable	
Italy	x	
Japan	x	
Kenya	x	x
Republic of Korea	x	x
Lithuania	Not applicable	
F. Y. R. of Macedonia	—	—
Mali	—	—
Netherlands	Not applicable	
New Zealand	x	
Niger	—	—
Norway	Not applicable	
Philippines/H. Reprs.	Not applicable	
Philippines/Senate	x	x
Peru	Not applicable	
Poland	Not applicable	
Portugal	x	x
Romania	x	x

<i>Country</i>	<i>Use of Testimony/ Evidence</i>	<i>Criminal Prosecution</i>
Spain	Not applicable	
Sudan	—	x
Switzerland	—	—
United Kingdom	x	x
United States	x	x
Zambia	x	x
Zimbabwe	—	—

In countries like Canada, Kenya, Republic of Korea, United Kingdom, Zambia, whose constitutions, laws or rules of the legislature expressly grant protection to a witness appearing before the assembly or a committee thereof, such protection extends to both use of testimony or evidence and criminal prosecution.

On the other hand, in countries like Belgium, Germany, India, Japan and United States where only the right against self-incrimination is granted to a witness, the said protection extends only to the use of testimony or evidence. But in the Philippines, particularly the Senate, where a witness avails himself of the Witness Protection Program provided under the law and which has been duly approved, the protection also extends to both as stated above.

In the case of Sudan, only protection from criminal prosecution is extended.

3. *Can the grant of protection be withdrawn, and under what circumstances?*

<i>Country</i>	<i>Yes</i>	<i>No</i>
Algeria	Not applicable	
Australia		x
Austria	x	
Belgium	Not applicable	
Brazil	Not applicable	
Bulgaria	Not applicable	
Canada	x	
Czech Republic	Protection from Criminal prosecution cannot be withdrawn/protection from use of testimony can be withdrawn	
Denmark	Not applicable	
Estonia	Not applicable	
European Parliament	Not applicable	

Constitutional and Parliamentary Information

38

<i>Country</i>	<i>Yes</i>	<i>No</i>
Finland	Not applicable	
France	Not applicable	
Germany	x	
Greece	—	—
India	—	—
Ireland	Not applicable	
Israel	Not applicable	
Italy	—	—
Japan	x	
Kenya	x	
Republic of Korea	x	
Lithuania	Not applicable	
F.Y.R. of Macedonia	—	—
Mali	—	—
Netherlands	Not applicable	
New Zealand	(Currently a matter before the Privy Council)	
Niger	—	—
Norway	Not applicable	
Philippines	x	
Peru	Not applicable	
Poland	Not applicable	
Portugal	—	—
Romania	x	
Spain	Not applicable	
Sudan		x
Switzerland	—	—
United Kingdom		x
United States	(No express provision on this subject)	
Zambia	x	
Zimbabwe	x	

In the parliament or legislature of Canada, Kenya, Republic of Korea, Zambia and Zimbabwe, the grant of protection to a witness may be withdrawn where such witness gives a false statement or evidence or otherwise commits perjury. In Germany, the witness has to substantiate the reason for his refusal to testify.

A different ground is provided in the case of the Japanese parliament, that is, where the grant of the protection is not based on justifiable grounds.

In the Philippine Senate, where protection has been provided to a witness, the same may be withdrawn where there is a breach of the terms for the grant thereof.

On the contrary, the protection extended to a witness appearing before the parliaments of Australia and United Kingdom is absolute. The grant of such protection cannot be withdrawn. In the Czech Republic, the grant of protection from criminal prosecution cannot be withdrawn. The grant of protection from use of testimony or evidence, however, can be withdrawn in case the ground for the security of the witness' appearance and for separate administration of the witness' personal data vanishes.

