



Geneva Centre for the  
Democratic Control of Armed Forces  
(DCAF)

# Parliamentary Oversight of the Security Sector in West Africa: Opportunities and Challenges

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# Contents

|                         |                                                                                                                                                  |     |
|-------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| <b>List of Boxes</b>    |                                                                                                                                                  | vii |
| <b>List of Tables</b>   |                                                                                                                                                  | ix  |
| <b>List of Acronyms</b> |                                                                                                                                                  | x   |
| <b>Foreword</b>         |                                                                                                                                                  | xi  |
| <b>PART I</b>           | <b>Conceptual Issues</b>                                                                                                                         | 1   |
| <b>Chapter 1</b>        | <b><i>Parliamentary Oversight of the Security Sector in West Africa: Addressing Democratic Governance Deficits</i></b><br><i>Adedeji Ebo</i>     | 3   |
| <b>Chapter 2</b>        | <b><i>Parliamentary Oversight of the Security Sector in the Euro-Atlantic Area: Trends and Lessons</i></b><br><i>Teodora Fuior and Hans Born</i> | 25  |
| <b>PART II</b>          | <b>Case Studies</b>                                                                                                                              | 57  |
| <b>Chapter 3</b>        | <b><i>ECOWAS</i></b><br><i>Jens Hettman and Fatima Kyari Mohammed</i>                                                                            | 59  |
| <b>Chapter 4</b>        | <b><i>Benin</i></b><br><i>Christophe C. Kougniazonde</i>                                                                                         | 79  |
| <b>Chapter 5</b>        | <b><i>Republic of Cape Verde</i></b><br><i>Carlos Nunes Fernandes dos Reis</i>                                                                   | 103 |
| <b>Chapter 6</b>        | <b><i>Ghana</i></b><br><i>Kwesi Aning</i>                                                                                                        | 117 |
| <b>Chapter 7</b>        | <b><i>Liberia</i></b><br><i>Thomas Jaye and Adedeji Ebo</i>                                                                                      | 139 |

|                     |                                                                                                                 |     |
|---------------------|-----------------------------------------------------------------------------------------------------------------|-----|
| <b>Chapter 8</b>    | <b>Mali</b><br><i>Boubacar N'Diaye</i>                                                                          | 159 |
| <b>Chapter 9</b>    | <b>Nigeria</b><br><i>Kabiru Garba</i>                                                                           | 177 |
| <b>Chapter 10</b>   | <b>Senegal</b><br><i>Boubacar N'Diaye</i>                                                                       | 203 |
| <b>Chapter 11</b>   | <b>Sierra Leone</b><br><i>Osman Gbla</i>                                                                        | 223 |
| <b>PART III</b>     | <b>Conclusions</b>                                                                                              | 243 |
| <b>Chapter 12</b>   | <b><i>Towards a 'Culture of Oversight' of the Security Sector in West Africa</i></b><br><i>Boubacar N'Diaye</i> | 245 |
| <b>Contributors</b> |                                                                                                                 | 261 |
| <b>About DCAF</b>   |                                                                                                                 | 264 |

## List of Boxes

|                |                                                                                 |     |
|----------------|---------------------------------------------------------------------------------|-----|
| Box No.<br>1.1 | The Ideal Role of Parliament in Security Sector Oversight                       | 6   |
| Box No.<br>1.2 | Good Practice: Legislative Instruments to Maximise Oversight of Security Sector | 9   |
| Box No.<br>1.3 | Components of the Power of Parliament: The Trinity of A's                       | 11  |
| Box No.<br>2.1 | Parliamentary Influence on Security Policy Formulation-Some Good Practices      | 30  |
| Box No.<br>2.2 | Parliament and the Budget: Some Good Practices                                  | 35  |
| Box No.<br>2.3 | Parliamentary Control of Military Missions Abroad: Some Good Practices          | 36  |
| Box No.<br>2.4 | Keeping the Executive Accountable                                               | 38  |
| Box No.<br>2.5 | Organisation of Committee Work: Good Practices                                  | 43  |
| Box No.<br>2.6 | Committee Oversight: Good Practices                                             | 45  |
| Box No.<br>2.7 | Enabling Members to Better Represent Their Electors                             | 50  |
| Box No.<br>2.8 | Possible Practical Actions for African Parliaments                              | 54  |
| Box No.<br>3.1 | The Prerogatives of the Committees of the ECOWAS Parliament                     | 64  |
| Box No.<br>4.1 | The Benin Defence and Security Committee's Powers                               | 93  |
| Box No.<br>5.1 | The EU-Cape Verde Action Plan 2007: Objectives under the Pillar Security and    | 107 |

Stability (selected provisions)

|         |                                                                                                                                      |     |
|---------|--------------------------------------------------------------------------------------------------------------------------------------|-----|
| Box No. | Parliamentary Oversight over Intelligence Agencies: The Ghana Security and Intelligence Agencies Act, 1996                           | 127 |
| 6.1     |                                                                                                                                      |     |
| Box No. | The Sierra Leone Security Sector Reform Programme: Strategies to Transform and Improve the Institutional Capacity of Security Sector | 238 |
| 11.1    |                                                                                                                                      |     |

## List of Tables

|                  |                                                                                                                      |     |
|------------------|----------------------------------------------------------------------------------------------------------------------|-----|
| Table No.<br>1.1 | Successful Coups in West Africa, 1963-1999                                                                           | 12  |
| Table No.<br>1.2 | Number of Parliamentarians in Selected West African Parliaments and Parliamentary Committees on Defence and Security | 17  |
| Table No.<br>2.1 | Resources of the Defence Committees in Different Countries                                                           | 42  |
| Table No.<br>6.1 | Security Sector Governance Actors in Ghana and their Mode of Appointment                                             | 120 |
| Table No.<br>7.1 | Statutory Liberian Security Agencies                                                                                 | 147 |

## List of Acronyms

|               |                                                    |
|---------------|----------------------------------------------------|
| <b>ACGF</b>   | Accountant General of the Federation (Nigeria)     |
| <b>AD</b>     | Alliance for Democracy (Nigeria)                   |
| <b>ADEMA</b>  | Alliance pour la Démocratie au Mali                |
| <b>AFC</b>    | Armed Forces Council (Ghana)                       |
| <b>AG</b>     | Action Group Nigeria                               |
| <b>AGF</b>    | Auditor General of the Federation (Nigeria)        |
| <b>AFC</b>    | Armed Forces Council (Ghana)                       |
| <b>AFL</b>    | Armed Forces of Liberia                            |
| <b>AFRC</b>   | Armed Forces Revolutionary Council                 |
| <b>AFRSL</b>  | Armed Forces of the Republic of Sierra Leone       |
| <b>ANPP</b>   | All Nigeria Peoples Party                          |
| <b>APC</b>    | All Peoples Congress Party                         |
| <b>AU</b>     | African Union                                      |
| <b>CDF</b>    | Civil Defence Forces                               |
| <b>CDS</b>    | Chief of Defence Staff                             |
| <b>CDS</b>    | Committee on Defence and Security (Senegal)        |
| <b>CEPS</b>   | Customs, Excise and Preventive Service             |
| <b>CMLN</b>   | Comité Militaire de Libération National (Mali)     |
| <b>CPP</b>    | Convention Peoples Party (Ghana)                   |
| <b>CSO</b>    | Civil Society Organisation                         |
| <b>DC</b>     | Defence Council                                    |
| <b>DFID</b>   | Department for International Development           |
| <b>DSB</b>    | District Block electoral System (Sierra Leone)     |
| <b>ECOSAP</b> | ECOWAS Small Arms Convention                       |
| <b>ECOWAS</b> | Economic Community of West African States          |
| <b>ECOMOG</b> | ECOWAS Monitoring Observers Group                  |
| <b>EEZ</b>    | Exclusive Economic Zone                            |
| <b>EFCC</b>   | Economic and Financial Crimes Commission (Nigeria) |
| <b>FCDA</b>   | Federal Capital Development Authority (Nigeria)    |
| <b>FDA</b>    | Forestry Development Authority (Liberia)           |
| <b>ICPC</b>   | Independent Corrupt Practices Commission (Nigeria) |
| <b>ICJ</b>    | International Court of Justice                     |
| <b>IG</b>     | Inspector General of Police                        |
| <b>IPU</b>    | Inter-Parliamentary Union                          |
| <b>LPRC</b>   | Liberia Petroleum Refining Corporation             |
| <b>LSP</b>    | Labour and Solidarity Party (Cape Verde)           |
| <b>MOD</b>    | Ministry of Defence                                |
| <b>MOD-SL</b> | Ministry of Defence, Sierra Leone                  |
| <b>MPs</b>    | Members of Parliament                              |
| <b>MPD</b>    | Movement for Democracy (Cape Verde)                |
| <b>MPRI</b>   | Military Professional Resource Incorporated        |

|                |                                                                       |
|----------------|-----------------------------------------------------------------------|
| <b>MTEF</b>    | Medium Term Expenditure Framework                                     |
| <b>NASS</b>    | National Assembly (Nigeria)                                           |
| <b>NATO</b>    | North Atlantic Treaty Organisation                                    |
| <b>NCNC</b>    | National Convention for Nigerian Citizens                             |
| <b>NCPS</b>    | National Civil Protection Service (Cape Verde)                        |
| <b>NDC</b>     | National Democratic Congress (Ghana)                                  |
| <b>NDI</b>     | National Democratic Institute for International Affairs<br>(Senegal)  |
| <b>NDP</b>     | National Development Plan                                             |
| <b>NLC</b>     | Nigeria Labour Congress                                               |
| <b>NPC</b>     | Northern Peoples Congress (Nigeria)                                   |
| <b>NPFL</b>    | National Patriotic Front of Liberia                                   |
| <b>NPP</b>     | New Patriotic Party (Ghana)                                           |
| <b>NPRC</b>    | National Provisional Ruling Council                                   |
| <b>NSC</b>     | National Security Council                                             |
| <b>NSS</b>     | National Security Strategy                                            |
| <b>NTLA</b>    | National Transitional Legislative Assembly (Liberia)                  |
| <b>ONS</b>     | Office of National Security                                           |
| <b>OPC</b>     | Odua People's Congress (Nigeria)                                      |
| <b>PAC</b>     | Public Accounts Committee (Nigeria)                                   |
| <b>PAIGC</b>   | African Party for the Independence of Guinea-Bissau<br>and Cape Verde |
| <b>PAICV</b>   | African Party for the Independence of Cape Verde                      |
| <b>PARP</b>    | Policy Analysis and Research Project (Nigeria)                        |
| <b>PCDI</b>    | Parliamentary Committee on Defence and Interior                       |
| <b>PDC</b>     | Party of Democratic Convergence (Cape Verde)                          |
| <b>PDR</b>     | Party of Democratic Renovation (Cape Verde)                           |
| <b>PDS</b>     | Senegalese Democratic Party                                           |
| <b>PKO</b>     | Peacekeeping Operations                                               |
| <b>PMC</b>     | Private Military Companies                                            |
| <b>PNC</b>     | Peoples National Convention (Ghana)                                   |
| <b>PNDC</b>    | Provisional National Defence Council                                  |
| <b>PRD</b>     | Party of Democratic Renewal (Cape Verde)                              |
| <b>PRSP</b>    | Poverty Reduction Strategy Paper                                      |
| <b>PSD</b>     | Social Democratic Party (Cape Verde)                                  |
| <b>PSOs</b>    | Peace Support Operations                                              |
| <b>RDA</b>     | Rassemblement Démocratique Africain (Mali)                            |
| <b>RIS</b>     | Republic's Information Service (Cape Verde)                           |
| <b>RSLAF</b>   | Republic of Sierra Leone Armed Forces                                 |
| <b>RSLMF</b>   | Republic of Sierra Leone Military Forces                              |
| <b>RUF- SL</b> | Revolutionary United Front of Sierra Leone                            |
| <b>SILSEP</b>  | Sierra Leone Security Sector Reform Programme                         |
| <b>SLP</b>     | Sierra Leone Police                                                   |
| <b>SLPP</b>    | Sierra Leone People Party                                             |

|             |                                               |
|-------------|-----------------------------------------------|
| <b>SSG</b>  | Security Sector Governance                    |
| <b>SSR</b>  | Security Sector Reform                        |
| <b>TWP</b>  | True Whig Party (Liberia)                     |
| <b>UCID</b> | Independent and Democratic Cape Verdean Union |
| <b>UDPM</b> | Democratic Union of the Malian People         |
| <b>UN</b>   | United Nations                                |
| <b>UNDP</b> | United Nation Development Programme           |

## Foreword

The combination of military autocracy and one-party civilian dictatorship in much of Africa resulted in debilitated parliaments, described by many as ‘talk shops’ and ‘rubber stamps’. Far from being the engine room of democracy as postulated by Sir Winston Churchill, many African parliaments functioned, if at all, as the graveyards of democracy, in which the remnants of oversight and debate were buried, characterised by an eerie silence whose net effect was to frighten African populations into despair with regard to the prospects for good governance.

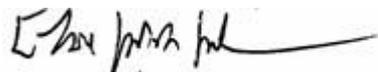
With the beginning of the so-called ‘third wave of democratisation’ in the 1990s, a complex mix of developments at the global, regional, sub-regional, and national levels resulted in the expansion of the political space for popular participation and accountability. Such developments have provided an enabling environment for enhanced parliamentary oversight, albeit with persisting democratic deficits. Accordingly, at the regional level, several instruments have been adopted outlawing the use of *coup d’état* as an instrument for gaining political power. At the continental level, such instruments have included, *inter alia*, the Harare Declaration of 1999, the African Union Constitutive Act of 2000, and the Solemn Declaration on a Common African Defence and Security Policy. At the sub-regional level in West Africa, the normative basis for non-tolerance of unconstitutional change of power is contained in the Protocol on Democracy and Good Governance (2001). Similarly at the state level, several countries have undertaken, with varying fortunes and different outcomes, transitions from military dictatorship to civilian administrations. As part of their new governance architecture, they have designed constitutional frameworks for democratically controlling the armed forces and security services.

However, experiences with civilian rule since the 1990s have taught that ending the spate of military coups is a necessary but insufficient condition for democracy and good governance. In the absence of entrenched democratic institutions, civilians have often been in *government* but not necessarily in *power*. It has become clear from our experiences that the quality of democracy is best measured by the strength of its institutions, of which the legislature is a cardinal component, in addition to a credible and independent judiciary, and an accountable, responsible and responsive executive. In this regard,

while parliamentary oversight extends to all sectors of governance, the security sector is of peculiar significance, particularly in West Africa, given the inglorious role played in many countries by security institutions, the associated incidence of gross human rights abuses by uniformed personnel and the consequent decline of public confidence in statutory security institutions.

Parliament is responsible for setting the legal frameworks, adopting the budget and overseeing security activities. It can only exercise these responsibilities in full if it has broad access to information, the necessary technical expertise, and the power and intention to hold the government to account. However, the variety and technicalities of the issues involved, the significant size and complex organisation of security personnel and, frequently, the secrecy of the security sector, make it particularly difficult for parliamentarians to work effectively.

Given the absence of a comprehensive study of the status of parliamentary oversight of the security sector in Africa generally, and West Africa in particular, this book is a much needed and enthusiastically welcome tool for parliamentarians engaged in this essential but little understood area. The book stands to be of great use in raising awareness and understanding of security sector governance issues across the sub-region, with particular regard to the role of the legislature. Beyond parliamentarians, policy makers, the academic world, civil society organisations and networks, and the broader community of practice interested and engaged in good governance in West Africa stand to benefit from this book. It is my conviction that the implementation of the recommendations put forward in this publication would significantly shorten the distance between democracy as it should be, and democracy as it is in West Africa.



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*Chair, Global Facilitation Network for Security Sector Reform (GFN-SSR)*

## **PART I**

# **Conceptual Issues**



## Chapter 1

# Parliamentary Oversight of the Security Sector in West Africa: Addressing Democratic Governance Deficits

*Adedeji Ebo*

### 1. Introduction

A new wave of democratisation began in West Africa (and other parts of the continent) in the 1990s which has, altogether, had a defining impact on the sub region. However, the wind of democracy has blown in multiple directions, at different speeds, and at different altitudes. Far from being a linear progression, the experiences of West African states in the transition towards more democratic governance have been divergent, and often problematic. The return of military strongmen to power through elections has been disappointing to maximalist expectations of liberal democracy while, on the other hand, civilian politicians, once elected, have often adopted authoritarian methods to maintain their hold on power.

The normative strength of democratic civilian rule emanates from, and is predicated on a representative and effective legislature which functions to check the excesses of executive power. Parliamentary oversight is therefore one of the main features of parliamentary democracy. While parliamentary oversight extends to all sectors of governance, the security sector is of particular significance for all political systems, and more so for developing countries. This is particularly true for African states, many of which were either run by men in uniform, or in which security institutions operated essentially outside the rule of law.

This volume identifies the challenges of, and opportunities for parliamentary oversight of the security sector in selected West African states. The overview chapter locates the concept of parliamentary oversight within the socio-political context of West Africa, with a view to providing an analytical framework for the case studies in the ensuing chapters. This overview begins with an examination of the

conceptual linkage between security sector and parliamentary oversight in a general context. It demonstrates that while West Africa features democratic deficits in the oversight of the security sector, a complex mix of global, regional, sub-regional, and national developments and trends point to an expansion of the political space necessary for effective parliamentary oversight combined with debilitating movements in the opposite direction. The latter largely spring out of the 'War on Terror', which seems to render security governance increasingly in conflict with transparency and accountability, even in contexts where SSG has stronger democratic foundations.

## **2. Parliamentary Oversight of the Security Sector: *What, Why and How?***

Broadly defined the governance of the security sector refers to those institutions entrusted with the (direct or indirect) protection of the state and its citizens. These include the military, paramilitary forces, intelligence services, civil authorities mandated to manage and control these agencies (such as the ministries of defence, finance, and the interior, as well as national security agencies, parliament, and civil society organisations) and justice and law enforcement institutions (such as judiciary, justice ministry, police, and penal services, human rights commissions and ombudsmen, customary and traditional justice systems). However, the reality of the loss of the monopoly of the means of coercion by the state has necessitated an expansion of the security sector to include non-statutory security forces (such as liberation armies, private security companies, guerrilla armies, ethnic militia).<sup>1</sup> Our immediate focus is on the core security actors, those that legitimately bear arms in the name and on behalf of the state- i.e. armed forces, police, paramilitary forces, gendarmerie, presidential guards, intelligence and security services, coast guards, customs, civil

---

<sup>1</sup> See *A Conceptual Framework for Enhancing Policy Coherence*, OECD, 2000; *Human Development Report*, UNDP, 2002. 'Security System' has emerged as another term to encapsulate what is usually referred to as the 'security sector'. This conceptual evolution arose on the basis that the use of the term security sector 'had led to confusion about whether this pertains to the armed forces or to the whole system of actors working on security-related issues'. (See *Security System Reform and Governance: Policy and Good Practice*, OECD 2004, 25-26, Footnote 2). However, the use of 'security system' introduces new conceptual issues to the field. It seems to exaggerate the level of cohesion and coordination in the security arrangements of many states, particularly those in transition and post conflict situations. Indeed the lack of such 'systemic' qualities is often the object of reform. In these contexts, security 'system' can only be meaningfully employed in futuristic and aspirational terms.

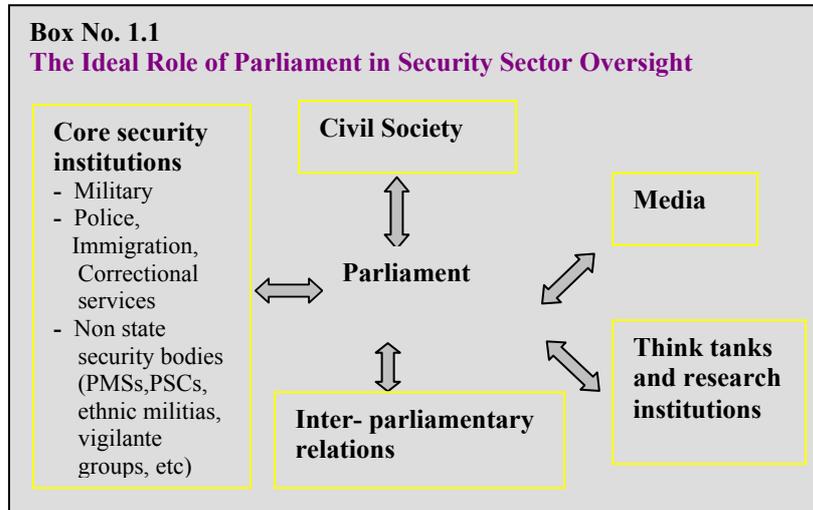
defence forces, and national guards.<sup>2</sup> Admittedly, the focus of the case studies has mainly been on defence, as opposed to other components of the security sector. Yet, the requirements and dynamics of parliamentary oversight, and indeed the very effectiveness of parliament, often differ between various components of the security sector. Some parliaments may, for example, be more robust in oversight of the police than the armed forces. Therefore, the conclusions reached by focusing on one do not necessarily apply to the other. While the study had set out to examine parliamentary oversight in the entire security sector, the sheer scope of such an exercise proved to be over-ambitious for a pioneering study of this nature. The focus on defence is therefore not an insignificant limitation, albeit an unavoidable one.

Parliamentary oversight refers to the responsibility, control and accountability of parliament over the security sector.<sup>3</sup> Parliamentary oversight of the security sector is indeed a crucial, but by no means the only pillar of democratic governance of the security sector. *Parliamentary oversight* is not synonymous with *democratic governance* of the security sector. Democratic governance of the security sector is broader than parliamentary oversight and relates to the constant process, policies and administration of the security sector in a manner that is transparent, accountable and participatory. It involves the submission of armed forces and security services to political power and direction and extends beyond parliamentary control to include the wider public. Specifically, democratic governance of the security sector includes the judiciary, civil society and the media, whose role in the governance process is further enhanced by, but by no means limited to, collaboration with and advice to parliament. A necessary condition for effective parliamentary oversight is the existence of regular and institutionalized relations with the core security institutions (the security service providers), civil society group, research institutions with expertise in defence and security issues, the media, and other parliaments and parliamentary groupings (see Box 1.1).

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<sup>2</sup> While it is widely acknowledged that non-state security actors such as militia groups should not escape the umbrella of parliamentary oversight, workable mechanisms for oversight are inherently lacking since these bodies do not depend on government funding and often function in defiance of constitutional authority. It is however increasingly recognized that parliamentary oversight should extend to the operations of private security companies.

<sup>3</sup> Born, H. and I. Leigh. 2005. *Making Intelligence Accountable: Legal Standards and Best Practice for Oversight Intelligence Agencies*, Oslo: Publishing House of the Parliament of Norway, 140.



The general and most fundamental rationale for parliamentary oversight for all sectors is that parliament is the repository of popular mandate. Parliament represents the will of the people and has both a duty and a right to exercise judgement over all facets of public life, including the security sector. In other words, parliament is supreme in the hierarchy of authority within a parliamentary democracy. As Hänggi has stated:

...parliaments are the central focus of accountability and legitimacy in democratic polities... Though institutions and practices of democracy are an evolving phenomenon and vary from country to country, it is an undisputed tenet of democracy that the parliament, being the representative body of the polity, must exercise oversight over every element of public policy, including the security sector.<sup>4</sup>

To be sure therefore, parliamentary oversight is not based on an inherent superiority of civilians in terms of knowledge of military affairs or in terms of morality. As Eboe Hutchful has noted, and as several authors in this volume demonstrate, 'the admission of African legislatures into the defence and security game has not always led to the necessary transparency and empowerment of the public and civil

<sup>4</sup> Hänggi, H. 2004. The use of Force Under International Auspices: Parliamentary Accountability and 'Democratic Deficits' in *The Double Democratic Deficit*, edited by H. Born and H. Hänggi, 7. Ashgate, Aldershot and Burlington.

society.’<sup>5</sup> Rather, the imperative and the legitimacy of parliamentary oversight flow from its attribute as the expression of popular sovereignty with a legitimate claim to participating in any and all aspects of the making and implementation of decisions involving the welfare of the polity.

A second rationale for parliamentary oversight, particularly with regard to the security sector, derives from the need to ‘guard the guardians’. The armed and security forces (*les gens d’armes*) ostensibly hold and deploy the means of coercion on behalf of, and for the protection of the entire society. Parliamentary oversight is therefore a major means of exercising democratic control over the security sector, so as to ensure that bearers of arms do not end up functioning as a threat to the same elements they were supposed to protect in the first place. The objective is to ensure that armed forces and services do not become a state within a state. It was in this context that Rudolf Joo observed that

Civilian control is needed essentially to prevent the military- which is an organised body that is legally empowered to use force on behalf of the state- from challenging the state’s duly constituted political authority and dominant values. It ensures that the armed forces will not endanger the basic liberties that they are supposed to protect.<sup>6</sup>

Thirdly, parliamentary oversight of the security sector is essential because it enhances effectiveness and efficiency of the security sector. It contributes to making this crucial sector synchronised with national priorities as defined by the constitutional authority. Moreover, the security sector is funded by the treasury and parliament needs to check whether public money is spent according to the people’s real needs. As Born et al. have argued, without oversight, a critical ‘bridge to the public’ is absent.<sup>7</sup>

While the specific role of parliament varies from state to state and from system to system, essential parliamentary responsibilities include

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<sup>5</sup> Hutchful, E. 2004. Bringing the Military and Security Agencies under Democratic Control: A Challenge to African Constitutionalism in *Constitutionalism and Society in Africa*, edited by O. Adiba, 125. Ashgate, Aldershot and Burlington.

<sup>6</sup> Joo, R. 1996. The Democratic Control of Armed Forces, *Chaillot Papers 23*, Institute For security Studies, Paris, 5.

<sup>7</sup> Born, H. et al. 2003. Parliamentary Oversight of the Security Sector: Principles, Mechanisms and Practices: Handbook for Parliamentarians No. 5, Geneva: DCAF/IPU.

legislative, budgetary, elective (or deliberative), and oversight/scrutiny functions.<sup>8</sup> These are usually enshrined in the constitution. Hänggi has argued that these traditional roles of parliament are often encroached upon by the executive or rendered less effective by political factors, such as party discipline and one party majority.<sup>9</sup> The power to make laws (legislative function), though considered to be the traditional role of parliament, is encumbered by the fact that it is not exclusive to parliament and the executive often dominates, leaving parliament to function as a mere rubber stamp. Parliament's deliberative/elective role, relating to the power to unseat governments, is often of limited value in situations of single party large majority, which exist in several parliaments. Moreover, parliament's 'power of the purse' is also constrained by the legislature's inability, in several cases, to significantly modify, much less initiate budget proposals. In these conditions, the necessity of asserting oversight powers of parliament therefore assume even added significance and can be viewed 'as a means to compensate for the relegation of parliament's traditional legislative and budgetary functions'.<sup>10</sup>

A major mechanism for oversight is the parliamentary committee system through which elected representatives ensure that the security sector is managed within the rule of law and according to agreed methods and benchmarks. Even though the focus is on the defence and security committee, effective oversight of the security sector often involves several committees, including foreign affairs, budget (or appropriation), intelligence, and committee on the interior. In some cases the defence committee is known as the armed forces committee.<sup>11</sup> The structure of the relevant committees may also differ. In Nigeria, for example, there are separate committees on each of the armed services (air force, army, and navy) in both houses of the National Assembly.

The three major mechanisms for parliamentary oversight have been identified as parliamentary debates, parliamentary questions and

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<sup>8</sup> See Von Beyme, K. 2000. *Parliamentary Democracy: Democratization, Destabilization and Reconsolidation, 1789-1999*. London: Macmillan Press; Born, H. and H. Hänggi, *Double Democratic Deficit*, *op. cit.*; Agyeman-Duah, B. *Sub-Saharan Africa: NEPAD and the Role of Parliaments*, Paper presented at the 5<sup>th</sup> Annual Conference of the Parliamentary Network on the World Bank, Paris, 15-16 February 2004.

<sup>9</sup> Hänggi, *op. cit.*, 13-14.

<sup>10</sup> *Ibid.*

<sup>11</sup> Born *et al*, *op. cit.*, 86.

interpellations, and parliamentary enquiries.<sup>12</sup> The Box below contains a non-exhaustive list of the range of instruments that may be available to legislatures to carry out parliamentary oversight of the security sector.

**Box No. 1.2**

**Good Practice: Legislative Instruments to Maximise Oversight of the Security Sector**

**General powers**

- Initiate legislation, amend or rewrite laws;
- Hold hearings;
- Summon members of executive, military staff, civil servants and experts to testify at legislative hearings;
- Obtain documents from executive;
- Carry out legislative inquiries.

**Budget control**

- Obtain access to all budget documents;
- Review and amend defence and security budgets;
- Exercise budget control (programmes, projects and line-items);
- Approve/reject supplementary security-sector budget proposals.

**Peace missions/other foreign deployments**

- Participate in decision-making before troops are committed abroad;
- Review, amend, approve/reject mission budget;
- Approve/reject rules of engagement and duration of mission;
- Visit deployed troops.

**Procurement**

- Right to be fully informed by executive of procurement decisions;
- Approve/reject procurement contracts;
- Review: a) need for new equipment; b) selection of supplier; c) offers of compensation/off-sets.

**General Security Policy**

- Approve/reject policy concept and crisis management concept;
- Approve/reject force structure;
- Approve/reject strategy/doctrine.

**Personnel Issues**

- Approve/reject personnel plan and fix ceilings for manpower;
- Approve/reject or be consulted on highest military appointments.

Source: *Parliamentary Oversight of the Security Sector: Principles, Mechanisms and Practices, op. cit.*, 76.

<sup>12</sup> See Born *et al, op. cit.*, Chapter 14.

To be sure, parliamentary oversight, and indeed the entire gamut of civilian control of the security sector does not lend itself to simplistic quantitative measurement. Therefore, it is not possible to determine the extent of the power of parliament based on the checklist provided in Box 1.2. As Hutchful has cautioned, ‘civil control is best seen as a process and not a fact’.<sup>13</sup> Jackie Cilliers has similarly observed that ‘civilian control is the end result of a complex of interrelated measures, laws, social institutions and customary practices’.<sup>14</sup> The extent to which parliament is able to employ parliamentary tools for the purpose of determining and influencing the government’s policy options and to oversee overall security policy would depend not only on the provisions of the constitution (legal *authority*), but also on the *ability* and *attitude* of parliament.<sup>15</sup>

*Ability* relates to the capacity of parliament to hold government accountable over the security sector and is a function of the resources (human, financial and technical) available to the parliament. Without the necessary resources, parliament is not able to effectively scrutinise the defence and security budgets, employ technical support staff, visit troops, and obtain the necessary objective information necessary for legislation. The importance of parliamentary capacity acquires added significance in view of the closed nature of the security sector, relative to other sectors. A third condition for effective parliamentary oversight is the *attitude*, in other words, the political drive, of parliament towards the whole idea of oversight of the security sector. Even when and where the constitutional authority and the resources and expertise for oversight exist, oversight would be problematic if parliamentarians lack the will to fully and effectively employ and deploy the tools of oversight at their disposal. (see Box 1.3)

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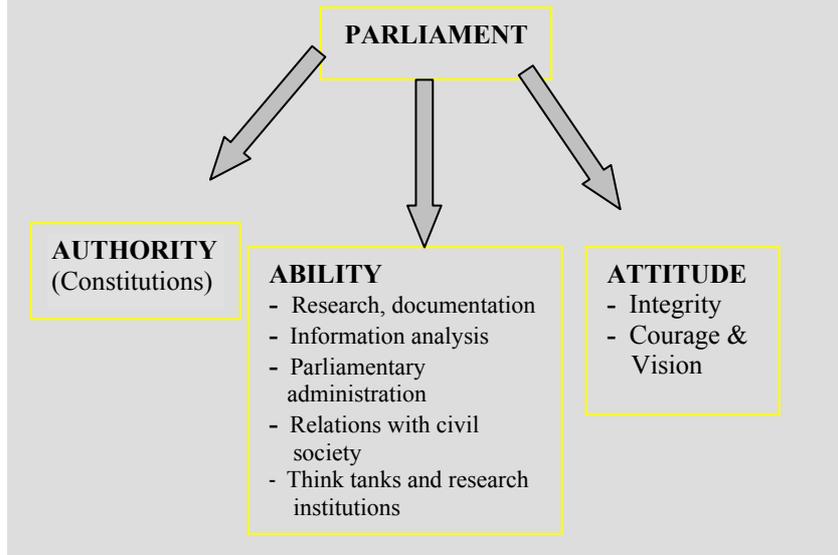
<sup>13</sup> Hutchful, *op. cit.*, 124.

<sup>14</sup> Cilliers, J. 1996. Security and Transition in South Africa in *Civil-Military Relations and Democracy*, edited by L. Diamond and M. Plattner, 1994. London: John Hopkins University Press.

<sup>15</sup> See Hänggi, *op. cit.*, 11-15.

**Box No. 1.3**

**Components of the Power of Parliament: The Trinity of A's**



**3. West Africa's Democratic Governance Deficits**

Civilian, especially parliamentary control has very short and somewhat fragile roots in many West African states. Due to the praetorian history of many of these contexts, parliamentary oversight of the security sector in particular is even more of an anathema. Indeed, even in advanced democracies oversight of the security sector remains a grey area because of the closed nature of the security sector, and its dominance by the executive. Given protracted periods of military rule (see Table 1.1), the security sector in several West African states has been characterised more by 'self-governance' rather than by parliamentary oversight.

**Table 1.1: Successful Coups in West Africa, 1963-1999<sup>16</sup>**

| Country              | Coups | Coup Years                      | Years of Military Rule |
|----------------------|-------|---------------------------------|------------------------|
| <b>Benin</b>         | 6     | 1963, 1967, 1969, 1970, 1972    | 17                     |
| <b>Burkina Faso</b>  | 5     | 1966, 1980, 1982, 1983, 1987    | 31                     |
| <b>Cape Verde</b>    | -     | -                               | -                      |
| <b>Côte d'Ivoire</b> | 1     | 1999                            | 1                      |
| <b>Gambia</b>        | 1     | 1994                            | 2                      |
| <b>Ghana</b>         | 5     | 1966, 1972, 1978, 1979, 1981    | 20                     |
| <b>Guinea</b>        | 1     | 1984                            | 10                     |
| <b>G. Bissau</b>     | 2     | 1980, 1999                      | 14                     |
| <b>Liberia</b>       | 1     | 1980                            | 5                      |
| <b>Mali</b>          | 2     | 1968 -1991                      | 24                     |
| <b>Niger</b>         | 3     | 1974, 1996, 1998                | 18                     |
| <b>Nigeria</b>       | 6     | 1966 (2), 1975, 1983, 1985,1993 | 29                     |
| <b>Senegal</b>       | -     | -                               | -                      |
| <b>Sierra Leone</b>  | 5     | 1967 (2), 1968, 1992, 1997      | 6                      |

The consequences of military rule for good governance in Africa have been discussed many times. It is sufficient here to stress that military rule truncated the evolution and consolidation of civilian, and particularly, parliamentary control, especially of the armed forces who often usurped all political power including that of oversight, representing a common trend in most of the countries in the sub-region. West Africa is also confronted with traditionally weak oversight and the dominance of the executive arm of government in the security sector. West Africa's praetorian history becomes even starker when compared with other parts of Africa, as detailed in Table 1.1. Of the 85 successful coups that occurred between the 1950s and 1990s, about half of them (42) took place in West Africa.<sup>17</sup> Senegal and Cape Verde stand out as the only two West African states not to have suffered a military coup. Nigeria has witnessed more military coups than any other West African country. In this sense, West Africa features more of a 'democratic deficit' than any other region of Africa, and by the same token is in more dire need of democratic (including

<sup>16</sup> Kandeh, J. 2004. Civil Military Relations in *West Africa's Security Challenges: Building Peace in a Troubled Region* edited by A. Adebajo and I. Rashid, 148. Lynne Reiner, Boulder Colorado.

<sup>17</sup> See Kieh, G. (Jr). 2004. Military Engagement in Politics in Africa in *The Military and politics in Africa*, edited by G. Kieh (Jr) and P. Agbese, 45. Ashagate, Aldershot and Burlington.

parliamentary) control of the armed forces and security services than any other part of the continent.

Beyond these areas of commonalities however, West African states are characterised by distinctive trajectories in their transition from military and authoritarian rule as illustrated by the case studies in this volume. Various countries are at different stages of transition. While there are many commonalities in these transitions the case studies therefore also attest to many unique elements shaping particular local dynamics and the quality and depth of political opening for parliamentary oversight. The extent to which political actors exploit (or equally importantly, fail to exploit) these openings are also context specific.

Beyond its general positive implications for a democratic system, parliamentary oversight is crucial for the security sector in developing countries such as those in West Africa. The links between development and security are interwoven and mutually reinforcing with implications for all aspects of human security. As Olonisakin has argued, 'the role that the security establishment plays within various structures of governance often tends to determine the level of insecurity within a state, as well as the extent to which development can be achieved or sustained'.<sup>18</sup> Democratic governance, of which parliamentary oversight is *sine qua non*, is therefore essential for the stable and secure environment necessary for sustainable human development. In the final analysis, the quality of security determines the quality of life. Moreover, the loss of monopoly of the means of coercion by the state, and the increasing role of non-state actors (such as various militia, vigilante groups, private security companies) either as security *providers* or security *spoilers* is an indication of a continuing crisis of legitimacy confronting the state and its formal security institutions in much of West Africa. As argued elsewhere, for the use of force to be legitimate, the governance process itself must be seen to be legitimate, reflecting transparency and accountability. Thus, the role of parliamentary oversight of the security sector is to contribute to the legitimacy of the security forces and their operations.<sup>19</sup> In a sense also, parliamentary oversight, and the debate,

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<sup>18</sup> Olonisakin, F. 2003. *Security and Sustainable Development; An African Perspective*. Paper presented at the First Joint Seminar of the United Nations Office in Geneva (UNOG) and Geneva Centre for the Democratic Control of Armed Forces (DCAF), 21 January 2003, Geneva.

<sup>19</sup> Ebo, A. *Effective Budgetary Control of the Defence Sector in a Democratic System*, Paper presented at the Training of Trainers Workshop for Parliamentary Defence Committees in West Africa, organised by the United Nations Regional

negotiation and discussion which it necessitates, is a conflict prevention and peacebuilding mechanism because the process allows conflicts and differences to be resolved before reaching antagonistic stages. The basic assumption of the framework for this volume therefore is that, in addition to its usual benefits, effective parliamentary oversight is a peacebuilding mechanism which enhances faith in the constitutional system, facilitates orderly transfer of power, and cements the stability and enabling environment for local and foreign investment. In order to maximise the opportunities of parliamentary oversight however, West African states would have to determinedly address the governance deficits which they are confronted with at present.

The expansion of the space for constitutionalism, the prospects for parliamentary oversight generally, and the demystification of security in particular have been enhanced by a series of interrelated and concentric developments beginning in the late 1980s. At the global level, the end of the Cold War ignited an avalanche of popular demands for more participatory and accountable governments, from which no part of the world has been spared. In relation to Africa, it has meant the termination of unquestioned great power military and economic support for client regimes and insurgent movements in the name of fighting communism/capitalism. The global political environment also witnessed 'the emergence of new discourses and practices of international humanitarian assistance and intervention'.<sup>20</sup>

This new political environment enabled the emergence of continental initiatives which sought to lock in democratic gains and to prevent the inherently destabilising effects of a return to autocratic rule in Africa. At its July 1997 Summit, the OAU (now AU) in Harare adopted a resolution against unconstitutional changes of government. The 1997 Harare Declaration stands out markedly as a significant point in the codification of normative frameworks for democratic control at the continental level and became the reference point for norms building in Africa. The Harare Declaration was further affirmed by the Algiers Declaration of 1999, the CSSDCA Declaration of 2000, and the Constitutive Act of the African Union. Article 30 of the AU Constitutive Act, for example, states categorically that 'governments

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Centre for Peace and Disarmament in Africa (UNREC), Lomé, Togo, 21-24 April 2004.

<sup>20</sup> Luckham, R. 2004. Military Withdrawal from Politics in Africa revisited in *The Military and Politics in Africa*, edited by G. Kieh (Jr) and P. Agbese, 101. Ashgate, Aldershot and Burlington. See also Young, C. *Competing Images of Africa: Democratization and its Challenges in Okon Adiba, op. cit.*

which come to power through unconstitutional means shall not be allowed to participate in the activities of the Union'. The basic principle behind these normative standards is the supremacy of constitutionalism and an affirmation of the illegality of militarism. At the sub regional level, ECOWAS has actively promoted the supremacy of constitutional rule and non-recognition of military rule in the sub region. The ECOWAS Protocol on Democracy and Good Governance (2001) contains the 'Constitutional Convergence Principles' which affirm the supremacy of democratic constitutional rule and the illegitimacy and illegality of praetorianism. Article 1a provides the statutory basis for the principle of *separation of powers*. Sections 1b and 1c outlaw military coups, while section 1e expressly provides for civilian oversight of the armed forces:

...The armed forces shall be apolitical and must be under the command of a legally constituted political authority; no serving member of the armed forces may seek to run for elective political office.<sup>21</sup>

This is further reinforced by article 20(1) which states that 'the armed forces, the police and other security agencies shall be under the authority of legally constituted civilian authorities'.

Within West African states, the campaign for accountability and transparency has been both driven and reflected by popular quests, beginning with Benin's national conference of 1990. In virtually all West African states, the prospects for uniformed and non-uniformed authoritarian rule have been increasingly hampered by a combination of popular resistance and constitutional engineering, within the context of global, regional and sub-regional hostility to authoritarianism. While noting the expansion in political space and encouraging signs of demilitarization since the end of the Cold War, the space for democratic governance, particularly since the terrorist attack of 9/11, is being increasingly negatively affected by fundamental concerns with 'homeland security' and the increasing assault on fundamental freedoms. Within the context of this ambivalence, a central thesis of this volume is that parliamentary oversight of the security sector is a major constitutional means for keeping the military under democratic control, for preventive peacebuilding, and for entrenching a democratic political culture in West Africa. We therefore attempt to expose the opportunities and the

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<sup>21</sup> See The ECOWAS Protocol on Democracy and Good Governance (2001), Article 1, Section 1e.

challenges relating to parliamentary oversight of the security sector in eight selected West African states and the sub-regional parliament.

#### 4. Challenges of Parliamentary Oversight

The challenges confronting effective parliamentary oversight of the security sector in West African states is dependent both directly and indirectly on the *authority, ability, and attitude* of parliament regarding its oversight functions. Though specific provisions may differ, most African constitutions, and certainly all those examined in this volume, are predicated on the principle of civilian supremacy and control over the armed forces and security services.<sup>22</sup> Thus, the core of the challenges facing parliamentary oversight of the security sector in West Africa, and indeed Africa, can hardly be pinned to the lack of formal constitutional provisions for legislative control.<sup>23</sup>

Beyond formal constitutional provisions, the degree and efficacy of parliamentary oversight can also be explained by the capacity of parliament to hold the armed services accountable. In order to effectively exercise oversight responsibilities, relevant committees (on defence, security, internal affairs, intelligence) require adequate financial, human, and technical capabilities to conduct independent research and investigations. As the various chapters in this study confirm, such resources and capacity have been palpably inadequate in West African states. Table 1.2 shows the relationship between the total number of parliamentarians and the number of parliamentarians and staffers in parliamentary committees on defence and security in the parliaments object of this study.

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<sup>22</sup> This is by no means to argue that such constitutional provisions are either ideal or adequate. Contrasting the South African and Ghanaian constitutions, Hutchful has demonstrated that the constitutional powers for oversight of the security sector in the former are 'merely implicit', while in the latter they are 'much more detailed'. See Hutchful, *op. cit.*, 130.

<sup>23</sup> See *The Role of the legislature in Defense and National Security issues*, Seminar Report, 19-22 April, 1999, Dakar, Senegal. National Democratic Institute for International Affairs, 4. See also George, B. and A. Graham, *Defence Committees in Democratic and Democratizing Legislatures* Paper presented at the Workshop for Parliamentary Scholars and Parliamentarians, Berlin, 19-20 August 1994.

**Table 1.2: Number of Parliamentarians in Selected West African Parliaments and Parliamentary Committees on Defence and Security<sup>24</sup>**

| State             | Number of MPs | No. of Parliamentarians on Security Oversight Committee | No. of Parliamentary Staff |
|-------------------|---------------|---------------------------------------------------------|----------------------------|
| Benin             |               | 13                                                      | 2                          |
| Cape Verde        | 72            | 7                                                       | 2                          |
| Ghana             | 230           | 18                                                      | 2                          |
| Liberia           | 94            | 29                                                      | None <sup>25</sup>         |
| Mali              |               | 16                                                      | 1                          |
| Nigeria           | 469           |                                                         |                            |
| Senegal           | 249           |                                                         |                            |
| Sierra Leone      | 124           | 15                                                      | 1                          |
| ECOWAS Parliament | 107           | 4                                                       | 1                          |

Budgets for select committees are negligible, while staff support fares no better. When and where civil society and research groups with the requisite technical expertise exist, access and linkages to them have been lacking. Communication and institutional links between the relevant committees and the armed forces and security services are often problematic.

Also significantly, the capacity of parliament to oversee the security sector is handicapped by the tendency of the incumbent executive branch of government to marginalize the legislature. The risk of excessive executive domination exists for all sectors. However, the closed and specialised nature of the security sector makes it particularly susceptible to the proclivity of executive branches to exert monopoly over this central lever of state power. Moreover, in some (postcolonial) parliamentary traditions, the security sector has been constitutionally conceded as the exclusive preserve of the executive.

<sup>24</sup> Data was compiled by means of a questionnaire filled by the Chairs of Defence and Security Committees in selected West African parliaments in the framework of the DCAF project for the production of this edited volume. Additional data have been collected on the IPU website.

<sup>25</sup> Email exchange with Hon. Seah, 20 May 2008. There are no staffers assigned to these committees but the staff of members of the House can be used to service these Committees; in the case of Senate, they use one of the secretaries to the entire senate for their work.

This, to a large extent, explains the executive domination and the timidity of the legislature in many West African states following either the French tradition of a 'presidential' security paradigm or the UK tradition of 'executive prerogative'.<sup>26</sup>

The most empowering formal constitutional provisions, combined with adequate resources and technical expertise would come to nothing if parliamentarians lack the political will and the predilection to exercise those powers and to deploy the necessary resources. This denotes their attitude, and relates directly to their thinking about parliamentary oversight of the security sector. It is notable that, in most of the cases studied, the attitude, political convictions and disposition of parliamentarians regarding oversight are generally casual and weak. This is due to many factors. In the first place, there has been a taboo culture with regard to the defence and security issues given the suspension of civil rule severally in West Africa. Without doubt, West Africa's praetorian history has had a debilitating effect on the mindset of the civilian leadership regarding the legitimacy and appropriateness of their supervisory role over the armed forces and security services. As argued elsewhere:

...given the protracted history of military rule in much of West Africa, the armed forces have traditionally operated without, and often against the fundamental principle of civilian oversight. The end-result has been inverted civil-military relations, characterized by a superiority complex on the part of the military and a debilitating incapacity complex on the part of civilian oversight institutions.<sup>27</sup>

In addition, except perhaps in cases of public scandals, party political interests and 'party discipline' often guarantee the use of 'kid gloves' and uncritical approaches to parliamentary oversight. At the individual level, parliamentarians are often eager to remain in the good books of the (typically powerful and patronage-dispensing) executive branch officials (both civilians and military). Therefore, there is some validity to Wesseldijk's conclusion that 'once elected, the parliamentarians in the governing majority tend to worry more about maintaining good relations with the president's office than looking after those who

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<sup>26</sup> See Article 15 of the 1958 French Constitution expressly states that 'the President of the Republic shall be commander-in-chief of the armed forces. He shall preside over the higher national defence councils and committees.'

<sup>27</sup> Ebo, A. 2004. Security Sector reform as an Instrument of Sub Regional Transformation in West Africa in *Reform and Reconstruction of the Security Sector*, edited by A. Bryden and H. Hanggi, 80-81. Munster: DCAF/Lit Verlag.

elected them'.<sup>28</sup> The net effect of such a disempowering attitude is that parliamentary oversight of the security sector often comes across as being 'decorative'<sup>29</sup>, 'rubberstamp' and 'appendages of their respective executives.'<sup>30</sup>

The sum of these challenges approximates to 'democratic deficits' which characterises parliamentary oversight of the security sector in several West African states. Indeed West African parliamentarians do not seem to be unaware of the challenges confronting them. For example, an October 2002 'West African Regional Parliamentary Conference' in Accra, Ghana observed that:

African parliaments, unlike those in Europe and elsewhere, have weak structures, especially in terms of their committee system. Therefore parliaments should be resourced to function as the pillars upon which participating and enduring democracies can be built and entrenched on the continent. Members of parliament should be further enabled to exercise their oversight functions and to scrutinise budgets.

The major task therefore is to reconcile West Africa's democratic deficits with the imperatives of dynamic parliaments as essential features of democratic control of the security sector. However, none of this should be understood to exclude other—new—forms of military influence (including more 'legitimate' ones). Although this volume does not focus on this, militaries and other security institutions should not be viewed as inert, but as political actors in their own, anticipating and (as the case may be) driving or constraining change in a number of ways.<sup>31</sup> While recognising these challenges on the one hand, this volume is, on the other hand based on the affirmative view that opportunities exist for further cementing the end of military rule and for consolidating the gains of accountability and transparency as the cornerstones of good governance in West Africa. Firstly, and as argued above, the global and regional context has become even more hostile to military rule (though in some senses encouraging lack of transparency). Secondly, given its abysmal record in governance, the military has clearly established its unsuitability either as a midwife or

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<sup>28</sup> Wesseldijk, E. 1998. The Role of Parliaments in Africa *The Courier*, No. 171, September -October: 37.

<sup>29</sup> Hutchful, *op. cit.*, 128.

<sup>30</sup> Kandeh, *op. cit.*, 162.

<sup>31</sup> *Political Armies: The Military and Nation Building in the Age of Democracy*, edited by K. Koonings and D. Kruijt. New York: Zed Books, 2002.

as a parent of democracy. Thirdly, indigenous democratic forces, especially the legislature and civil society, are increasingly demonstrating their enthusiasm, if not their ability, to live up to the responsibilities of democratic governance. Based on selected case studies, this volume, exposing and amplifying the challenges and opportunities of parliamentary oversight of the security sector, should contribute towards the push in this direction.

## 5. Overview of Chapters

This book is a constellation of eleven chapters, comprising of three parts that together seek to explore the specific challenges facing, and the discernible opportunities for parliamentary oversight of the security sector in West Africa. Two main criteria inform the selection of the countries covered in this volume- the different political contexts in West Africa (such as fragile, post-conflict and consolidating) and secondly, the different anglophone, francophone and lusophone colonial influences on the sub-region.

In their contribution, Teodora Fuior and Hans Born expose the parliamentary practices with regard to oversight of the security sector in the Euro-Atlantic area, as a basis for identifying relevant lessons for parliaments in West Africa. Such lessons are relevant because virtually all West African parliaments are modelled after them. Secondly the challenges facing West African parliaments are in many respects similar to the demands of post conflict transition faced by parliaments in East and Central Europe after the Cold War. Fuior and Born argue that parliamentary oversight of the security sector is an established international norm and they discuss various parliamentary traditions. They argue that, even though parliamentary experiences from this geographical area could inspire ways to stimulate legislatures in West Africa, there is no single model of parliamentary oversight and due attention needs to be given to the specificities of West African societies. In drawing out relevant lessons from the euro-Atlantic axis, the authors emphasize that parliamentary oversight of the security sector is a conflict prevention mechanism and has a *de-tensioning* impact on the political system. Furthermore, a strong parliament is essential for ensuring that governments are good employers of the security services. While acknowledging the distinctive features that make security sector parliamentary oversight problematic (complexity, secrecy, corruption), they caution lack of technical knowledge of security and budgetary issues among parliamentarians is an exaggerated handicap which is balanced by the imperatives of transparency and public discussion. The authors

recommend strengthening the general capacity of West African parliaments by attracting to parliament valuable and successful people; resources need to be found to provide salaries, facilities, pensions, etc. Furthermore, MPs should be enabled to perform their duties better by, among other things, improving the research and technical resources available to them, organising training activities, and adopting codes of official conduct/ethics for parliamentarians. Each parliament should also improve its relations with the people, by becoming a truly open and transparent institution; to this end, live telecast or live radio cast of parliamentary sessions are susceptible to bring about a better public knowledge of parliament and the matters which come before it.

The second part of the book consists of eight country case studies of parliamentary oversight of the security sector in West Africa, and the ECOWAS Parliament.

The chapter on the sub-regional level describes the ongoing process of internal reforms within **ECOWAS** and the increasing engagement of the recently established Community Parliament in the oversight of the security sector at the regional level. The paper argues that despite some achievements, as for example the peace and fact finding missions in several crisis-areas and the election monitoring activities, the ECOWAS Parliament is an example of an under-resourced regional mechanism for peacebuilding, which has strong potential to contribute to sustainable peace in West Africa. To this end, its authority has to be greatly increased. A more engaged *attitude* is also necessary. This can be achieved only by way of direct elections of ECOWAS' parliamentarians through a fair and free selection process

Koungniazonde's chapter on **Benin** shows that notwithstanding a background of political stability, parliamentary oversight of the security sector has neither been substantive nor effective. While the principle of parliamentary oversight of the security sector has been asserted since the early days of independence, its implementation has proved problematic over the years due to institutional, logistical and human resource weaknesses. In order to improve parliamentary oversight, the author recommends, *inter alia*, training of parliamentarians on security issues, increased accessibility to confidential information and strengthening linkages with civil society organisations.

The chapter on **Cape Verde** aims at providing a broad overview of the current status and functioning of the Cape Verde Parliament, hereby

highlighting its strengths and weaknesses. The contribution of the parliament and its specialised committees to the enforcement of the principle of democratic oversight of the security sector will be assessed and an overview of existing reform projects for the armed forces and the security sector as a whole will be provided.

In his contribution on **Ghana**, Kwesi Aning argues that the precise experiences and roles that the security sector has played in Ghana's turbulent politics have positively impacted on the disposition of the statutory security sector to be subjected to civilian and democratic oversight. A positive impact of this process is that the governance deficit that was previously experienced is receding. The author emphasises that while parliament as a whole lacks resources, the challenges faced by the parliamentary committee on defence and interior (PCDI) are particularly acute. He notes, however, that the technical inadequacies of parliamentarians on security issues is increasingly compensated by their preparedness to learn, also by reaching out to civil society organisations and individuals with the requisite expert knowledge to contribute to their training. This creates a basis for collaboration among different stakeholders.

In their contribution on **Liberia**, Ebo and Jaye, while underling the imperative of democratic reform of the security sector in a post-war country like Liberia, noted that the Liberian constitution grants the parliament adequate powers to exercise its oversight functions. However, Liberian parliamentarians, being in most cases 'first-timers' in the legislature, lack the required ability to make effective use of the immense powers they have. In this regard, the authors recommend capacity building initiatives for the provision of specific knowledge on security issues to parliamentarians; improving the logistical and research capacities of the legislature, and a more critical mindset among parliamentarians.

In the chapter on **Mali**, N'Diaye points out that Mali is often taken as an example for its positive developments in terms of security governance and civil military relations, which led to it becoming one of the largest beneficiaries of international aid. In particular, the elaboration of a 'code of conduct' for the armed forces, the institutionalisation of 'open doors days' to military facilities and the regularization of interactions between civilians and the military can be cited as best practices for other West African states to follow. Still, there is space for further strengthening of parliamentary oversight of the security sector, especially by increasing the knowledge base of

parliamentarians through training and by addressing the culture of excessive secrecy prevailing in the executive branch.

The chapter on **Nigeria** describes how the developments in the military, and in particular the protracted period of military rule, have affected the political system generally and in particular, democratic control and parliamentary oversight of the security sector. Garba posits that the Nigerian legislature has the necessary *authority* and *ability* to undertake effective oversight. However, the *attitude* has been hampered by corruption and by a lack of democratic culture, and needs therefore to be improved. Garba demonstrates the ambivalent relationship between state and non- state security actors and the challenges of bringing the latter under effective parliamentary oversight.

In his contribution on **Senegal**, N'Diaye acknowledges that the Senegalese history of relative political pluralism and of democratic ethos and practice did not translate into a culture of parliament's check and balance over the executive branch. The national assembly and the security and defence commission failed to exercise effective oversight over the security sector. Though the parliament has the authority to carry out its oversight functions, the CDS displays neither the ability nor the attitude to meet its obligations. After having improved the attitude and filled the knowledge gap through appropriate training and capacity building activities, Senegalese parliamentarians will have to overcome the resistance of the military top brass and the executive, which are used to running all aspects of the security sector.

**Sierra Leone** is an appropriate case study of the challenges of parliamentary oversight of the security sector in a post war country. In the paper, Osma Gbla argues that Sierra Leone's history of authoritarian single party and military rule and war offers both challenges and opportunities for democratic control and, particularly, parliamentary oversight of the security sector. The main opportunity derives from the prioritisation in the post-war recovery programme of parliamentary strengthening, considered as an appropriate strategy for the sustainability of peace and democracy in the country.

The **concluding chapter** attempts to set an agenda for more effective parliamentary oversight of the security sector, including sub regional dimensions.

*Adedeji Ebo*

While the various chapters agree that the quality of oversight is a function of parliament's *ability, authority* and *attitude* (the 3 A's), the determinant role of national and regional contexts is also recognised as a major factor in the trajectory of each state. The following chapters locate parliamentary ability, authority and attitude within specific national and regional contexts. Thus, this Book provides parliamentarians, policy makers and other practitioners multiple but related scenarios for further enhancing the quality of parliamentary oversight of the security sector in West Africa.

## Chapter 2

# Parliamentary Oversight of the Security Sector in the Euro-Atlantic Area: Trends and Lessons

*Teodora Fuior and Hans Born*

### 1. Introduction

The specific mechanisms and historical trajectories for oversight depend first of all on the political system in each state. Differences between African and European countries are many. In spite of the Cold War and the rapid and sometimes dramatic transition of Eastern Europe from authoritarian regimes to new democracies, parliamentary institutions have developed in states that have enjoyed peace and stability on their territory for more than 60 years. By contrast, West Africa is slowly recovering from political turmoil including military coups, civil wars and conflicts, a history that intensifies the urgency of strengthening parliaments' ability to play a proactive role in reconstruction and reconciliation. After conflict, parliamentary institutions suffer from a severe asymmetry of power in relation to the executive, the security institutions and non-state actors. Confusing concentrated power with effective power, new regimes are tempted to gather the power of the state into the executive. Building a peaceful and stable democracy requires urgent correction of this imbalance through a functional and proactive parliament. Possessing the mandate from the people, parliaments provide the needed democratic legitimacy to decisions that involve the use of a state's security structures. As the elected representatives of the people, parliaments are at the heart of the democratic system, the effectiveness of their oversight being crucial for the political health of a nation.

This chapter reviews the trends in parliamentary experiences in the Euro-Atlantic area, as a basis for identifying relevant lessons for parliaments in West Africa.<sup>1</sup> While we consider that parliamentary

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<sup>1</sup> For the purpose of this chapter, we analysed the powers and capacities of parliaments in 14 Western and Eastern European countries in addition to the United States and Canada, which have legislatures of European inspiration.

experiences of both 'old' and 'new' European democracies could inspire ways to stimulate and enforce the role of parliaments in other parts of the world, it is important to emphasise from the onset that there is no ideal parliament. Democracies are structured according to different contexts. A practice or a rule that works well in one setting might be inappropriate in another. Good practices exist, but they definitely have to be adjusted to the local specific context and conditions. This chapter reviews mechanisms and principles of parliamentary control at the national level. Based on these trends and experiences, some lessons are identified which are considered relevant to parliamentary development in West Africa.

## **2. Democratic Control of Security Sector as a Challenge for National Parliaments**

As stated by Winston Churchill, parliament is the workshop of democracy and it is within that workshop where the necessary powers of the state are determined and set within limits. There should be no area of state activity that is a 'no-go' zone for parliamentary oversight. Security is one of the core tasks of a state; the agencies within the security sector hold many leverages of power that need to be counterbalanced and controlled. That is why ensuring a real separation of powers and a smooth system of checks and balances in security issues is even more important than in other fields of government.

### **2.1 The Place of Parliament in Different Political Systems**

The very existence of the parliament derives from the constitution which articulates the fundamental powers of state institutions and the relationship between them. There are three major models of constitutional design that structure differently the relationship between the executive and the legislative power: presidentialism, parliamentarism and semi-presidentialism.

In a **presidential system** the president is directly elected and enjoys strong prerogatives, particularly a special role in foreign affairs and matters of national security. As both head of state and head of government, he appoints the government and exercises direct executive control. There is a clear separation of powers and personnel between executive and legislature. In spite of the power vested in the president, the parliament maintains therefore a strong autonomy. The US Congress (comprising the House of Representatives and the Senate) for example is known for its strong position *vis-à-vis* the executive, especially when the opposition has a majority in one or in both Houses,

and it can substantially obstruct presidential policy. The United States of America is the most visible example of presidential system, but presidentialism is also predominant in Latin America and in the non-Baltic former Soviet countries.

**Parliamentarism** on the other hand prevails in most European countries. The clear separation between executive and legislative branches does not exist in this model, where the executive is chosen from the legislature. As a result, the composition of parliament and the executive are intertwined, which tends to favour party discipline and cooperative legislative-executive relations. The president is indirectly elected by the parliament and has an essentially ceremonial role. The prime minister exercises considerable executive power, but he is accountable to the legislature who may dismiss him, if it disapproves government's policy. This vote of no-confidence represents indeed a strong oversight tool legislatures possess in parliamentary systems: so strong that the 'vote of non-confidence' or the 'nuclear option' in legislative-executive relations is consequently hardly ever put in practice.<sup>2</sup>

There are variations to parliamentarism. United Kingdom and Canada are representative of a Westminster model<sup>3</sup> whose particular features include a single party executive. Germany is the most prominent example of the continental model of parliamentarism, prevalent in most European countries, Denmark, Netherlands, Finland, Spain, Italy, Greece and Turkey being just a few examples of this. Continental parliamentarism relies on a coalition executive and on consensus building policy. The head of state is completely excluded from the executive and plays a ceremonial role.<sup>4</sup> Switzerland is described as having a 'plebiscite parliamentary system' given that important political decisions are frequently checked by popular referenda.

**Semi-presidential systems** combine features of the two previous models. The president is directly elected, and the executive emanates from the legislature. Both the president and the legislature control the prime minister and his government. In France, for example, a hybrid

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<sup>2</sup> Wagner, W. 2006. Parliamentary Control of Military Missions: Accounting for Pluralism, DCAF Occasional Paper No. 12, 4.

<sup>3</sup> Most of Commonwealth and ex-Commonwealth nations such as Australia, India, the Republic of Ireland, Jamaica, Malaysia, New Zealand and Singapore have a Westminster-type of parliament.

<sup>4</sup> See Germany Armed Forces: Background Papers, German Embassy, Washington D.C., available at: [www.germany-info.org/relaunch/info/archives/background/armedforces.html](http://www.germany-info.org/relaunch/info/archives/background/armedforces.html).

model prevails where the president has traditionally far reaching authority in defence and security issues exclusively when his party is also the ruling party. In case of co-habitation, the parliament can drastically limit the powers of the president. Semi-presidential systems became popular in post communist countries, like Poland, Romania, Moldova, Mongolia, Russia or Ukraine. The big differences between post communist countries in terms of democratization and democratic consolidation are often attributed to the power struggle between the president and the parliament, which is made possible by semi-presidentialism. Some of the semi-presidential states are in fact super-presidential systems, where power is concentrated in the hands of the president at the expense of the legislature.

While in different political systems parliaments may range from contemplative to significant governing partners, they have some common characteristics, which include the three basic functions that they perform: to represent the people, to make laws, and to exercise oversight. We will review the powers and the mechanisms used by selected parliaments to accomplish these functions, taking into account the three complementary levels of parliamentary action: plenary sessions, committees, and individual actions undertaken by members of parliament.

## **2.2 Parliament's Authority: The Plenary**

The plenary session is the most visible scene of parliament activity and the focus of media attention. It represents the locus of parliament's authority; all parliamentary acts and decisions with mandatory content are debated and voted upon in plenary. Here is the place where laws are enacted, political declarations are heard, and government's policy is debated and evaluated.

### *Endorsing government's policy and enacting laws*

Parliaments in plenary give consent to and sometimes formally approve government's policy formulation. Documents like government program<sup>5</sup>, national security strategy, defence review or white paper for defence shape national security policy on a long term. On the basis of a threat assessment, such documents determine the national security interests and define the priority tasks for security sector agencies: they

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<sup>5</sup> The Government Programme's approval in parliament is characteristic for parliamentary systems.

*Parliamentary Oversight of the Security Sector in the Euro-Atlantic Area:  
Trends and Lessons*

may indicate the level of defence spending<sup>6</sup>, the maximum number of personnel employed in the armed forces, the necessity for arms acquisition, the levels of possible participation in peace support operations. They settle the political framework for future reforms and the basis upon which ensuing legislation and yearly budgets will be elaborated by the executive. Parliamentary plenary debates may also play a crucial role in raising public support and ensuring the legitimacy of the policies adopted. Once a document reaches parliament and is debated, with or without a vote for formal approval, it becomes 'parliament's property' and direct responsibility for its implementation will be shared by the parliament with the executive.

The power to influence policy formulation became especially important in the Euro-Atlantic area as, with the internationalisation of security cooperation, decisions are often taken at a supranational or intergovernmental level, while being still implemented nationally, supported by national capabilities. On a number of occasions, national governments have used both NATO and the EU to take policy decisions without the involvement of their national legislatures.<sup>7</sup>

The parliament's power to influence security policy formulation is rendered even more crucial by the emergence of new sources of tension in security sector governance (SSG) in older democracies, largely, though not exclusively, springing out of the 'war against terror'. In particular, since 9/11 the delivery of security seems increasingly at odds with transparency, rule of law and the protection of human rights, especially with regard to immigration policies and violation of civil liberties, such as infringements of the right to privacy, discrimination policies, detentions etc. 'Good SSG' is in danger of being undermined in these countries if parliaments do not ensure that security policies comply with rule of law and universally accepted human rights standards.

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<sup>6</sup> Usually as a percentage of Gross Domestic Product.

<sup>7</sup> For example, the first two Common European Security and Defence Policy (CESDP) military operations (Concordia in Macedonia and Artemis in Congo) did not require consent from most of the national parliaments of participating states.

**Box No. 2.1**

**Parliamentary Influence on Security Policy Formulation- Some Good Practices**

- Romanian law on defence planning<sup>8</sup> provides that the President will, in a maximum of 6 months after his investiture, present the National Security Strategy in front of the plenary, which debates and approves it. The NSS, whose average term of validity is 5 years, contains long-term provisions for accomplishing national and collective defence and security objectives;
- In the UK House of Commons each major Defence Strategy document is vigorously debated by the plenary;
- In Switzerland, important agreements for the country, like the accession to collective security organisations or supranational communities, are not only subject to parliamentary debate, but also to a public debate and referenda;
- Parliamentary debates transmitted live on television, radio or internet, ensure a high degree of transparency and raise public awareness and interest in policy. In an increasing number of countries all plenary debates are broadcasted live.

The creation of the national legal framework represents the **proactive function** of parliament, oriented towards future policies and activities of the executive. As Lord Pembroke, a member of the English parliament, stated in 1648, through laws '*a parliament can do any thing but make a man a woman and a woman a man*'.<sup>9</sup>

These are the most common manifestations of parliament's legislative authority, relevant to defence and security:

- All state actors mandated to use force, and the civil management bodies that prepare and make decisions about the use of force, have their mandate, Authority, size, organisation, executive powers and budget clearly stipulated in laws enacted by parliament;
- Parliaments define by law the state of emergency, siege and war; they may also have the power to declare or to lift such states;
- They decide by law which state organ is competent to decide to send military troops abroad, to participate in peace support

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<sup>8</sup> Law no. 473/ 2004 regarding the planning of national defence, Article 5.

<sup>9</sup> The Oxford Dictionary of Political Quotations, edited by Antony Jay, 2001, 286.

*Parliamentary Oversight of the Security Sector in the Euro-Atlantic Area:  
Trends and Lessons*

- operations, or to approve military deployments on national soil;
- They ratify treaties referring to the country's accession to international organisations and military alliances, or to security and defence cooperation.

*Approving the use of public funds*

**State budget law** deserves particular attention, for it provides how the money raised by taxes are allocated to and spent by state agencies. The budget represents a powerful policy tool to plan the future development and distribution of essential values to the citizens: security, justice, freedom and wealth. The budget is therefore a political choice between competing demands of different sectors, the result of the so-called competition between funding guns or butter.<sup>10</sup>

National practices in budgeting differ significantly from state to state. However, one rule remains constant: *the executive proposes and the parliament disposes*.<sup>11</sup> By debating and approving the annual state budget and further monitoring its execution, parliaments have the opportunity to influence government policy and the strategic commitments of the country on a long term.<sup>12</sup>

In most countries the budget is comprised in one law. There are few exceptions: Canada, with four laws, Netherlands with twenty-three or US with six. Regardless of the number of laws of which is composed, the fact that budget has this juridical status has important consequences:

1. Guarantees parliamentary participation in decision making;
2. It is a public document, available on the internet, in public libraries throughout the country and it is a useful basis for holding the government to account; and,

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<sup>10</sup> The 'guns and butter' model is a classic economic example of the 'Production Possibility Frontier'. When spending its finite resources, a nation has to choose between investing in defence and investing in civilian goods. It can buy either guns or butter, or a combination of both. The model also illustrates the idea of 'opportunity cost' that every choice has: you can get more of something only by giving up something else.

<sup>11</sup> The principle of legislative authorization of all public spending and taxation is called the 'rule of law' in public finance.

<sup>12</sup> For further information see DCAF Backgrounder on Parliament's Role in Defence Budgeting, at [http://www.dcaf.ch/docs/bg\\_defence\\_budgeting.pdf](http://www.dcaf.ch/docs/bg_defence_budgeting.pdf).

3. Non-compliance with the budget law can be punished as a crime.

The degree of political incentives and possibilities for parliaments to perform their role vary from case to case. The first important difference appears in the quality and the comprehensiveness of the information received by parliament. The second relates to the actual power of the parliament to amend the budget.

The budget proposal can be a document of few pages containing general information about the overall sums of money allocated to different agencies, or it can consist of hundreds of pages with information disaggregated to a complex level of detail. Let us take the example of the defence budget, which usually means the budget of the ministry of defence:

1. Most parliaments receive the defence budget depicted by appropriation titles which involves listing expenditures according to their objects (the major titles listed usually are military personnel, operations and maintenance, procurement, defence conversion programmes, research and development etc.). Appropriation titles are further sub-divided in appropriation accounts which are further disaggregated in budget activities, and line items. These kinds of budget documents focus attention on what the money is spent on;
2. Another form of the budget document organises the defence budget into major force programmes like strategic forces, general purpose forces, peacekeeping operations, special operation etc. Programme budgeting helps illustrate the purposes for which money is being spent;
3. Usually for public relations purposes, defence budget can also be presented by organisational units - land forces, air forces, naval forces, defence intelligence, which emphasises who is spending the money.

A comprehensive understanding of the expenditures can be achieved by analysing all of these forms of defence budgeting, but this would imply studying hundreds or even thousands of pages of information, which most parliamentarians do not have the time and the technical background to understand.

More than that, parliamentarians should be aware that the defence budget and the national military expenditures are not always the same thing. The total annual cost of maintaining a defence establishment is,

in almost all countries, but especially in new democracies higher than the official data provided by governments under the official budget of the MoD. For example military constructions, arms procurement, military pensions, received military aid, paramilitary forces may all come under other chapters and ministries than defence (development, economy, social security, internal affairs etc.). These **off-budget expenditures** can be difficult to identify, sometimes because they are lumped together with non-military expenditure. Sometimes there is a deliberate attempt to conceal such items, to hide them in non-defence budget accounts. Military expenditures might be significantly increased also by **extra-budget expenditures**, financed entirely outside the government budget.<sup>13</sup> In some countries the military runs factories, cooperatives, shops and other commercial activities, which are used either to increase the personal income of the soldiers, or in a more organized form, for arms purchases and other collective expenditures.<sup>14</sup>

Sometimes national official figure of the defence budget includes also the civil defence, like allocations for economic defence (measures to protect oil reserves, food supplies, other important economical functions) and psychological defence (defence from hostile enemy propaganda).<sup>15</sup> Apart from civil defence, items that may increase the defence budget without representing military expenditures are: expenditure for demobilisation of armed forces and for conversion of defence industries and destruction of weapons.

Another particularly difficult problem for the measurement of the total defence expenditures of a country is the debts incurred by military purchases. Imports of military equipment that are financed via foreign loans constitute an economic burden, and the interest and amortisation payments are extremely difficult to depict in the state budget documents.

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<sup>13</sup> In Chile, a certain percentage of the revenues of the state-owned copper company is used for arms imports, but never passes through the regular government accounts. In many African or Asian countries the military has large income sources outside the formal state budget. In Nigeria under General Sani Abacha, a large part of the petroleum fund went to the armed forces. This outside sources, and many times the army extra budgetary activities, gives the army a considerable liberty in spending and makes the budget almost impossible to control. From UNDP Human Development Report 2002, 89.

<sup>14</sup> In Indonesia only around 30 % of the defence establishment expenditures are covered by the state budget. The rest is provided out of such military commercial activities, the control over such funds being inexistent.

<sup>15</sup> This is the case of Sweden, for example. More information is available at [www.sipri.org/contents/milap/milex/skoens.pdf/download](http://www.sipri.org/contents/milap/milex/skoens.pdf/download).

Other peculiar problematic types of expenditures are:

- **Sunk costs:** legacies/legal commitments from policies which the current parliament cannot undo;
- **Secret expenditures/black holes** (not known to MPs, or, only known to a very select group of MPs); and,
- **Surprises:** unexpected expenditures because of non-planned activities, e.g. emergency aid or PKOs.

The essential indicator of the role of parliament in the budgeting process is the extent to which it influences the contents of the budget through the amendment process which may comprise:

- To reduce or eliminate existing spending, without adding new items or increasing existing ones;
- To transfer funds while maintaining the aggregate totals – any increase in expenditure must be balanced with commensurate cuts elsewhere;
- To initiate expenditure proposals – rarely used, for reasons of fiscal prudence the increase of the budget should be compensated with new resources (or unpopular taxes!).

In broad terms, there are three models for parliamentary involvement in defence budgeting.

1. **Budget-making parliaments** have the capacity to amend or to reject the budget proposal as well as the capacity to formulate their own alternative budget proposal. The US Congress is a notorious example of a parliament which plays an important role in the development of the defence budget. The President's draft budget serves only as a proposal in the strictest sense, without any binding force. The Congress holds the department of defence firmly accountable, often to a level of detail described by some as excessive micro-management. Such an extensive power requires substantial supporting infrastructure: staff, experts and finance;
2. **Budget-influencing parliaments** can amend or reject the budget, but lack the power to put forward their own proposals. Most parliaments in Europe fall into this category. The German Bundestag, the Netherlands and Danish parliaments initiate hundreds of budgetary amendments every year and get engaged in significant details of the budget;
3. **Parliaments with little effect on budget formulation** may only reduce existing items, but not include new ones nor

increase existing ones. Westminster types of parliaments are representative of this model. Traditionally, they give their consent to the defence budget as a global figure, as proposed by the government. In some countries, any amendment to the budget, if successful, is considered equivalent to a vote of no confidence in the executive, that might push the government to resign (Canada, UK, Australia, India, New Zealand, South Africa, and Zambia). But, even if these Parliaments exert little influence over the budget formulation, they play a vibrant role in auditing defence expenditures through hearings, inquiries and public reports aimed to inform public opinion. If parliament's recommendations and the conclusions of parliamentary debates are effectively taken into account during budget formulation, this might diminish the need for amendment activity.

**Box No. 2.2**

**Parliament and the Budget - Some Good Practices**

- To reconcile legislative activism with fiscal prudence, in countries like Canada, Check Republic, France, Italy, Norway, Poland, Portugal, Spain, Sweden or US, spending is kept under control by having the legislature's vote on the overall spending levels before considering sectorial allocations and specific appropriations;<sup>16</sup>
- On behalf of the House of Commons, the National Audit Office undertakes in United Kingdom the financial audit of all government departments and in addition it has powers to examine the economy, efficiency and effectiveness with which those departments have used their resources. Its detailed scrutiny of departmental spending produces around 50 reports a year for parliament. The annual Major Projects Report provides details of the largest 25 defence procurement projects of the Ministry of Defence.<sup>17</sup> The MOD also provides parliament with an annual statement of the top 20 new defence projects.

*Sending troops abroad*<sup>18</sup>

Another extremely important legislative authority of parliaments is to decide on the participation of the national armed forces in peace support operations (PSOs). Participation in PSOs, usually under the

<sup>16</sup> OECD Journal on Budgeting, Volume 1-No. 3, The OECD Budgeting Database, 155.

<sup>17</sup> See [http://www.nao.org.uk/publications/nao\\_reports/05-06/0506595\\_II.pdf](http://www.nao.org.uk/publications/nao_reports/05-06/0506595_II.pdf).

<sup>18</sup> For further information see DCAF Backgrounder on Sending Troops Abroad, at [http://www.dcaf.ch/docs/bg\\_troops\\_abroad.pdf](http://www.dcaf.ch/docs/bg_troops_abroad.pdf).

mandate of an international organisation like UN, represents the modern variety of the old ‘war or peace’ situation.