4. *What is the duration of such protection?*

<i>Country</i>	<i>Duration</i>
Algeria	Not applicable
Australia	No expiration
Austria	Dependent on membership of the Nationalrat or Bundesrat
Belgium	Not applicable
Brazil	Not applicable
Bulgaria	Not applicable
Canada	Unlimited
Czech Republic	Unlimited
Denmark	Not applicable
Estonia	Not applicable
European Parliament	—
Finland	Not applicable
France	Not applicable
Germany	As long as the reasons continue to apply
Greece	—
India	—
Ireland	Not applicable
Israel	Not applicable
Italy	—
Japan	As long as witness is under request to give testimony
Kenya	Absolute unless withdrawn
Republic of Korea	No fixed duration

Constitutional and Parliamentary Information

40

<i>Country</i>	<i>Duration</i>
Lithuania	Not applicable
F.Y.R. of Macedonia	–
Mali	Linked to a person's status as a Member of Parliament
Netherlands	Not applicable
New Zealand	Permanent
Niger	–
Norway	Not applicable
Philippines/H. Reprs.	Not applicable
Philippines/Senate	Lasts until breach of terms or refusal to testify
Peru	Not applicable
Poland	Not applicable
Portugal	–
Romania	As long as the duration of the MP's mandate
Spain	Not applicable
Sudan	As long as the justification behind it continues
Switzerland	–
United Kingdom	Unlimited
United States	No express limitation
Zambia	Indefinite
Zimbabwe	As long as the matter is considered worthy of protection

The duration of the protection granted to a witness is generally indefinite or has no limit. Obviously, this may be due to the inherent nature of the protection itself. Otherwise, it will not serve its purpose, more especially if it is placed merely for a short duration of time where the witness in such a case would likely hesitate to testify especially where he may be put in jeopardy.

However, the duration of such protection may be terminated as when the grant thereof can be withdrawn on certain grounds.

5. *Who may avail themselves of the protection?*

<i>Country</i>	<i>Who</i>
Algeria	Not applicable
Australia	Members of Parliament and witnesses appearing
Austria	Parliamentarians

<i>Country</i>	<i>Who</i>
Belgium	Not applicable
Brazil	Not applicable
Bulgaria	Not applicable
Canada	All persons taking part in parliamentary proceedings
Czech Republic	The witness
Denmark	Not applicable
Estonia	Not applicable
European Parliament	Members of the Parliament
Finland	Not applicable
France	Not applicable
Germany	All witnesses summoned or other persons affected
Greece	Any witness; Members of Parliament
India	Persons taking part in proceedings of committees
Ireland	Not applicable
Israel	Not applicable
Italy	Witness giving evidence and persons affected
Japan	Witness requested to give testimony
Kenya	All witnesses
Republic of Korea	Committee concerned or the National Assembly
Lithuania	Not applicable
F. Y. R. of Macedonia	—
Mali	Members of Parliament; judges
Netherlands	Not applicable
New Zealand	Members, Officers of the House and Witnesses
Niger	—
Norway	Not applicable
Philippines/H. Reps.	Not applicable
Philippines/Senate	Any person who has knowledge of commission of crime
Peru	None
Poland	Not applicable
Portugal	—
Romania	Members of Parliament; President of the Republic
Spain	Not applicable
Sudan	Doctors; solicitors; government officials; other witnesses
Switzerland	—
United Kingdom	Any witness invited to give evidence

Constitutional and Parliamentary Information

42

<i>Country</i>	<i>Who</i>
United States	A witness may assert privilege against self-incrimination
Zambia	All witnesses before the Assembly or Committee
Zimbabwe	Any person appearing in a Committee

The parliaments or legislatures of the different countries are almost similar in their answer: protection may be availed of by the persons or witnesses who are called to appear and give their testimonies and/or submit evidence before the assembly or a committee thereof requiring their appearance.

In Sudan, the protection may be availed of by medical doctors (in relation to communication received from their patients); by solicitors (with respect to communication from their clients); by government officials entrusted with state secrets; and, generally, by witnesses being asked incriminating questions.

III. Parliamentary investigation

1. *What is the usual coverage of parliamentary investigations in your jurisdiction?*

<i>Country</i>	<i>Coverage</i>
Algeria	Matters of general interest
Australia	No restriction on the subject
Austria	–
Belgium	Wide, limited only by principle of separation of powers
Brazil	All matters relating to the competencies of the Union, States or the Communes
Bulgaria	Positive regulation in the Constitution-Rules and Procedure
Canada	Departmental activities and subject matter referred by the House
Czech Republic	Bankruptcy of Credit and Industrial Bank, Privatization of the steel company
Denmark	Not applicable
Estonia	Matters of general interest
European Parliament	–
Finland	Not applicable
France	Specified matters or the management of public services and state industries

<i>Country</i>	<i>Coverage</i>
Germany	Government and administration, and parliamentary matters
Greece	Questions of public interest
India	Specified in the terms of reference of the Committee
Ireland	Evidence upon any Bill or matter, Select Committee
Israel	Traffic accidents, polygraph, Bedouin affairs
Italy	Matters of public interest
Japan	All the fields of government
Kenya	Matters falling within the purview of the Assembly
Republic of Korea	Exempts private matters, pending court proceedings and pending inquiry
Lithuania	Economic and office-related fraud of state officers
F.Y.R. of Macedonia	–
Mali	No limit on the scope
Netherlands	Not very often held – five investigations since 1994
New Zealand	Matters related to subject areas of each Committee
Niger	All areas of national life
Norway	Activities of the public administration
Philippines	Any matter already within its jurisdiction or in connection with law or bills
Peru	Any subject of public interest
Poland	Matters under jurisdiction of the Parliament
Portugal	Matters relating to government and administration
Romania	Matters related to subject areas of each committee
Spain	Any matter of public interest and media and press coverage
Sudan	Issues of public concern and which are federal in nature
Switzerland	Developments concerning federal administration
United Kingdom	Any matter except sub judice
United States	Any subject where legislation could be had
Zambia	Through sessional/select committees
Zimbabwe	Any matter relating to government expenditure

In general, the usual coverage of parliamentary investigations of most of the parliaments of different countries extends to matters or subjects involving

Constitutional and Parliamentary Information

44

public or general interest of the people. In some countries, however, a broader coverage is provided. For instance in Australia, the subject which could be covered by parliamentary investigations is generally unrestricted. This is also true in the case of Belgium, Philippines, United Kingdom and United States where only a relatively few restrictions limit the scope of parliamentary investigations. In other countries such as Bulgaria, Canada, Israel, Lithuania and Zimbabwe, the coverage of parliamentary investigations is confined only to specified subjects.

2. *Can your parliamentary investigations examine private transactions?*

<i>Country</i>	<i>Yes</i>	<i>No</i>
Algeria		x
Australia	x	
Austria	x	x
Belgium	x	
Brazil	x	
Bulgaria	x	
Canada	x	
Czech Republic	x	
Denmark	Not applicable	
Estonia	x	
European Parliament	—	—
Finland	Not applicable	
France	x	
Germany	x	
Greece	x	
India	x	
Ireland	x	
Israel	x	
Italy	x	
Japan		x
Kenya		x
Republic of Korea	x	
Lithuania	—	—
F.Y.R. of Macedonia	—	—
Mali	x	
Netherlands	x	
New Zealand	x	
Niger	x	
Norway	x	

Position of witnesses before parliamentary committees

45

<i>Country</i>	<i>Yes</i>	<i>No</i>
Philippines		x
Peru		x
Poland	x	
Portugal	x	
Romania	x	
Spain	x	
Sudan		x
Switzerland	x	
United Kingdom	x	
United States		x
Zambia		x
Zimbabwe	x	

As can be seen in the above tabulation, a great majority of the countries indicates a more liberal extent of parliamentary investigations to examine private transactions. But this is not even absolute. There are still certain restrictions. For instance, in United Kingdom and Italy, private transactions can be inquired only where it is relevant to the subject matter or inquiry. In Norway, private transactions can be examined if it is a necessary consequence of the committee's investigation of the public administration.

On the part of Canada, parliamentary investigations may cover private transactions if the same concern issues of a federal nature or, in the case of Zimbabwe, if it relates to public bodies or public expenditure.

As regards India in its parliamentary investigations, private transactions may be examined if such transactions are irregular and flout any law of the land; whereas in Belgium, so long as private transactions do not come within the field of professional privilege of secrecy, they can be examined.

3. (a) *What questions during parliamentary investigations can be considered to be pertinent or relevant?* (b) *Who decides if they are pertinent or relevant?*

<i>Country</i>	<i>(a)</i>	<i>(b)</i>
Algeria	(not dealt with)	
Australia	—	Committees but finally by the body Committee
Austria	—	
Belgium	—	Committee Chairman