**Box No. 2.3**

**Parliamentary Control of Military Missions Abroad - Some Good Practices**

- German law (2004) requires prior approval of parliament before the deployment of armed forces, but leaves to the authority of parliament to decide whether a mission is of sufficient importance to merit its involvement. For missions of low intensity and importance a government request is circulated among the members of parliament and it is considered to be approved unless, within seven days, one fraction or a minimum of five per cent of parliamentarians call for a formal procedure. Furthermore, parliamentary votes on sending troops abroad are so-called free votes, meaning that political parties in parliament refrain from imposing a party line on members of parliament;
- Romanian law (2004) requires previous approval of parliament for PSOs and coalition type operations that are not deployed on the basis of a treaty ratified by Romanian parliament. For collective defence, humanitarian assistance or operations deployed on the basis of a treaty, the president takes the decision informing the parliament within 5 days. Thus, rapid decision is ensured for military deployments that are supposed to have been already politically supported by parliament;
- Sometimes the power of the purse may compensate for the lack of a constitutional power of prior authorisation. Parliaments can use this power when approving the annual defence budget – which provides funding for ongoing PSOs, or when receiving additional budget requests for new deployments. For example, the US Congress forced the policies of the executive, suspending military aid to South Vietnam under President Gerald Ford, or stopping funding for the US troops committed to the UN PSOs in Somalia after the first casualties were incurred in 1993;
- All parliaments comprised in our study make intensive use of their power to acquire information about PSOs through visiting troops deployed in mission, inquiries, questioning responsible minister.

The main indicator of a parliament’s relevance in this matter is if it has or doesn’t have the power to approve participation in PSOs before the troops are deployed. The main rationale of putting the power to send troops abroad in the hands of parliament emanates from the important consequences of such decision both on the life of soldiers and on the relation with other states. Parliamentary unhurried debate on war and peace situations ensures that national troops be not deployed in sensitive and risky situations.

Once the troops are sent abroad it is difficult for a parliament to undo the government's decision: withdrawal could endanger the ongoing mission and damage the international reputation and credibility of the country. The need to rapidly react to security emergencies is often the argument used by executives to directly initiate forceful action without previous consultation of parliament.<sup>19</sup>

*Keeping the government accountable*

**Motions and votes of confidence** are instruments of parliamentary oversight which in most parliamentary democracies are defined in the constitution. Parliaments may vote to grant confidence to the executive on a specific law, a policy proposal or the government's general policy. Opposition may also submit to the plenary's vote a motion of no-confidence, or a motion of censure. A simple motion, if adopted, produces no juridical effect, being only a political sanction that may or may not affect the position of the government in that specific matter. But if a vote of confidence is defeated or a motion of censure is passed, the government is forced to resign. The list of governments defeated by votes of no-confidence is long. Paul Martin (2005) in Canada, Romano Prodi (1998) in Italy, Gerhard Schroder (2005) and Helmut Schmidt (1982) in Germany are but a few examples.

Another way to keep the executive accountable is the constitutional or legal requirement for parliaments to give consent to important appointments, such as ministers of defence, interior, justice, directors of intelligence, directors of national audit office, national prosecutor, ombudsman, top military commanders. The nominees for these positions are questioned and evaluated in standing committees, or directly in the plenary, and they have to get the vote of the majority to become officially invested.

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<sup>19</sup> Korea, Vietnam, Falkland Islands, Kosovo or Iraq, are all *de facto*, but not *de jure* wars. USA and UK, for example, have not issued a formal declaration of war since the World War II.

**Box No. 2.4**

**Keeping the Executive Accountable**

- Sunset legislation<sup>20</sup> provides time limits on government agencies: the Sunset process works by setting a date on which an agency will be abolished unless legislation is passed to continue its functions. This creates a unique opportunity for the Legislature to look closely at each agency and make fundamental changes to an agency's mission or operations if needed. Colorado was the first US state to investigate the possibility of using this kind of legislation to control its public bodies. The Colorado Act of 1976 provided for the automatic extinction of thirteen regulatory and licensing agencies in 1977 unless their continued existence could be justified; as a result of the Act, two agencies disappeared as their functions were transferred to their sponsoring departments, two were merged, one was abolished, one had its functions broadened and another had its membership increased. From this very modest beginning, sunset legislation caught on in the United States, and within two years, no fewer than 26 other states had brought hundreds of agencies under sunset clauses. Sunset clauses were introduced in the last years in anti-terrorism legislation by the US, the UK, or Australia;
- Constructive vote of no confidence is provided for in the 1949 German Basic Law. It means that a parliamentary vote of no-confidence does not automatically trigger the resignation of the government, if the opposition is unable to agree to a successor. Federal Chancellor may only be removed from office if a successor has sufficient backing in Parliament. This mechanism avoids political instability, strengthens the opposition and motivates political parties to negotiate into finding mutual beneficial solutions.

**2.3 Parliament's Ability: The Committees**

The authority to make laws and to approve government's policies is complemented by the authority to oversee how the latter are put into practice. Only by monitoring how the executive implements laws and policies, can members of the legislature uncover and correct the

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<sup>20</sup> The roots of sunset provisions are laid in Roman law of the mandate. At the time of the Roman Republic, the empowerment of the Roman Senate to collect special taxes and to activate troops was limited in time and extent. Those empowerments ended before the expiration of an electoral office, such as the Proconsul. The rule, *Ad tempus concessa post tempus censetur denegata* is translated as, what is admitted for a period will be refused after the period. The same rules were applied in the Roman emergency legislation. The principle was broken when Julius Caesar became dictator for life.

inevitable imperfections of legislation, misinterpretation of legislation, or bad administration.

The oversight function of parliament is more efficiently and visibly developed at the level of committees; work in committees facilitates more technical and detailed cross-party scrutiny. Woodrow Wilson, stated in 1885 that '*Congress in session is Congress on public exhibition, whilst Congress in its committee-rooms is Congress at work*', meaning that committee level is the place where parliament is 'working' rather than 'debating'.<sup>21</sup>

#### *The standing committees*

All parliaments in the Euro-Atlantic area have a well institutionalised structure of **standing committees**.<sup>22</sup> These are agreed at the beginning of each parliamentary mandate, to divide the wide labour of parliament between organised groups of parliamentarians that advise the plenary on their specialised field. Besides the concentration of expertise, the advantage of working in committee is the lack of publicity and media coverage, which encourages open dialogue, facilitates negotiations and the development of a common view. Permanent committees develop an independent ethos, a capacity for unbiased thought and action.

The committees that are involved in security sector on a daily basis are those dealing with the armed forces, security services and intelligence.<sup>23</sup> Also relevant for security matters is the work of committees handling foreign affairs, budget<sup>24</sup>, human rights, energy and industry, science and technology.

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<sup>21</sup> Wilson, W. 1981. *Congressional Government*, Baltimore: The Johns Hopkins University Press, 69. Originally published in 1885.

<sup>22</sup> There are also *ad-hoc* committees appointed with a specific and narrow mandate, such as a particular bill or an issue under investigation that dissolve after finishing their mandate.

<sup>23</sup> For further information see DCAF Backgrounder Parliamentary Committees on Defence and Security:  
[http://www.dcaf.ch/publications/bg\\_parliamentary\\_committees.cfm?nav1=4&nav2=1](http://www.dcaf.ch/publications/bg_parliamentary_committees.cfm?nav1=4&nav2=1).

<sup>24</sup> Budget committee is the centre of parliamentary activity with regard to budget. In many parliaments it is the most powerful and prestigious committee. Sometimes has the sole responsibility to consider the draft budget; sometimes it coordinates the work of sectoral committees on departmental budgets.

*The mandate of committees dealing with security issues*

**The mandate** of parliamentary committees is defined in laws and the standing orders of the parliament, sometimes even in the constitution. The role of standing committees is twofold. Firstly, they advise the plenary on all the legislation and parliamentary decisions to be taken in their field of activity. Committee reports offer the starting point for all the debates in the plenary. Secondly, committees exercise parliamentary oversight over the activity of the executive agencies covered by their mandate, pursuing the accountability of executive agencies from two main channels:

1. Administrative - trying to determine facts and laws governing a specific situation, to elucidate accusations of defective administration or corruption within the executive; and,
2. Political- trying to evaluate political choices of the executive, their implementation and consequences.

Their oversight activities are independent from the plenary, or from the legislative schedule. Committees define their own programme and oversight agenda. They decide whom they invite to hearings or to committee meetings, which may be open or closed to the public. The oversight activities of parliamentary committees are diverse, but their foundation is the legislature's power to get information from the executive. These activities mainly follow two oversight strategies:

- **Proactive:** When committees engage in 'police patrol' activities, which are regular and planned (eventually together with the overseen agency): regular meetings to discuss legislation or recent developments, regular reports of activity submitted to the committee, visits of troops, military or civilian premises and offices, etc. This is a preventive approach in which the committee becomes sometimes co-responsible for the developments it reviews;
- **Reactive:** When committees act only after a 'fire alarm' sounds, and they organise hearings or inquiries to investigate deeds signalled in parliamentary debates, media, or complaints received. Committees have the authority to summon ministers, military or civil servants, agency directors or experts to committee meetings to answer questions or even testify under oath, as in a court of law; they may order the competent authorities to carry out a financial audit on budget execution.

*Parliamentary Oversight of the Security Sector in the Euro-Atlantic Area:  
Trends and Lessons*

No matter how wide their mandates, committees have no power of enforcement. Their recommendations are not legally binding on the executive. Committees have to rely on the force of argument, on publicity and on multi-partisan support to convince the plenary to follow their advice. The word of a strong and respected committee usually has considerable political importance.

*Composition of committees*

**Committee members** are elected by the parliament in its plenary meeting, nominations being made by parliamentary groups, so that political parties in parliament are proportionally represented. We meet few exceptions from this rule in the case of intelligence oversight, where the need for secrecy, professionalism and non politicization of the committee's activity is high. The UK intelligence and security committee, for example, has a cross-party membership appointed by the prime minister after consultation with the leader of the opposition. The committee is required to report to the prime minister on its work, and only after any deletions of sensitive material its reports are placed before parliament. Intelligence oversight committees in Norway and Canada are composed of experts who are not parliamentarians, but they are appointed by the parliament and report to the parliament. Belgium and Holland have mixed intelligence committees composed of parliamentarians and experts.

Most committees reach equilibrium between party politics and expertise. Membership in permanent committees tends not only to be stable for the duration of the legislative term, but to last across a number of legislative terms. In new democracies, elections tend to change a bigger percentage of parliament composition, which makes the development of a stable core of experience more difficult, but not impossible. Committee members develop their negotiating skills and their capacity to deal with the executive officials with sufficient depth and expertise to be serious governing partners, and therefore to shape outcomes.

**Committees' chairmanships** are usually negotiated among the larger parties. Because committees which deal with security sector have an important oversight function, their chairmanship is allocated to some parliamentarians of the opposition party, or the chairmanship rotates between the main opposition and the government party.<sup>25</sup>

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<sup>25</sup> Relevant especially for parliamentary systems, where mainly the opposition is tasked with the control of the government; in presidential systems the legislature as a whole is more vigilant in controlling the executive.

*Resources and organisation of committees' work*

**Committee staff** prepares and organises committee meetings, maintains contacts with government and officials, collects information and helps interpret government information. Adequate staff numbers and training is essential to make committees able to meet their responsibilities.

**Table 2.1: Resources of the Defence Committees in Different Countries<sup>26</sup>**

| Countries      | Members | Re-elected | Staff | Chairman Opposition | Meeting Frequency (times per month) | Budget      |
|----------------|---------|------------|-------|---------------------|-------------------------------------|-------------|
| Canada         | 16      | 5          | 3     | no                  | One                                 | -           |
| Czech Republic | 19      | 10         | 4     | yes                 | Twice                               | -           |
| Denmark        | 17      | 9          | 3     | no                  | Once/twice                          | -           |
| France         | 72      | 32         | 11    | No                  | Four                                | -           |
| Germany        | 38      | -          | 8     | no                  | Four                                | -           |
| Hungary        | 15      | 10         | 2     | yes                 | Three                               | E4,000      |
| Macedonia      | 12      | 4          | 3     | no                  | Once/twice                          | -           |
| Netherlands    | 30      | 15         | 5     | no                  | Four                                | -           |
| Poland         | 18      | 5          | 3     | yes                 | Three                               | -           |
| Romania        | 22      | 5          | 6     | no                  | Eight                               | 0           |
| Spain          | 40      | 12         | 4     | no                  | Once/twice                          | -           |
| Sweden         | 17      | 8          | 5     | yes                 | Eight                               | E500,000    |
| Switzerland    | 25      | 16         | 2     | no                  | One                                 | -           |
| Turkey         | 25      | 10         | 3     | no                  | Once/twice                          | E130,000    |
| United Kingdom | 14      | 3          | 8     | yes                 | Four                                | E391,232    |
| United States  | 25      | 17         | 50    | yes                 | Four                                | E 4,296.296 |

As shown in Table 2.1, a small number of parliamentary experts have to cover a wide range of activities, from secretarial work to juridical advise, drafting legislation, writing documentaries, research papers, or speeches. This limits and delays research possibilities and access to information, being one of the biggest impediments to efficient parliamentary oversight. The result is that committee members, especially those without a solid background and expertise in defence

<sup>26</sup> Source: DCAF research 2006-2007.

matters, have to rely mainly on information provided by the government and the military, the very institutions they seek to control.

**Box No. 2.5**

**Organisation of Committee Work – Good Practices**

- Subcommittees are used in many parliaments to divide the work of committees with broad mandate. The split in subcommittees can follow a functional approach (for a special bill, investigation or hearing) or an institutional approach (for a specific institution or agency that are covered by the committee's mandate). Subcommittees may also be formed to coordinate several committees working on selected topics;
- Committee Rules of Conduct and Procedure are adopted by committee members at the beginning of the mandate to enable the proper and smooth functioning of the decision-making process. The rules detail the attributions of chairman, secretaries, rapporteurs and staff, the procedure of calling and running a committee meeting, the possibility of having a member represented by other colleagues in case of impossibility to attend a meeting etc.;
- Rapporteurs play an important role in many parliamentary committees. They are appointed within the committee members to be responsible for the specific information, documentation and writing of legislative reports. For example in the budget committee of the German Bundestag, members are assigned the role of rapporteurs with regard to the budget of a specific ministry. The rapporteurs are kept informed by the budgetary officials in their ministry of all the phases of the budget cycle, they conduct on-site visits to investigate the necessity of certain expenditures or to check the standard of administration. They may demand additional information, demand clarification, obtain latest actual expenditure information. As the rapporteurs tend to keep their positions for a number of years, they develop a high degree of expertise in their policy area, becoming a valuable source of information for the rest of the committee;
- Committee debates and the resulting reports have increased value in the Romanian parliament, since the regulations from 2003 provide that an amendment to a law proposal cannot be considered in the plenary unless it was included (be it adopted or rejected) in the report of the specialised committee. Therefore, any member of parliament interested in a specific law proposal has to submit his written amendments to, or to attend the meetings of the permanent committee that will report to the plenary on the respective project. This procedure enhances legislative coherence and consistency.

Another facilitator of committee's efficient work is the budget. Committees may access financial resources through parliamentary bureaucracy, or they are allocated their own budget. The greater the

budget, the more possibilities are available for hiring staff, using outside expertise, training of members and staff, engaging in oversight activities that involve territorial mobility, or developing cooperation with other parliaments.

#### *Role of committee's oversight*

Parliamentary oversight through committee hearings and inquiries has a very important **anticorruption** impact. In the defence and security field, corruption is mostly associated with defence procurement, which is an important part of the overall defence budget, approved every year through the state budget law.<sup>27</sup> Transparency International's Global Bribe Payers Index<sup>28</sup> rates the defence sector as one of the top three sectors for bribery and corruption, along with the oil sector and major infrastructure projects. As the International Monetary Fund report on corruption and military spending explains, 'Procurement is an important channel through which corruption affects military expenditures.'<sup>29</sup> Moreover, according to the same report, 'bribes account for as much as 15% of the total spending on weapons acquisition.' The U.S. Department of Commerce estimated that 50% of all bribes in global transactions are paid for defence contracts; numerous single source defence contracts have been awarded for operations in Iraq. For all these reasons, in many parliaments defence procurement represents the main topic of defence committee hearings; along with it, the offset clauses.<sup>30</sup>

However, parliamentary attempts to oversee defence procurement go much further in some countries, where important contracts have to be

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<sup>27</sup> Procurement may represent a large part of defence expenditures: in 2003 NATO countries allocated an average 2% GDP to defence, out of which some 17% was allocated to procurement.

<sup>28</sup> Transparency International. 2006. *Preventing Corruption in the Official Arms Trade*. Update Note 3, 30 April, 2006, available online at [http://transparency.org.uk/programmes/DAC/UpdateNote3\\_ReducingCorruptionInTheDefence&SecuritySectors30April2006.pdf](http://transparency.org.uk/programmes/DAC/UpdateNote3_ReducingCorruptionInTheDefence&SecuritySectors30April2006.pdf)

<sup>29</sup> Gupta, S., de Mello, L. and Sharan, R. 2000. *Corruption and Military Spending*. IMF Working Paper, International Monetary Fund, Fiscal Affairs Department, February, available online at <http://www.imf.org/external/pubs/ft/wp/2000/wp0023.pdf>.

<sup>30</sup> Large defence contracts granted by governments to foreign suppliers give rise to demands for compensations benefiting domestic industry: offset. Compensation is normal, and often mandatory, particularly in countries having little or no major defence industry of their own. Its rationale is that such huge expenditures abroad, as defence procurement involves, have to result in equivalent employment at home. Through offset governments make sure that their taxpayers' money will somehow result in spending at home.

submitted for approval of the defence committees. This is the case of the Netherlands, for contracts that exceed 2,5 million euros, Germany for 25 million euros, Poland for 28 million euros and Norway for 300 million euros. In other parliaments, even if the defence committee's approval is not mandatory, MoD has the obligation to inform the committee and give details about all contracts above a certain value (Hungary, Switzerland and the United Kingdom). Sometimes, parliament or the defence committee can be even involved in specifying the need for equipment, in comparing and selecting a supplier or a product, in assessing offers for off set arrangements (Czech Republic, US).<sup>31</sup>

**Box No. 2.6**

**Committee Oversight – Some Good Practices**

- The defence committee in the German Bundestag's existence is provided for in the constitution and it is the only committee which may declare itself to be a committee of inquiry (Art. 45a, para (2) of the Basic Law). A committee of inquiry is parliament's most effective weapon for scrutinizing the government's conduct, having similar rights to the public prosecution office. The rules of criminal procedure apply *mutatis mutandis* to the hearing of evidence. Meetings in which evidence is taken are open to the public, unless military secrecy is required. Meetings in which the evidence is evaluated are not open to the public;
- US Congress committees also possess the subpoena powers – meaning the authority to summon a person to appear under penalty. Refusal to testify before a committee or failure to provide a requested document is considered contempt of Congress;
- The defence committee in the Romanian parliament receives each month in advance the program of the main central and territorial activities of the defence ministry. Members of the committee are free to attend individually or in group the activities they are interested in and, if necessary, they are transported or accompanied by MOD personnel to the respective activities.

Strong committees are the main tools for effective parliamentary influence in the policy-making process. In transition societies, the role of parliamentary committees may be even more important. As political reform usually precedes security sector reform, democratic mechanisms may clash with institutional behaviours held over from

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<sup>31</sup> For more information see DCAF Backgrounder Parliaments' Role in Defence Procurement, available at <http://www.dcaf.ch/publications/kms/details.cfm?lng=en&id=25266&nav1=4>.

past regimes. As parliaments are often the first and easiest institutions to reform, parliamentary committees can be an efficient instrument to help foster security sector reform, transparency and accountability, and to encourage the development of informed public awareness about sector security.

#### **2.4 Parliament's Attitude: The Members**

The most important function of a national parliament is to represent the citizens. Of all governmental institutions, parliaments are the most accessible to the public, the most open and transparent. They also tend to be the most diverse in their membership, reflecting the opinions, the preferences and the interests of all electors, thus embracing the diversity of the society. How members of parliament carry out their duty to represent citizens' interests depends on a variety of constitutional, political and cultural factors. Before elaborating on this topic, we review the main actions available for individual members of parliament in order to respond to the interests of their constituencies.

##### *Individual actions of members of parliament*

Members of parliament have the right to **initiate and amend laws**. The numbers of bills and amendments proposed by members of parliament is a very important criterion in the evaluation of their activity, vis-à-vis both their political party and their constituency.

Members of parliament also have the right to address **questions and interpellations** to the executive, which is obliged to respond.<sup>32</sup> With no exception, parliaments from Euro-Atlantic countries have in their plenary sessions special times allocated each week for questions and interpellations, but also for **political declarations**, thus offering members the opportunity to express their opinions and take a public attitude towards political developments in the country.

##### *The right to be informed*

Parliamentarians' attitude and performance is much influenced by the information they have about their area of activity within the parliament. The right of parliamentarians to be informed by the executive

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<sup>32</sup> Questions and Interpellations are developed in the plenary in a weekly sitting, in which the floor is given to the interpellator and to the representative of the Government, who may reply immediately, or ask for a respite up to the next sitting devoted to the debate of questions and interpellations.

*Parliamentary Oversight of the Security Sector in the Euro-Atlantic Area:  
Trends and Lessons*

represents the first condition for both effective lawmaking and oversight.

In defence and security matters, the access to information raises more challenges than in other fields. First, parliamentarians with a deep knowledge of defence issues are comparatively rare. Secondly, confidentiality tends to limit the flow of essential information. The security sector is necessarily less transparent than other governmental activities, due to the need to protect information vital to national security, but also due to the military 'caste mentality'. In many countries, institutions which possess the legal monopoly of force develop into *states within the state* – having their own distinct values, norms, discipline, schools, courts, hospitals etc. The executive has a tendency to look at security policy and institutions as its own exclusive responsibility. Anti-terrorism measures added in the recent years to the arguments used by executives to withhold the flow of information to the parliament. However, distinction has to be made between confidentiality and the lack of public scrutiny. Euro-Atlantic countries are trying to solve this dilemma by enacting legislation to clearly define procedures for sharing classified information to specialised committees.

There are two main ways to grant parliamentarians access to classified information. In most countries it is assumed that the elected nature of the parliamentary mandate entitles them to have access to classified information, without any verification. (e.g. US, UK, Germany, France, Poland, Czech Republic, Estonia, Bulgaria, Ukraine, and Turkey). Sometimes a secrecy oath is necessary at the beginning of the legislative term, or after being elected in a committee that deals with defence, security or intelligence.

In other parliaments, committee members obtain access to classified information only after receiving a security clearance (Norway, Romania, Serbia, Macedonia, and Latvia). The security clearance is issued after parliamentarians undergo background checks performed by a governmental agency. The rationale for vetting parliamentarians is, basically, to clarify the rules of the game, especially in young democracies, where politicians do not have a culture of secrecy and, on the other hand, security agencies are reluctant to share information. Passing successfully such formal vetting procedures builds trust between legislature and executive, improves communication and empowers members of parliament in their dialogue with executive officials. The most important disadvantage of this model is the possibility to end up by creating two classes of parliamentarians, with

and without clearance. This would jeopardize committee work and the credibility of parliament.

The access to classified information is not the only problematic aspect in defence matters. There is also a more general problem of access to multiple sources of information and independent expertise, not automatically accept all government submissions.

Relevant sources of information can be the electorate and the reports made by statutory audit institutions, like the court of audit, which performs detailed checks over the expenditure of all public institutions. Internal mechanisms of inspection and oversight within the defence establishment, like the inspector general or the ombudsman, can also provide important information support for parliament. Furthermore, the media often provides in-depth and objective analysis, and members of parliament cooperate successfully with journalists in re-enforcing each others efforts to keep the executive accountable.

*The duty to represent citizens' interests*

The most important condition for an effective parliament is its members' attitude. If there is a lack of a firm political will, the formal powers and the resources parliaments have to engage in both lawmaking and oversight lose their relevance. A poor attitude is always the main cause of the decline of public trust in the institution of parliament and in its individual members. Parliamentarians' attitude and conduct are responsible for the prevalence of the public perception of parliaments as non-responsive, un-accountable, and in-efficient institutions.

In response the increased public concern over the misconduct and corruption of elected officials, parliaments in Euro-Atlantic countries use a variety of legal instruments to set high ethical standards of behaviour for members of parliament, as detailed below.

- a. **Codes of Conduct** deal with frequent general misconduct like absenteeism, tardiness, improper language, unruly or disrespectful interventions during the sessions, use of privileged information, misuse of parliamentary allowances. They also provide guidance for parliamentarians on how to reconcile their private interests with their public duties. Sanctions can be applied for misconduct, in the form of a fine, suspension from attendance in the parliament, suspension of allowances or benefits, and even expulsion;

- b. Incompatibilities** are defined in constitution, laws, or codes of conduct. They address potential conflicts of interest, especially the use of legislator's position to advance their own personal economic interests. Incompatibilities intervene only after the election and impose choosing between the mandate of parliamentarian and the activity declared incompatible by the member himself, or the competent authority, usually a parliamentary committee. Most often, carrying out a parliamentarian's duty is considered incompatible with any contractual agreement with a body outside parliament, and with undertaking other paid work outside parliament;
  
- c. Wealth and interest declarations** are in many countries public (Czech Republic, France, Germany, Italy, Poland, Romania, Spain, Switzerland, UK, and the US), and often published on the internet site of the parliament. They identify all assets and liabilities of parliamentarians and their families, all benefits and any private company in which a member or his family has an interest, list every corporation, association, union or partnership in which any of them holds an office or directorship.

Parliamentarians' conduct is shaped by a variety of factors: personal motivations, desire to influence policy, loyalty to political parties, perceptions about their own job, and the range of ways they have to respond to constituencies. These factors are a consequence of structural characteristics like the type of political and electoral systems. As earlier discussed, the political system determines the relationship between legislature and executive. In parliamentary systems party discipline tends to be very strong, parliament and government speaking many times as one voice, and the oversight being taken seriously mainly by the opposition parties. Majority party members often aspire to become part of the government, and this career goal discourages a critical and vigilant attitude in their parliamentary activity. In presidential systems legislatures tend to be more independent of, and adversarial to the executive. The oversight role is more effectively played by the whole parliament. Secondly, the type of electoral system is very important in influencing parliamentarians' attitude, because it determines how votes are translated into seats in the parliament, and affects significantly party discipline. There are two main types of

electoral systems<sup>33</sup>, with different principles and objectives. In majority/plurality systems (US, Canada, UK, Kenya) all seats go to the strongest party in one constituency, clear majorities being followed. As only the candidate with most votes wins, re-election depends on pleasing one's constituency. Parliamentarians make the interests of their constituency a high priority, winning over party interests. Proportional systems (most of European countries, including all the new East European democracies) distribute seats according to share of votes, pursuing equal representation. Constituents vote for a list of candidates prepared by each party, rather than for an individual. Parties win legislative seats based on the percentage of votes they receive, therefore parliamentarians will want to maintain or improve their position on the party list to be re-elected. Therefore party discipline tends to be very strong.

**Box No. 2.7**

**Enabling Members to Better Represent Their Electors**

- Parliamentary immunity reduces the possibility of pressing a member of the parliament to change his vote by fear of prosecution. Before prosecuting, it is necessary that the immunity be removed, usually by a court of justice, or the parliament itself. In France for example, as a consequence of immunity members of the parliament may not be sought, prosecuted, judged or imprisoned for actions they have accomplished within their duties of parliamentarians. This includes speeches and votes in public sittings of the assemblies, law proposals, amendments, as well as reports and other actions. The termination of the parliamentary term does not allow the prosecution of former parliamentarians for actions committed during their mandate. Members of parliament may be arrested or otherwise deprived of their freedom, or face restrictions thereof, only with the permission of the parliament. This authorization is not needed only in case of a *flagrant* felony or of a definitive condemnation by a court of law;
- Freedom of information legislation, enacted in all Euro/Atlantic area, provides a right of access to recorded information held by public authorities, not only for parliamentarians, but for all interested public. Protection of classified information legislation is an exception from the from the general principle freedom of information; it formalizes what types of information may constitute a 'state secret', establishes authorities entitled to assign a secrecy level to information, codifies the guidelines for vetting and establishes sanctions for unauthorized disclosure. All these provisions prevent over-classification and limit the executive's space of maneuver on secrecy.

<sup>33</sup> For a detailed comparative analysis of electoral systems see *Electoral System Design: The New International IDEA Handbook*, second edition published in 2005, available online at: <http://www.idea.int/publications>.

Political parties are crucial to political life, representing the main vehicle for structuring political competition, for aggregating the opinions of the citizens and transforming them in laws and policies. The organisation, the funding<sup>34</sup> and the levels of internal democracy within political parties are important for understanding the way members of parliament position themselves in the mechanism of representation. Excessive partisanship limits parliament's capacity to call government to account; in many parliaments the loyalty to political parties prevails over the concern for the legislature as an institution. When all actions and debates are party-oriented, when votes are party dictated, the general interest of the people is more likely to be eluded. Solving the potentially conflicting demands of party loyalty and individual conscience is a difficult challenge to face.

### **3. Some Lessons for West African Parliaments**

#### ***Parliament matters***

Parliaments have substantial power when they choose to exercise it. Strong political will and a clear institutional awareness transform the parliament from an arena of obedient voters, into a real centre of power. Through the laws they enact, parliaments shape all institutions of a state, and assign them tasks, powers and money. Parliamentary procedure is an important constraint on government. Government's composition, its domestic and foreign policies, its bill proposals including the state budget, all have to go through established parliamentary procedures. At least in principle, the powers parliaments have are those powers that parliaments want to assume. The powers parliaments do not have, are in fact self-imposed limits.

#### ***Fair competitive elections are key to democratic control of armed forces***

History shows that the early years of building a democratic state are the most perilous, both for democracy and peace. Parliaments themselves derive their legitimacy from the credibility and integrity of the electoral

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<sup>34</sup> For a comprehensive comparative analysis of political parties financing see the handbook on *Funding of Political Parties and Electoral Campaigns*, with its chapter dedicated to Africa, published in 2003 by the International Institute for Democracy and Electoral Assistance (IDEA); available on line at [http://www.idea.int/publications/funding\\_parties/upload/full.pdf](http://www.idea.int/publications/funding_parties/upload/full.pdf). See also *Money in Politics*, published by the National Democratic Institute for International Affairs, in 2005, available online at: <http://www.accessdemocracy.org/library>

process. In spite of unique features of every country ‘the evidence shows that the presence of a powerful legislature is an unmixed blessing for democratization’.<sup>35</sup>

***Parliament has an important conflict prevention role***

The first great benefit of democracy is the right to oppose. West Africa is very much in need of strengthening democracy for the purpose of good governance but also as a way of conflict management. A representative parliament which reflects the social diversity of the population will offer space for opposition’s proposals, for debates and negotiations where minority views are discussed and complaints are de-tensioned through dialogue. If different groups in society are adequately represented in parliamentary dialogue, the motivation for conflict is reduced. Thus, parliaments guarantee political pluralism and build acceptance of the democratic process by the majority of political actors in a society.

***Human security prevails over state security***

Generally, security in Western African states, just as security in Euro-Atlantic states, does not refer to the protection against foreign military invasions. The successful development of ECOWAS as a community is proof that the states in West Africa do not perceive each other as potential enemies, but as neighbours with whom to cooperate. The security concerns which really do matter are human security and regime security. Armed robberies, illegal smuggling of people, organised crime and corruption, to mention a few, are threatening the daily life of many ordinary people in West Africa. Unfortunately, even the members of the security services sometimes are themselves source of these threats. Representatives of the African people in parliament need therefore to ensure that security services are not a source of insecurity to the people, or an obstacle to democratisation.

***Parliament works for the security sector employees also***

In some West-African states, the protection of the regime of the day against non-democratic and unconstitutional change is a real concern. Parliaments have to address grievances of all groups and minorities whose rights might be not respected or who might be discriminated against. Additionally, parliaments have to address the issue of the

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<sup>35</sup> Steven Fish, M. 2006. Stronger Legislatures, Stronger Democracies, *Journal of Democracy* 17(1).

loyalty of the security services to the constitutional order and have to investigate and mediate if parts of the security services start to rebel. The past has shown that military coups do not happen overnight but numerous events and steps escalate to crises as such. A strong involvement of African parliaments in the security sector is essential not only for security concerns but also for ensuring that governments are good employers of the security services, in terms of working conditions, regular payment of salaries, and pensions.

***Government needs an efficient parliament***

Accountability makes the government stronger because it enhances political authority, legitimacy, sustainability. A government which is able to explain, to reveal and to justify its policy and actions in front of a vibrant parliament is a healthy and a vital government. Therefore parliamentary oversight should be seen by members of the executive as a benefit, not as a threat. To underestimate parliament is to endanger the functionality and the endurance of the whole political system.

***Parliaments have the right to be informed***

A parliament is as good as the information it receives. Transparency and public discussion compensate for the lack of expertise prevailing in most parliaments. The criticism that civilian members of parliament do not sufficiently understand security rationales or budgetary technical requirements is often an excuse by the executive. At best, it is an argument for providing to the parliament better information.

***Parliaments and their work need to be known by the larger public***

Decision-making processes and outcomes have to be accepted and valued by citizens, otherwise security, development and democratic values cannot coexist. People have the right to know what their representatives are doing in their name. Therefore parliaments are responsible for informing citizens but also educating them. In order to develop democratic modes of behaviour people need to be exposed to democratic institutions. Political elite are exposed to the institutional learning process on a daily basis. They are the first group to practice democratic values, and to prove their viability before these are internalised by the society at large. Parliaments in West Africa should serve as an instrument of socio-economic change and the parliamentary debates should enlighten, teach and inform the people on the important issues of the day.

***The integrity of parliament and its members should be beyond reproach***

Parliaments themselves are institutions accountable to the public. Members of parliament have to meet certain standards of performance and integrity in the conduct of their office. They are expected to conduct themselves with dignity, highest principles of ethics and correctness. The most important responsibility of members of parliament is to serve, through their positive performance, as a good example for the citizens, gaining their respect and confidence.

**Box No. 2.8**

**Possible practical actions for West African Parliaments**

**Strengthening the general capacity of parliament**

- The quality of a parliament depends on the quality of its members. A primary challenge for political parties is how to attract valuable and successful people who already have a solid career to seek election in the parliament. Resources need to be found for offering salaries, facilities, pensions, training, and an alternative career structure that would give to the position of parliamentarian an attractive and respected status;
- Service in a committee should be made more attractive for parliamentarians. Committees should offer an alternative career path to that of ministerial office. The chair and the deputy chair should be elected by members and receive salaries at the same level as ministers. Committees, especially the large ones, should be empowered to appoint one or more sub-committees, which should elect their own chair. This would add dynamism and dedication to parliamentary work, allowing more MPs to hold positions of responsibility and raise their public profile;
- A library, internet, a research department, an intranet system that would facilitate documents circulation inside the parliament are essential tools for parliamentarians and their staff. The indispensable data base of any parliament should contain the comprehensive collection of national legislation;
- Having at least one weekly Question Time in the plenary schedule is essential to call ministers to account in front of the parliament;
- All draft bills should be submitted to the competent sectorial committee before they are debated in the plenary;
- A special committee could be established to monitor the impact of legislation and the problems associated with implementation. Democratic reforms require large numbers of new laws which many times need to be amended, depending on how they work in practice. Scrutinizing the effects of legislation should be an imperative for any new democracy.

**Strengthening the oversight of security sector**

- Security has distinctive features that make parliamentary oversight a difficult task: complexity, political nature, secrecy and high corruption. Standing committees for defence and security are essential to foster parliamentary capacity to scrutinize security sector. Committee membership should last for a whole parliamentary session in order to let members gather expertise. To compensate members' lack of experience, defence committees need permanent dedicated staff, partly composed of civilians with education in law, political science, defence, partly of personnel retired from the armed forces and other security agencies, in order to reach an ideal balance between civilian and military expertise;
- For an effective oversight of intelligence a special committee should be appointed. Its members should be granted access to classified information;
- In their oversight activities committees should have the power to determine the timetable and the agenda of their meetings.

**Better control of the use of public funds**

- The parliament should be empowered not only to approve or reject the government proposal, but to transfer funds between appropriations and budgetary chapters. This power would make the consideration of budget proposal much more attractive for MPs and it would also motivate a more vigilant scrutiny of budget execution;
- To strengthen parliamentary scrutiny of public spending a public accounts committee should be appointed (where this does not exist) to consider the national audit office's reports on budget execution.

**Enabling members to better perform their duty**

- New democracies are characterised by the emergence of a new inexperienced political class, which relies on fast self-taught skills. Training for new parliamentarians should be introduced at the beginning of each mandate;
- A training infrastructure for members and staffers could be developed within parliament, to increase efficiency of both training and resources' spending. Among the possible topics of these training programmes, are legislative technique, parliamentary tools of scrutiny, how to conduct investigations, time management, public budgeting, use of internet, use of parliamentary intranet;
- Besides Standing Orders that detail basic rules of conduct and procedures during parliamentary sessions, a code of official conduct/ethics for parliamentarians can contribute to build up public trust and strengthen the integrity and transparency of parliament itself. Its implementation should be overviewed by an appointed ethics commissioner or by an ethics committee. Such a body should recommend administrative actions to establish and enforce standards of official conduct; investigate alleged violations of the code of official conduct or of any applicable rules, laws, or regulations governing the performance of official duties, and report to the appropriate authorities about possible violations.

**Better visibility and relation with the citizens**

- Parliament should be an open and a transparent institution. People are increasingly interested in learning how their representatives have stood and voted on key issues before parliament. Having the voting records published and the debates broadcast represents the essence of parliament's accountability;
- Live telecast or live radio cast of parliamentary sessions are likely to bring about better public knowledge of parliament and the matters which come before it and also an improvement in the behavioural patterns of its members;
- Media tends to focus on government rather than parliament. Therefore parliaments should attract media, through the establishment of appropriate facilities within the parliament premises;
- All draft bills should be published as soon as they are submitted to parliament;
- A petition committee should be appointed to consider individual and collective petitions in detail, to refer them to sectorial standing committees or governmental departments, to eventually conduct its own investigation and demand action to redress grievances. Such a committee would give people more confidence that the parliament represents and protects them.

## **PART II**

### **Case Studies**



## Chapter 3

# ECOWAS

*Jens Hettmann and Fatima Kyari Mohammed*

### 1. Introduction

Even though some form of security cooperation indeed existed in the region<sup>1</sup>, the outbreak of the civil war in Liberia in 1989 forced ECOWAS to take more active and direct responsibility for conflict resolution, crises management and peace. The Liberian conflict itself arose largely out of the absence of effective control over the security sector, which encouraged the development of a state within the state. A major thesis of this chapter is that parliamentary oversight deficit in the security sector is also manifested in regional mechanisms. Despite several internal changes, a cardinal challenge confronting the ECOWAS Parliament in delivering effective oversight of the security sector is its relative impotence within the broader ECOWAS institutional framework.<sup>2</sup>

ECOWAS introduced a parliament in its revised Treaty of 1993, and the protocol for the ECOWAS parliament was signed in 1994. The ECOWAS Parliament held its first session in January 2001. The creation of a regional parliament formally opened the path to democratisation of the security sector in West Africa beyond the immediate limits of state borders. The ECOWAS regional parliament has tremendous potential for a crucial role in democratic governance of security at the regional level, especially in terms of oversight functions. The ECOWAS Parliament could also have a unique role to play in conflict management, representing a forum to mediate between conflicting interests and to prevent escalation into violent

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<sup>1</sup> Earlier Instruments of security cooperation in the ECOWAS region included the 1977 Non-Aggression and Defence Agreement, the 1978 ECOWAS Protocol relating to Non-Aggression, the 1981 ECOWAS-Protocol relating to Mutual Assistance and Defence.