Constitutional and Parliamentary Information

46

<i>Country</i>	<i>(a)</i>	<i>(b)</i>
Brazil	—	The Chairman of the Committee or the rapporteur of the Committee
Bulgaria	—	Committee
Canada	All questions unless objected	Committee
Czech Republic	Not dealt with	Committee
Denmark	Not applicable	Not applicable
Estonia	—	Committee
European Parliament	Not dealt with	—
Finland	Not applicable	Not applicable
France	—	Committee
Germany	All pertinent questions	Committee
Greece	Questions of interest to the Committee	Committee
India	—	Committee Chairman
Ireland	Matters which are intra-vires	Committee Chairman
Israel	—	Committee
Italy	—	Committee
Japan	Within jurisdiction of Committee	Committee
Kenya	All except to secrets of government	Speaker
Republic of Korea	—	Presiding Officer
Lithuania	—	—
F.Y.R. of Macedonia	—	—
Mali	—	Committee
Netherlands	—	Committee
New Zealand	Within the boundaries of the Standing Orders	Chairman of Committees
Niger	Any question establishing truth	Committee
Norway	—	Committee
Philippines	Pertinent to subject	Committee
Peru	—	No specific rule
Poland	All positions	Committee Chairman
Portugal	Questions regarding legality of transactions	—
Romania	—	Committee
Spain	Related to the subject	President of Special Committee

Country	(a)	(b)
Sudan	Varies from one case to another	Speaker
Switzerland	–	Fixed by terms of reference
United Kingdom	–	Committee Chairman
United States	Connected and relevant to topic	Investigating Committee
Zambia	Related to the administration of Government	
Zimbabwe	Appropriate to issue	Committee Chairman

The pertinency or relevancy of questions during parliamentary investigations is almost invariably decided by the committee conducting the investigation or the chairman of such committee. Only few countries answered directly as to what questions during parliamentary investigations can be considered to be pertinent or relevant. Obviously, however, this can be understood to mean as those questions having to do or in connection with the subject of investigation.

4. *Are there in camera parliamentary investigations?*

Twenty-six of the forty-one parliaments report that they have *in camera* parliamentary investigations. In some parliaments, however, *in camera* parliamentary investigations are limited to certain types of sessions. In the United States, for instance, *in camera* parliamentary investigation is limited to the executive session in considering nominations and treaties which are placed on the Executive Calendar. In Canada as well as in Sudan, *in camera* parliamentary investigations may be held only for reasons of national security or when the public interest so requires. In Spain and the Czech Republic proceedings of the committees are never open to the public in general; in the United Kingdom committees always deliberate in private and may take evidence in private. In Germany, exceptions are made whenever the protection of State secrets or personal data is of prime importance.

In some Parliaments (Norway, Zambia, Zimbabwe) all parliamentary investigations are held *in camera*; while Israel reports that majority of parliamentary investigations are open to the public.

On the other hand, four assemblies (Belgium, Switzerland, Ireland, Italy) report that they do not have *in camera* parliamentary investigations. In Finland, Lithuania, Denmark and Algeria, protection of witnesses is not guaranteed, thus they do not consider the question relevant.

5. *At what stage in the investigation may protection be invoked and granted?*

In most parliaments in countries where protection of witnesses is available, including the Philippines, Kenya, New Zealand, Romania, Mali, Poland, Zambia and Canada, such protection may be invoked and granted at any time during the proceedings. In the United States, the protection may be invoked and granted at the time the question is asked to the witness. In Japan the witness may reject to make testimony on justifiable grounds. In Australia the witness may invoke protection throughout his testimony, while in the Republic of Korea the witness enjoys protection so long as his testimony may be availed of only for the length of time the witness takes part in a parliamentary proceeding. Once the witness leaves the proceeding or meeting, protection is no longer applicable. In Germany, it may be invoked during any examination of the witness or the subject under investigation.

Several parliaments do not grant protection to witnesses and thus they consider the question not applicable (Spain, Norway, Algeria, Belgium, Israel, Peru, Finland, Lithuania, France, Denmark, Ireland). Six assemblies did not reply.

However, in Brazil parliamentary protection applies only to a member of parliament and such protection may be invoked at any time he considers his prerogatives to be threatened.

6. *Can parliamentary investigations cover a subject matter which is pending in a court of law?*

Fifteen parliaments (Philippines, Republic of Korea, Kenya, Zambia, Norway, India, United Kingdom, France, Peru, Romania, Mali, Zimbabwe, Sudan, Netherlands, Niger) report that parliamentary investigations cannot cover subject matters which are pending in their courts of law.

In eighteen parliaments (United States, Spain, the Czech Republic, Ireland, Estonia, Australia, New Zealand, Canada, Belgium, Brazil, Portugal, Poland, Switzerland, Israel, Bulgaria, Italy, Japan and Germany) parliamentary investigations may cover a subject matter which is pending in courts of law. In Canada, the members of the House of Commons and its committees agree not to raise matters that have been put before a court. The purpose of this convention, called *sub judice*, is to protect the parties before and during the trial and the persons who may be affected by the outcome of a judicial inquiry. It should also be noted that as master of its own procedure, the House of Commons in Canada may always rule in favour of a debate on a matter

before the courts and against the convention where that matter appears vital to the country and for the proper operation of the House. In Japan, investigations can cover the subject matter which is pending in a court of law when the purpose of the investigation is different from that of the trial (for example, when an investigation is carried out with a purpose related to legislative power or administrative power). In Brazil parliamentary investigations covering a subject matter which is pending in a court of law do not have any suspensive effect or any influence on the legal proceedings. In Ireland there is a two-fold responsibility on the Oireachtas and its Committees: to avoid the risk of prejudicing judicial proceedings and to observe the separation of powers under the Constitution in that any discussion by the Oireachtas could not be construed as an attempt by the Oireachtas to encroach upon the functions of the courts.

Four assemblies (those of Finland, Algeria, Lithuania, and Denmark) consider the question not relevant and thus did not reply.

7. *Can (a) a witness (b) an investigating magistrate, who has been subpoenaed, decline to testify on the ground that his testimony will prejudice a pending court proceeding or a pending inquiry?*

Seven parliaments (Philippines, Zambia, Canada, Germany, Brazil, Poland, Peru) replied in the negative to this question. In the Philippines, under Senate Rules a person cannot refuse to testify. A witness however may request that his answer be made in an executive session.

In India, the Rajya Sabha's committees generally do not take up such questions. Four assemblies (the Knesset of Israel, Parliament of Finland, Algeria, Lithuania) consider the question not relevant. The rest replied in the affirmative. In the United States the privilege of the witness is personal in nature. Both the United States and New Zealand cite the principle of separation of powers in granting to the investigating magistrate the privilege to decline to testify. In the former, this principle applies in his favour in as much as he is part of the judiciary while in the latter, it is unlikely that a judge would be subpoenaed because of the principle of separation of powers. In the Czech Republic, the witness can decline to testify only in case the investigation will cause the danger of criminal prosecution. No other reasons for declining exist.

In Portugal, such a situation should not arise because where a legal process is under way on the question at issue, the parliamentary inquiry would immediately be suspended.

8. *Are there any other categories of witnesses who are exempt from obeying a summons to attend an investigating parliamentary committee?*

Fifteen parliaments (Spain, Australia, Kenya, Brazil, Greece, Portugal, New Zealand, Norway, Sudan, United States, Zambia, India, Canada, United Kingdom, Zimbabwe) report that certain categories of witnesses are exempt from obeying a summons to attend an investigatory parliamentary committee. In Australia, New Zealand and Canada senators or members and officers of the House of Representatives or the House of Commons cannot summon each other. In the United Kingdom the Select Committee on Standards and Privileges uniquely has the power to summon any Member, including Ministers; other committees at present have no such powers. In Spain, it is constitutionally improper to subpoena the King while in New Zealand, ministers of the crown are also exempt. In Sudan, the Head of State cannot be summoned while other government officials can be summoned only with the permission of their immediate superiors. In Kenya, public servants with the express authorization of the President may attend but decline to give evidence relating to certain matters which the President feels should not be discussed before the committee. In India, the President and Vice-President, the Prime Minister, Ministers, Governors of States, Judges and persons in high authority are exempt. In the United States officials of the Executive Branch may assert executive privilege as to presidential communications which are considered presumptively privileged, but this is not so absolute as to preclude judicial review whenever it is asserted. In Germany, the Federal President is interrogated at his residence. In Brazil, the President of the Republic and the Presidents of the higher courts are exempt from obeying a summons to attend.

Eleven parliaments, on the other hand, report that no specification in law or in rules of procedure provides for any witnesses exempted from obeying summons of a parliamentary committee. However, the no-exemption rule is not applied strictly in some parliaments. In France, for instance, in practice, in certain exceptional cases, the procedure for invoking sanctions for refusal to attend was not put into operation against a spokesman of the President or against a Senator. In Ireland, the witness is not obliged by law to attend.