<sup>2</sup> Hettmann, J. 2004. *Eine demokratisch kontrollierte Sicherheitsarchitektur in Westafrika – Zentrale Herausforderung für die ECOWAS*, 11. Bonn: Friedrich Ebert Stiftung.

confrontation.<sup>3</sup> In terms of cross-border conflict, regional parliamentary dialogues and networking can be a crucial element for sustainable peace. Sharing experiences and good practices between parliamentarians from countries with different historical backgrounds and systems has proven effective for mutual learning. In the context of conflict prevention, the ECOWAS Parliament can play an important confidence-building role via parliamentary diplomacy and exchange of information and experience. Regional parliaments debate protocols, observe elections, and can assist in harmonisation of legislation, for example on small arms reduction and arms trafficking (e.g. ECOSAP Convention).<sup>4</sup> The ECOWAS Parliament could be therefore a driving force for a more democratic regional security agenda.

The purpose of this chapter is to contribute to the ongoing debate about the democratic control of the security sector within the context of regional realities. The chapter addresses the gap between the immense potential of the ECOWAS Parliament in terms of regional security governance and the reality of a modest track record. It describes the actual political and legal framework that determines the existence and the prerogatives of the ECOWAS Parliament. Subsequently it highlights the achievements so far within the framework of regional integration and finally discusses some challenges on the way to more effective and democratic regional parliamentary oversight.<sup>5</sup>

## **2. Background**

### *Historic political and institutional development*

On 28 May 1975, 15 West African countries signed a treaty for an Economic Community of West African states (ECOWAS Treaty of Lagos). ECOWAS was established with the aim of promoting co-operation and integration in economic, social and cultural activities between the states of the region, ultimately leading to the

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<sup>3</sup> Molukanele, T. 2007. Parliaments as unique institutions for conflict management *Conflict Trends*, "Parliaments & Conflict Resolution", 1/2007: 41 and 44.

<sup>4</sup> Balch, J. 2007. The new parliamentary peace-building paradigm *Africa Conflict Trends*, "Parliaments & Conflict Resolution", 1/2007: 7.

<sup>5</sup> Shortcomings in the institutional and political setup of the regional integration are not the only factors contributing to regional instability. Other factors, like the omnipresent (Neo-) patrimonialism, exclusion of minorities, poverty, natural catastrophes, failing states with endless coups and civil wars, play important roles as well; they however will not be taken into account in this paper.

## ECOWAS

establishment of an economic and monetary union through the total integration of the national economies of Member States.

The protocols launching ECOWAS were signed in Lomé, Togo on 5 November 1976. The institutional set-up was merely functional without putting much emphasis on democratic principles. At the beginning of its functioning, ECOWAS decisions and activities mainly focussed on economic issues.

Though inter-state conflicts and numerous attempts to destabilise Member States led to the protocols on non-aggression and mutual assistance in defence matters, in 1978 and 1981 respectively, security did not become the major preoccupation of ECOWAS until the 1990s when the end of the Cold War effectively removed the imperial security umbrella which had hitherto existed in the sub-region. Renewed interest in democratisation prompted institutional changes within ECOWAS and its organs.

Major revisions in the ECOWAS institutional setting were adopted in July 1993. The revised ECOWAS Treaty, designed to accelerate economic integration and to increase political co-operation among Member States, provided for the establishment of a West African parliament, an Economic and Social Council and an ECOWAS Court of Justice (article 6). The treaty also formally assigned the Community with the responsibility of preventing and settling regional conflicts (article 58).

Even before the parliament started functioning, several international instruments were adopted as a result of the ECOWAS broader mandate; the first achievement was the adoption of the **Declaration of Political Principles** which, for the first time, emphasised the regional preoccupation with Human Rights in particular, and democratic rules and principles as a whole.<sup>6</sup>

Moreover, ECOWAS had taken major decisions particularly in the area of security policy. In 1999, the Authority of Heads of States adopted the '**Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security**' in Lomé. This was widely considered as the ECOWAS' central document in the realm of security policy.<sup>7</sup> The Protocol covers, among others, the role of the armed forces, police, and

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<sup>6</sup> Declaration of ECOWAS Political Principles, Lagos, ECOWAS Executive Secretariat, Abuja, July 1991.

<sup>7</sup> Henceforth referred to as the Mechanism.

security forces in a democracy, elections, rule of law, human rights and good governance. The Protocol, however, does not integrate the Community Parliament directly into the Mechanism.

A further **Supplementary Protocol on Democracy and Good Governance** was adopted in Dakar in 2001. The latter Protocol, intended as a supplementary instrument to the Mechanism of 1999, sets out essential constitutional principles which should characterize any democratic order, for instance separation of powers between the executive, legislative and judiciary; empowerment and strengthening of parliaments; independence of the judiciary, access to power only through free, fair and transparent elections; popular participation in decision-making; strict adherence to democratic principles; reference to the African Charter on Human and Peoples' Rights; free creation of political parties; freedom of association; and freedom of the press.<sup>8</sup> The ECOWAS Parliament has therefore functioned on the basis and within the context of an emerging institutional normative framework which is unequivocal in its democratic aspirations.

The Community Parliament was established on the basis of Article 13 of the ECOWAS Revised Treaty of 1993, stating:

1. There is hereby established a Parliament of the Community;
2. The method of election of the members of the Community Parliament, its composition, functions, powers and organization shall be defined in a Protocol relating thereto.<sup>9</sup>

In 1994, the Protocol pertaining to the creation of the Community Parliament was elaborated and signed by all ECOWAS Member States, except Guinea-Bissau and Côte d'Ivoire.<sup>10</sup> The Protocol only entered into force on 14 March 2002. In the Protocol, the parliament is conceived as a 'forum for dialogue, consultation and consensus for representatives of the peoples of West Africa with the aim of promoting integration'.<sup>11</sup>

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<sup>8</sup> Protocol A/SP1/12/01 on Democracy and Good Governance; supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security, Dakar, December 2001, Art. 1.

<sup>9</sup> ECOWAS revised treaty 24 July 1993, article 13.

<sup>10</sup> Protocol A/P2/8/94 establishing the ECOWAS-parliament, approved on the 6<sup>th</sup> of August, 1994. ECOWAS states are historically slow to sign treaties. As of today, both Guinea Bissau and Cote d'Ivoire have not signed the Protocol. However, Guinea Bissau has taken its seats in the Parliament, while Côte d'Ivoire has not.

<sup>11</sup> At its 25<sup>th</sup> meeting in Dakar in December 2001, the Authority of Heads of States and Governments decided that Abuja should be the headquarters of the Community Parliament. Interestingly the first session of the Parliament took place

## ECOWAS

Since Mauritania pulled out in December 2000<sup>12</sup>, the parliament presently consists of 115 seats as opposed to the 120 mentioned in the Protocol. Each of the 15 Member States has a minimum of five seats. The remaining seats are shared based on the population of the Member States. Consequently, Nigeria has 35 seats, Ghana 8 seats, Côte d'Ivoire 7 seats, while Burkina Faso, Guinea, Mali, Niger and Senegal have six seats each. Benin, Cape Verde, the Gambia, Guinea Bissau, Liberia, Sierra Leone and Togo have 5 seats each.

At present, members of the Community Parliament are selected from the National assemblies of each Member State. Each parliamentarian serves a five years term, provided he/she is a member of the legislature in his/her home country during that period.

The ECOWAS Parliament commenced its functions in January 2001 when a speaker was elected. The speaker presides over all sittings of the plenary and is assisted by six deputy speakers. The bureau of parliament, which is the highest decision making body, also consists of three treasurers and six parliamentary secretaries. The parliament comprises the following thirteen committees:

- Foreign affairs, cooperation, defence and security
- Laws, regulation, legal and judicial affairs
- Human rights and free movement of persons
- Rural development
- Transport and communication
- Environment and natural resources
- Public health and social affairs
- Education, training, employment, youth and sports
- Economy, finance and trade
- Industry and mines
- Energy, technology and scientific research
- Women's and children's rights
- Tourism, culture and handicrafts.

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in December 2000 in Bamako (Mali) way ahead of the date of the protocol's entering into force.

<sup>12</sup> No official reason was stated by Mauritania when communicating to ECOWAS its decision to withdraw its membership from the ECOWAS Parliament. However, several references were made to the issue of common currency, to which Mauritania is believed to be opposed based on the argument that this would undermine its sovereignty. See for example [www.arabicnews.com/ansub/Daily/Day/991228/1999122860.html](http://www.arabicnews.com/ansub/Daily/Day/991228/1999122860.html) and [www.africa.upenn.edu/Newsletters/irinw-122799.html](http://www.africa.upenn.edu/Newsletters/irinw-122799.html).

The chair of each committee together with the speaker and deputy speakers constitute the conference of chairmen. The Box below sums the duties of the committees.

**Box No. 3.1**

**The Prerogatives of the Committees of the ECOWAS Parliament**

1. Committees shall consider all matters coming within their competence as well as related documents, acts and discussions referred to them by the conference of committee chairmen;
2. Should a standing committee declare itself not competent to consider a question, or should a conflict arise over the competence of two or more standing committees, the question of competence shall be placed on parliament's agenda on a proposal from the conference of chairmen or at the request of one of the standing committees concerned;
3. Should two or more standing committees be competent to deal with a question, one committee shall be named as the committee responsible and the others as committees asked for opinions.  
A question shall not, however, be referred simultaneously to more than three committees, unless it is decided for sound reasons to depart from this rule under the conditions laid down in paragraph 1 above;
4. Any two or more committees or sub-committees may jointly consider matters coming within their competence, but they may not take a decision;
5. Any committee may, with the agreement of the bureau, instruct one or more of its members to undertake a study or fact-find mission.

Source: Rule 43, Rule of Procedure of the ECOWAS Parliament

### **3. Authority of the ECOWAS Parliament**

The powers of the ECOWAS Parliament are laid down in Article 6 of the Protocol A/P2/8/94, signed by the heads of state of ECOWAS Member States. In contrast to most national parliaments, therefore, the Community Parliament does not have the power to define its own competence. Significantly and furthermore, the authority of ECOWAS Parliament is demonstrably lacking in the following respects, including:

- Budgetary powers<sup>13</sup>;
- Power to summon ECOWAS executive members before parliament;
- Power to have access to classified documents;

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<sup>13</sup> The ECOWAS Parliament has no power concerning the Community Budget and oversight over it.

*ECOWAS*

- Power to vote or to give consent to high level ECOWAS appointments.

Article 6 of the Protocol establishes that:

1. The parliament may consider any matter concerning the Community, in particular issues relating to human rights and fundamental freedoms and make recommendations to the institutions and organs of the Community.
2. The parliament may be consulted for its opinion on matters concerning the Community.

The opinion of the parliament shall be sought in the following areas:

- a. Inter-connection of the communications links between Member States so as to make free movement of persons and goods effective;
- b. Inter-connections of telecommunications systems to form an effective community network with the maximum possible number of extensions to the rural areas to make them more accessible;
- c. Inter-connection of energy networks;
- d. Increased cooperation in the area of radio, television and other media links within the Community and between the Community and the rest of the world, development of national communications systems to form an integrated effective community system with its own programmes;
- e. Public health policies for the Community;
- f. Common educational policy through harmonisation of existing systems and specialisation of existing universities; adjustment of education within the Community to international standards;
- g. Youth and sports;
- h. Scientific and technological research;
- i. Community policy on environment;
- j. Treaty review;
- k. Community citizenship;
- l. Social integration;
- m. Respect for human rights and fundamental freedoms in all their plenitude.

Therefore, even though the Community Parliament could, in principle, be able to consider any matter concerning the Community, Article 6

limits its ‘powers’ to expressing its ‘opinion’. The ECOWAS Parliament is not endowed with any decision-making power and its authority may be categorized into three areas where it may consider matters on its own initiative (art. 6, paragraph 1), issues regarding which it may be consulted (art. 6 paragraph 2) and issues in which parliamentary consultation is mandatory (art. 6 paragraph 2). In essence therefore, the parliament cannot make laws and its real ‘power’ derives mainly from personal or group charisma, persuasion, moral suasion and social influence. However, such informal powers are not enough to ensure effective influence and participation in the decision-making process. Furthermore, on the basis of article 6, the ECOWAS Parliament has no specific competence concerning oversight of the security sector.

It is evident therefore that the regulatory framework of the ECOWAS Parliament is rather weak, and stands arguably in clear contradiction with Article 1 of the Protocol on Democracy and Good Governance, calling, among others, for separation of powers and empowerment and strengthening of parliaments. This reality explains the protracted discussion about the enhancement of the Community Parliament’s powers. Various attempts have been made to this end; an important step was the adoption by the parliament of a **‘Resolution Relating to Enhancement of the Powers of the Community Parliament’** in 2002.<sup>14</sup> The Resolution recommends: i) the extension of the areas on which the parliament *must* be compulsorily consulted, e.g. on the adoption of the Community budget; ii) the enhancement of its enforcement powers; iii) the enlargement of its competence to issues like peace as well as the promotion of democracy and good governance in the region; iv) the establishment of the financial autonomy of the Community Parliament.<sup>15</sup> The Resolution also requires the determination of a terminal date for the transitional period, thus requesting implicitly the organisation of the agreed ‘direct universal suffrage by citizens of Member States’.<sup>16</sup>

Even though this resolution moves way ahead of the actual legal situation of the Community Parliament, it still falls short of claiming truly parliamentary prerogatives. So far, the only practical consequence has been the adoption of a regulation on the

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<sup>14</sup> Resolution Relating to Enhancement of the Powers of the Community Parliament, ECOWAS-parliament, Abuja, 13 September 2002.

<sup>15</sup> As laid down in Article 18 of Protocol A/P2/8/94.

<sup>16</sup> *Ibid.*, Article 7.

Improvement of the Functioning, the Administrative and the Financial Management of the Parliament.<sup>17</sup>

The ECOWAS Executive Secretariat (now ECOWAS Commission) has conducted a *Study on the Enhancement of the Powers of the ECOWAS Parliament*, which analyses the actual challenges and prospects for the enhancement of the ECOWAS Parliament.<sup>18</sup> Concerning the involvement of the parliament in the decision-making process, the study pointed out that – at least until its presentation – ‘none of the ECOWAS institutions have sought the opinion of the parliament in any of the areas, or any of the matters listed in article 6, paragraph 2’.<sup>19</sup> Moreover, the parliament has never addressed recommendations to other ECOWAS institutions.<sup>20</sup> The Community Parliament seems therefore disconnected from the Community’s decision-making process.

At its summit in January 2006, the Authority of Heads of State and Government adopted Decision A/DEC.6/01/06, relating to the Modalities for the Effective Implementation of Article 6 of Protocol A/P2/8/94. The procedure for referral to the Community Parliament shall be as follows:

- The parliament shall forward a draft recommendation, regulation or decision on the matter to the ECOWAS commission, accompanied by the report of the meeting of the competent committee of the parliament that considered the issue;
- The ECOWAS Commission shall consult the institutions and Member States concerned by the proposal and submit same as well as the report of the parliamentary committee to the competent specialised technical commission;
- The ECOWAS Commission shall communicate to the Community Parliament whatever amendments may be proposed by the specialised technical commission;

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<sup>17</sup> Regulation C/Reg.20/01/05 on the Improvement of the Functioning, the Administrative and the Financial Management of the Parliament, ECOWAS Council of Ministers, Accra, 16-18 July 2005 (Comment of the Authors: While being far more recent, this regulations does not make any mention of the ECOWAS-parliaments resolution of 13 September 2002).

<sup>18</sup> Study on the Enhancement of the Powers of the ECOWAS-Parliament, ECOWAS Executive Secretariat, Abuja, August 2004.

<sup>19</sup> *Ibid.*, paragraph 4.

<sup>20</sup> *Ibid.*

- The parliament shall communicate to the ECOWAS Commission the observations it may have on the amendments proposed by the technical commission.

Where the institutions and organs of the Community choose to consult the parliament for its opinion or in cases where the Parliament must be consulted for its opinion, the institutions and organs concerned shall prepare a draft recommendation, regulation or decision, which will be reviewed by the competent specialised technical commission. After examination (and eventually amendment) of the draft text by the specialised commission and the plenary, the parliament shall communicate its opinion accompanied by the necessary justifications, to the institution or organ concerned and to the council of ministers, through the ECOWAS Commission.

The institution or organ of the Community shall communicate to the parliament, through the ECOWAS Commission, the draft texts concerning the matters on which the opinion of the parliament may or has to be sought at least thirty (30) days before the start of the ordinary session during which drafts are to be considered. The parliament shall give its opinion during the same session or in an extraordinary session.

In both cases of an optional or compulsory consultation, the Community Parliament gives an advisory opinion and communicates it to the council of ministers through the president of the commission, at the latest ninety (90) days from the date of the receipt of the draft by the parliament.

Where the parliament decides on its own to consider any matter concerning the Community, its opinion shall be communicated without delay to the council of ministers through the ECOWAS Commission. The commission in turn has ninety (90) days from the date of the receipt of the opinion of the parliament to proceed on necessary consultations with the competent specialised technical commission and inform the parliament of the observations made by the latter. The parliament shall forward its observations on the amendments proposed by the specialised technical commission to the ECOWAS Commission not later than seven (7) days after the end of the next ordinary or extra ordinary session.

Implementing the decision of the Authority of Heads of State and Government on the issue of referrals, the ECOWAS Commission had,

## ECOWAS

during its first ordinary session in 2007, sought the opinion of the Parliament on the following matters:

- Supplementary draft act adopting community rules on competition and their modalities for implementation within ECOWAS;
- Supplementary draft act establishing ECOWAS regional authority of competition with its functions and operations;
- Supplementary draft act, adopting community rules on investment and their modalities for implementation within ECOWAS;
- The draft Convention of cross border cooperation within ECOWAS territory.

In all the referrals made, a joint session of the committees responsible met, deliberated on the issues and presented a draft opinion to the plenary. The opinion was adopted by the plenary and sent to the ECOWAS. It should however be noted that the opinion of parliament is not binding on the council of ministers or the authority of heads of state and government.

In order for ECOWAS Parliament to be an effective tool of democratic control and oversight, it needs to be endowed with full parliamentary competencies *in all community matters*. Indeed, in all democratic entities the ultimate sovereignty lies within the parliament, which should therefore be involved in all spheres in which ECOWAS is engaged, including the security sector.

#### **4. Ability of the ECOWAS Parliament**

Several factors limit the ability of the ECOWAS Parliament.

First, while most national parliaments have the power of the purse, the Community Parliament has no power to approve the budget and cannot exercise control over the expenditure decided by the executive bodies (the commission and authority of heads of state).

Secondly, the Community Parliament lacks financial autonomy. Article 18 of the Protocol establishing the Community Parliament addresses this issue, even though the provision on the financial autonomy of the Parliament has at present no practical meaning as the parliament is funded from the same source and in the same manner as all other Community institutions. The parliament prepares a draft budget of its proposed expenditure for each calendar year; this draft

budget is submitted to a technical committee and then transmitted to the council of ministers for approval. The financial resources for the budget so approved are drawn from community accounts funded by community levies on imports.<sup>21</sup>

Thirdly, the regional parliament, as many national parliaments in West Africa, lacks the resources to function properly, even when parliamentarians are professionally capable. Besides financial resources, human resources are also poor. Members of the Community Parliament are part time parliamentarians on the regional level and at the same time full time members of their national parliaments. This problem could be solved by seconding them full-time to the ECOWAS Parliament.<sup>22</sup> To require membership in the national parliament as a condition for membership in the regional parliament leads to high fluctuation in membership on the regional level and is counterproductive to the ability of the Community Parliament to play an effective oversight role. To break this vicious circle, ECOWAS parliamentarians will need to be elected directly. In addition, several members lack the requisite expertise and knowledge of the security sector. Membership into the defence committee is not based on past experience on defence issues. Of the seven members of the defence committee in 2005, only one had military experience. Usually, membership into the standing committees is based on the voluntary interest of individual members of parliament.

Fourthly, there is no systematic working relationship between the parliament and the ECOWAS Commission where defence issues in the Community are handled. This adversely affected the ability of the parliament to participate actively in defence issues. However, with the recent restructuring of community institutions, a better synergy between parliament and other institutions, particularly the ECOWAS Commission, is expected. Indeed, one of the fundamental principles of the restructuring exercise was to improve coordination and harmony between the community institutions in the exercise of their duties.

Meanwhile, the restructuring exercise had led to the absence of a resident Speaker at the seat of the parliament. Hitherto, the speaker of parliament was residential, which paved the way for quick decision

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<sup>21</sup> Comments of the General Secretary of the Community Parliament in November 2005.

<sup>22</sup> This over-extension is due to the fact that the first legislature of the ECOWAS-parliament has ended in November 2005 and that the second legislature has not been chosen through elections, as envisaged in the protocol establishing the Parliament.

making. This situation has changed, thus affecting the ability of parliament to take decisions quickly. In most cases, when far-reaching decisions committing the parliament need to be taken, the secretary general of parliament requires directives from the speaker, who is now resident in his home country. Such a procedure is time consuming.

Finally, the lack of adequate administrative staff (e.g. assistants and secretaries), research facilities (e.g. library, computers) and permanent offices for the parliamentarians further reduces the ability of the ECOWAS parliament to function effectively. The parliament is yet to embark on a massive recruitment of all its required personnel.

### **5. Attitude of the ECOWAS Parliament**

Attitude refers to the political will, the individual and collective propensity of the ECOWAS parliamentarians and the ECOWAS parliament as a whole to address the challenges of effective regional parliamentary oversight of the security sector. Attitude is a function of several factors, such as values and beliefs, interest in an issue, group dynamics and dependency on, and vulnerability to third parties. Several factors exercise an influence over the attitude of the Community Parliament. The first factor to take into account is the disparity in the election procedures for acceding to a parliamentary seat at the national level. In some ECOWAS member countries elections do not fully meet democratic standards. There are several reports about the widespread interference of executive bodies, often the presidencies themselves, with the nomination of candidates. Preferences and influence of the national governments play thus a prominent role in the selection of candidates for the ECOWAS parliament. This impacts negatively on the legitimacy of the Community Parliament. Several countries hardly hold elections for delegates to the Community Parliament, in contradiction to the provision of article 7(1) ii of the Protocol Relating to the Parliament. There are allegations that rather than by elections, several members are nominated to the Parliament by the presiding officers of their respective national parliaments.

A second issue could be labelled as 'loyalty conflict'. Besides the lack of transparency in the electoral process at the national level, the fact that the members of the ECOWAS Parliament are not directly elected by the people further reduces their sovereignty and their legitimacy. A community parliamentarian is at any moment aware of the possibility of being revoked before the end of his/ her term and is therefore

exposed to a permanent loyalty conflict between his role as an ECOWAS parliamentarian and the necessary allegiance to those who made him/her become a parliamentarian. Based on this tendency, members of the Community Parliament hardly have the commitment towards its activities. Their loyalty is to their national parliaments and their constituencies rather than to the sub-regional Parliament.

A third factor exerting a negative influence on the ability of the Community Parliament relates to the perceived role of parliaments in general in West African States.<sup>23</sup> Parliaments in West Africa are traditionally conceived as advisory bodies and are far less powerful than the executive bodies at the national level, even though they are ostensibly equal partners. Many parliamentarians have accepted and internalised this situation, even though it is incompatible with the basic principle of separation of powers. This weak conception of the Parliament's role in a national democratic setting has been transposed also to the regional level. The fact that the Community Parliament was created by the regional executive bodies (council of ministers, authority of heads of state) also means that the legislative arm of the ECOWAS structure suffers an inherent inferiority relative to the executive arm. The adoption of the aforementioned resolution by the ECOWAS parliament on the enhancement of its powers, however, is encouraging. As already mentioned, this resolution clearly testifies that a renewed attitude and a more appreciative understanding of the role of parliaments is spreading among national political systems, and thus also to the Community Parliament.

A fourth limiting factor is the existing barrier between the Anglophone, Francophone and Lusophone. There are indeed differences in parliamentary traditions between the three divides, which adversely affects the emergence of an acceptable sub-regional parliamentary tradition.

## **6. An Assessment of the Functioning of the ECOWAS Parliament: Some Achievements**

Assessing the achievements of the ECOWAS Parliament is complicated by the fact that the Community Parliament is still very young and functions merely as an advisory body. Nevertheless, the analysis of the *status quo* is meaningful with a view to explore ways to increase the role of the ECOWAS Parliament in the process of democratic regional integration in West Africa.

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<sup>23</sup> See Aning and Hettmann, *op. cit.*

## ECOWAS

Even though the ECOWAS Parliament's rules of procedures allow it to organise public hearings, they have never taken place so far. In addition, ECOWAS parliamentarians never visited deployed peacekeeping troops.

On a positive note, since July 2002, the Community Parliament has undertaken several peace and fact-finding missions, for instance in the Mano River Union.<sup>24</sup> The parliament played a role in the resolution of the Liberian conflict by initiating an effort in reaching out to the various factions. The parliament facilitated dialogue between the three states directly affected by the Liberian war and between the LURD rebels and the leaders of the Mano River union towards a negotiated settlement.<sup>25</sup> The Community Parliament also adopted recommendations and reports on the situation in the Mano River area. The parliament produced a report which was transmitted to the heads of states of the countries involved; the parliament acted as a mediator thus creating the conditions necessary for the exit of Charles Taylor from Liberia.

The parliament also intervened in the political crisis in Côte d'Ivoire, Guinea Bissau and Togo. In conformity with a resolution adopted in November 2002, the Community Parliament carried out a fact-finding mission in January 2003 on the Ivorian crisis and its impact on Ghana and Burkina Faso. The Mission to Guinea Bissau took place in June 2003; the ECOWAS parliamentary delegation addressed to the Guinean President several suggestions to solve the political crisis, i.e. to respect the deadlines for the elections, to ensure transparency and rule of law during elections, to abide by the principles of separation of powers and independence of the institutions and to guarantee the independence of the supreme court which has to declare the electoral results.<sup>26</sup> A similar effort was made in the successive crisis in Togo following the death of Gnassingbe Eyadema.

The Community Parliament has also been involved in election monitoring, e.g. in Nigeria (April 2003), in Togo (June 2003) and in Guinea Bissau (March 2004). In accordance with the Supplementary Protocol on Democracy and Good Governance, electoral missions took place under the responsibility of the ECOWAS Commission. To

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<sup>24</sup> ECOWAS- Parliament. *Report on Peace/Fact Finding Mission to the Mano River Union States (Sierra Leone – Liberia – Guinea)*, Abuja, August 2002; ECOWAS-parliament, 2002. *Report of the Fact Finding Mission of the Mano River Union Parliamentarians of the ECOWAS-parliament in the Mano River Sub-Region*.

<sup>25</sup> ECOWAS Parliament, Annual Reports 2002 and 2003.

<sup>26</sup> ECOWAS Parliament, Annual Report 2003.

this extent, the Community Parliament expressed the hope that the Democracy and Good Governance Protocol would be revised in order to grant to the ECOWAS Parliament a more central role in election monitoring missions.

## **7. Challenges and Opportunities Pertaining to Effective Parliamentary Oversight**

The parliamentary oversight deficits in the ECOWAS structure, as well as its limited role in security matters, emanates from several factors. The ECOWAS regional integration process has, from its origins, been under the exclusive control of national executives. When it was originally set up, economic integration was ECOWAS main focus. Growing instability found ECOWAS unprepared for taking over regional responsibilities in the field of security policy. Nevertheless, ECOWAS is and remains the only appropriate body for addressing security governance issues at the regional level.

The development of ECOWAS has also been influenced by the widespread understanding of parliament as a merely advisory body. This perception needs to be overcome. Thus far, the competences of the Community Parliament are largely symbolic and fall far short of the democratic aspirations of ECOWAS. The parliament does not legislate nor vote budgets. Furthermore, it does not exercise effective influence on the political decision-making process as well as on the general policy of regional integration. Thus it must be concluded that the authority as well as the ability of the Community Parliament fall short of ECOWAS normative aspirations.

A first way to increase parliamentary performance would be through customary practice improvements, which would not necessitate a formal change of the rules regulating the functioning of the ECOWAS Parliament. Customary practice would include organising hearings; enlargement of staff; issuing public statements concerning important ECOWAS events<sup>27</sup>; hiring outside experts; and commissioning reports/studies etc.<sup>28</sup>

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<sup>27</sup> The ECOWAS Parliament, for example, has issued resolutions recognising elections in Nigeria in 2003.

<sup>28</sup> ECOWAS Parliament has the power, by virtue of its rules of procedure, to hire outside experts or to commission studies, but these practices have never taken place so far.

The following steps are hereby suggested for the enhancement of the role of the ECOWAS Parliament in regional security sector oversight. In addition to customary practice:

1. **Elections:** Elections are a core issue of democracy. Article 7 of Protocol A/P2/8/94 clearly states that all members of the regional parliament must be directly [...] elected by the people. Such elections, however, have not been organized yet. Thus for the time being, and until the end of the transitional period, members of the Community Parliament are drawn from the national parliaments. The protocol on Good Governance outlines in Section II (Articles 2 to 10) the most crucial criteria for the organisation of democratic elections. Even though such elections will be costly, this argument should not be used to delay further the solution of the electoral issue. The transitional period should therefore be ended as soon as possible;
2. **Monitoring of the electoral process** in the ECOWAS region is exclusively attributed to the ECOWAS Commission according to Section II, Arts. 11-18 of the Protocol on Democracy and Good Governance. Ways and means should be explored to increase the level of legitimacy of the electoral process by associating the ECOWAS Parliament with monitoring activities;
3. **Implementation of the ECOWAS security policy** – as expressed in the two central protocols and the moratorium on small arms is still unsatisfactory. Moreover, the ratification process of the above-mentioned instruments has been quite slow. By August 2007, the Mechanism had been ratified by only five countries (Mali, Sierra Leone, Burkina Faso, Senegal and Ghana). The Protocol on Democracy and Good Governance had been ratified by eight countries (Ghana, Mali, Guinea, Sierra Leone, Burkina Faso, Senegal, Benin and Niger) and therefore has not reached the quota of nine countries for entry into force.<sup>29</sup> The implementation of the regional security policy requires close cooperation between the regional and the national parliaments. To this end, one concrete suggestion would be to involve the parliaments in the ECOWAS peacekeeping missions and the ECOWAS Early

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<sup>29</sup> All figures were provided by the ECOWAS-Commission in August 2007.

Warning System, from which they are excluded. ECOWAS Parliament seems to be excluded also by the current building up of the ECOWAS Stand-by force. While this should rapidly change, reflections about the role of the Community Parliament in DDR-processes throughout the region appear necessary as well;

4. **Endowment of the ECOWAS parliament with effective prerogatives and instruments in order to exercise oversight over the security sector.** Steps should be taken to improve the authority and the ability as well as the attitude of the parliament. In order to increase its authority, the Community Parliament should be consulted in all fields of decision-making at a first stage. An advisory body – and particularly one whose advice has not been sought – is a parliament in name only. In a second phase, the parliament should be granted the right to pass laws and to approve the budget; it should also be further integrated into the political decision making process;
5. **Review of the legal framework.** The legal framework concerning the ECOWAS' role in the regional security policy should be reviewed and harmonized in order to clarify the principles which should guide the regional integration process, to eliminate contradictions with a view of rendering ECOWAS more democratic. In particular, it is necessary to better harmonise the revised Treaty of 1993 with the Mechanism, the Protocol on Democracy and Good Governance, and the Protocol establishing the Community Parliament.

This recommendation, of course, is based on the implicit assumption that the necessary political will for the enhancement of the role of the parliament exists and will further grow.

## **8. Conclusion**

A comprehensive reform of the security sector governance in West Africa would remain incomplete without greatly enhancing the oversight functions of the ECOWAS Parliament.

The **authority** of the parliament needs to be enhanced and clarified. The parliament needs to acquire effective oversight powers, rights and prerogatives. As the regional setup actually stands, the ECOWAS

## *ECOWAS*

parliament can be considered merely as a ‘echo chamber’ for the Authority of Head of States, the Council of Ministers and the Commission. A democratic ECOWAS requires the parliament to be able to participate in the decision-making process, including oversight. Since experience shows that prerogatives are rarely obtained without claiming them, the parliament’s authority would require a proactive approach by the parliamentarians themselves. **Ability** seems to be the field where progress can be reached more easily; capacity building and awareness-raising could be addressed with a comprehensive training programme, in addition to enhancing the parliament’s financial and institutional autonomy. A dramatic shift in parliamentarians’ **attitude** is needed.

Finally, one can conclude that the ECOWAS Parliament has not made optimal use of the opportunities provided by its advisory and consultative powers. This places it in a relatively weak position in its bid to acquire direct oversight powers. In any event, such direct powers will necessarily be dependent on direct elections of ECOWAS parliamentarians which presently appear a distant prospect.

In sum, the ECOWAS Parliament is an example of an under-resourced and under-utilised regional mechanism for peace-building, which has an enormous potential to contribute to sustainable peace in West Africa.



## Chapter 4

# Benin<sup>1</sup>

*Christophe C. Kougniazondé*

### 1. Introduction

The Republic of Benin shares with many developing states a socio-political situation marked by weak institutions and the daunting search for political stability, security, and democratic governance generally, and of the security sector more specifically. Despite relatively favourable conditions since the mid-1990s, thanks to the successful *Conférence Nationale*<sup>2</sup> and the consequent end of the single-party rule, the genuine de-politicisation of civil-security relations and implementation of sound security sector governance, including an effective parliamentary oversight, remain work in progress. Whether this is due to a particularly chequered pre-1990 political situation, to the flaws inherent to the political dispensation ushered in by the *Conférence Nationale* –all things that may have neglected human rights and security concerns– or yet to the lack of vigilant commitment from parliament members, can be established only through a careful scrutiny of the current status and functioning of the security sector.

Such analysis is the purpose of this chapter. As detailed in the introduction to this volume, effectiveness of security sector oversight (or lack thereof) is linked to the *authority* afforded to the Parliament by the country's constitution. Further, the *ability* and *attitude* of parliament to effectively exercise oversight are equally important to determine whether or not the constitutional provisions are translated into reality. The *ability* refers to the institutional setting and powers of the parliament, the mono-cameral *Assemblée Nationale*, and its defence and security committee, to available human, material and technical resources, and also to the financial autonomy of the parliament. Finally, even more decisive in affecting effective security

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<sup>1</sup> The author offers his heartfelt thanks to Modeste William Dehotin and Pascaline Alidjinou, both research assistants at the *Alioune Blondin Beye Academy for Peace* (ABBAP) in Cotonou, Benin.

<sup>2</sup> *Conférence Nationale* is a shortcut for *Conférence des Forces Vives de la Nation*, an all-inclusive 19-28 February 1990 national gathering (of 488 delegates) whose forceful deliberations shifted the country away from one-single party rule to a liberal democratic system.

sector oversight are the *attitude* and *acumen* of the parliament as a whole as well as of its individual members, and particularly the attitude and acumen of its committee on defence and security. In other words, the mental or intellectual agility, disposition, and skills, the behavioural capacity and steadfastness in addressing security sector oversight are paramount. The extent of the parliament's ability and attitude towards security and defence issues will determine whether or not the constitutional and legal provisions prescribing a transparent and democratic governance of these sectors are upheld. The objective of parliamentary control is threefold. First, it is important to protect the nation against autocracy by ensuring that the rules regulating the security and defence sectors are not too easily or too frequently modified, depending on the mood of the executive power. Second, parliament should be allowed to ensure that security related spending is properly executed. Finally, parliamentary oversight contributes to the demystification of security, placing it within the public scrutiny realm, thus ensuring constitutionality, accountability, and transparency. The inclusion in the constitution of the principle of parliamentary oversight of the security sector, however, is not enough to ensure its implementation in daily life, which rather depends on the reality and effectiveness of oversight carried out by the legislative branch.

On the basis of this analytical framework, coupled with insights drawn from the country's recent history, we will explore the history of parliamentary control over the security sector by Benin's *Assemblée Nationale* and the challenges it faces.

First, a brief profile of Benin followed by a general analysis of the evolution of the security sector is given. Then the implementation of the principle is considered, with a strong emphasis on the predicaments that hamper effective control. The conclusion examines succinctly the basis of Benin's political stability and peace despite an apparently ineffectual security sector oversight. It also makes recommendations for improving and revamping the current state of affairs.

## **2. Background**

A former French colony since 1894, and formerly known as Republic of Dahomey, Benin became independent on 1 August 1960. Located in the Gulf of Guinea, it is bordered by Niger and Burkina Faso in the North, Togo in the West, Nigeria in the East and the Atlantic Ocean in the South. Its population is 7.2 Million (2004). Porto-Novo is the

political capital and Cotonou the economic and administrative capital. Benin used to be called '*le Quartier latin de l'Afrique*' in reference to the high concentration of educated elites, compared to other countries.<sup>3</sup> It experienced its first coup on 28 October 1963; a chronic political instability followed, up to 26 October 1972, when the last successful military takeover occurred. As a result of such instability, Benin was labelled as '*l'enfant malade de l'Afrique*.'<sup>4</sup> The 1972 putsch brought the then Major Mathieu Kérékou to power. Kérékou proclaimed the People's Republic of Benin in 1975, and declared Marxism-Leninism as the political philosophy of the State and society. He thus set Benin up on the course of becoming one-party State with democratic centralism and class struggle as its main tenets.<sup>5</sup> This evolution was brought to an end by serious economic and financial mismanagement, corruption and embezzlement. The February 1990 *Conférence des Forces Vives de la Nation*<sup>6</sup> sounded the regime's death knell and set in motion a transition to a multiparty liberal democracy. A new constitution was adopted by referendum and promulgated on 11 December 1990.

The new constitution incorporated the African Charter of Human and People's Rights, and established a presidential regime in which the president holds the executive power, and disposes of the armed forces. The president shares the legislative initiative with the parliament (sections 57 & 105), and may require a second reading of a law passed by the parliament by using its veto power (*véto suspensif*) (section 57). The head of state can, when authorised by the assembly, legislate and govern through ordinances in matters that normally pertain to the legislative power (sections 110 & 111). However, the parliament can summon the president and control the government's policies (sections 71, 79, 96, 99, 113). Such control cannot result in the dismissal of the government; the president, on the other hand, has no power to dissolve the national assembly. In certain instances, when the institutions of the republic, the independence or territorial integrity of the nation or the implementation of international agreements are in danger, the president is endowed with special emergency powers (section 68).<sup>7</sup>

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<sup>3</sup> *Quartier latin* is a neighbourhood in Paris with a concentration of universities and intellectual activities.

<sup>4</sup> 'The sick child of Africa.' This is a general definition of the country, due to its political instability at the time.

<sup>5</sup> There were three or four major tenets: dialectical materialism, historical materialism, class struggle, democratic centralism and proletarian dictatorship. Socialism was declared national path to economic development.

<sup>6</sup> See note 2 above.

<sup>7</sup> This is the same provision as is found in Section 16 of the 1958 French Constitution. In fact, it gives the Head of State all legislative and regulations

The president can take referendum initiatives provided that he/she consults the president of the national assembly and the president of the Constitutional Court (section 58). This regime of rigid separation of powers is nonetheless tempered by diverse types of collaboration and exchanges between the different State organs. In addition, there are a number of newly formed institutions aimed at checking and balancing the three main traditional power branches. These institutions are the Constitutional Court, the High Court of Justice, the High Authority on Audio-Visual and Communication, and the Economic and Social Council. An ombudsperson with competence to investigate/audit the security sector has yet to be established. The interaction and fluid exchange between and among these institutions and the main constitutional branches have produced a political environment that is unique to Benin.