IV. Contempt and sanction

1. *Is there any law or other provision which govern the circumstances in which sanctions may be applied to a witness before a parliamentary investigation?*

Most of the assemblies (24 in 41) report that the laws in their countries provide certain sanctions that may be applied to a witness before a parlia-

mentary investigation. Sudan, for example, cites its Parliamentary Privileges Act.

Witnesses may be cited for contempt in the legislatures of the Philippines, the United States, Australia, Republic of Korea, India, and the United Kingdom. In Spain, Italy, and Peru penal sanctions may be applied to a witness who fails to appear. In Belgium and Italy, sanctions consist of imprisonment from two months to 3 years. In France, the person who does not appear or who refuses to give evidence or take the oath before a Committee of Inquiry is subject to a term of imprisonment of two years and a fine of 50,000 Fr. In cases of false testimony penalties of five years imprisonment and a 500,000 Fr fine are applicable, or even, in certain circumstances, of seven years imprisonment and a 700,000 Fr fine. In an instance of the suborning of a witness the penalty is three years imprisonment and a 300,000 Fr fine.

Five assemblies (Norway, Niger, Ireland, Estonia, Romania) report that no sanctions are applied to witnesses who disobey summons of a parliamentary committee. The parliaments of Finland, Lithuania, and Algeria report that their laws do not provide for committees to invite witnesses and, therefore, principles concerning competence of witness are irrelevant.

Zambia, Netherlands, Japan and Denmark gave no answers to this question. Israel, on the other hand, replied that the Knesset determines the sanctions but that it is doubtful if the Knesset has the power to apply said sanctions.

2. *By whom can any process of applying sanctions be initiated or carried out?*

At least fourteen assemblies (Philippines, the Czech Republic, Greece, Poland, United States, Australia, Republic of Korea, Kenya, Switzerland, Bulgaria, Peru, Sudan, Zimbabwe, Netherlands) report that the committee concerned or the Committee of Inquiry initiates the process of applying sanctions. In New Zealand, India, Canada, and the United Kingdom it is the entire House that takes the initiative. In Germany, decisions are taken by a committee by a simple majority. In Zambia and Belgium the Speaker takes the initiative. In Mali, the affected persons may initiate the action.

With regard to the execution of sanctions, five assemblies have similar procedures. The Serjeant-at-Arms carries out the sanctions meted out by the legislative bodies of the Philippines, the United States, New Zealand, Zambia, and Canada. In certain countries (Spain, Republic of Korea, Kenya, Belgium, Switzerland) the final decision is made by the courts to execute the sanctions. In Spain, the President of the Senate informs the Attorney General of the non-attendance, then this officer will promote the prosecution before the competent

court of law. In Kenya, the Clerk of the National Assembly or the courts of law carry out the sanctions. In the Netherlands, the Ministry of Justice carries out the sanctions. In India, the House can direct the civil authority to aid and assist in the execution of warrants issued by its presiding officer under the authority of the House.

Twelve of the 41 assemblies either did not reply to this point, or their replies could not be correctly processed. France replied that the provisions concerning the implementation of the sanctions had not, to date, been found to apply, while Romania replied that no one can initiate such a process of applying sanctions. Ireland replied that the Oireachtas Committees have no legal means available to them to compel witnesses to attend or to impose any sanctions for non-attendance.

3. *What steps can be taken to compel a witness to attend a parliamentary investigation? What sanctions can be imposed on a witness who refuses to attend?*

In all countries where witnesses may be compelled to be present before a parliamentary investigation, a subpoena or summons is issued. In Germany, committees may decide to order the compulsory attendance of a witness. A witness who fails to attend may be ordered to pay a disciplinary fine and the administrative costs. In Belgium, the witnesses are summoned by ordinary letter. The summons by court officer does not arise except where witnesses refuse to comply with the letter of summons. A witness refusing to respond to a summons or to take the oath is subject to a fine. In Sudan, should a witness refuse to answer a summons without any justifiable excuse, a warrant of arrest is thereafter issued by the Speaker of the Parliament and served by the Parliamentary Special Police Force.

It appears that imprisonment or detention is the most common form of sanction imposed on a witness who refuses to appear. Such is the practice in the Philippines, the Czech Republic, the United States, Australia, Brazil, Republic of Korea, New Zealand, Portugal, India, Switzerland, Zimbabwe, Netherlands, the United Kingdom, France and Italy. In the United States, if the witness refuses to attend, he is imprisoned or prosecuted or he can be tried by the court in statutory civil contempt proceedings, or if he still refuses to comply he can be tried by the court in summary proceedings for contempt of court with sanctions being imposed to compel his compliance. In New Zealand, the power of the House to punish for contempt ranges from requiring an apology to imprisonment. The New Zealand House of Representatives however has never used its power to imprison. In Portugal, the sanction laid down is an order for arrest for up to 100 days and/or a fine.

In certain instances, contempt may be punished by apology or reprimand. In Australia, the United Kingdom, and in India for instance, the offender can be punished by reprimand.

Twelve parliaments (Norway, Finland, Austria, European Parliament, Zambia, Algeria, Lithuania, Bulgaria, Peru, Niger, Denmark, Japan) offered no replies. In the case of Algeria, Finland, and Lithuania the testimony given to parliamentary inquiries is not governed by any regulation, so no response can be made to the questions. For Norway, the question has no relevance since no witnesses are obliged to give evidence before committees of the parliament. In Romania and in Estonia there are no sanctions.

4. *What steps can be taken to compel a witness to answer questions posed during a parliamentary investigation? What sanctions can be imposed on a witness who refuses to answer questions?*

All the 41 parliaments have the same answers as No. 3 above, that is, those countries where witnesses may be compelled to appear shall issue subpoena or summons for said witnesses to appear and answer questions. The sanctions imposed for refusal to answer questions are the same as the sanctions imposed for refusal to appear, with the exception of Spain where only the non-appearance, but not the refusal to answer, is considered a criminal offence. According to the principle "*nulla poena sine previa lege*", it would not be possible to deem such refusal to answer as a contempt by construction.

In Canada, when a committee is faced with a refusal to answer questions, it can offer to hear the witness answer *in camera*. In the case of a public servant, the committee may invite his or her superior to provide the necessary information. If this is not successful, the committee will then usually invite the Minister to appear and ask him or her to answer the question. Finally, should a witness be persistent in refusing to answer, the only recourse is for a committee to report the contempt to the House and the House then decides what action should be taken.

In Italy, committees in the past temporarily arrested a reluctant witness before denouncing him to the competent judicial authority. A more recent practice has been for a committee to merely denounce a reluctant witness to the judicial authority, without arresting him.

5. *Is holding the witness in contempt one of the sanctions?*

Fourteen assemblies (Philippines, Estonia, United States, New Zealand, Kenya, Canada, Republic of Korea, Sudan, United Kingdom, Zimbabwe, India,

Australia, Zambia, Netherlands) replied in the affirmative whereas eight (Norway, Peru, Romania, the Czech Republic, Switzerland, Belgium, Poland, Germany) reported that holding a witness in contempt is never a sanction. Thirteen parliaments did not respond to this point.

6. *Is arresting the witness and placing him in detention one of the sanctions?*

This has been answered in IV-3 and IV-4. To reiterate, thirteen parliaments, namely, the Philippines, the United States, Poland, Australia, Republic of Korea, Sudan, New Zealand, United Kingdom, India, Switzerland, Zimbabwe, Netherlands and Italy impose the sanction of arresting the witness and placing him in detention.

7. *Where a witness is held to be in contempt what is the usual mode of punishment? And what is the duration of that sanction?*

The usual mode of punishment for contempt is imprisonment or fine, or both. In the fourteen countries mentioned above, imprisonment is imposed on witnesses held to be in contempt. The duration ranges from 10 days (Switzerland,) to less than one year (Republic of Korea) to 2 years (Zimbabwe) and from one to six months (Spain).

In the United States, imprisonment may not extend beyond the end of the current session of Congress as for the House of Representatives, but not as for the Senate which is a continuing body.

In Australia, the House may impose a penalty of imprisonment for a period not exceeding 6 months. In Zambia imprisonment for contempt shall not exceed three months.

In India, as in the United States, the imprisonment shall be for a period not exceeding beyond the prorogation of the House. Contempt of the Senate of Belgium is punishable by imprisonment of 15 days to 6 months.