Unfortunately, so far, economic successes have not followed this political performance. Benin is a poor highly indebted country. Its Gross National Product is US \$ 2.49 billion, with the income per capita being only US\$ 397. Despite a growth rate hovering around 5% over the last few years, abject poverty is rampant and the administration is almost paralysed by corruption and bribery. Such an environment encourages violence; and security thus becomes a precious commodity available only for those few who can afford it.

The universe of security providers in Benin includes public and private actors. At the forefront is the ministry of national defence (the armed forces and paramilitary forces), the ministry of internal affairs, security and decentralisation (police), the ministry of justice, legislation and human rights (judges and prisons), the ministry of agriculture, fishing and husbandry (water & forest conservation services), ministry of finances and economy (customs) and the presidency of the republic (*Garde rapprochée* and *Service des archives et de la documentation*, the intelligence services). As to the private sector, up to 1990 there was an informal traditional security system in rural as well as in urban areas. In the 70s and 80s, there had been a deliberate and systematic effort to draw on it and incorporate it into the formal mass policing model of the revolutionary era. This costless policing, despite occasional cases of corruption, engaged the populace and operated on the basis of militancy and patriotism but did

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power, thus making him a 'dictateur temporaire' or temporary dictator, to use the words of Dominique Turpin in *Libertés Publiques & Droits Fondamentaux*, Paris: Edition du Seuil, 127.

not survive the collapse, in 1990, of the revolutionary political system that encouraged it.

Today, private security companies are mushrooming and permeate every aspect of life, including the economy. They are supposed to be regulated by the ministry of internal affairs. The issue of private security companies is addressed more thoroughly below.

Finally, civil society is starting to play an important role with regard to the security sector. Some local and international NGOs are working alongside the authorities on issues relating to the functioning of the national security system. Oversight of the national security sector by NGOs takes the form of the organisation of training seminars for various components of the system. In addition, press releases that condemn the abuses and misconduct of different security units are a way of drawing the attention of the nation and the sector itself to the error of its ways.<sup>8</sup>

## **2.1 Main Challenges of Security Sector**

The main challenge facing the national security sector relates to good governance, which requires efficient management, with the various prerogative and duties of different security actors being clearly defined, in order to be efficiently discharged. Instead, the system is plagued by generalised corruption at all levels. The excessive politicisation of the national security system is also a growing flaw in the system.

The other main difficulty concerns the lack of the material and human resources needed for the security actors to carry out their functions. It is therefore extremely difficult to ensure the surveillance of the national territory, in particular along the country's lengthy borders. The porosity of these borders tends to facilitate cross-border crime. Secondly, due to the lack of coordination, and the fact that many agencies in the sector are not integrated, activities seem to be highly dispersed, and give a general impression of disorder and opacity. As a

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<sup>8</sup> For example, GERDES Afrique set up an independent commission of enquiry to investigate the role played by various parties involved in the tragic events of 18 August 2004 in Porto-Novo where efforts by the state to clean up the oil industry provoked riots and a resulting loss of life. This investigation made it possible to single out the weaknesses of the regulatory framework governing the oil sector, and the shortcomings in its implementation. It also demonstrated the socio-economic inadequacies of the same sector. The results of the enquiry were published and also forwarded to the authorities, to serve as guidance for any future initiatives in this sector.

result, many human security dimensions have not been afforded the attention they deserve, pollution and trafficking among others.

In order to discharge the numerous complex duties placed upon them, the various security bodies require well-trained, qualified human resources. The rules relating to the maintenance of public order should be improved to make them more transparent. At the same time, local authorities should be given the appropriate responsibilities in this area; to this regard, the establishment of municipal police services at the commune level is expected in the very near future.

### **3. Parliamentary Oversight of the Security Sector: Theory and Practice**

#### **3.1 The Affirmation of the Oversight Principle**

Benin subscribed to the principle of the supremacy of civilian and parliamentary oversight of the security sector. The principle of parliamentary oversight of the security sector is originally associated with Benin republicanism, which established for the first time the constitutional basis for the competence of the executive in defence and security matters subjected to the control of the parliament, including budgetary control. In this context, the inclusion of the principle of parliamentary oversight over the security sector in the constitution should be viewed as the expression of the democratic credo of the people of Benin and as an important step toward effective supervision of the security sector.

Benin adopted the principle of parliamentary oversight of the security and defence sectors starting with the 1959 constitution which entrusted the executive branch with the command of the armed forces and gave the legislative branch the power to control its action.<sup>9</sup> The 1990 constitution granted the executive power to the president of the republic, who is also the chief of the government, and who directs the armed forces and is responsible for the national defence (section 54).<sup>10</sup>

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<sup>9</sup> It should be recalled that the 1958 French Constitution inspired to a great deal the members of the 1959 Benin Constituent Assembly.

<sup>10</sup> The 1959 Constitution granted the executive power to the Prime Minister, who 'directs the public services action' and 'is responsible for public order'. The Dahomey Republic was proclaimed on 4 December 1958. Strongly inspired by the 1958 French Constitution, the 1959 Constitution establishes a dualist paralytic parliamentary regime: the President of the French Republic continuing to be the President of the territory of Dahomey, the Prime Minister was only responsible before the Legislative Assembly habilitated to receive his resignation. *Cf.* Sections

In addition, it stipulated that the determination of general principles on 'the general organisation of internal security' and 'the constraints imposed by the country's internal security on the citizens (...) and their goods' fell within the ambit of the law (section 98), that is the competence of the assembly, which also had the right to vote on the budget (section 99). The fundamental pillar of the principle of parliamentary oversight of the security sector is, namely, the constitutional basis for competency in defence and security matters entrusted to an executive subjected to the control of a parliament, with powers to this end, including budgetary control.

This tradition seems to have been lost in the years following independence due to the intense political rivalries that opposed prominent post-independence Benin leaders and their regionally based, disconnected parties.<sup>11</sup> In the volatile political landscape marked by institutional instability that resulted, the military, the only institution capable of imposing its will, found itself in the role of sole arbitrator.<sup>12</sup> It intervened frequently on the national political scene, often influenced by the officers' personal ambitions, sometimes at the behest of external centres of interest.<sup>13</sup> In other instances such intervention was in response to the explicit invitation of internal political actors.<sup>14</sup> The instability that followed has profoundly affected

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19, 20 & 22 in Toudonou J. A. and Kpénonhoun C. 1977. *Constitutions et textes constitutionnels de la République du Bénin depuis les origines dahoméennes*, Cotonou : Friedrich Naumann Foundation, 23 - 24.

<sup>11</sup> See Toudonou et Kpénonhoun, *op. cit.*, 3. Further development and enlightening analysis of the period and events can be found in Ahanhazo M. G. 1969. *Naissance d'un Etat noir: l'évolution politique et constitutionnelle du Dahomey de la colonisation à nos jours*, Paris: L.G.D.J.

<sup>12</sup> Here we are reminded of a basic postulate in Huntington's *Soldier and the State*, which is that the state of civil-military relations, and the possibility of *objective controls*, reflects very much the state of civil-civil relations. Fundamental cleavages between civilian parties and fractions erode the foundations for constitutional control of the military. A precondition for effective civil control of security is a democratic consensus between civilian fractions over the rules of the game.

<sup>13</sup> The role played in this regard by the *Elysée's Cellule Africaine*, namely under the direction of Jacques Foccart, is sufficiently documented. See Péan P. 1983. *Affaires africaines*, Paris: Fayard.

<sup>14</sup> Sometimes, at the pinnacle of social unrest, it is at the express demand of union organisations leaders or political actors themselves that coup attempts were staged. As paradoxical as it may seem, *invitations addressed to soldiers by civilian actors to take power* loom as a 'tropicalised' application of the principle of (public, civilian if not parliamentary) oversight of the security sector. The latter commands the former to do what pleases them. A critical analysis of this phenomenon can be found in Kougniazondé C., *Civilian Control of the Military in Africa in Militarisation and Political Violence in Tropical Africa*, Ph. D. dissertation, Department of Government & International Studies, University of Notre Dame, December 1998, volume 1, 95-114. My previous research found

the very status of the state; the repeated coups d'état and putsch provoked an inflation of constitutions. Roughly ten constitutions were adopted between 1959 and 1990, with a life span between two to three years. With the exception of the December 11, 1990 constitution, the longest-lasting constitution was the Fundamental Law of August 26, 1977.

Except for the 1959 and 1977 constitutions, all the others established a presidential regime, with a strong executive. Typically the supreme command of the armed forces is expressly conferred upon the Head of State, civil or military. All the subsequent constitutions indeed (the constitution of 26 November 1960, the constitution of 11 January 1964, and the Charter of 1 September 1966, the military *Directoire's* Charter of 26 December 1969, the Presidential Council Charter of 7 May, 1970, the Edict no. 74-68 of 18 November 1974, on the power structure under the Military Revolutionary Government (MRG), the Fundamental Law of 26 August 1977 amended by the Constitutional Law no. 84-003 of 6 March 1986, the Constitutional Law n°90-022 promulgated on 13 August 1990 and the constitution of 11 December 1990) touched upon the foundations laid down by the 1959 constitution. Only a significant sample of the pertinent provisions of these constitutions (or their equivalent) is examined, as a thorough review of them all would go beyond the scope of this study. For instance, the 1964 constitution established the president of the republic as the supreme commander of the armed forces. In consultation with the council of ministers, he appoints the members of the superior defence council (section 26). The same provision was repeated in the 1968 constitution (section 38) and the 1990 constitution (section 62).<sup>15</sup> Furthermore, the 1964 constitution attributes the responsibility for national defence to the council president, namely the vice-president of the republic (art. 38). Interestingly enough, the 1968 constitution stipulates that the army is responsible for the regime that it institutes (section 39) and that it must contribute to the economic, social and cultural progress through its participation in national edification tasks (section 40). It prohibits the president from calling on foreign armed forces to intervene in an internal conflict (section 41 on the exceptional powers). Such a prohibition was already included in the 1964 constitution. The Presidential Council Charter of 1970 considers as high treason the resort to armed forces in order to stay in power beyond the normal duration of one's mandate or to put in jeopardy the governmental

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illustrations in Benin, in Burma, in Burkina Faso, in Sierra Leone as well as in France.

<sup>15</sup> See also Section 63 of the 1990 Constitution.

system (section 30).<sup>16</sup> The current 1990 constitution, instead, considers as high treason when the president of the republic violates his oath, or is recognised to have committed or tolerated grave violations of human rights, when he cedes part of the national territory or attempts to the conservation of an environment (section 74).

Security policy is usually a constitutional duty of the executive branch (which has the prerogative to initiate laws in the area of security). The corresponding principle of separation of powers demands, however, that the control of the execution and implementation of security policy should be placed under parliamentary supervision.

The institutional environment created by the 11 December 1990 constitution is characterised by a clear separation of powers and responsibilities among the various branches of government. While the legislative power belongs to the national assembly, the executive participates through draft laws which must be deliberated in the council of ministers (section 56). According to section 79, the assembly performs two functions: 'it carries out the legislative power and controls governmental action.' Among other subjects, the status of military personnel and the organisation of national defence fall within the scope of the parliament's legislative power. Further, the 1990 constitution expressly authorises 'every member of a constitutional organ to use all means available in order to re-establish constitutional legitimacy, including the use of existing military and defence co-operation agreements' in case of any unconstitutional change of power such as *coup d'État*, putsch, mercenary aggression or any such *coup de force*. It considers such resistance as 'a right and a duty' (section 66). In the same vein, any attempt by the armed forces to overthrow the constitutional regime is portrayed 'as an abuse of authority and a crime against the nation' (section 65). Furthermore, it prohibits the head of state from calling on foreign armed forces and police in order to help settle some internal conflict, except in the cases provided for in section 66. Finally, any personnel of the armed forces willing to be presidential candidate (section 64) or to run for the national assembly (section 81) must first resign from the armed and public safety forces.

It should be noted that the various constitutions and charters required the setting-up of permanent committees to study sensitive questions and topics before the debate in plenary sessions. They also devised

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<sup>16</sup> The Presidential Council was a three-member institution. It provides for a two years rotational presidency, starting with President Hubert K. Maga on 7 May 1970. President Justin T. Ahomadégbé took his turn on 7 May 1972. President Sourou M. Apithy never saw his turn come because, in October 1972, there was the coup engineered by Mathieu Kérékou and his berets rouges.

mechanisms for the supervision of governmental action, such as summoning, oral and written questions (with or without debate) and parliamentary investigation commissions.

Finally, it must be noted that the Constitutional Law no. 90-22 of 13 March 1990, concerning the organisation of powers during the transitional period, stipulates that the government, which disposes of the administration and the army, is responsible before the high council of the republic (section 29).<sup>17</sup> The high council could ask the government to answer written and oral questions. On its own initiative, or on that of the president or the government, it could also hold periodic negotiation sessions on national politics with the president and the government. Most importantly, the recommendations or decisions of the high council of the republic resulting from summoning or negotiation sessions were enforceable (section 30). The question of the enforceability of recommendations and decisions made by the organ in charge of supervision leads to that of the effectiveness and credibility of the oversight of governmental actions.

It remains to be seen how the various legislatures, especially those elected under the current constitution, have applied such principle in practice.

### **3.2 The Implementation of the Oversight Principle**

A cursory look at the practice of parliamentary oversight over the security forces suggests that it has been applied differently throughout the country's recent history, a critical cut-off date being 26 October 1972; that is to say that evaluation of parliamentary oversight varies according to whether it takes place before or after the fateful date of 26 October 1972. Before the post-1972 revolutionary period, the affirmation of the principle of parliamentary oversight over the security sector did not limit nor prevent the military's massive presence in Benin politics. Indeed, there were numerous military coups and military regimes.

The supervision of the security and defence sectors constitutes a major challenge in developing countries in general, and especially in Sub-Saharan African countries where there is a legacy of the military put

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<sup>17</sup> The National Conference of February 1990 established a one-year transition which resulted in the election of President Nicéphore D. Soglo inaugurated in April 1991. The High Council of the Republic operated as the legislative body during the transition period.

in charge of law and order. Several factors concur to make the implementation of parliamentary oversight of security sector very difficult. One is the institutional fragility of the legislative assemblies and the low level of education of the administrative staff. Another is the increasing complexity of security and defence questions. Finally, the executive branch's superior technical qualifications in security matters compared to parliamentarians. However, such supervision remains one of the foundations of democracy since internal and external security policy plays a central role in the power relations within and among human societies. Neither the sensitivity of this domain nor the reasons mentioned above could justify excluding the parliament, the media and civil society from participation in the implementation of this principle. Yet, in reality, the parliament, the media and civil society are often driven out of this process.

Several mechanisms and channels through which the national assembly may require information from the executive with a view to controlling the latter's activities exist. Parliamentary oversight of the security sector is mainly performed through the process of budget authorisation and monitoring of government spending by the parliament. The parliament has quite an extensive power over budgetary matters: it can modify, reduce or increase defence allotments. Oversight is also performed through summoning, interrogations, parliamentary investigation commissions, oral and written questions and petitions (section 113 of the 1990 constitution). temporary and special commissions may also be created (see below).

Yet, justifications adduced by the government in response to such requests for information scarcely deal with the defence and security sectors. This is the case, probably, because the questions raised by MPs do not address these concerns which, on the other hand, may not be of great importance to their respective constituencies. Public opinion, indeed, is barely aware of security issues. Rare outpouring of public resentment vis-à-vis the government for security and defence issues may be evidenced only when some dangerous or disastrous major events occur (hold-ups, armed robberies, large scale inter-ethnic violence, etc.). A report of the parliament issued on 18 May 2004 showed that only four of the 57 questions the national assembly addressed to the government during the Fourth Legislature were linked directly or indirectly to security matters. These questions concerned 'the construction of buildings for the Avrankou police,' the 'inclusion, in the national budget, of the construction costs of a police station in Akpro-Missereté,' the 'authorisation conditions for weapons' possession and the identity of the beneficiaries since the

formation of the current government' and the 'measures to be taken by states of the sub-region to prevent the degradation of the socio-political situation in Ivory Coast.'<sup>18</sup> Very often, government responses are not firm commitments but rather some vague promises to take action in the future. In any case, in the fifteen year period since the return of democracy (1991), twenty information, investigation, and supervision parliamentary commissions have been set up. However, none of them has dealt with security or defence-related issues.

From the foregoing, it is evident that parliamentary oversight is far from being a consolidated reality in Benin. Though its dispensation may affect all sectors of national social life, much of its implementation depends on the political calculations and psycho-sociological inclination and sensitiveness of MPs who try to voice their concerns taking into account daily living anxieties and concerns of their constituencies. Moreover in practice, within the framework of the annual budgetary authorisations, questions of new acquisitions, deployment of troops and troop training are rarely, if at all, discussed in any detail before an authorisation is voted on. Considerations such as origin, nature, technological quality, performance of new weaponry, capacity of manufacturers, regional security issues, etc. do not influence the vote of the security sector budget. The minister of state in charge of national defence confirmed that control pursuant to section 113 of the 1990 constitution is always general, it is not followed by sanctions and the recommendations taken by the national assembly in relation to its requests of information are not enforceable, unlike those adopted by the *Haut Conseil de la République* during the transitional period.<sup>19</sup>

Two final aspects of oversight are worth mentioning. The first concerns the relations between the national assembly and other parliaments. The second concerns the setup and functioning of parliamentary permanent committees. The national assembly develops and entertains dynamic relations with parliaments across the world. It is represented in the parliaments of the ECOWAS and of the AU. It is also actively involved in several parliamentary associations and its representatives often hold visible roles in their leading organs.

As far as the second aspect is concerned, the parliament of Benin, very early on, set up *bureaux*, permanent committees and caucuses. The

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<sup>18</sup> The last two questions were raised by the same MP, a Law Attorney and University Law Professor.

<sup>19</sup> Informal exchange with the Minister of State in charge of National Defence on 18 January 2005.

number of permanent committees changed over time. The next paragraph analyses the setting up and functioning of the committees relevant to security sector oversight.

### 3.3 Parliamentary Committees Dealing with Security

The name of the committee in charge of security issues has changed over time. Under the first two legislatures (1960 and 1964) security sector was part of the competence of the *Commission de la politique générale et de la législation* (committee on general policy and legislation).<sup>20</sup> From 1980 to 1989, it was called *Commission de défense et sécurité* (committee on defence and security); and since 1991 it has been called *Commission des relations extérieures, de la coopération au développement, de la défense et de la sécurité* (committee for external relations, for cooperation and development and for defence and security). The chairmanship of the committee under the different legislatures has been mixed, i.e. three high officers (or former) and four civil servants.<sup>21</sup> Parliamentary archives do not reveal what percentage of the members of the committees once belonged to the armed forces or public security. However, the committee was presided by Commander Mama Djougou Amadou for three legislatures during the Revolutionary National Assembly; in 1995 and 1999, it was chaired, respectively, by former Colonels Adolphe Biaou and Soulé Dankoro. Mr. Bertin Borna (1960), Mr. Salomon Biokou (1964), Mr. Albert Tévoédjrè (1991), Mr. Bernard L. Davo (2003) all civilians, had been in charge of this body whose current chairman is Mr. Venance Gnigla (2007). In sum, the life of the committee in charge of Benin people's security has been run by three high officers (or former) and five civil servants. It should be noted that most of the various defence and security committee members have completed their university education. In addition, the presence of military personnel in the committee enhances the quality of oversight and facilitates access to valuable information for security and defence debates. From this point of view, it must be recalled that the current constitution requires that a soldier retires from the army before running for parliament (sections 64 and 81). The experience under the National Revolutionary Assembly, where the various socio-

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<sup>20</sup> No evidence was found denoting any such specific committee devoted to security matters had existed, though it could not possibly have been totally ignored.

<sup>21</sup> In March 2007, the legislature was renewed. The number of Permanent Committees in the 5<sup>th</sup> Legislature has not changed; nor has their denomination. The new Chair of the Committee on Defence and Security is a civil servant, former Minister in charge of Communication and New Technologies of Information, Mr. Venance Gnigla.

professional groups, including armed forces personnel, were represented according to established quotas, could be taken as an example. Unfortunately, however, the parliamentary archives do not allow documenting it.

### **3.3.1 Powers and Responsibilities of the Defence and Security Committee**

The *Commission des relations extérieures, de la coopération au développement, de la défense et de la sécurité* is best known to the public as *Commission des relations extérieures*. The name of the committee reflects its attributions but also the emphasis put on diplomacy and foreign relations as opposed to defence and security matters in contrast to the revolutionary era parliament, where there were two separate committees.

The defence and security committee functions regularly and properly. It is presided by a chairman elected by his peer members. It is convened by its chairman forty-eight hours before its meeting, except in cases of emergency. The convening period is eight weeks when the national assembly is not in session. However, no meeting can be convened, except in cases of emergency, when the national assembly is in plenary session. During these sessions, at least half a day per week is devoted to permanent committee business. Section 35 of the national assembly's internal rules of procedure makes meetings' attendance compulsory and prescribes sanctions which could even lead to the suspension of the absentee committee members. A suspended MP cannot take part to another committee during the suspension period and 'loses a third of his/her parliamentary allowances for three months.'

The committee's powers are stipulated in section 29 of the internal code of procedure, as specified in the Box below. This provision clearly sets out the *authority* of the committee in security sector oversight; the committee and the parliament as a whole are empowered to ensure that the country enjoys a democratic, accountable and efficient security system. However, the national assembly's power to control the security system has been hampered, as already mentioned, by a historical violation of the principle of military neutrality in politics and, later on, by a return to a situation similar to the French concept of *la Grande Muette* (the great mute one).

**Box No. 4.1**

**The Benin Defence and Security Committee's Powers**

The Defence and Security Committee is competent in the following areas:

- International relations;
- External policy;
- International cooperation;
- Treaties and international agreements;
- Protection of Benin interests abroad, status of foreigners residing in Benin;
- Inter-African cooperation and integration;
- General organisation of defence;
- Cooperation and assistance policy in the field of security and defence;
- Civilian and military personnel of the army;
- Police forces;
- Military justice;
- Territorial security and integrity, goods and persons security.

Source: Section 29 of the Internal Code of Procedure, Benin

### **3.4 Independence of the Armed Forces: From Insubordination to Political Neutrality**

The principle of political oversight over the military aims at establishing political neutrality of the armed forces and at consolidating the authority of political bodies. However, this expectation didn't hold true since there has been a continuous involvement of the military in politics throughout the 1960s, 70s, and 80s. Numerous *coups d'État* led to the formation of several military governments. In fact, the apparent independence of action the military enjoyed during the period under consideration is difficult to elucidate, as it seems to have been due to complex factors.

The implementation of oversight over the military and its effectiveness depend on institutional ability and capacity. It only becomes effective once officers accept and integrate the value of civilian authorities' supremacy into their ethics.<sup>22</sup> Only after this shift in value orientation can the parliament find and develop the appropriate attitude and ability. Several factors have contributed to undermining the implementation of the principle of parliamentary oversight. Among these, the opportunism of civilian political actors,

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<sup>22</sup> Kougniazondé, *op. cit.*, 81.

the personal ambition of some military officers, external influences over some officers, the interference of powerful States. The military is an instrument of state violence. It should be neutral and apolitical. However, the role of the military as the arbiter of political disputes and social crises in Benin has often led to praetorian interventions. Thus the 1990 constitution has tended to ostracise the 'citizens in uniform', compelling them to shed off their professional identities prior to seeking elective political office.

#### 4. The Challenges to Parliamentary Oversight of the Security Sector

The sensitivity and competing objectives of security policy impose severe limitations on the democratic control of the security sector. For one, there is an inherent tension between confidentiality and transparency. The impact of these limitations can be exacerbated by institutional and structural challenges, which further impede the ability of the parliament to carry out its oversight duties.

**Legal and political restrictions:** Parliamentary oversight of the security sector is considerably limited by the imperative of secrecy and confidentiality which are inherent in the activities of the armed forces and security services. There are various levels of confidentiality that parliamentary investigative commissions must uphold, namely the 'secret défense' and the 'internal and external state security secret.'<sup>23</sup> As a result, the main method of parliamentary oversight, i.e. the examination and adoption of budget, becomes more arduous. Oversight becomes even more difficult in light of extra budgetary activities in which the armed forces enjoy ample discretion. In addition, the confidentiality surrounding the security sector, in particular weapons procurement may lead to corruption and irregularities. International weapons trade, supported by powerful economic and financial interests, increases corruption in the security sector of many countries.<sup>24</sup> Personal financial interests can be clocked

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<sup>23</sup> These principles are formally enunciated in non official documents. However, the Chairman of the Defense and Security Committee (officially Foreign Relations Committee) placed a particular emphasis on them as capable of setting actual limits upon control. The same is true of the Minister of Defence who stressed that in the process not every question raised by Parliamentarians is answerable.

<sup>24</sup> Parliament does not delve into the nitty-gritty of budget allocations: it increases or reduces the spending levels requested by the Governmental bill. But any budget violation may be uncovered in the future by the Supreme Court' *Chambre des Comptes* (Accounting body). In fact, the Constitution grants the Supreme Court, among other things, the power to verify and control Public Spending. To that effect this body reviews the execution of the *Loi des Finances* (Annual Budget)

behind the label of 'national security'. To prevent military domination of the defence budgetary process, the capacity of the parliament to control the execution of the budget of the security sector must remain an absolute priority. Some minor adjustments, such as visits and exchanges of information between parliament and the armed forces should bring about some correction to the current situation while complying with the principle of confidentiality and public resources management's basic rules. Beyond these legal and political limits, material restrictions make parliamentary oversight more difficult in practice.

**The material limitations:** The institutional environment in developing countries lacks specialised parliamentary committees and auditing capacity for the supervision of budget implementation. In addition, legislative assemblies in these countries are not properly equipped to exercise appropriate oversight. Furthermore, members of the defence and security committee are, for the most part, civilians without any specialized knowledge in security issues. Here again, 'secret defence' and excessive confidentiality may prevent military experts and their civilian counterparts from answering exhaustively questions raised by committee's members. Moreover, the defence and security committee's members have a short term tenure (three to five years) in the course of which concerns for re-election leave little room and time for developing insight and collecting the necessary information for daily oversight work. Finally, there is inadequate staffing, working space and research tools. Only two senior assistants assist the committee in its work. They are answerable to the administrative secretariat of the national assembly. This means that assistants are not recruited by the committee's chairman, but by the chairman of the national assembly. The chairman of the committee has a small office. But there is no meeting room especially and permanently affected to the businesses of the committee. It is expected that space needs and problems of personnel will be resolved once the new headquarters of the parliament, under construction, is completed.

Increased transparency in the security policy will strengthen democratic institutions. To achieve this, parliament ought to be able to intervene in all aspects of the process of security policy definition and its effective implementation. After all, the determination of the

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and issues a report that is enacted into law (generally known as *Loi de Règlement*) by the Parliament. Corruptive and deviant behaviors or embezzlement could be detected in the process. It is however regrettable that such Law does not intervene very often. The first to be passed since the 1990 was voted in 2001 and covers only 1999.

fundamental principles of national defence and security is a legislative competence under section 98 of the constitution. However in representative systems, and Benin is no exception, parliaments play a limited role in the elaboration of national security policies, which are typically an exclusive domain of agencies under the control of the executive branch.<sup>25</sup> Ultimately, this may exclude the objective human security needs and aspirations of the populace from national security policy formulation. To illustrate this point, a discussion of the regulation of private security, intelligence matters, and a bill aimed at reforming the armed forces follows.

#### *Regulating local private security companies in Benin*

Although they raise fundamental issues pertaining to the monopoly of the source of organised violence and the ability to actually meet the security needs and aspirations of the populations, private security companies have become established as critical actors in the provision of security. We therefore focus on issues related to their regulation. It is intriguing that it is a simple *Arrêté*<sup>26</sup> of the minister of internal affairs that *still* regulates the creation, organisation, attributions and functioning of private security companies, labelled *sociétés privées de gardiennage et de sécurité*. It is not even an inter-ministerial *arrêté* nor a *décret* (decree) deliberated in a session of the council of ministers and signed by the head of state and counter-signed by concerned ministers. This certainly raises a number of legitimate questions. Wouldn't this be an open door to all kinds of abuses? In such circumstances, how can the trafficking of light arms and small weapons be controlled or ended (not just in Benin, but in the sub-region)? Isn't there, logically, a relation between the multiplication of private security companies and the increase in armed robberies and other related crimes in the country? And finally, who is to be tasked with the delicate job of answering these questions? It cannot be emphasised enough that this aspect of the security sector ought to be, and indeed is to be regulated by Law, as section 98 of the constitution stipulates. This especially because of the sensitive nature of the

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<sup>25</sup> An official national defence and security policy exists in Benin. This is very important in terms of democratic oversight of the security sector; without 'policy', parliamentary oversight becomes virtually meaningless indeed.

<sup>26</sup> An *arrêté* is a unilateral regulatory act taken, in this case, by the sole Minister of Internal Affairs. The text dates back to the mid-80s or early 90s and has undergone no modification or update so far. The hurdles and red tape to be faced to obtain a copy of this text and the listing of agreed private companies in this area point not only to the opaque practices in existence but also to the interests at stake in private security companies and their management.

## *Benin*

services these companies and their promoters are supposed to be providing. It is also important to do so because public funds are channelled to them through alleged hiring of their services, and without parliamentary oversight, PMCs could end up doing more harm than good to the public (violation of rights, risk of violence, corruption, etc). Though there is no official statistics in this respect, public feeling reveals a strong linkage between security privatisation and increased criminal activities in the country, thus calling to remedy for the lack of legislative framework for private security companies.

### *Regulating intelligence activities*

In Benin as elsewhere, when it comes to intelligence matters, the problem is the excessive secrecy and the thick wall of confidentiality that surround this supposedly public service. The parliament may exercise its power of the purse over the intelligence budget. It has also the prerogative to adopt laws regulating the intelligence sector. What is at stake is the extent to which the activities and actions of intelligence personnel, conducted on behalf of the people, have an impact on policy formulation and formation. To this regard, there remain several issues which are worth raising, though this study has not been able to provide definitive answers to them. To what extent are these actions in the interest of the people and how are they determined, carried out, and evaluated in a democratic system? Should intelligence be, as it most certainly is now, the preserved domain of the executive branch? How does the parliament relate to, or try to control this activity of the security sector? What about civil society organisations?

### *Reforming the armed forces*

Draft legislation for reforming the armed forces has been on the desk of the national assembly for more than five years, apparently without concrete action. The bill reportedly proposes to achieve an integrated reform and modernize the armed forces and to introduce greater mobility in the job of the personnel. It also aims at addressing corruption, which plagues the armed forces and security services more in general, at all levels. Several exchanges with the various staff of the national defence ministry have neither shed light on the reasons why this bill has not yet become law nor facilitated access to its actual content. According to foreign relations committee's sources, there are speculations that the preliminary preview of the bill is completed. However, each time the bill is put on the agenda of the plenary session of the national assembly, calls are made from many quarters to drop it

off the agenda. Nobody, however, was able to explain the origins of the resistance to the adoption of such a bill. It was not possible to determine whose interests (against whom?) are at stake, since the bill was not made readily available, or even candidly discussed by either side. It remains that what is at stake is not just the corporate interests of a specialised and central institution but also, more broadly, the necessity of reforming the entire security architectures in Benin as a way of providing for the welfare of the people, entrenching democratic governance of the defence and security sectors and protecting future generations against violence and human rights abuses by uniformed personnel.

## 5. Conclusions and Recommendations

While the principle of parliamentary oversight of the security sector has been asserted since the early days of Benin's independence, its implementation has, however, proven far more difficult over the years due to repeated incursion of the military in the political arena. Things have been improving since the 1990 *Conférence Nationale*, although many inadequacies and challenges remain. The national assembly must earn the confidence of the people by increasing its performance and visibility in a sector where democratic debate seems prohibited, as this researcher's inability to access information on the army reform bill suggests. Public access to information would guarantee effective exercise of parliamentary oversight as a tool of accountability, and rule of law in a democracy.

In sum, in Benin, civilians, and the national assembly more specifically, have not seized the moment during the critical political openings of 1990 to develop effective mechanisms of control of the armed and security forces. This is a wider deficit of the 'pro-democracy' movements across the sub-region as a whole. In essence, these appear to have aimed at 'formal democratic subordination' (abstention from politics and from coup-making) rather than democratic control of security as such. Actually, organs proposed to exercise such control do exist, the most important being the foreign relations committee of the national assembly. However, these organs have not been functioning properly or effectively since independence. This institutional weakness is, without a doubt, symptomatic of persistent infrastructural and other weaknesses.<sup>27</sup> Paradoxically,

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<sup>27</sup> Professor Eboe Hutchful made this point in his analysis of Post-Coups Militaries in Ghana. See *Workshop Report on Security Sector Governance in Africa*, organised by African Security Dialogue and Research (ASDR) in collaboration

against this background emerges a political stability and social peace that showcase Benin, as well as Ghana and Mali, as ‘a bright spot’ model of transition democracy and peaceful transfer of power extolled and lauded in formal gatherings and academia.<sup>28</sup>

As this study shows, while not completely absent, parliamentary oversight of the security sector is neither substantive nor coherent and consistent enough to foster all by itself the political and social atmosphere recorded over the last fifteen years. Among the many factors that contribute to generate and maintain the new political stability and peace, one can point to the strong attachment of the people of this country to peace and abhorrence of bloodshed, but also to the culture of mediation and reconciliation stressed throughout the revolutionary era. Most important is the very spirit and culture of concord and forgiveness that characterised the 1990 *Conférence Nationale* which all post-conference institutions strive to perpetuate and strengthen. As important is the remarkably smooth functioning of the Institutions created by the successful *Conférence* and resulting constitution. The political institutional symphony orchestrated around the Constitutional Court and reinforced by the unique idiosyncratic governing style of President Mathieu Kérékou are distinguishing features of Benin’s transition to democracy and the cornerstone of its regime of *présidentialisme apaisé*.<sup>29</sup> For example, the central position and important role of the Constitutional Court is well spelt out by Anna Rotman who, in a recent study, concluded:

‘[b]y combining a mandate to protect constitutionally guaranteed human rights with the institutional prestige and legitimacy of the constitutional court, Benin’s institution is optimally situated to address human rights violations.

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with the Global Facilitation Network for Security Sector Reform (GFN/SSR) in Elmina, Ghana, 24-27 November, 2003.

<sup>28</sup> See Rotman, A. 2004. Benin’s Constitutional Court: An Institutional Model for Guaranteeing Human Rights *Harvard Human Rights Journal*, Vol. 17, Spring 2004: 281-314.

<sup>29</sup> That is a presidential regime that is ‘rationalised’. In fact, as described in the country profile of this paper, the 1990 Constitution framers established a political regime of strict separation of powers in which the diverse branches, especially the Executive and Legislative, interact, exchange, cooperate and cannot paralyse each other: the President shares in the legislative initiative with the Parliament which can summon the Government. But it cannot overthrow the latter. The President disposes of a suspending veto over laws passed by the National Assembly since he/she may require a second reading of the text; but in no way can he/she order the dissolution of the Parliament. This institutional framing and functioning is what is called *présidentialisme rationalisé* (‘rationalised presidentialism’) or *démocratie apaisée* (appeased democracy). The new change in regime in April 2006 has not altered this scheme.

Moreover, the Court's competence in regulating the competencies of other government institutions may reinforce the willingness of those institutions to cooperate in the Court's human rights investigations'.<sup>30</sup>

As an institution with the power to control and regulate legislation, the Court could and should supplement the parliament in designing or improving mechanisms for making security sector oversight and governance more effective and ultimately a useful tool for strengthening democratic governance as a whole.

With specific regard to parliamentary oversight of the security sector, this chapter puts forward the following recommendations.

- Parliamentary technical capacity and competence in all areas should be enhanced to participate in the definition of the national defence and security policy;
- Parliament should take the lead in making non confidential information relative to security planning and resources allocation accessible to the public in addition to competent authorities;
- Parliament should apply sound rules and principles of public resources management to the execution of the security and defence budgets, within the limits of confidentiality obligations;
- Parliament should create more institutional links and networks with civil society organisations to enable popular participation in, and contribution to security debates;
- Parliament should insist on basing the relations between civilians and security institutions on respect of mutual rights and obligations as well as human rights;
- Parliament should bring the activities of private security companies within the domain of the law and monitor such activities accordingly;
- Parliament should encourage the defence and security committee chairman to recruit assistants of his own, distinct from those of the president of the national assembly. This will ensure specialised and dedicated committee staff;
- Finally, in order to build much needed capacities and be more responsive to the need of the people, the national assembly of Benin should organise a *Joint Institutional Research Group on Defence and Security* to investigate the perceptions and

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<sup>30</sup> Rotman, *op. cit.*, 295.

*Benin*

attitudes of the Beninese people and their political class on the issue of security in general and particular human security issues. This Joint Research Group may include representatives of the national assembly, the Constitutional Court, the High Court of Justice, the Supreme Court, the High Authority for Audiovisual and Communication, the Economic and Social Council, civil society organisations, sovereignty ministries (defence, internal affairs, foreign affairs, justice and finances), private security companies managers and academics. The outcome of such research will doubtless help the parliament and its defence and security committee better determine and assess the specific security issues and concerns on which they should focus. Furthermore, the Joint Research Group activities will also certainly help highlight, from various perspectives, the issue and necessity of reforming the security sector and its governance and the complexity of the task, as well as the relevant actors to be involved.



## Chapter 5

# Republic of Cape Verde

*Carlos Nunes Fernandes dos Reis*

### 1. Introduction

This chapter aims to provide an analysis of the current status and functioning of the Cape Verde parliament, hereby highlighting its strengths and weaknesses. The contribution of the parliament and its specialized committees to the enforcement of the principle of democratic oversight of the security sector will be assessed and an overview of existing reform projects for the armed forces and the security sector as a whole will be provided. It is clear that this chapter does not provide a comprehensive analysis of the role and state of parliamentary oversight of the security sector in Cape Verde. Literature on the subject is scarce, and primary sources are hard to come by. The modest objective of this chapter is to provide a broad overview, and hopefully, to ignite a debate in this crucial and largely unexplored area.

The author posits that it is necessary to emphasise the role of the parliament, as a central institution in a pluralist and modern democracy, despite the existing attitudinal, political and financial limitations and challenges which influence and constrain its role in the political arena.

### 2. Historical and Political Background

The Republic of Cape Verde is, in physical geographical terms, an archipelago, composed of 10 inhabited islands and several uninhabited islands. The population of the country is of 434 635 inhabitants; as a consequence of several waves of immigration, more than 700 000 Cape Verdeans live abroad. Its maritime extension amounts to more than 7000 km<sup>2</sup>, 4 200 km of coasts, and 734 265 km<sup>2</sup> of exclusive economic zone. The capital of Cape Verde is Praia, on the San Tiago Island. Half of the country's population lives on this Island, which is the biggest and a quarter of the population live in Praia.<sup>1</sup>

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<sup>1</sup> <http://www.tlfq.ulaval.ca/AXL/AFRIQUE/Cap-Vert.htm>.

Despite the GDP's high growth rate (4.6 in 2002<sup>2</sup> and 6.0 in 2003<sup>3</sup>), the Cape Verdean economy is still confronted with severe problems, such as the chronic deficit of the balance of payments (11.3% of the GDP in 2003), an agriculture dependent on irregular rain and the absence of infrastructure, which are essential for development. The Atlantic and Sahelian Archipelago is characterised by drought, famine, and emigration. The main economic resource is tourism.

The former Portuguese colony became independent in 1975 following a difficult political battle. For various political reasons, many Cape Verdeans were imprisoned and others chose exile. Several Cape Verdeans joined Amílcar Cabral, the leader of the national liberation movement- the PAIGC (African Party for the Independence of Guinea-Bissau and Cape Verde) - in the battle for independence in Guinea-Bissau. Cabral was murdered on 20 January 1973, but the struggle was sustained under the guidance of Aristides Pereira, one of Cabral's closest friends. On 5 July 1975, the Republic of Cape Verde was proclaimed by the president of the Popular National Assembly. The first president, who was designated by the party and directly elected, was Aristides Pereira. From 1975 to 1990, the political regime was dominated by a single party -the PAIGC, as in Guinea-Bissau- with a Parliament composed of the PAIGC's members and other independent parliamentarians. In November 1980, the coup d'état in Guinea-Bissau ended the project of uniting the two countries. Subsequently, the Cape Verdean branch of the PAIGC announced the creation of the PAICV, the African Party for Independence of Cape Verde.

Responding to growing pressure for pluralistic democracy, the PAICV called an emergency congress in February 1990 to discuss proposed constitutional changes in order to end one-party rule. Opposition groups united to form the Movement for Democracy (MPD) in Praia in April 1990. Together, they campaigned for the right to contest the presidential elections scheduled for December 1990. The one-party state was abolished on 28 September 1990, and the first multi-party elections were held in January 1991. The MPD won a majority of the seats in the national assembly, and the MPD presidential candidate Antonio Mascarenhas Monteiro defeated the PAICV's candidate with 73.5% of the votes. Legislative elections in December 1995 further increased the MPD majority in the national assembly.

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<sup>2</sup> *L'Etat du Monde*, 2004. Ed. La découverte, Annuaire économique géopolitique mondial, 116 -117.

<sup>3</sup> Ministry's of Finance Report to the National Assembly, Praia, November 2004, on the occasion of the debate on the State Budget for 2005.

*Republic of Cape Verde*

After an initial phase of tensions when several members of the ruling party threatened to ‘annihilate the opposition’<sup>4</sup>, ten years later the political alternation allowed the Cape Verde African Independence Party to return to power. Commander Pedro Pires was elected as President of the Republic in February 2001. Parliamentary elections took place on 22 January 2006 and resulted in a broad victory of the PAICV, the party which is currently in power. The PAICV obtained the absolute majority with 50.93% of the votes, i.e. 41 seats out of 72, the MPD obtaining 42.74% of the votes and 29 seats. The UCID (Independent and Democratic Capeverdean Union), which competed exclusively in the São Vicente district, obtained, for the first time of its history, two seats with 2.67% of the total votes at the national level and 17.02% in the district. Regarding the two other small parties, the PRD (Party of Democratic Renewal) and the PSD (Social Democratic Party), they respectively obtained 0.56 and 0.39% and no seats. The abstention rate, 45.98% overall was lower than in the previous election in 2001 when it was at 54.49%. It was nevertheless very high overseas- with an abstention rate of 77.44%. The presidential elections took place on 12 February 2006; when incumbent Pedro Pires was re-elected with 51.1% of the votes. Carlos Veiga was defeated again, having obtained 48.9% of the votes. The abstention rate was about 46%.<sup>5</sup>

Prime minister José Maria Neves is currently involved in reforms designed to bring the government closer to the citizens and to obtain the trust of creditors. New infrastructures have been built. The modernisation of communications infrastructure is under way and many computerisation projects have been realized. Health, education and human resources statistical indicators are much higher than the West African average. The rule of law has been established and the parliament has a relatively important role in the policy arena.

Questions relating to the security sector and its governance are one of the many challenges facing the government. Despite the difficult economic situation, the republic of Cape Verde has been characterised by political peace and institutional stability. However, Cape Verde’s current security challenges relate to the consumption of hard drugs and alcohol, drug trafficking, violent crimes and environmental threats, such as drought and volcano blasts. The importance and the seriousness of the drug trafficking problem reaches beyond the Cape

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<sup>4</sup> Inocêncio, E. 1993. Opinion (article) in the *Horizonte Newspaper*, Praia, January, 13, 6.

<sup>5</sup> <http://ec.europa.eu/development/Geographical/RegionsCountries>, Cape Verde.

Verde's boundaries, as Cape Verde is used as a transit point which provides supplies to global markets.

The government's policy response to these threats can be found in its National Development Plan. The national priorities were established by the 2002-2005 National Development Plan (NDP)<sup>6</sup>:

- a. Active insertion of the country in the international economic system;
- b. The private sector as the motor for economic growth;
- c. The affirmation of national culture.

The NDP 2002-2005 is divided in 36 programmes and 156 sub-programmes. Two programmes deal with the security system: one relates to the armed forces, and the other pertains to drug trafficking, violent crime and preservation of public order. The programme relating to the armed forces comprises two sub-programmes, one on the reform and the modernisation of the armed forces and another on the implementation of the national service of civilian protection. The programme on drug trafficking, violent crime and preservation of public order is composed of four sub-programmes: two relating to police modernisation (the reorganisation of police), one on the battle against illegal drug trafficking and the last one on the implementation of the Republic's Information Service (RIS).

In November 2007, Cape Verde and the European Union, within the framework of the Cotonou Agreements, decided to expand to scope of their already existing partnership, in order to improve the security, stability and prosperity of the country. To this end, they adopted an EU-Cape Verde Plan of Action, which is articulated around the following subjects: good governance, security and stability, regional integration, transformation and modernisation, poverty reduction and development.<sup>7</sup> The EU will provide Cape Verde with the technical resources and know-how it lacks to reform its justice sector, set up a national plan to fight corruption, and strengthen its oversight institutions, such as the parliament.<sup>8</sup> Box 5.1 sums up the main actions to be undertaken in the field of security and stability.

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<sup>6</sup> Plano Nacional de Desenvolvimento (National Development Plan), 2002-2005, II vol., edited by Ministry of Finance, Planning and Regional Development, 18.

<sup>7</sup> Plan d'action- UE-Cap Vert – français, 29 novembre 2007, available at [http://www.governo.cv/index2.php?option=com\\_content&do\\_pdf=1&id=546](http://www.governo.cv/index2.php?option=com_content&do_pdf=1&id=546).

<sup>8</sup> *Ibidem*, 1.1.2.

**Box 5.1**

**The EU-Cape Verde Action Plan 2007: Objectives Under the Pillar Security and Stability (selected provisions)**

- Better understanding of the country's situation in terms of criminality and possible adaptation of existing legislation to new challenges;
- Enhancement of technical capacities to supervise the national territory and the Exclusive Economic Zone (EEZ);
- Set up of specialised security and police corps, and provision of adequate equipment to existing ones, in order, among others, to enhance the fight against corruption, drug trade, arms trafficking and money laundering, illegal immigration;
- Creation and implementation of an effective Republic Information System (RIS), and development of a capacity for the research and treatment of relevant security information;
- Participation of Cape Verde in regional and international instruments of cooperation in the field of security, conflict prevention and crisis management.

Source : Plan d'action- UE- Cap Vert ,29-nov-2007, para 1.2

The government's strategic agenda<sup>9</sup> established the major priorities of its action as:

- a. The advancement of social and economic development;
- b. Good governance as a development factor coupled with State reform, the intensification of democracy and the reinforcement of citizenship. The enhancement of the administrative capacity and the 'performance' of national economy, the reform of the taxation system, the development of the financial system and of tourism. The integration of communities of emigrant is also an established priority;
- c. The reform of justice, with an emphasis on the principle of independence of the judiciary, and the creation of conditions leading to the affirmation and enjoyment of the freedom of speech.

Against this background, it would appear that Cape Verde is consciously building a framework for democratic control of the security sector.

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<sup>9</sup> Agenda Estratégica do Governo, 2002, edited by Imprensa Nacional, Praia.

### 3. The Security Sector

#### 3.1 Security Sector Actors in Cape Verde

##### *The government, ministries and technical services*

There is a general coordination structure, the national security council, which is presided by the prime minister and is composed of ministers dealing with the security sector, namely the minister for national defence and the minister for internal security. The council also comprises ministers which play an important role in the pursuit of national security objectives, namely the minister for external affairs, the minister for transport and fisheries, as well as the commander-in-chief of the armed forces, the president of the civil protection service and police representatives. The meetings of the council are not regular.

##### *The armed forces*

The history of the armed forces is linked to the struggle for national liberation in Guinea-Buissau. Ten Cape Verdeans, Amílcar Cabral's followers, formed the first core of the Cape Verdean armed forces. These men contributed to the success of the battle in Guinea-Buissau and several of them participated in the political battle conducted on the islands. It is the co-ordinated political pressure of these two battles which have forced the colonial authorities to negotiate Cape Verde's right to independence.

With the subsequent declaration of political independence on 5 July 1975, the 'armed militants' of the nationalist cause were integrated into the Cape Verdean armed forces.<sup>10</sup> With the establishment of democracy in 1991, the 'Combatants of the National Liberation,' also part of the armed forces, voluntarily retired.

At present, the armed forces are organised at two levels, the central level and decentralised units. At the central level, the commander-in-chief is the only Colonel in function; the technical departments are directed by lieutenant colonels. Three territorial units are based on the Islands of San Tiago, San Vicente and Sal. There is also the coast guard directed by a lieutenant-colonel, which is responsible for the aero-naval aspect.

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<sup>10</sup> Cabral, Amílcar, Expression used in various circumstances, see, for example: *Selected texts*, ed. Maspero, 128.

*Republic of Cape Verde*

The National Development Plan 2002-2005, II vol. affirms that the approved manpower is of about one thousand corresponding to 0.28% of the population, 14% of which are officers, 20% are sergeants and 66% are soldiers from the Mandatory Military Service (MMS).<sup>11</sup>

For several weeks in June 2006, NATO (The North Atlantic Treaty Organisation) held training exercises for armed forces in Cape Verde. 'Steadfast Jaguar' involved 7,000 European and US troops in two weeks of manoeuvres designed as a drill for NATO's new rapid response force. Cape Verde believes a co-operative partnership with NATO, similar to those the alliance has with Morocco, Egypt and Algeria, would further help promote security and safety in the region.<sup>12</sup>

The infrastructures were built during the colonial times. The armament, considered as being in good condition, comes from colonial heritage and from donations received as part of international cooperation. The country has never bought weapons or ammunition. The means of transportation are considered as being old and inadequate. Two aircrafts and three small boats are part of the 'Guarda Costeira.'

Less than 0.5% of the total national budget is devoted to the security sector, which is considered as largely insufficient. Since 2000 there have been no budgetary changes aimed at expanding the security budget. Ninety percent of the current budget is destined for staff salaries. The acquisition of equipment and logistical material generally takes place under the framework of international cooperation agreements.<sup>13</sup>

From a legal point of view, the situation is generally good. An internal system of laws and regulations defines the organisation of armed forces. The constitution of the republic contains seven articles which relate to national defence and to the armed forces. Section 243 para 2 of the constitution clearly establishes that 'the armed forces shall be subordinated to and shall obey the competent organs of sovereignty, in accordance with the constitution and the law.' This provision incorporates a new concept of security and defence, based on a holistic approach to human security. The new concept of security is broader in scope and includes civil protection, the battle against

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<sup>11</sup> Plano Nacional de Desenvolvimento, 2002-2005, II vol., 91.

<sup>12</sup> NATO Response Force (NRF) Exercise 'Steadfast Jaguar' in the Cape Verde Islands, <http://www.nato.int/docu/review/2007/issue1/english/art3.html>.

<sup>13</sup> Plano Nacional de Desenvolvimento, *op. cit.*

pollution, environmental protection and archaeological sub-marine heritage preservation.

As part of the broader national reform process, a reform programme for the armed forces focuses on modernisation and on the improvement of the contribution of military forces to meeting human security challenges, such as illegal drug trafficking and monitoring of the exclusive economic zone (EEZ). The functioning of the armed forces confirms that despite budgetary difficulties the state generally operates under the rule of law.

### ***The police***

The police is organised in four sub-corps, namely the public order police, the judiciary police, the maritime police and the economic and fiscal police.

#### *The public order police*

The public order police is composed of one thousand male and female staff. It is organised in national and regional commands (three regions). The reform process targets also this corps, with the objective of reinforcing and modernising this institution. The reform programme aims at increased investment in training, so that police personnel will be more likely to respect human rights, will be more efficient, more professional and more coordinated with the other police corps. Other important objectives of the reform are improved border control; the contribution to the reduction of road accidents; maintaining security and public order as well as combating criminality and hard drugs trafficking through reinforcement of staff; improving co-ordination between services and other police formations; community partnerships, and modernisation and computerisation of services. Given the current budget constraints, equipment and installations are still a priority. The reform programme should also address several recent challenges, such as the problems relating to immigration.

#### *The judiciary police*

The reform programme aims at reinforcing and modernising the judiciary police through the improvement of the statistics, the control of criminal activities, and the coordination with the National League against Drugs. It also aims at creating human and material conditions so that the institution could become a true scientific and research police.

*Republic of Cape Verde*

The agents and inspectors available are very few (about fifty) and they are insufficient for the country's needs. At present, the judiciary police is only present in Praia, in San Vicente and Sal.

*The maritime police and the economic and fiscal police*

The other police forces also play an important role in the national security system. The scattered territory and population increase the importance of their role. The country's dependence on imports confirms the need for the maritime police and the economic and fiscal police in the archipelago. Also, the severity of ecological problems affecting the Islands, such as erosion, which requires the adoption of strong environment protection policies, further emphasise the importance of the role played by the forest police.

The maritime police plays a fundamental role, in co-ordination with the coast guard, in the control of the seashore during the unloading of merchandise and the disembarking of people. The coast guard is more active in the high seas. There are also other security services in charge of prisons.

***The national civil protection service (NCPS)***

The national civil protection service has only been established recently and, therefore, it is still in its early phase of planning, formation, communication and co-ordination. The NCPS has very limited resources, but it is starting to play an important role in the field of human security. It is provisionally composed of a group of soldiers, but there are already very interesting plans of expansion in this sector. The capacity of the NCPS was challenged in 1997 during a volcano blast on the Fogo Island and the subsequent displacement of many families.

Among the future objectives, is the elaboration of an emergency plan, the acquisition of equipment for the creation of a national operations centre, the creation of a national fire brigade service, the setting-up of a school for training fire men, and the establishment of an emergency health structure.

Apart from interventions in emergency situations, the NCPS has already organised and continues to organise training and sensitisation programmes for the population in the field of human security.

#### 4. The National Assembly and its Powers on Security Issues

The parliament of the republic of Cape Verde (*Assembleia Nacional*) is unicameral. The national assembly is currently composed of 73 directly elected deputies, six of which are elected abroad. Two deputies are elected for Africa, two for Europe and two for America. In its current composition, the national assembly comprises forty deputies from the Cape Verde African Independence Party (CVAIP), thirty from the Movement for Democracy (MFD) and three from other three parties (the Party of Democratic Convergence (PDC), the Labour and Solidarity Party (LSP) and the Party of Democratic Renovation (PDR)). According to Section 139 of the constitution, ‘the deputies shall be the representatives of all the people (...)’.<sup>14</sup> The national assembly is the legislative and taxation body (sections 174 to 179).<sup>15</sup>

During the First Republic (from 1975 to 1991), the national assembly (56 deputies, with representation of the emigrant community) held two annual sessions. After the establishment of the democratic and pluralist regime, the parliamentary sessions are held from October to July each year. Following a tradition initiated during the single party regime, the plenary sessions are broadcast by the National Radio. This practice could be considered as an expression of certain direct democratic control by the citizens over the deputies’ activities. Another unique aspect during the one party regime was that, while almost all newspapers loyally defended the actions by the ruling party, the existence of an opposition’s weekly newspaper connected to the Catholic Church- Terra Nova- was tolerated.

At present, the national assembly meets in plenary sessions during the first week of each month. During the remaining days, it meets in nine committees: the permanent committees- presided by the president of the assembly, and the specialised committees. The national assembly may also establish ad hoc commissions and commissions of inquiry over the actions of the executive branch (section 146). There is also the conference of representatives which comprises the elected representatives from all the political parties. The joint leadership of the national assembly is assumed by two assistant presidents and two secretaries, nominated on the basis of political parties’ representation and elected by the plenary.

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<sup>14</sup> Constituição da República de Cabo Verde, Assembleia Nacional, Praia, 1999.

<sup>15</sup> *Ibidem*.

*Republic of Cape Verde*

The president of the national assembly acts as president of the republic, in case of absence of the latter. The national assembly of the republic of Cape Verde has links with the ECOWAS Parliament and takes part in its meetings; however financial constraints limit the national assembly's active participation in ECOWAS activities. The national assembly also has links with other parliaments, namely the parliaments of Portuguese-speaking countries and the parliaments of French-speaking countries.

The national assembly has the exclusive power to legislate on the organisation of the national defence and on the state of siege and of emergency (section 174 of the constitution). It has also the power to adopt general guidelines on the organisation, functioning and discipline of the armed forces and police (section 176), and to initiate or amend laws on defence issues. The national assembly has the right to have access to all defence budget documents and to approve the budget, as proposed by the government (section 177 of the constitution). However, the parliament does not have the power to amend the defence budget or to approve or disapprove any supplementary proposal, nor it is involved in defence procurement.<sup>16</sup> The national assembly does not seem to have any type of control over peace missions. The national assembly is also granted *ex-post* oversight powers, for example it can question the minister of defence, military or civil servants and experts from civil society to meetings and to testify. It can obtain documents from the ministry of defence and the military and carry out parliamentary inquiries and hold hearings on defence issues.<sup>17</sup>

### **5. The National Assembly's Committee for Defence and Security Affairs**

Among the seven specialised committees, all elected in plenary meetings, two are responsible for defence and security affairs: the committee for the reform of the state, public administration, local power and defence and the committee for legal affairs, social communication and security. They are composed of seven members, in accordance with parliamentary representation (four deputies from the ruling party and three from the opposition). The presidents of the specialised committees are elected in plenary sessions. Section 146 of

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<sup>16</sup> DCAF-ECOWAS Questionnaire on Provisions and Powers of Parliamentary Committee of Defence/National Security, response to questions 27 and 46.

<sup>17</sup> DCAF-ECOWAS Questionnaire on Provisions and Powers of Parliamentary Committee of Defence/National Security, response to questions 22 to 26.

the 1999 constitution stipulates that ‘the composition of the committee (...) must correspond to the representation of each party in the national assembly’. The presidents of both committees are lawyers and most of the seven members are university graduates. Also two women, who are secondary school teachers, serve in these committees. A retired officer from the armed forces is part of the defence committee. The other members of the committees do not have specialised training in security and defence. Also, most of the members are deputies in their first mandate; only three members are serving their second mandate. The staff assisting the committee is composed of around 70 members. The committees have both legislative and oversight powers over defence and the military in particular. They meet once or twice a month and their meetings are not open to the public.<sup>18</sup> The committees act as consultants during the plenary sessions, they participate actively in the preparation of the plenary sessions and organise hearings for members of the government. They may themselves initiate legislation on defence issues and assist the plenary during the drafting process of defence legislation, such as security policy, crisis management concept, military and police structure and military strategy. The committees are also involved in the analysis of the defence budget, which has ultimately to be approved by the plenary. Finally, the committees have also the power to carry out investigations and to hold hearing on defence issues. Alike the plenary, they may obtain document from the military and the ministry of defence.<sup>19</sup>

According to the Cape Verdean president of parliament, Aristides Lima,<sup>20</sup> the weakness of the parliament is one of the reasons which explain the fragility of the Cape Verdean democracy. Taking into account the four categories of parliament proposed by Blondel (the ‘emerging parliaments’, the ‘truncated parliaments’, the ‘inhibited parliaments’ and the ‘true parliaments’<sup>21</sup>), Lima classifies the Cape Verdean parliament as an ‘inhibited parliament.’ In fact, the parliament is still ‘unable to influence the executive in a significant way.’<sup>22</sup> According to Lima, ‘we have carried out privatisations, legislative reforms, several decentralisations of power, but the

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<sup>18</sup> DCAF-ECOWAS Questionnaire on Provisions and Powers of Parliamentary Committee of Defence/National Security, response to questions 8 and 6.

<sup>19</sup> DCAF-ECOWAS Questionnaire on Provisions and Powers of Parliamentary Committee of Defence/National Security, response to questions 18 to 26.

<sup>20</sup> Lima, A. *Constitution, Démocratie et Droits Humains*, Ed. National Assembly, 137.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

machine of the state is still heavy, the reform of parliament is incomplete, the government and the administration have not been reduced and the decentralisation is not complete yet.<sup>23</sup>

Citing W.W. Rostow, the president of the national assembly considers further that this institution is on its way to 'take off' as a central organ of a pluralist and modern democracy.<sup>24</sup> The president notes that the reasons for the fragility of the national assembly are the non-exclusivity of the deputies' mandate 'who accumulate this function along with another one in the public administration and the private sector' as well as the 'external influence in the committees' work capacity.'<sup>25</sup>

Apart from the legislature, the superior defence council is a specific consultative body to the president of the republic in matters relating to defence and the armed forces (section 248 of the constitution). The law regulating the council, which is presided by the president of the republic, stipulates that it must be composed of members of both the majority and the opposition. In its current composition, the council has two members from the majority, one from the opposition and other members from independent parties.

## **6. Conclusions and Recommendations**

The parliament plays an important role in the consolidation of democracy, and contributes to the maintenance of good relations with other bodies and the electorate. While its oversight functions are not completely satisfactory, many efforts have been made to improve parliamentary control in general and over the security sector in particular. However, as far as oversight over security and defence issues is concerned, there are still many weaknesses in parliamentary performance.

It is essential that the functioning of the specialised committees be improved and that sub-committees be created in order to better the performance of the national assembly, as provided for in section 37 of the national assembly's regulation. The difficulties experienced by the specialised committees in dealing with defence and security sector are however not different from those experienced by other specialised committees.

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<sup>23</sup> *Ibid.*, note 10, 139.

<sup>24</sup> *Ibid.*, note 10.

<sup>25</sup> *Ibid.*, note 10.



## Chapter 6

# Ghana<sup>1</sup>

*Kwesi Aning*

### 1. Introduction

This chapter addresses the functionality and effectiveness of Ghana's fourth republic parliament, which was inaugurated in 1992. It discusses oversight capacity and efficiency in terms of parliament and particular select committees' capacity to play the multiple functions and roles specified to it by the constitution with respect to the security sector. To undertake this analysis, the concept that will be applied is the 'triple A of parliamentary oversight'<sup>2</sup> namely examining the authority of parliament, with particular regard to the governance and legal processes prescribed both in the 1992 republican constitution and the standing orders of parliament.<sup>3</sup> It starts by contextualising the political set-up within which the security sector operates. This is followed by a detailed analysis of the legal framework that governs this sector in terms of the 1992 constitution and other legislative frameworks. In the chapter, the other two A's that complete the trinity are also discussed. These deal with the *ability* of particular committees to perform oversight functions in relation to the security sector. Ability has been conceptualised as 'the capacity of parliament to hold government accountable over the security sector and is a function of the resources (human, financial and technical) available to the parliament'.<sup>4</sup> While the first two A's are important, the third A, namely attitude, is also critical for the effective functioning of parliamentary oversight. Even when and where the constitutional authority and the resources and expertise for oversight exist, oversight would be problematic if

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<sup>1</sup> The focus of the chapter is predominantly on parliamentary oversight of the armed forces.

<sup>2</sup> Authority, Ability and Attitude, based on the framework put forward in the overview chapter in this book by Adedeji Ebo. See also Hans Born *et al.* 2003. *Parliamentary Oversight of the Security Sector*, Handbook for Parliamentarians nr. 5, Geneva: IPU/DCAF.

<sup>3</sup> See Standing Orders of the Parliament of Ghana, Commencement: 1 November 2000. Accra.

<sup>4</sup> Ebo, A. *op.cit.* In the overview chapter further aspects of 'ability' are conceptualised, as research [and] documentation, information analysis, [the nature and extent of] administrative support, role [of] civil society, think tanks and research institutions, and finance.

parliamentarians lack the will to fully and effectively employ and deploy the tools of oversight at their disposal'. Subsequently, an analytical description of the complex maze of security sector institutions and the manner in which they interact with each other is presented. The concluding section deals with the challenges and issues thrown up by the discussion of the Trinity of A's and makes suggestions for integrating these components of the power of parliament into the democratic governance of the security sector in Ghana.

Any discussion about a democratic security sector in Ghana should situate this specific development within Ghana's particular historical experiences since 1957. The author argues that the precise experiences of and the roles that the security sector has played in Ghana's turbulent politics has also contributed to explicit developmental trajectories which have resulted in the traditional statutory security sector now increasingly more willing to subject itself to civilian and democratic oversight. An aspect of this process is that the governance void and deficit that was previously experienced is receding. A more fascinating facet of this development has been the gradual opening of the political space within which other non-state security institutions are playing critical roles in the governance of the security sector.<sup>5</sup>

This section argues that situating democratic security sector governance (SSG) developments in Ghana should take a long-term historical view, which explores the different trajectories SSG processes have taken. The argument is that locating such practices from January 2001, when the New Patriotic Party (NPP) government took power without a long-term systemic and broader view, neglects and overlooks other instructive and cognitive advances preceding this administration.

## **2. History, Context and Background**

A useful starting point for situating the political context for democratic security sector governance processes in Ghana should be located within the 1960's period when the militarization of politics started. It must be stated, however, that during Ghana's first republic- led by Kwame Nkrumah's Convention People's Party (CPP)- a vibrant culture of parliamentary process and civil control of the armed forces had started to emerge. Parliament was central to this development, as demonstrated by the passage of the various national

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<sup>5</sup> See Atsutse, M. 2004. Let's Sustain Democratic Governance *The Daily Guide*, 21 July: 5.

security legislations -the Armed Forces Act (Act 105) of 1962, the National Security Service Act of 1963, and the Police Act (Act 284) of 1965. However, these steps toward an established role for parliament in security governance were interrupted by the military *coup d'état* of February 1966, which contributed negatively to setting back the emerging and encouraging praxis of parliamentary oversight. Thereafter, short periods of civilian rule alternated with periods of military rule. Thus, parliamentary oversight was sporadic and short-lived. When it resumed, it was under significantly changed political and security contexts.<sup>6</sup> Unfettered executive control and the greatly enhanced power of the military in the wake of the coups obstructed public and parliamentary discussion of issues of security and the armed forces.

This was the historical background against which the 1992 republic constitution, which re-introduced plural democratic politics in Ghana after its abrogation in December 1981, was adopted by the Provisional National Defence Council (PNDC). With the promulgation of the 1992 republican constitution that ushered in the fourth republic, Ghana started on a new democratic process, which is now perceived domestically, regionally and globally as deepening into a genuine case of democratic consolidation. Overall, however, parliament had not played a leading role in the de-militarisation and democratisation processes until 1996, when the opposition party realised significant electoral gains. With the upset of the ruling National Democratic Congress (NDC) in the 2000 elections, the parliament took a more critical line on armed forces and security contentious issues started to be debated. For example, on February 2000 a question was put to the ministry of defence to provide 'relevant statistics regarding the regional and gender composition' of recruitment into the Ghana armed forces since January 1993.<sup>7</sup> Dissatisfaction after the classification of the matter as a classified information by the MoD led to another NPP representative sponsoring a motion on 15 June 2000, 'That this House requests the minister of defence to annually place before parliament a statement of compliance of the following guidelines for ensuring regional balance in the recruitment into the Ghana armed forces...'.<sup>8</sup>

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<sup>6</sup> Hutchful, E. *Parliamentary Oversight in Ghana*, Paper Written for ASDR Workshop on 'Security Sector Reform and Democratisation in Africa: Comparative Perspectives', Accra, Ghana, February 27-28, 2002, 2. Military coups disrupted institutional continuity; enhanced power and autonomy of the armed forces; favoured a changed balance of power between the executive and parliament and put an end to transparency around issues of defence and security.

<sup>7</sup> In accordance with the provisions of article 35(5) and 35(6)(b) of the Constitution.

<sup>8</sup> Interview with Professor Hutchful, Geneva, 1 December 2007.

Who and what groups form the constituents of the security sector in Ghana? The table below shows security sector actors in Ghana.

**Table 6.1: Security Sector Governance Actors in Ghana and their Mode of Appointment**

| Actor                                        | Role                                                                                                                                  | Mode of Appointment                              |
|----------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|
| President                                    | Controls all security services. Appoints service chiefs and top commanders in consultation with Council of State and Service Councils | National Elections                               |
| Vice President                               | Chairs the Service Councils                                                                                                           |                                                  |
| National Security Advisor                    |                                                                                                                                       | President                                        |
| Minister for National Security               |                                                                                                                                       | President and Parliament                         |
| Council of State                             | Advise President on key appointments                                                                                                  | President                                        |
| Armed Forces Council <sup>9</sup>            | Advise President on policy, promotions, finance & budgeting                                                                           | President, Armed Forces Act, 1962                |
| Police Council                               |                                                                                                                                       | President, Police Service Act, (Act 350 of 1970) |
| Prisons Council                              |                                                                                                                                       |                                                  |
| Committee on Defence & Interior              | Oversees the budget of Ministries of Defence and Interior                                                                             | Parliament                                       |
| Finance Committee                            | Examines the budget of the Office of the President including that of the NSC                                                          | Parliament                                       |
| Public Accounts Committee                    | Considers the Report of the Auditor-General                                                                                           | Parliament                                       |
| Judiciary                                    | Consents to the issue of warrants for investigations and intercepts by intelligence agencies                                          |                                                  |
| Commission on Human & Administrative Justice | Investigates complaints on the Armed Forces, Police, and Prisons Services <sup>10</sup>                                               | Act of parliament, CHRAJ Act, 1993 Act 456       |
| Ministry of Finance                          | Controls budgetary allocations                                                                                                        |                                                  |
| Auditor-General <sup>11</sup>                | Audits all MDAs and reports to parliament                                                                                             | President                                        |

<sup>9</sup> Consists of the vice-president, ministers of the interior, defence & foreign affairs, Chief of Defence staff and service commanders, a Senior Warrant Officer, and two other persons appointed by the President acting in consultation with the Council of State.

<sup>10</sup> See 1992 Constitution, Article 218 (b).

<sup>11</sup> The appointment and functions of the Auditor-General are clearly spelt out in Articles 187 & 188 of the 1992 Constitution.

With all these actors by the time these SSG processes were initiated, the PNDC metamorphosed into the democratic National Democratic Congress (NDC). It subsequently organised and won the 1992 elections although the main opposition party, the NPP, described the results as ‘The Stolen Verdict’.<sup>12</sup> The NDC subsequently won the 1996 elections in spite of the fact that the NPP provided vehement opposition in parliament. For the December 2000 elections, the NPP presented a wholly new political-ideological manifesto titled ‘*NPP – An Agenda for Positive Change*’. In this political document, the NPP sets out its policies with respect to the security sector.<sup>13</sup> According to the NPP:

[t]he security services under our administration will focus on the security of the state. Their main concern will be the survival of the state and the protection of its territorial integrity and its democratic system... Security service personnel will thus be expected to show absolute neutrality in political conflicts.<sup>14</sup>

Furthermore, the NPP perceives the whole security sector as ‘tools for the enhancement of democratic governance’.<sup>15</sup> The opposition NDC also held the position that there should be civil control and parliamentary oversight of the security sector. It argued that,

... The party is convinced that ultimately, the path to stability, security and peace lies in strengthening democracy... The Intelligence and Security agencies will be subjected to democratic control as stipulated in the Security and Intelligence Agencies Act, 1996, Act 526...<sup>16</sup>

Ghana’s political institutional system has a separation of powers comprising the executive, legislature and the judiciary with all these sectors playing key roles in the governance of the security sector. The 1992 constitution of Ghana describes in detail the interdependent manner in which the political context controls, positions and directs the security sector. The president has the constitutional mandate to oversee the security services with the prerogative of appointing his Chief of Defence Staff (CDS) and service chiefs on the advice of the council of

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<sup>12</sup> New Patriotic Party (NPP) 1992. *The Stolen Verdict*, Accra.

<sup>13</sup> NPP 2000. *NPP – Development in Freedom - An Agenda for Positive Change – Manifesto of the New Patriotic Party*, Accra, 40– 43.

<sup>14</sup> *Op. cit.*, note 10.

<sup>15</sup> *Op. cit.*, note 10.

<sup>16</sup> National Democratic Congress Manifesto, 2004. *A Better Ghana*, 66.

state.<sup>17</sup> Other commanders are appointed on the advice of the Armed Forces Council (AFC).

### 3. Authority, Tools, and Powers of Parliament

In this section, the author discusses the first of the three trinities, dealing namely with the authority, tools and power of parliament to play its oversight role.

The 1992 constitution, like previous constitutions, is cryptic on the role of parliament. Art 200 (2) of the 1992 constitution provides merely that 'No person shall raise any police service except by and under the authority of an act of parliament'. Art 210 (2) similarly provides that 'No person shall raise an armed force except by or under the authority of an act of parliament'. There is little further detail.

Within the parliament, three bodies are most directly concerned with oversight over the security agencies: the committee on defence and interior, the finance committee and the public account committee (PAC).

The committee on defence and interior consists of eighteen (18) members out of the total parliamentary membership of 230. It is concerned with the armed forces, and police and immigration services and 'vets' the budgets of both the ministry of defence and the interior ministry. The committee has two key powers:<sup>18</sup> to conduct (a) investigations and (b) inquiries into the activities and administration of ministries, departments, agencies (MDAs), public organisations and corporations as parliament may determine. Such investigation and inquiry may extend to proposals for legislation.<sup>19</sup> Furthermore, the committee has all the powers of a High Court for the purpose of enforcing the attendance of witnesses, compelling the production of documents and the issuing of commissions for the examination of witnesses abroad.<sup>20</sup>

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<sup>17</sup> Personal interview in Accra with General Edwin Sam, former Chief of the Defence Staff and Member of the Council of State and a former Chief of the Naval Staff, Accra, 11 June 2004.

<sup>18</sup> *Standing Orders of Parliament*, November 2000, Order 158 under 'Functions and Powers of Committees.

<sup>19</sup> See Article 103 (3) of the 1992 *Constitution* and *Standing Orders* 190 of November 2000.

<sup>20</sup> Article 103 (6) of the 1992 *Constitution* and *Standing Orders* 155 of November 2000.

## Ghana

The finance committee<sup>21</sup> considers the budget of the office of the president (including that of the National Security Council (NSC)) and also oversees the Custom, Excise and Preventive Services (CEPS); it also has the authority where 'there has arisen an urgent or unforeseen need for an expenditure ... to authorise advances from the Contingency Fund to meet the need and report to parliament'. Furthermore, when such an advance has been made the committee is bound to ensure that 'supplementary estimates for replacement of the advance are prepared and laid before the House.'<sup>22</sup>

The public accounts committee oversees public accounts in general and, crucially, considers the report of the Auditor-General, thus giving it the ability to monitor military and security expenditures.<sup>23</sup>

The PAC's oversight functions are improved by virtue of the fact that its head is from the largest opposition party in parliament, the National Democratic Congress (NDC). By virtue of the near 'antagonistic' and competitive relations between these two parties in parliament, the NDC scrutinises accounts submitted especially by ministries, departments and agencies very carefully to explore for possible financial malfeasance to embarrass the incumbent government. Such hawkish and scrupulous examination of the account ensures that ministers and their departmental heads are careful about the accounts submitted to parliament.

There is no specific oversight committee on intelligence so far; intelligence activities are under the supervision of the National Security Council and the Intelligence budget is overseen by the PAC.

There are several mechanisms and tools for parliamentary committees to exercise their oversight functions. In the case of Ghana, according to J.E. Ackah, oversight mainly entails 'keeping track of how appropriated funds are spent; that is monitoring the budget, and whether the activities of the executive are being carried out consistent with the law'.<sup>24</sup> In terms of the budgetary cycle, parliament plays an indirect role in implementing subsequent budgets, which occurs through two processes: firstly through debates, questions and suggestions in plenary and secondarily through exhaustive negotiations

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<sup>21</sup> *Standing Order* 151 (d) and (g) of November 2000.

<sup>22</sup> *Ibid.*, Order 169 – 170 (1) & (2).

<sup>23</sup> *Ibid.*, Order 165 (1) and (2).

<sup>24</sup> Interview, Accra, September 2004. Ackah is the previous two-term Chair of the committee and until the 2004 elections the Ranking member of the Defence and Interior Committee.

in standing and elect committees on each ministry's activities and on expenditure proposals.<sup>25</sup> According to Ackah:

After the Appropriation Bill has been passed ... parliament has an ongoing responsibility to monitor performance ... by way of questions and debate when parliament meets in plenary and committee. In playing the watchdog role, parliament is strengthened by a professionally competent audit service.<sup>26</sup>

The main tools for performing oversight are:

- a. Questions to ministers<sup>27</sup>;
- b. Motions<sup>28</sup>;
- c. Statements<sup>29</sup>;
- d. Annual reports on the activities of each ministry, department and agency;
- e. Quarterly expenditure returns through specific, measurable, achievable, realistic time-bound processes, popularly known as SMART;
- f. Visits and follow-ups; and
- g. Setting up of sub-committees to examine particular issues.

As far as oversight of the defence budget is concerned, the defence committee, and the parliament as a whole has always showed support to the budgetary demands of the armed forces, often manifesting a sympathetic appreciation of the state of servicemen housing and insufficiency of allocations to the defence sector. However, it has since become evident that the committee and the parliament have no real power to influence defence estimates. Even though the committee has been consistent in its demands for increased budgetary support for the armed forces, this did not disguise the difficulties it encountered in trying to execute its functions. The committee had no office of its own, and had limited expertise for analysing the budget; there were no precedent in guiding its work, and its first chairman was dependent on the assistance of the military command to structure the reports to be submitted to the parliament. The committee also lacked critical data to

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<sup>25</sup> See *Standing Orders of Parliament*, Nos. 140 -148 and 150.

<sup>26</sup> *Ibid.*

<sup>27</sup> This gives opportunities to parliamentarians to question ministers on their performance. Ministers have three weeks to respond. See *Standing Order* No. 66 (1), November 2000.

<sup>28</sup> Motions request Parliament to debate a particular issue in which the public has expressed a particular interest. See *Standing Order*, No. 79 (4), November 2000.

<sup>29</sup> *Standing Order* No. 72, November 2000.

properly evaluate defence estimates; on the other hand, however, the committee and the parliament have not consistently pressed for better access to data. The situation has partially improved since the introduction of the Medium Term Expenditure Framework (MTEF) in 1999, a policy framework on defence budgeting which was supposed to address shortcomings of the budgetary process.<sup>30</sup> Foreign military aid to Ghana armed forces is not subject to parliamentary oversight, as, generally, the procurement process. Peacekeeping funds, which are not under parliamentary scrutiny, are only supervised by the ministry of finance.<sup>31</sup>

Overall, this committee has been of limited effectiveness in its oversight of military and security issues. Several factors explain this pattern. First, there was initially some reluctance on the part of members of the parliament to work on the defence committee. Moreover, the highly complex nature of the security sector presents a veritable challenge for effective oversight. Defence issues are often too technical for members who have not had earlier military experience and have neither been given any specific capacity training in issues dealing with security. Indeed this is more so as security services have peculiar organisational cultures, rules and practices and are governed by a number of secrecy laws, which can potentially pose problems if an oversight committee is not conversant with these institutional norms.<sup>32</sup> Again, the detailed operations, rules of combat, weapons procurement and use are beyond the professional capacity of the average members of both the standing and select committees.<sup>33</sup> Yet, they need at least a

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<sup>30</sup> Hutchful, 2002, *op. cit.*, 8-10.

<sup>31</sup> Interview with Professor Hutchful, Geneva, 1 December 2007.

<sup>32</sup> A Freedom of Information Act will allow access to information that might otherwise be classified as 'secret' or confidential. However, despite the need for such legislation, the Freedom of Information bill is yet to be placed before Parliament.

<sup>33</sup> For some of the difficulties faced by Parliamentarians in taking up security issues dealing with military procurement, see the discussion by Parliamentarians during the acquisition of helicopters by the Ghana Armed Forces for peacekeeping. In this particular case, in January 2003, Parliament approved a USD 55 million for the Ministry of Defence (MoD) to 'acquire equipment including helicopters to facilitate Ghana's participation in UN peacekeeping operations' in the Democratic Republic of Congo (DRC). These included four Mi-17-V5 transport helicopters of which two were to be used for the UN operations and two kept for GAF. The original estimated cost for these helicopters was \$14.640m with 'contract provision made for the training of personnel as well as spares and tools [for] \$5.055.600.00m. The total contract sum therefore amounted to \$19.695.600.00'. Ministry of Defence, *Update on the supply of Helicopters – to the Ghana Armed Forces by Wellfind Ltd.* (n.d.) (January, 2003), 1 quoted in Aning, E.K. 2004. *Military Imports and Sustainable Development: Case Study Analysis – Ghana*, 10. Available at <http://allafrica.com/peaceafrica/resources/view/00010208.pdf>.

rudimentary appreciation of these matters if they are to properly determine policies, laws and budgets of the armed and security forces. This calls for independent research and expertise to support the work of the standing and select committees. Second is the problem of resources; committee's infrastructure, i.e. offices, research and support staff, access to library facilities is extremely poor. Third, the committee has been overloaded by the too wide scope of its responsibilities. The most persistent difficulty however has been the lack of clarity about the mission and responsibilities of the committee, symptomatic of a broader problem, which is that of designating the scope of parliament's power and functions in the area of security.<sup>34</sup>

#### **4. Relations between Parliament and Other Stakeholders**

All legitimate and registered political parties are free to contest elections in Ghana. In the December 2000 elections, members of parliament represented four parties, namely the New Patriotic Party (NPP), the National Democratic Congress (NDC), the Peoples National Convention (PNC), the Convention Peoples Party (CPP) with the presence of a few independent members of the House. The same parties are also represented in the 2005 parliament with independent members of the House.

There is close collaboration between parliamentarians and their party offices at national, regional and constituency levels through which party policies are discussed and disseminated. However, the levels of interaction and dissemination may differ in places depending on the ability and capacity of the individual politician involved and the organisational skills of his constituency personnel. The policy guidelines that parliamentarians follow in the House should in theory reflect the position of their parties. However, this is far from the reality as most parties represented in parliament lack articulated position papers on security sector issues. This does not apply to the two larger parties NDC and NPP, which have particular party manifestoes that state party positions relating to the security sector. There are no significant differences among the core parties in terms of the positions that their members are supposed to articulate in parliament. However, there is one point of substantive difference between the NPP and the NDC. NDC as the largest opposition is arguing for the appointment of a substantive minister who will oversee the intelligence and security agencies. The Security and Intelligence Agencies Act, 1996, Act 526, introduced important opportunities for oversight over the intelligence

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<sup>34</sup> Hutchful, 2002, *op. cit.*, 5 and 7.

agencies by the parliament. Up until then, the intelligence agencies had no accountability to the parliament. The Box below highlights the provision from the Security and Intelligence Act, 1996, according to which the minister of security will have to submit an annual report on the performance of intelligence agencies to parliament.

**Box 6.1**

**Parliamentary Oversight over Intelligence Agencies: The Ghana Security and Intelligence Agencies Act, 1996**

*Article 17*

Ministerial Responsibility for the Intelligence Agencies and annual report to Parliament

- (1) The President (of the National Security Council, ndr) shall assign ministerial responsibility for Intelligence Agencies to such Minister as the President shall consider as appropriate.
- (2) The Minister assigned responsibility... shall in respect of each year submit a report to Parliament on Intelligence Agencies.

The first report was submitted to parliament in 1998; since then, however, no further reports appear to have been submitted.<sup>35</sup> In addition, parliament has failed to follow through on oversight provisions of the Act; no standing legislative body to oversee intelligence has been set up.

Furthermore, many MPs seemed unaware of the Act and of the ensuing obligations of the minister of security to submit an annual report to the parliament on the intelligence services. This issue of MPs being unaware of some pieces of their country legislation is partly linked to the fact that many acts are very old, like for example the Ghana Armed Forces Act, which dates back to 1962, while most MPs do not have much experience of working in parliament. Moreover, many acts have been revised several times but only partially, on particular sections; MPs may have therefore lost track of the changes. As a matter of fact, there is a certain degree of confusion between old and revised acts and between contrasting provisions concerning parliamentary oversight. In addition to the incoherence of the entire legislative framework, the ignorance of legislative provisions is also due to the lack of continuity in mandates of parliamentarians.<sup>36</sup>

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<sup>35</sup> Hutchful, *op. cit.*, 5-6.

<sup>36</sup> Interview with Professor Hutchful, Geneva, 1 December 2007. The Ghana Police Act and the Intelligence Act contain provisions on parliamentary oversight of the

Civil society involvement with issues of security sector governance was not visible until the late 1990s for two key reasons. First, was the political nature of the regime in power and its overriding penchant for securitising issues that it did not want public scrutiny of, and therefore placed an ‘embargo’ on closer supervision. Basically, the ‘embargo’ consisted more of covert signals that it was not appropriate to engage in security issues. In view of the nature of tense politics and the ‘culture of silence and fear’ then prevalent in Ghana, most CSOs simply took the precautionary measure of self-censorship. Secondly, there was a sheer dearth of civilian expertise on matters of security. After twelve years of democratic dispensation, only a few civil society groups are actively engaged in the field.<sup>37</sup>

Collaboration with civil society groups, researchers and experts in the security field, will provide the resources necessary to counter the information and expertise shortfall that is felt in this sector. Such close collaborations will bring to the table independent information and analysis of the sector; training and capacity building; the facilitation of dialogue with the sector, and public debate on the sector.<sup>38</sup> Indeed, these groups have generally been identified as having the potential to serve different functions and provide diverse technical inputs into the SSG process in Ghana. Possible CSO participation in SSG and their assistance in advancing local ownership of such governance processes have been studied extensively.<sup>39</sup> A serious shortcoming, however, is that SSG is still a highly specialised issue-area in West Africa. As a result, there is both limited expertise and interest, sustained by the traditional secrecy with which security-related issues have been cloaked. It has been argued that:

African CSOs have been reluctant, as well as unequipped,  
to influence security policy and oversight... The problem

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respective services, while the Armed Forces Act of 1962 does not provide for parliamentary oversight over the armed forces.

<sup>37</sup> Institutionally, the media, the religious bodies and the African Security Dialogue & Research (ASDR), the Foundation for Security and Development in Africa (FOSDA), the Ghana Centre for Democratic Development (G-CDD) and the Centre for Security Studies (CSS) are those increasingly gaining expertise in this field.

<sup>38</sup> There are encouraging signs that the new Parliamentary Select Committee on Defence & Interior, which was constituted after the December 2004 elections, is already seeking such collaboration with CSOs. The author has held two meetings with members of the Committee and its Chairperson to identify areas of possible collaboration.

<sup>39</sup> Hutchful, E. 2003. A Civil Society Perspective in *Providing Security for People: Security Sector Reform in Africa*, edited by Anicia Lala & Ann Fitz-Gerald, GFN-SSR, Shrivvenham.

## Ghana

is magnified by the relative rarity of African research institutes specialising in security issues; certainly the theme of SSR is striking in its absence from the work of mainstream political scientists and university departments in Africa.<sup>40</sup>

The end result is a limited circle of experts and non-governmental research organisations in this area of interest.<sup>41</sup> The acceptance of CSO contribution to SSG processes is increasingly coming from parliamentary select committees, the security institutions themselves and other policy relevant agencies.

Two areas are fundamental to a viable discussion of oversight and accountability. These are (a) the institutional frameworks; and (b) legislations for democratic security governance. The 1992 republican constitution and other specific legislation relating to particular security services underpin the governance structures and frameworks that oversee the security sector in Ghana. The lack of training for parliamentary administrative support, which more often than not provides the institutional memory and transfer of knowledge, is a major impediment to effective parliamentary oversight. While since 1992 different parliamentary committees have been provided with training and institutional capacity building programmes, the clerks and other supporting staff to committees have been overlooked.<sup>42</sup>

### 5. Assessing the Attitude of Parliamentarians

Part of the attributes of attitude is integrity, courage and vision. Valuable as they are, it is difficult to quantify these values especially in a consolidating democratic process like the Ghanaian. In general, however, we can assert that parliamentarians have shown lack of political will when dealing with security issues. According to Hutchful (2002), there has been a tradition of ‘censorship’ and ‘self-censorship’, particular among members of the defence committee. Much of the reticence is due to the fact that, especially under the Rawlings regime, the committee, and the parliament as a whole, lived under the shadow of the executive. The party system has also negatively affected parliamentary oversight; the ruling party unwillingness to question its own government security agenda

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<sup>40</sup> See Hutchful, *ibid.*, 38.

<sup>41</sup> Ebo, A. 2004. Security Sector Reform as An Instrument of Sub Regional transformation in West Africa in *Reform and Reconstruction of the Security Sector*, edited by Alan Bryden & Heiner Hanggi, 82, Munster: DCAF/LIT Verlag.

<sup>42</sup> Diverse interviews with Clerks to PSCD between March and May 2005.

hindered the transparency and accountability that the parliament should ensure. Over the long term, the dominance of party interest has led to some ambivalence among Ghanaian parliamentarians on the meaning of civilian control. Hutchful opines that ‘There has been some resistance to civilian control because of the fear that this might mean party political control...a well-founded concern given the experience of past regimes’.<sup>43</sup>

However, it may be possible to identify instances where individual parliamentarians have demonstrated great personal courage in checking corruption and performing parliamentary oversight functions to the detriment of their own political careers within their parties. An example is Honourable P. C. Appiah-Ofori, member of parliament for the Asikuma, Odoben, Brakwa constituency who is widely perceived as a ‘noted anti-corruption campaigner’ and a champion of ‘... what role parliamentarians ... play in ensuring accountability’.<sup>44</sup> Increasingly, some members of diverse committees with security sector oversight are beginning to show integrity and courage by going against their own party’s positions and taking positions based on national interest and what is perceived to be right.<sup>45</sup> Yet another example of courage was during the 1997 parliamentary debates on the estimates of the ministry of defence (MoD) where a parliamentarian from the majority party namely the chairman of the defence & interior committee of parliament, in moving a motion to accept the minister’s estimates argued that, ‘with respect to running costs of vehicles, ships and aircraft, the committee is of the view that, the amount voted for them was insufficient.’<sup>46</sup> From the two examples above, it is becoming clear that there is an emerging boldness among select committee members to question the decisions made by the executive branch; notwithstanding all the structural difficulties and problems, committee members play their oversight roles.

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<sup>43</sup> Hutchful, 2002, *op. cit.*, 5-7.

<sup>44</sup> *The Chronicle*. 2005. Crusader Appiah-Ofori in UK for ‘MDG’ accountability confab, June 21, 1 & 16. For further evidence of this particular MPs courage, see Amakye, R. 2005. ‘Asikuma-Odoben-Brakwa Assembly: Uproar over DCE confirmation – Police fire teargas, warning shots’, *ibid*, 4.

<sup>45</sup> See Parliamentary Debates, (Official Report), Fourth Series, Vol. 14, No. 38, Consideration of Annual Estimates, Ministry of Defence, Head 380, col. 2200, 19 March 1997, col. 2204.

<sup>46</sup> *Ibid*.

## 6. Challenges

With regard to the Ghanaian security sector and parliament's performance of its oversight functions, parliament as a whole is important because of its power to 'provide ... from the Consolidated Fund such monies as may be required for the expenses of the Council and the Intelligence Agencies',<sup>47</sup> and in this sense, the roles of three parliamentary select committees are critical. These are: the select committees on defence and interior, and finance and public accounts.<sup>48</sup> All these play key roles in the oversight of the security sector. For the defence and interior committee, made up of 18 members, its areas of authority deals with the armed forces, police, prisons, fire service, National Disaster Management Organisation (NADMO), Customs, Excise and Preventive Service (CEPS) and immigration service and scrutinizes the budgets of the ministries of defence and the interior.<sup>49</sup> It 'examine[s] all questions relating to defence and internal affairs'.<sup>50</sup> Some of the challenges faced by parliamentarians in executing their oversight functions can be exemplified by citing examples of parliamentary oversight weakness. There is a long tradition of not discussing defence matters in the open in Ghana. In an interesting debate in parliament in 1981, all members of the House showed a shocking reluctance to discuss defence estimates. For instance, J. B. Grant, chairman of the committee on defence and interior, argued that, '[t]raditionally parliament has never debated the estimates for defence'. He therefore 'plead[ed] with hon[ourable] members to take the report

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<sup>47</sup> *Security and Intelligence Services Act*, Act 526 of 1996, Part VI, Section 32.

<sup>48</sup> Like all other committees of Parliament these committees derive their existence from Article 103 of the 1992 Constitution which states that 'Parliament shall appoint Standing Committees and other Committees as may be necessary for the effective discharge of its functions'. See Parliament of Ghana, *Standing Order* No. 140 – 148, and 150. Standing Order 151 (2) established the Public Accounts Committee.

<sup>49</sup> See the *Standing Orders of Parliament* that specifies the functions of this Committee, especially Standing Order 165 (1) that stipulates that the committee must not consist of more than 25 members and is under a Chairperson who does not belong to the party which controls the Executive branch of government. Therefore 'by practice and convention, the committee has, since the evolution of the Fourth Republic, been chaired by the leader of the largest opposition party in Parliament', See Bagbin, A. 2004. *The Role of the Public Accounts Committee of Parliament and how it can effectively promote and enforce an ethics of management in the public service*, *GII Alert*, No. 2, June: 6.

<sup>50</sup> *Standing Order* No. 158. The Committee oversees the Ministries of Defence and Interior and the following departments under them: Ghana Immigration Service, Ghana National Fire Service, Ghana Prisons Service, Ghana Police Service, Narcotics Control Board, National Disaster Management Control, Veterans Association of Ghana.

from the committee ... and keep the figure to themselves'.<sup>51</sup> Other arguments proffered for not discussing the estimates dealt with 'traditional practices' that, the Ghanaian 'exchequer is already burdened' implying that a discussion of such issues concerning public expenditure on the military might cause public anger. In this particular case, the estimates were approved without detailed debate.<sup>52</sup> This has changed somewhat. However, during the discussion of the 2001 MoD estimates in parliament, a member had to be cautioned that 'information which is classified ... should not be stated on the floor of the House ... [because] the public as a whole should not know because it has security implications for the whole nation'.<sup>53</sup> This cautionary behaviour which enables the speaker of parliament to limit the options open to the standing, select and the full House to pry into sensitive matters is captured in the Security and Intelligence Services Act, Act 526 of 1996. It limits the powers of parliament and protects intelligence officers from disclosures where the speaker of parliament or the National Security Council deems that document or information contained therein to be 'injurious to the public interest'.<sup>54</sup> Interestingly enough, what constitutes the national interest has not been specified in any document. Indeed, Ghana does not have an official and publicly available document outlining the national security policy nor a White Book on defence.<sup>55</sup> A result of such ambiguous definitional conundrum is that any government with a sympathetic speaker of the House can stop any debate under the vacuous argument that the discussions can be 'injurious to the national interest'.

Other difficulties faced by this particular select committee are the rather technical and specialised expertise that is needed to contribute to the debates and in understanding the nuances of the military expenditure and eventual acquisitions. There are other challenges

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<sup>51</sup> Parliamentary Debates, Official Report, 3<sup>rd</sup> Series, Second Session of the First Parliament of the Third Republic of Ghana – Second Year of the Third Republic, 29 April 1981 – 21 August 1981, 1980 – 81 Session, p. 175 quoted in Aning, E. K. 2002. *A New ECOWAS?: Democracy and Security Sector Governance in West Africa*. Paper presented at a workshop on *Security Sector Reform and Democratisation in Africa: Comparative Perspective*, organised by African Security Dialogue and Research (ASDR) in Accra in February 2002.

<sup>52</sup> *Ibid*, Parliamentary Debates, 1981, 200.

<sup>53</sup> See 'Consideration of the Annual Estimates – Ministry of Defence' in *Parliamentary Debates* (Official Report) Fourth Series, Vol. 28, No. 41, March 2001 col. 2963.

<sup>54</sup> Act 526 of 1996, Part V, Section 38, 1 (a) I & ii and (b) i & ii.

<sup>55</sup> Interview with Professor Hutchful, Geneva, 1 December 2007. According to Professor Hutchful, even though there is no official national security policy, there is an informal agreement among defence personnel as to what are the main national security interests.

Ghana

related more to structural issues that affect the whole of parliament. These include the lack of parliamentary support staff thus undermining parliamentarians' effectiveness to contribute to debates. Therefore, the capacity of this committee to effectively scrutinize the budget estimates presented to them *in camera* is, at best, weak.<sup>56</sup> Honourable J.E. Ackah, captures this succinctly:

[t]he committee cannot assume to the fullest its oversight functions of the ministries and their departments with regard to their budgets and activities through existing mechanisms... The constitution, budgetary constraints and behavioural factors restrict much of what it would hope to achieve.<sup>57</sup>

This is best exemplified by some of the exchanges that occurred during the discussion of the 2001 ministry of defence estimates in parliament.

The other critical parliamentary committees which have potential oversight functions are the *finance* and *public accounts committee*, which examines the budgets of the office of the President and the National Security Council (NSC) and that of the CEPS. The *public accounts committee* examines public accounts in general,<sup>58</sup> and discusses the report of the Auditor-General.<sup>59</sup> This activity provides the committee with some measure of oversight over the expenses of the military and other agencies. There seems to be some dissonance in the parliament concerning the extent of PAC's oversight functions. Minority leader of parliament, Alban Sumani Bagbin, who serves as the chair of PAC, and by parliamentary praxis and standing orders should be from the largest opposition party in parliament to ensure an extra critical oversight of the usages of the public purse, has argued that,

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<sup>56</sup> For some of the debates concerning the MoD and Ministry of Interior budgetary estimates, see, See, 'Government's Financial Policy, 2003', *Parliamentary Debates, Official Report*, Fourth Series, Vol. 28, No. 22, 27 February, Col. 1295 ff, also See *Parliamentary Debates, (Official Report)*, Fourth Series, Vol. 14, No. 38, Consideration of Annual Estimates, Ministry of Defence, Head 380, col. 2200, 19 March 1997. In response to the minister's statement, the Chairman of the Defence & Interior Committee of Parliament, in moving a motion to accept the minister's estimates argued that, 'with respect to running costs of vehicles, ships and aircraft, the committee is of the view that, the amount voted for them was insufficient.', *ibid*, col. 2204.

<sup>57</sup> Ackah, *op. cit.*, 2.

<sup>58</sup> See Chapter 13 of the 1992 Constitution of Ghana.

<sup>59</sup> See Article 187 (2), *ibid*.

it appears from the provisions of the constitution and the standing orders so far mentioned that the committee's work is limited to examining only reports presented by the Auditor-General. This view is sometimes held by some of my colleagues but I hold a contrary opinion. I believe the committee, as a watchdog wing of parliament in matters of public finance can, institute investigation into any matter of public interest where public funds are involved.<sup>60</sup>

Members of the finance committee complained about the manner in which the Auditor General seemingly takes instruction from the security agencies and ministers in the performance of his duties. Members of this committee have bemoaned such actions and complained that, 'such development[s are] dangerous and inimical to the development of Ghana's fledgling democracy and tends to erode confidence in the role of parliament as a watchdog of the executive arm of government'.<sup>61</sup>

All things being equal, the alleged control of the Auditor-General by the security services need not necessarily arise as law protects the Auditor-General's removal from office.<sup>62</sup> What explains this apparent contradiction in the behaviour of the Auditor-General can best be understood within the context the neo-patrimonial character of Ghanaian politics.

Other difficulties faced by this particular select committee are the rather technical and specialised expertise that is needed to contribute to the debates and in understanding the nuances of military expenditure (miles) and eventual military/defence acquisitions. There are other challenges, which are related more to structural issues that affect the whole of parliament. These include the lack of parliamentary support staff thus undermining parliamentarians' effectiveness to contribute to debates. The issue of parliamentary support staff is omnipresent, though there is an essential corps of potential expert knowledge base that needs support and training. This is because in some cases they are those with the institutional memory to impart to new members of the House. Closely related to such institutional memory processes is the need to have a well-equipped library. As of June 2005, the parliamentary library is totally understaffed and under-equipped. The

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<sup>60</sup> See Bagbin, A. 2004. The Role of the Public Accounts Committee of Parliament and how it can effectively promote and enforce an ethics of management in the public service, *Ghana Integrity Initiative (GII) Alert*, No. 2, June: 6.

<sup>61</sup> *The Independent*, 2004. Auditor General takes orders from ministers, National Security, July 13: 3.

<sup>62</sup> There are elaborate provisions for this under the Audit Service Act of 2000, Act 584.

total support staff for the committee consists of one full-time staff member and a part-time staffer. As at the beginning of 2005, there were plans to cut this staff because of budgetary constraints.<sup>63</sup> At the beginning of the 2005 parliamentary sittings, this committee had a clerk who also served other committees, no computers and printers specifically dedicated to the work of the committee and no specialised books on their subject area. In fact there is no library to speak of for the whole of parliament.

Yet another important difficulty faced by this specialized technical committee is the apparent chasm between the perceptions of their functions between committee members and party headquarters. After years of providing training to a committee member, the leadership of a political party in the house and the party head office, for party political tactical reasons can shift a member to yet another committee without taking cognisance of the expertise gathered. While theoretically one cannot fault a party or caucus in parliament for making such decisions, it is worth retaining such technical expertise on particular committees. To curtail the loss of critical expertise, it may be necessary to discuss with party head offices some of the advantages of considering the potential value of a trained member of a particular committee before such shifts are undertaken.

What are the practical and operational issues involved in these challenges? Honourable Ackah presents a daunting list of challenges. He recognizes that 'the committee ... has limited resources at its disposal and has been working under very trying circumstances'. He suggests that to enhance its performance, a basic minimum of facilities should be present. These include, but are not limited to:

- Office accommodation for members;
- Logistical support, such as computers, internet accessibility, adequate research staff and the use and assistance of experts;
- A well-stocked library;
- Well-trained support staff;
- Improving the capacity of committee members to enable them to thoroughly examine issues referred to the committee; and
- Supporting committee members to acquire expertise in oversight and monitoring of security funding.

The most critical challenge is probably what Ackah terms as 'behavioural factors'. This, he argues, has arisen because 'there is very

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<sup>63</sup> Interview with Charles Dery, Parliamentary Staffer, Accra, 1 February 2005.

little evidence of parliamentary involvement in security matters due to the prevailing culture of secrecy'. While parliamentary standing orders empowers this committee to demand information,<sup>64</sup> sections of the Security and Intelligence Services Act, Act 526, according to Ackah, still makes it 'possible for security services to deny it [the committee] information, on grounds of national security'.<sup>65</sup> There has been no change in this law because of the opportunities it provides for incumbent governments to hide uncomfortable information or details under the broad rubric of 'national security'. Although it is difficult to establish precisely the frequency of instances when the assertion of 'national security' has been invoked, it might be important that this loophole be re-examined. It has the potential of undermining the efficacy of monitoring and oversight in the long term. However, Ackah makes an incisive comment that justifies a lengthy quotation. He tries to understand and rationalise why the Security and Intelligence Services Act, Act 526 provides this loophole:

A prevailing assumption is that MPs talk too much and therefore cannot maintain *confidentiality* and moreover being politicians would not resist the temptation to divulge government views on the issues prematurely for their own political gains. This traditional mindset continues to inhibit the development of a process of providing information on the need to know basis. This is one of the main obstacles to developing an assertive legislative oversight [and] it is important that national security does not become a standard argument for avoiding accountability for institutional waste, fraud, abuse, professional neglect or inefficiencies. *There is a need to know what is sensitive and why.*<sup>66</sup>

Ackah's arguments above open an essential but disturbing perspective concerning the differences between confidentiality and secrecy. For any oversight functions to be performed creditably there is the need for all parties that is the executive, legislature and the judiciary to agree to a certain modicum of trust and define the parameters of what ought to stay confidential. It is essential that an agreement among the actors be

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<sup>64</sup> *Standing Order* No. 155, November 2000.

<sup>65</sup> Ackah, *op. cit.* An official State Secret Law is in place in Ghana. In Ghana, a Freedom of Information Act was first drafted in 2003; since then, there have been several revisions – in what some civil society groups have called deliberate stalling on the part of a government too reluctant to open itself up to universal scrutiny. The Freedom of Information Act is currently before the Parliament (December 2007).

<sup>66</sup> Ackah, *ibid.* My Emphasis.

reached as to what kinds of information should not be divulged either to the public or exploited for party political purposes. Such a consensual agreement leading to the sharing of critical information in an atmosphere of reciprocal trust also contributes to building the capacity of members of relevant committees and ensures a cadre of political elites conversant and comfortable with handling sensitive and confidential information.

## **7. Conclusion**

This chapter has examined some of the challenges and opportunities for parliamentary oversight in Ghana. It has been clear from the discussion that, while the whole of parliament lacks resources, the particular challenges faced by the parliamentary committee on defence and interior (PCDI) is particularly acute. Such inadequacies weaken their oversight and decision-making functions. From the above discussion also, the PCDI and its members have had conceptual difficulties in understanding the technicalities of military or defence budgets. Due to the intricacies of the issues faced by the PCDI, improving their capacities to perform optimally means that there can be no 'quick fixes'.

Although one can argue that the ability of members of the PCDI is limited, members of this committee also appear to be willing to reach out to civil society organisations and individuals with the requisite expert knowledge to contribute to their training. While much needs to be done to improve the conditions under which this committee works, there is no doubt about its preparedness to learn. This creates an encouraging basis for collaboration among different stakeholders.



## Chapter 7

# Liberia

*Thomas Jaye and Adedeji Ebo*

### 1. Introduction

After fourteen years of war and plunder, like other war-torn societies, Liberia faces the crucial challenge of rebuilding its socio-economic and political life. Political reconstruction is important for Liberia because one of the causes of the war was bad governance. Terrence Lyons shares this view when he writes that since the causes of most of these wars are political in character, the most critical element in rebuilding such war-torn societies and preventing them from relapsing into conflict requires an effective strategy for political reconstruction.<sup>1</sup> Importantly, the process of post-war reconstruction involve carrying out a number of complex and difficult but surmountable tasks and measures that seek to ensure that the gains made are not easily reversed. This also requires the role of critical actors in order to ensure that the process is sustained. The Liberian people played a significant role in bringing peace to their country with the active support of external actors, particularly ECOWAS and its member states, and United Nations. Currently, the government, civil society and international actors are contributing to the ongoing process of post-war reconstruction and peacebuilding. The specific role of the Liberian legislature, which is an outcome of the 2005 elections and the overall peace process, is vital in ensuring good governance including providing critical oversight responsibilities over different sectors of the government including the security sector.

As the structures of the state often collapse during the course of war, their rebuilding is crucial. Within the specific Liberian contexts, the entire state and societal structures collapsed under the weight of the war. Hence, the need to rebuild and strengthen the capacity of state structures including the legislature, executive and judiciary in order for them to carry out their constitutional mandate cannot be over-emphasised.

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<sup>1</sup> Lyons, T. 1999. *Voting for Peace. Post-Conflict Elections in Liberia*, 1. Washington, D.C.: Brookings Institution Press.

During the Liberian conflict, the security sector became dysfunctional and factional. In fact, the collapsed and dysfunctional security institutions melted into, and served as trainers and commanders of the various warring factions in the civil war. Therefore, reforming it is an absolute imperative. The reform or transformation process should aim at improving the technical efficiency and governance systems of the security sector.<sup>2</sup> Given the role of the security sector in causing conflicts, the issue of parliamentary oversight of the security sector has wider and serious implications for democratic politics in war-torn societies like Liberia. For example, as will be discussed later in this chapter, the subservient role of the legislature in the Liberian tripartite state system has provided the condition for the executive branch to assume a domineering position over the security sector. Such skewed oversight responsibility has reinforced regime security.

The basis for the dominance of the executive branch and more specifically the president is rooted in the one-party state and patronage system that dominated Liberian politics for a long time. Since independence in 1847, almost all the ruling governments have enjoyed absolute majority in the legislature and this laid the basis for a rubber stamp parliament. However, the elections of 2005 have provided an opportunity to reverse this situation and enable the legislature to assume its historic and constitutional role in Liberian politics.

This chapter seeks to provide a background to the role of parliamentary oversight in the Liberian security sector. In so doing, it gives a brief historical background to the formation of the Liberian state and implications for democratic politics in the country. Further, the paper discusses the concept of security in Liberia and examines civilian oversight of the security sector in relation to the legislature, executive, and the judiciary. It contextualises and deploys three indicators of parliamentary oversight, namely authority, ability, and attitude. The chapter concludes with an analysis of the challenges of parliamentary oversight of the country's security sector.

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<sup>2</sup> For an overview of the prospects for SSR in Post-conflict Liberia, see Ebo, A. 2005. *The Challenges and Opportunities of Security Sector Reform in Post-Conflict Liberia* DCAF Occasional Paper 9. Geneva: DCAF; Aboagye, Festus B. and Bah, Alhaji M.S. 2005. *A Tortuous Road to Peace: the Dynamics of Regional, UN and International Humanitarian Interventions in Liberia*. Pretoria: Institute for Security Studies.

## 2. Historical Background and Overview

Liberia was founded in the early 1820s, and subsequently declared an independent republic on 26 July 1847. The history of the country can be divided into the following broad periods: colonial period (1822 to 1839)<sup>3</sup>; Commonwealth period (1839 to 1947); first Republic (1847 to 1980); second Republic (1980-1990)<sup>4</sup>; civil war years (1989-2003); and post-war (2003 till present). One defining feature of Liberian politics is that almost all the major political changes in the history of the Liberian state have been brought about largely because of a deep sense of injustice.<sup>5</sup> For example, the commonwealth period was ushered in because the settlers were demanding greater voice in running the affairs of the state and this culminated into the declaration of independence. Similarly, the coup of 1980 occurred after a prolonged period of demands and agitation for justice and equal rights for the indigenous people; the civil war in Liberia erupted because of ten years of military misrule; the second war occurred because Charles Taylor refused to exploit the opportunities offered by the elections of 1997 but resorted to repressive and oppressive rule; and the elections of 2005 was possible after fourteen years war and plunder, which destroyed the country and its people.

With specific reference to the Liberian state, it is a product both of past American and African experiences. D. Elwood Dunn partly shares this view when he commented that modern Liberia is a product of complex African past, which witnessed a long period of relationship with the Mel, Kwa, and Mende speaking people of that land.<sup>6</sup> However, he asserts that the new state that emerged in the early 19th century enveloped much more than the meeting of two cultures, daunting though that would be. In the process, a settler representative government was established within the wider polity, with few rights for the indigenous majority. Moreover, the existing 'native modes of

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<sup>3</sup> This period was dominated by the rule of the American Colonization Society (ACS), the body that organised the repatriation of the freed slaves from America. Later, chapters of the ACS organised separate and independent colonisation societies, which initiated their own colonies but these were not colonial in the classical sense of the word.

<sup>4</sup> See Olonisakin, F. 2000. *Reinventing Peacekeeping in Africa. Conceptual and Legal Issues in ECOMOG Operations*, 69. The Hague: Kluwer Law International.

<sup>5</sup> See Olonisakin, *op. cit.*, 69.

<sup>6</sup> These people inhabited Liberia before the arrival of the settlers in 1822. See Dunn, D. E. 1998. Liberia's Internal Responses to ECOMOG's Interventionist Efforts in *Peacekeeping in Africa. ECOMOG in Liberia*, edited by K. Paygar and E. Conteh-Morgan, 78. Houndmills: Macmillan Press, Ltd.

governance' (chieftancy and ascephalous systems)<sup>7</sup> were also adapted to the politics of patronage. The net effect of these arrangements was the gradual emergence of autocracy as the Liberian mode of governance.<sup>8</sup> Therefore, as will be illustrated later in this chapter, autocratic rule in Liberia had serious implications for parliamentary oversight of the security sector.

The issue of the relationship between the settlers and the indigenous Africans has been a recurring theme in Liberian history. Very often, most of what has happened in Liberia over the past one hundred and sixty years has been reduced to ethnicity as an explanatory variable. In short, recurring references have always been made to Americo-Liberian hegemony in Liberian politics. As one writer points out, although they constituted about 5 percent of the total population, the settlers controlled political and economic power almost to the exclusion of the majority of indigenous Africans. Such control was reinforced by single party rule under the True Whig Party and the imperial presidency, which they held until the military coup of 12 April 1980.<sup>9</sup>

However, ethnicity should be construed as only a facet of a wider complex of factors that shaped the Liberian crisis. The crisis in Liberia should be attributed to the lack of security in the widest sense of the word for the vast majority of the people. As previously argued, far from being the 'guardian angel' of the Liberian people, the Liberian state has, from one regime to another, served more as a source of insecurity than security for them.<sup>10</sup> Prior to the outbreak of the war, the country faced mounting problems of economic mismanagement, political repression and exclusion, and decline in the living standards of the vast majority of the people at one end of the social pyramid, and

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<sup>7</sup> The Chieftaincy mode was characterised by a hierarchical and central authority; it embodied executive, legislative and judicial powers in the modern sense of the word. Chiefs presided over chiefdoms. On the contrary, the acephalous system was characterised by lack of centralised authority and power; authority was held at the clan or lineage levels often through elders; these were headless societies that were highly non-hierarchical and had no defined administrative machineries and decisions were made by lineage heads (elders).

<sup>8</sup> Dunn, *op. cit.*, 78. This theme is also discussed in much detail in Sawyer, A. 1992. *The Emergence of Autocracy in Liberia. Tragedy and Challenge*. San Francisco: ICS Press.

<sup>9</sup> Sesay, A. 1992. Historical Background to the Liberian Crisis in *The Liberian Crisis and ECOMOG: A Bold Attempt at Regional Peacekeeping*, edited by M. A. Vogt, 30-32. Lagos: Gabumo Publishing Co. Ltd.

<sup>10</sup> Jaye, T. 2000. ECOWAS and Liberia: Implications for Regional Intervention in Intra-State Conflicts in *Africa at the Millennium. Agenda for Mature Development*, edited by B. Bakut and S. Dutt, 156-157. Houndmills: Palgrave.

luxury and opulence at the other end.<sup>11</sup> Such a polarised socio-economic framework has serious implications for any discussion on conceptualisation of security in Liberia.

Upon independence in 1847, the constitution was modelled after that of the United States of America. One of the democratic principles enshrined in the constitution was the separation of powers for purposes of ‘checks and balances’ within a tripartite state system. In practice, however, this was not to be the case. As indicated by Gus Liebenow, beginning with President Edwin Barclay (1930-1944) and completed under William V.S. President Tubman (1944-1971), the legislature lost its supremacy to the executive.<sup>12</sup> Prior to these leaders, supremacy of the executive was not as pronounced. As Sawyer argues, in the exercise of patronage powers, the president was circumscribed by closely observed convention and practices.<sup>13</sup> As he points out, this is not to suggest that there existed an independent and effective legislature because presidential favours were crucial for maintaining their status in society.<sup>14</sup>

Firstly, and in reinforcing a point made earlier, the role of the legislature was undermined by the protracted period of one-party rule. For example, over the years, the legislature have passed various Acts to establish different agencies of the security sector but failed to include any mechanisms or measures for their oversight responsibilities. The only role enshrined in these acts has to do with the president appointing senior management personnel of these agencies with the *advice and consent of the Senate*. Effective oversight responsibility was delegated to the executive branch through the office of the president and the ministries of justice, defence, and national security. The office of the president exercised ultimate control over the security sector. The president appoints senior officials of these agencies and they serve at his/her will and pleasure. Under such circumstances, his/her office exercised absolute control over them and they operated mainly for the maintenance of the status quo.

Second, the role of the legislature was also undermined because of the ways in which people were nominated to this body. All nominations are made at party conventions, which under single party rule have

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<sup>11</sup> Jaye, *op. cit.*, 157.

<sup>12</sup> Liebenow, J.G. 1987. *Liberia. The Quest for Democracy*, 127. Bloomington and Indianapolis: Indiana University Press.

<sup>13</sup> Sawyer, A. 1992. *The Emergence of Autocracy in Liberia. Tragedy and Challenge*, 268. San Francisco: ICS Press.

<sup>14</sup> Sawyer, *op. cit.*, 268.

been controlled by the president and his cronies. For example, under the True Whig Party (TWP) system (1877 to 1980), the national party leadership maintained a firm hand over the convention proceedings. This was clearly manifested at the Grand Bassa Convention of 1959, when the unanimous choice of the local party for the post of senator was vetoed by the national party leadership. A second convention was held to re-nominate the incumbent senator.<sup>15</sup> Worse still, under the TWP from the 1870s to 1980, it was an unwritten rule that those elected to the Senate and House would automatically be entitled to a second term in office. In fact, the speaker of the house, Richard Henries was in office from 1944 to 1980 when he was executed after the military *coup d'état*.<sup>16</sup> Under such conditions, the legislature could not exercise effective oversight functions but was reduced to a rubber stamp body for the president's decisions. However, recent developments in Liberia such as the end of conflict and subsequent elections of 2005 have changed this situation but whether this will enable the legislature exercise an effective oversight responsibility over the security sector remains to be seen. What is certain is that Liberia's unique historical evolution has had a defining impact on the conception of security, and the architecture that has been erected to provide security in Liberia.

## 2.1 Conception of Security

At birth, Liberia faced the challenge of ensuring a sustainable and peaceful internal administration, defined and constrained by competing conceptions of security by the indigenous and settler populations. In essence, the settlers had to cope with the challenge of running a country in which there were two types of administration: modern and 'native mode of governance' (chieftaincy and ascephalous systems) as Dunn put it.<sup>17</sup> For a long time, this issue plagued Liberian politics and was reinforced by the cleavages and conflicts between the so-called settlers and the indigenous Africans. Therefore, to a large degree, the initial concept of security was shaped by ethnic tensions and an accompanying sense of insecurity on the part of the settlers who found themselves in predominantly indigenous African communities and a hostile environment. The sense of manifest destiny; and the mission to *christianise* and *civilize* the African people did not help the building of harmonious relationship between the two communities nor did it promote the democratic ideals with which they

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<sup>15</sup> Liebenow, J.G. 1969. *Liberia. The Evolution of Privilege*, 126 – 127.

<sup>16</sup> Liebenow, *op. cit.*, 99.

<sup>17</sup> Dunn, *op. cit.*, 77-78.

### *Liberia*

arrived in Africa. On the contrary, it led to a false sense of superiority on the part of the settlers, and reinforced antagonisms and insecurity for the minority settler group.

The other historical reality that shaped Liberia's sense of security had to do with the colonial expansion by Britain and France who encroached on Liberian territory in the late 19<sup>th</sup> century when both colonial powers took away large parts of Liberian territory and annexed them to theirs in what today constitutes Sierra Leone and Cote d'Ivoire respectively. A deep sense of insecurity was created among the ruling elites who rightfully feared further encroachment on Liberian territory. Consequently, the Liberian authorities sought to organise its internal administration and resolve border disputes among the indigenous communities were measures taken to establish Liberian government control over the hinterland.<sup>18</sup>

The Cold War period also shaped Liberian conception of security. Like elsewhere in Africa, during this period, the dominant notion of security was highly state-centric and militaristic. The referent for security was the state and the regime in power; and not the people. Successive Liberian governments failed to realise that they were a source of insecurity for the people because of their actions and policies. Thus, emphasis was placed on the number of security agencies established for the purposes of law enforcement, security, and intelligence gathering, but failed to realise that the way in which the security sector was organised and managed created exclusion and further insecurity.

Under president William V.S. Tubman's personalised rule, Liberia experienced a proliferation of security agencies. He created a network of security agencies in order to maintain the status quo. Although Tolbert reduced the number of agencies when he assumed power in 1971, the notion of security did not change. Under the successive regimes of Samuel Doe and Charles Taylor, regime security prevailed over human security. Further, emphasis was placed on technical efficiency of these agencies as opposed to democratic civilian control and oversight. The latter was not in the interest of these regimes because the security agencies became instruments for political repression.

The war years reinforced the militaristic and state-centric notion of security but recent discourse on security in the country illustrates that

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<sup>18</sup> Sawyer, *op. cit.*, 131-132.

this narrow conception of security has come under public scrutiny. Liberians increasingly feel that the threats to their security are not just military but also non-military in dimension. They strongly feel that poverty; illiteracy; lack of access to food, education, and health care; poor governance and lack of respect for rule of law and other basic human needs constitute real threats to national security in the broader sense of the word.<sup>19</sup> Such a notion has implications for security sector governance and reinforces the point by Ken Booth that the threats to most countries, individuals, and communities do not necessarily derive from their neighbour's army but challenges from economic collapse, political oppression, scarcity, ethnic rivalry, destruction of nature, crime and other related factors.<sup>20</sup> In the light of this, it is important to stress that security is not just about physical survival; it is also about the emancipation from oppressive powers structures – be they global, national, or local in origin and scope.<sup>21</sup>

## 2.2 Liberia's Security Architecture

The constitution of Liberia provides for a tripartite stated system comprising three branches of government. In the executive branch, the office of the president as well as those of the ministers of justice, defence and national security play an important role in providing oversight of the security sector. By virtue of Article 50 of the constitution, the president is Commander-in-Chief of the armed forces of Liberia. Article 54(e) also empowers the president to appoint and commission 'members of the military from the rank of Lieutenant or its equivalent and above' but with the advice and consent of the Senate.<sup>22</sup>

With the exception of the army, all security agencies are supervised and controlled by the ministries of justice and national security. They are also subject to the supervision and control of the National Security Council, which is chaired by the president. The ministry of defence provides civilian oversight responsibilities over the army. The powers of judiciary over the security are implicitly exercised through the courts, which have powers to dispense justice throughout the country.

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<sup>19</sup> Interviews with a cross section of Liberians throughout the country from October 2006 to February 2007 under the aegis of the Governance Reform Commission.

<sup>20</sup> Booth, K. 1991. Security and Emancipation *Review of International Studies* 17(4): 318.

<sup>21</sup> Thomas, C. 1999. Introduction in *Globalization, Human Security and the African Experience*, edited by C. Thomas and P. Wilkin, 9. Boulder and London: Lynne Rienner.

<sup>22</sup> See Constitution of the Republic of Liberia, January 6, 1986, 22 -23.

*Liberia*

It ensures the rule of law and therefore, all agencies and personnel of the security sector are subject to the judiciary when it comes to constitutional matters. As enshrined under Article 66 of the constitution, the supreme court is the ‘final arbiter of constitutional issues and shall exercise final appellate jurisdiction in all cases whether emanating from courts of record, courts not of record, administrative agencies, autonomous agencies or any other authority, both as to law and fact except cases involving ambassadors, ministers, or cases in which a country is a party’.<sup>23</sup> In this light, the independence of the judiciary is important and crucial for effective, transparent, and democratic security sector governance.

Under the oversight responsibilities of the civilian institutions enumerated above, agencies responsible for security provision throughout the country are detailed in Table 7.1 (below).

**Table 7.1: Statutory Liberian Security Agencies**

| Agency                                            | Law Enforcement | Intelligence | Territorial Safeguard | VIP Service |
|---------------------------------------------------|-----------------|--------------|-----------------------|-------------|
| <b>National Security Agency</b>                   | X               | X            |                       |             |
| <b>Police</b>                                     | X               | X            |                       |             |
| <b>Army</b>                                       |                 | X            | X                     |             |
| <b>National Bureau of Investigation</b>           | X               | X            |                       |             |
| <b>National Fire Service</b>                      | X               |              |                       |             |
| <b>Bureau of Customs and Excise</b>               | X               |              |                       |             |
| <b>Monrovia City Police</b>                       | X               |              |                       |             |
| <b>Ministry of National Security</b>              |                 | X            |                       |             |
| <b>Bureau of Immigration &amp; Naturalisation</b> | X               |              |                       |             |
| <b>Drugs Enforcement Agency</b>                   | X               | X            |                       |             |
| <b>Special Security Service</b>                   | X               | X            |                       | X           |

<sup>23</sup> See Constitution of the Republic of Liberia, January 6, 1986, 27.

There are also paramilitary bodies attached to state institutions such as the Liberia Petroleum Refining Corporation (LPRC), National Port Authority (NPA), Roberts International Airport (RIA), Liberia Telecommunications Corporation (LTC), Monrovia Consolidated School System (MCSS), Forestry Development Authority (FDA), and others. The role of the FDA security body is important because it has responsibility to protect the dense Liberian forest from being unscrupulously exploited.

In addition to the above, a multiplicity of non-state security actors, which extends beyond the dimensions of profit, fills the security gap resulting from a context of rising insecurity and declining state capacity to respond, together with the continuing lack of confidence in public security institutions. Among them, there are private or commercial international and local security bodies<sup>24</sup> and civil society actors.

For example, the American government has outsourced American post-conflict involvement in Liberia to two American companies. DynCorp International is responsible for vetting, recruitment and provision of basic training to the new Liberian armed forces, while Pacific Architects and Engineers (PAE) is responsible for specialised advanced training, equipment, logistics and base services.<sup>25</sup>

In addition to the activities of foreign private security outfits, there has also been a boom of locally-based private security services, as a direct result of protracted conflict. It is estimated that there were 5 security companies before the war, 11 during the war, and there are now some 15 security companies in Liberia. Security companies serve businesses and affluent residences, international organizations, and extraction companies in the mining and logging industry. Also, the evolution of local commercial security entities has been closely related to, and largely emanated from, the protection of natural resource extraction interests.

Finally, civil society in Liberia has become increasingly visible on reform initiatives. In March 2005, for example, a conference of over a

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<sup>24</sup> Private security companies are required by law to acquire clearance from the Ministry of Justice before beginning operations and register with the Ministry of Justice. Only citizens of Liberia either by birth or naturalisation can own or operate such ventures.

<sup>25</sup> The \$95 million training package is administered by the US State Department. Cook, N. *Liberia's Post War Recovery: Key issues and developments*, CRS Report for Congress, Updated May 5, 2006, 10.

hundred groups set up the National Coalition of Civil Society Organisations in Liberia (NACCSOL) in order to broaden civil society inputs in the reform process. Civil society groups further created (March 2006) the Working Group on Security Sector Reform, which aims at ensuring civil society input into the SSR process.<sup>26</sup>

### **3. Authority, Ability and Attitude**

#### **3.1 Authority**

Overall, Liberian parliamentarians have adequate legal authority to provide oversight responsibility of the security sector. Such authority is enshrined in the constitution of Liberia, the rules and regulations governing the affairs of the legislature and the various acts that established the agencies within the security sector of the country. Article 34 provides enormous powers to the legislature, and contains the specific and general legal basis for parliamentary engagement in security sector oversight. Section 34b expressly identifies the parliament as having strategic and oversight responsibility for security, stating that ‘the legislature of the country shall have the power to provide for the security of the republic.’<sup>27</sup> This provision gives broad powers to the legislature, and positions it to play a crucial role in security matters in the country. Article 34(c) goes further to specify the legislature is

to provide for the common defence, to declare war and authorise the executive to conclude peace; to raise and support the armed forces of the republic, and to make appropriations therefore provided that no appropriation of money for that use shall be for a longer term than one year; and to make rules for the governance of the armed forces of the republic.<sup>28</sup>

From the above, it is evident that the legislature has powers on virtually all matters concerning security in the country. These range from the strategic responsibility for ‘common defence’, including the power to raise and support the armed forces, to powers over the purse strings, which necessitate the executive to revert to the legislature annually for ‘appropriations’. The Liberian constitution is crystal clear

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<sup>26</sup> Ebo, A. 2007. Non-state Actors, Peacebuilding and Security Governance in West Africa: Beyond Commercialisation, *Journal of Peacebuilding and Development*, vol. 3(2): 53-69.

<sup>27</sup> Constitution of Liberia, 1983.

<sup>28</sup> Constitution of Liberia, 1983.

on parliamentary responsibility for security sector oversight, given the constitutional mandate to ‘make rules for the governance of the armed forces of the republic’.

Article 50 grants that ‘the executive power of the republic shall be vested in the president who shall be head of state, head of government and commander-in-chief of the armed forces of Liberia. Article 54 further gives the president the power of appointment of all senior security personnel but, as a veritable check and balance mechanism, all such appointments shall be made only ‘with the consent of the Liberian Senate’.

In addition, the legislature and in particular, the committees on defence and security draw their authority from Article 38 of the constitution, which reads as follows:

Each House shall adopt its own rules and procedure, enforce and with the concurrence of two-thirds of the entire membership, may expel a member for a cause. Each House shall establish its own committees and sub-committees; provided, however, that the committees on revenues and appropriations shall consist of one member from each county. All rules adopted by the legislature shall conform to the requirements of due process of law laid down in this constitution.<sup>29</sup>

In the light of the provisions of this article, the rules and regulations of the House of Representatives and the Senate constitute important elements of the legal framework for authority over the security sector. According to the rules and regulations of the House of Representatives, there are standing committees on security and defence. Each standing committee can investigate any matter within its jurisdiction.<sup>30</sup> For example, the committee on national security of the House of Representatives deals with all proposed legislation, messages, petitions, memorials and others matters relating to national security and intelligence. These include national intelligence-related activities in all ministries and agencies of the government.<sup>31</sup> In addition, the committee is also responsible for matters relating to ‘checkpoints’, and international arms control and disarmament. In this light, immigration matters also fall directly under the purview of this

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<sup>29</sup> Constitution of Liberia, 1983.

<sup>30</sup> Standing Rules of the House of Representatives, 2006, 30.

<sup>31</sup> Standing Rules of the House of Representatives of the 52<sup>nd</sup> Legislature, Republic of Liberia, 21 March 2006, 18.

*Liberia*

body. All members of the committee can serve for three (3) years but subject to removal by the speaker for cause.<sup>32</sup> While the meaning of what constitutes a cause is left open ended and so liable to different interpretations and possible abuse, the speaker cannot single-handedly remove any member from a committee without approval by 2/3 majority of plenary. Therefore, there is a system of checks and balances in the way the legislature works.

Similarly, all proposed legislation, messages, petitions, memorials, and other matters relating to defence fall under the purview of the committee on national defence. According to the rules, this committee specifically deals with following issues:

- Common defence including arms, armament, recruitment and service;
- The ministry of defence and all military activities including the armed forces of Liberia (AFL), the coast guard and the army aviation unit;
- Pay, promotions, retirement and other benefits and privileges of members of the armed forces of Liberia;
- Size and composition of the army, navy, air force and the coast guard;
- Forts, arsenal, military camps and reservations and ammunition depots;
- Military bases and coast guard bases and homes of military personnel generally;
- Strategic and critical materials and weaponry necessary for common defence; and
- Military dependents and war veterans.<sup>33</sup>

From the above, the committee deals with a broad range of issues on defence. Therefore, it has enormous authority and oversight responsibility over defence. Moreover, like the committee on national security, all members of the defence committee can serve for three (3) years but also subject to removal by the speaker for a cause.<sup>34</sup>

However, the committees on national defence and security of both House of Representatives and Senate do not currently have the power to exercise oversight over external military assistance, if external funds are attributed directly to a foreign based entity. It is expected that the new National Defence Act, currently under discussion before

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<sup>32</sup> Standing Rules of the House of Representatives, 2006, 18.

<sup>33</sup> Standing Rules of the House of Representatives, 2006, 27.

<sup>34</sup> Standing Rules of the House of Representatives, 2006, 27.

the parliament, should establish the competence of the Liberian parliament to exercise oversight over external funds attributed to any actor dealing with defence and security issues and which operates in Liberia, even if it is externally based.<sup>35</sup>

In terms of composition, each of these committees comprises seven members. Any member of the House of Representatives who is elected to the parliaments of ECOWAS and AU as well as to the IPU is ineligible either to serve as chair of standing and statutory committees, or co-chair of a statutory committee.<sup>36</sup> They can however serve on these committees.

### 3.2 Ability

While the authority provided within the frameworks of the constitution and the standing rules are crucial by themselves for the work of the legislators, they do not represent sufficient condition for effective oversight responsibility over the sector. A major benchmark of parliamentary oversight of the security sector is the ability to hold government accountable in relation to the security sector, associated with the capacity of parliamentarians to comprehend and address security issues. There is therefore the need for a corresponding ability and a positive attitude to employ the authority granted to the legislature through the aforementioned legal framework.

The provision of oversight responsibility of the security sector is challenging and multidisciplinary because of the complex issues involved. These range from personnel to weapons procurement, military preparedness, budgetary matters, strategic reviews, and others. Often, members of parliament, particularly those serving on the defence and security committees, do not necessarily have the requisite expertise and knowledge to deal with such issues in a way that ensures effective oversight and accountability. In some instances, even by the time they develop such expertise, they may have been moved to another committee or their life span as a parliamentarian will have expired.<sup>37</sup>

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<sup>35</sup> Interview with Hon. Lahai Lasana, Chair Senate Committee on National Defence, Monrovia, 11 March 2008. If external funds are transferred by the donors directly to the Liberian government, they became part of the state budget and therefore are subject to parliamentary oversight. However, this is only a theoretical speculation because so far, external funds have been transferred directly to foreign companies, without the intermediation of the Liberian government.

<sup>36</sup> Standing Rules of the House of Representatives, 2006, 29.

<sup>37</sup> This point is well made in the DCAF and IPU Handbook for Parliamentarians, *op. cit.*, 19.

## *Liberia*

In the specific case of Liberia, this constitutes a real concern because of the fact that this is the first time that most of the parliamentarians are serving in the legislature. In this sense, many lack experience but some also lack the academic background that is required to do their work as parliamentarians. As John Johnson and Robert Nakamura have illustrated in their needs assessment of the Liberian legislature, the current House of Representatives has four members and two aides whereas the Senate has four members and one aide from the previous National Transitional Legislative Assembly (NTLA).<sup>38</sup> In terms of academic background, about half of the members of the House lack college degrees and a third of the Senate lack similar degrees.<sup>39</sup> While the lack of educational qualifications may be reflective, and therefore representative of Liberian society, it nevertheless complicates and retards official communication. Specifically on the needs for security sector oversight, there is the need for improvements in parliamentarians' capacity, including additional training for themselves and for their research staff. As highlighted in the report on the Interactive Needs Assessment Meeting on Security Sector Oversight for Liberian Legislature (hereinafter, the Report), the legislature as it has the power to set its funding allocation and can therefore theoretically allocate resources to this end.<sup>40</sup>

Another important challenge to effective oversight is that parliamentarians are disempowered, given the general tendency for them to be subservient to the executive. Furthermore, parliamentarians are discouraged from carrying out their oversight functions due to a lack of access to information particularly on security matters, under the pretext of being 'classified information'. As suggested by the Report, there is the need for increased collaboration and exchange of information between the executive and the legislature, in order for the latter to be able to effectively challenge the executive to the benefit of the Liberian people.<sup>41</sup>

The lack of facilities to support the work of the parliament also reduces the ability of parliamentarians to keep the government

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<sup>38</sup> See Johnson, J. and Nakamura, R. *Liberia Legislative Needs Assessment*. A paper written for the United Nations Development Programme (Liberia), 13 February 2006.

<sup>39</sup> See Johnson and Nakamura, *op. cit.*, 13.

<sup>40</sup> Report on the Interactive Needs Assessment Meeting on Security Sector Oversight for Liberian Legislature, March 2007, Accra, Ghana, available at [http://www.dcaf.ch/news/diarydetailskms.cfm?param0\\_219=2007&lng=en&id=29378&nav1=2](http://www.dcaf.ch/news/diarydetailskms.cfm?param0_219=2007&lng=en&id=29378&nav1=2), 14.

<sup>41</sup> *Ibid.*, 11.

accountable. A professional research and support staff to provide briefings and specialized knowledge would help parliamentarians to be better acquainted with security issues and with the relevant legislation. Quoting the Report, 'the working environment is essentially substandard thus limiting what can be achieved.'<sup>42</sup>

Because of the limited knowledge of security and security-related issues, they will find it difficult to effectively hold the government accountable in specific relation to technical security issues. However, on general security issues, the newly elected parliamentarians have illustrated an ability to hold the government accountable on such matters, as for example in the case of the National Defence Act. The National Defence Act was drafted excluding *in toto* the parliament from the process. This is at odd with the constitutional responsibility of the parliament, which, according to article 34 of the constitution, has strategic and oversight responsibility for security governance, including the prerogative to provide for the common defence and to raise and support the armed forces. Furthermore, the Act contains fundamental breaches to the constitution, among the other, the monopoly of power in the minister of defence and the lack of agreement between Liberia and the United States as to what the SSR procedure entails. It was evident that the Act was intended to ratify the ongoing security sector reform process *ex-post*, and was put together by external actors with little local input. Being aware of the above mentioned issues, the parliament rejected the Defence Act and sent it back to the executive, thus demonstrating its ability to effectively carry out its role of check and balance for the executive. The Interactive Needs Assessment Workshop contributed to raise awareness among parliamentarians on the prerogatives of parliament in relation to security governance and legislation and represented an opportunity to openly discuss and critically examine the contents of the Act. This is only an episode which shows the beneficial effects of the SSR process on the quality of parliamentary oversight. The many training activities for parliamentarians organised within the framework of SSR have brought a broader knowledge of defence and security issues among members of the defence and security committees. As a result, parliamentarians are more conscious of their role and their powers, and therefore more willingly to keep the government to account on security-related issues.<sup>43</sup>

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<sup>42</sup> *Ibid.*, 19.

<sup>43</sup> Interview with Hon. Saah Gbollie, Chair House Committee on Security, 11 March 2008.

However, as is always the case, it is one thing to have the ability to hold the government accountable but you must also be willing and committed to do so. This is where attitude is crucial in this process.

### **3.3 Attitude**

Since 1847, single party rule has grossly undermined the will and commitment of parliament to effectively and independently provide oversight of the security sector. This has serious implications for any discussion of the attitude of parliamentarians in Liberia. Historically, the legislature has always played second fiddle to the executive and party loyalty has always undermined the independence of the body. Such legacy has the potential to adversely impact on the work of the legislature.

However, during the intermittent periods of interim or transitional governments in Liberia between 1990 and 1997, and 2003 and 2005, certain changes were observed in the attitude of the interim legislative assemblies to hold the government accountable on broad range of issues including security matters. Despite the knowledge constraints, members of these assemblies asserted themselves on a variety of national issues including summoning those responsible for security matters to appear before appropriate legislative committees on defence and security. For example, they invited the appropriate agencies within the security sector to brief them on the Veteran Act. The Act was meant for the establishment of a veterans bureau to deal specifically with ex-AFL soldiers. Further, they invited the police director to explain why the police entered the premises of Hon. Rufus Neufville and arrested members of family.<sup>44</sup>

The elections of 2005<sup>45</sup> have provided a window of opportunity for the emerging signs of legislative assertiveness to be sustained in a legitimate and effective way. For the first time in the history of Liberia, the ruling party does not have majority in the legislature. Unlike in the past, the appropriate defence and security committees in both the House of Representatives and the Senate have been very active in trying to ensure that they have a say, and a role to play in security matters without necessarily intervening in operational

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<sup>44</sup> Interview with members of the Legislature, September 2007.

<sup>45</sup> Legislators or MPs can be selected depending on whether there are no other candidates but they must be agreed upon at a party meeting. In cases where there are more candidates, they can be elected at party caucuses or conventions; and others can be independent candidates who contest elections directly without party affiliations.

matters. For example, although they did not succeed in doing so, in 2006 they invited DynCorp, the US private military company that is training the Liberian army to explain its role in Liberia.<sup>46</sup> DynCorp referred them to the US embassy for any explanation on their role in training and restructuring the Liberian army. Article 34 empowers the legislature to approve treaties, conventions and such other international arrangements negotiated or signed on behalf of the republic. Hence, when the appropriate committees in the House of Representatives summoned the DynCorp, a US private military company, to explain its role in training the Liberian army, it was acting within the confines of its powers as enshrined in the constitution.

Second, they have also cited the minister of defence over the issue of severance payment for those dismissed from the Liberian army. Moreover, they virtually refused to discuss the draft Defence Act of Liberia because of its flaws and the failure of the minister of defence to produce the previous Defence Act of 1956.<sup>47</sup>

It is therefore evident that there is a positive change in attitude of the members of parliament on security matters. In particular, Liberian parliamentarians have proved to be respectful for rules and regulations and have shown tolerance and commitment to reach out contrasting views on security issues.<sup>48</sup> However, like other parliamentarians in most West African countries, the threats of being bribed or even coerced into submission by the executive branch of government hangs over the current legislature. If the attitude is to grab quick and short-sighted, then this body will easily and readily compromise its constitutional mandate and responsibilities. Such attitude will certainly have a retarding effect on security sector governance in post-war Liberia. As noted during the Interactive Need Assessment Workshop in March 2007, the priority needs in terms of parliamentarians' attitude are to increase peer motivation through dialogue between the Senate and the House of Representatives and to foster adherence to rule of law by improving public dialogue and civic education.<sup>49</sup>

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<sup>46</sup> Interview with Members of the Defence and Security Committees of the House of Representatives, Monrovia, Liberia, November 2006.

<sup>47</sup> Interview with cross section of members of the Defence and Security Committees of the House of Representatives and Senate, Accra, Ghana, March 2007.

<sup>48</sup> Interactive Need Assessment Report, *op. cit.*, 21.

<sup>49</sup> Interactive Need Assessment Report, *op. cit.*, 21.

#### 4. Challenges of Parliamentary Oversight

Parliamentary oversight is crucial in ensuring that security agencies operate in a democratic, professional, transparent, and accountable manner. From the above analysis, it is evident that the legal framework for effective oversight of the security sector in Liberia does not present a major challenge. Article 34 of the constitution is unequivocal in stating the significance of the role of the legislature in security governance. However, the ability and the attitude of legislators to effectively employ the enormous constitutional powers at their disposal face various challenges which need to be addressed.

- *Attitudinal and mindset changes:* In order for them to effectively play their oversight role, members of the legislature will need to develop a mindset in which they see themselves as having a unique responsibility and mandate for the wellbeing of Liberians which puts them above partisan, ethnic, and other such cleavages. In addition, there will be a need to break the historical mould of playing the role of a rubber stamp and second fiddle to the executive branch of government. Such a rebirth of the Liberian legislature can only emerge from a clear demonstration of high integrity, statesmanship, and constructive engagement with the executive and the judiciary. Closely related to this is the need for legislators to rise above partisan politics and to put the interests of the nation above party politics. In addition, there is a need for legislators not to perceive their colleagues in terms of their past roles in previous regimes and during the civil war. The cohesion necessary for effective parliamentary oversight can only be possible if legislators rise above such primordial cleavages.
- *Whose security?:* One of the challenges facing the Liberian legislature is to ensure that a broader notion and shared vision of security is adopted by the new administration. This implies a shift of policy from the historical narrow focus on regime security to a more people-centered notion of security. Ideally, such an inclusive framework should form the basis for the country's national security policy. Such an inclusive security policy can however only emanate from a consultative process which accommodates the views of all stakeholders and social groupings. The legislature therefore stands challenged to use the available tools of parliament (such as public hearings, budget reviews, etc) to solicit and respond to the views of

ordinary Liberians on the definition of insecurity and the necessary policies and frameworks to address it. The legislature would also need to solidify and operationalise links with civil society organisations, especially those that focus on security sector oversight, in addition to links with security institutions and relevant government ministries such as the ministry of finance, justice, and defence.

- *Research and analytical support:* Even before Liberia's protracted conflict, the absence of adequate research and analytical support to facilitate security sector oversight has been a persistent challenge confronting the legislature. An up-to-date and well stocked library or documentation centre on security sector issues would go along way to bridge the knowledge gap of the legislators, while providing a resource to parliamentary support staff. Such support staff should be able to benefit from specialized training on the technicalities of the security sector and its governance. The lack of adequate physical and administrative infrastructure to support the work of the legislature also remains a major challenge. It would therefore very necessary for the relevant parliamentary committees to be supported with office and communication equipment, in addition to information technology to enable them access information and to propagate their work.

## Chapter 8

# Mali

*Boubacar N'Diaye*

### 1. Introduction

Mali is often showcased and extolled in the literature and discussions on democratic governance generally, and the governance of the security sector and progress accomplished in civil military relations in particular.<sup>1</sup> This general perception has served the country well, making it one of the largest beneficiaries of international aid and sympathy.<sup>2</sup> It has somehow projected Mali as a model for other African countries, faced with the challenges of redesigning and managing post authoritarian civil-military relations and security issues, ought to emulate. There is a consensus that the measure of real progress toward a genuine and durable democratic subordination of the military to elected civilian authorities is the extent to which the representatives of the people, particularly the legislature, exercise a vigilant and effective oversight over, and otherwise participate in, the management of the security apparatus of the state. Therefore, this favourable perception of Mali, notwithstanding the progress it has accomplished toward a democratic control of the security forces, must be measured by taking a close look at its realities, and at the actual policies and institutional practices pursued in its current political arrangement. In other words, it is useful to have a reality check and examine the role parliament in Mali plays in the new era of civil-military relations started with the establishment of the Third Republic in 1992.

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<sup>1</sup> This was the case, for example at the April 1999 seminar on ‘the Role of the Legislature in Defense and National Security Issues’ sponsored by the National Democratic Institute (NDI) and held in Dakar. See the *Seminar Report* of that seminar published by the National Democratic Institute for International Affairs and funded by the National Endowment for Democracy, Washington, D. C.

<sup>2</sup> According to the UNDP 2007/2008 report, in 2005 for example, Mali received nearly 700 million USD in official development assistance, which represented over 50 USD per capita and 13% of its GDP for the same year. As a percentage of GDP, foreign direct investment increased 15 times between 1990 and 2005. Available at [http://hdrstats.undp.org/countries/data\\_sheets/cty\\_ds\\_MLI.html](http://hdrstats.undp.org/countries/data_sheets/cty_ds_MLI.html) (accessed 13 February 2008).

This chapter purports to carry out an analysis of the current situation in Mali. To do so, it is first necessary to present a short political background of the country. This will situate the examination of the reality of Mali's parliamentary oversight over the security sector in its historical context. How this oversight is carried out in theory and in practice, its challenges as well as its opportunities are then presented. Recommendations will be highlighted to help Mali in meeting the challenges and taking advantage of the opportunities in order for it to become the model it aspires to be in West Africa. These recommendations take into account Mali's socioeconomic and political realities as well as the best practices identified by experts or successfully implemented by other countries.

## 2. Historical Political Background<sup>3</sup>

A landlocked materially poor country in the heart of West Africa, Mali considers itself the proud heir to the glorious medieval Mali empire (and its successor Songhay) that was world renowned as much for its military prowess and conquests, its unrivalled wealth, as for its rich culture, and centers of high culture and education, Timbuktu and Jenne. Colonised by France after much resistance by its various political entities of the 19<sup>th</sup> century, the territory that corresponds to contemporary Mali was named '*Soudan Français*.' It became independent on 22 September 1960 after a two-year internal autonomy interlude. Similar to its former French colonies counterparts in the region, 'modern' politics in Mali started after the Second World War with the decolonisation that saw the rise of a dynamic French educated bureaucratic and urban elite. Mali's decolonisation efforts were led by a charismatic leader and founding member of the West African-wide political party, the *Rassemblement Démocratique Africain* (RDA) and head of its Sudanese section, Modibo Keita. After ephemeral experiments of a federal state with neighbouring Senegal and a problematic attempt to create an embryo of the United States of Africa with its ideological sisters Nkrumah's Ghana and Sékou Touré's Guinea, Mali was left to chart its own independent post-colonial existence under the leadership of Modibo Keita and his party, the *Union Soudanaise RDA*. As typical of most other former French colonies, the *Union Soudanaise RDA* soon became the only party

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<sup>3</sup> For a pertinent summary of the Mali's recent evolution in the context democratisation in Africa, see Clark, A.F. 2000. From Dictatorship to Democracy: The Democratization Process in Mali in *Democracy and Development in Mali*, edited by R. Bingen, D. Robinson, and J. M. Staatz, 251-264. East Lansing: Michigan State University Press. This background is also based on the author's familiarity with Mali's recent political history.

## Mali

allowed and just as typically a repressive political system started to emerge with Mr. Keita at the helm. From 1960 until 1968 when he was overthrown by a military coup led by Lieutenant Moussa Traoré, Modibo Keita pursued resolutely socialist domestic economic and social policies and Eastern bloc friendly foreign policies. The collectivist economic policies started to slowly alienate vast segments of the embryonic commercial and bureaucratic petit bourgeois class in the context of an increasingly authoritarian and repressive political atmosphere. They singularly alienated officers in the military who felt humiliated by an increasingly intrusive and omnipotent, ideologically driven militia, the *milice populaire*. On 19 November 1968, Mali joined the unenviable, but rapidly expanding group of African states ruled by a military junta.

It is worth noting that as far as parliamentary oversight of the armed and security forces is concerned, the Keita regime, just as other similar regimes at the time was unremarkable. A parliament made up exclusively of members of the single party was, in fact, a rubber stamp national assembly, the *raison d'être* of which was to give legislative legitimacy to decisions made by the higher echelons of the party (the *comité central*, the central committee and *bureau politique national*, the national polit-bureau). With regard to civil military relations, the Keita regime infringed callously on the autonomy of the military and trampled afoot its sense of professionalism by politicising it (i.e. infiltrating and subordinating it to the whims of political commissars), and giving free rein to the militia to take on traditionally military roles and responsibilities. To this extent, Mali's first republic was by no means a reference as far as security sector governance and civil military relations are concerned. Indeed, it was the fateful and misguided policies and attitudes toward the military (including the lack of proper oversight by a totally ineffective legislature) that were to precipitate the overthrow of the Keita regime in 1968. A particularly trying period of post-independence politics in Mali was to result from this first military intervention in the political process.

As the head of the junta, the *Comité Militaire de Liberation National*, CMLN (Military Committee for National Liberation), Lieutenant Moussa Traoré (soon to be army General) first consolidated his power by dutifully eliminating his rivals and using the military and other security forces as his natural power base. In the process, he militarised the national police and turned it into a deadly instrument of ruthless repression while turning a blind eye on its utter corruption. Anticipating by a generation a now familiar political move, he 'civilianized' his power in 1974 after adopting a new constitution. Shedding off the military uniform he had a single party-state, he

created the *Union Democratique du Peuple Malien* (UDPM), launching Mali's Second Republic. In addition to a singularly autocratic and corrupt regime, Moussa Traore presided over the slow disintegration of Mali's social fabric. He stubbornly refused to carry out either economic or political reforms despite the deafening clamor from a restless urban class allied to workers, pupils, students, and growing unemployed ranks whose patience was tried by plummeting standards of living, widespread repression, and worsening overall conditions. Added to years of recurring droughts, these also triggered a bloody armed rebellion in the north with ethnic overtones. Even when throughout West Africa emboldened opposition groups were forcing the most entrenched authoritarian regimes to introduce multiparty politics, particularly after the *La Baule* conference in 1990,<sup>4</sup> Moussa Traoré chose the option of repression over compromise. This culminated in the killing of dozens of protesters by security forces in March 1991. Led by Lieutenant Colonel Amadou Toumani Touré (nicknamed ATT), the military joined the 'street' in overthrowing his regime, and opening the way, in collaboration with an active political opposition and civil society, to the instauration of a democratic, pluralist regime.

A distinct political dispensation resulted from the combined efforts to topple General Traoré. This new regime chose to carry out far-reaching reforms in civil military relations, as well as in the area of the relations between the state, society, and the citizen on the one hand, and citizens and the armed forces, on the other. The resulting political system was largely informed by the circumstances in which it was born.<sup>5</sup> It is also clear that the civil military relations under the 'civilianized' military regime of former General Traoré, which severely undermined the military, as other similar experiments elsewhere,<sup>6</sup> can also be considered to have contributed to determining what practices were to be avoided at all cost. Under the Traoré regime, as typical of single party military-backed political systems, the oversight of the security apparatus was of course non-existent. A rubber stamp parliament abdicated its putative constitutional responsibilities to an omnipotent executive that could be reduced, in reality, to president Traoré alone (and his family marginally). By

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<sup>4</sup> At the annual Franco-African summit of head of states and government, held that year in La Baule, France, then French President Francois Mitterand ties any future French development aid to commitment of African leaders to democratisation of their political systems.

<sup>5</sup> Clark, *op. cit.*, 262.

<sup>6</sup> See Hutchful, E. 1997. Demilitarizing the Political Process in Africa: Some Basic Issues *African Security Review* 6 (2).

March 1991, the security sector in Mali was downright pathological and in total decomposition. With the adoption of the 1992 constitution and the election of Dr. Alpha Oumar Konaré as president of the Third Republic, Mali entered a new democratic era. As is examined below, the constitution as well as the laws and other decisions that were enacted to implement it purported to radically break away with the past. This is particularly true for civil-military relations in general, and the control and oversight of the security apparatus in particular. On paper and in spirit certainly.

### **3. The Third Republic: A New Conception of the Security Sector**

As the 23-year old regime of Moussa Traoré was being dismantled between March 1991 and June 1992 when a new democratic constitution was adopted and free and fair elections held, it was evident that the relations between the military, civilian authorities, and the ordinary citizen would never be the same.<sup>7</sup> Unsurprisingly, civil-military relations would be an area of particular interest henceforth. In addition to the bloody outcome of the repression during its final weeks, it was also apparent that the old regime's legacy included a complete estrangement of the military from the very people whose protection is supposed to be its essential mission. More generally, there was a broad consensus that the practices and attitudes of the regime of Moussa Traoré with its failed economic, social, and other policies represented the antithesis of all that a democratic system should be. As Mamadou S. Kanté recalls, throughout the difficult transition to the Third Republic jointly carried out by the military under the able leadership of Amadou Toumani Touré and representatives of Mali's opposition and dynamic civil society, participants were often poignantly reminded of the nefarious effects of such practices, including the resentment and distrust armed and security forces inspire ordinary Malians.<sup>8</sup>

The awareness of the necessity to abandon old practices was already present in the composition of the transition team that prepared the conditions for ushering in the Third Republic. The *Comité Transitoire pour le Salut du Peuple* was made up of 25 members, fifteen of whom

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<sup>7</sup> See Smith, Z. 2001. Mali's Decade of Democracy *Journal of Democracy* 12 (3): 73-79.

<sup>8</sup> See Kanté, M. S. *Case Study: [The] Military in Democratic Transition in Mali*. Unpublished paper, presented at the Military Question in West Africa: Options for Constitutional and Democratic Control Conference, 14-17 June 2001, in Accra Ghana.

civilians and ten members of the military. Though this organ was presided over by Lieutenant-Colonel Touré, the pre-eminent role of civilians was acknowledged and the necessity of a speedy return to civilian democratic rule was unquestioned even by the military establishment and its representatives. The same shift in the conception of power relations between the military and society in a democratising society took place during Mali's laborious '*Conférence Nationale*.' First, there was a formal apology and an emotional plea for forgiveness by the armed forces for the role they played in the bloody repression, consequently spreading resentment and underlying tensions between civilians and the military. In addition to taking stock of the old regime's disastrous economic and social legacies (including the rebellion in the north), evacuating in a cathartic way the bitter resentment over the repression in which the military had taken part, the National Conference drafted a new constitution. This constitution, overwhelmingly ratified by the people in November 1991 and promulgated on 25 February 1992, remains, by all accounts, one of the most democratically minded on the continent.

When on 8 June 1992, Lieutenant-Colonel ATT, head of the junta (who, setting a precedent in Africa, did not run in the election), transferred power to the democratically elected president Alpha Oumar Konaré, a page was definitely turned on the era of political authoritarianism and the unbridled domination of the political system by the military as an institution or one of its high ranking officers as its dubious proxy. That certainly was the ambition of the 1992 constitution and the political order that was built on it. After two five-year eventful terms as president, during which despite a severe political crisis in 1997, Mali made strides toward democracy, president Konaré dutifully left office without trying to modify the article of the constitution barring a third presidential term. In June 2002, Amadou Toumani Touré, now a retired army General, was elected in a hotly contested, but free and fair election. It is worth mentioning that in the first legislature more than half a dozen political parties were represented. ADEMA, president Konaré's party dominated it although it face a determined opposition. In the mid 1990s, Mali's democracy was put to a severe test, culminating in 1997 in the boycott of parliamentary elections. These resulted in a second legislature being almost exclusively ADEMA members. The 2002 elections were marked by a split in ADEMA which led to the election of Amadou Toumani Touré who ran as an independent and succeeded in securing a broad coalition around his name, and after victory to set up a government of consensus despite the current legislature's fractiousness.

#### 4. Managing the Security Sector... in Theory

Before presenting the constitutional arrangements and subsequent legal and other stipulations, it is useful to be reminded that in Mali the security sector is comprised mainly of the customary uniformed bodies.<sup>9</sup> These are the army and the air force. The navy is virtually non-existent (the country being landlocked). As in other former French colonies, the *gendarmerie*, and the national guard are the two other main security forces managed by the ministry of armed forces and veterans. Paramilitary forces such as customs, the forest service, and civil protection services (fire-fighters) are managed by other ministries. The national police is attached to the ministry of internal security and public safety. Seldom mentioned are the intelligence services (*direction générale de la sécurité d'Etat*, attached to the presidency, and military intelligence), which are indeed part of the security apparatus of the state. All these bodies accomplish specific and respective missions determined by laws and ordinances. However, the 'Code of Conduct of the Armed Forces and Security of Mali' (see below) has judiciously elaborated on the obligations, expectations, and constraints these missions entail in Mali's Third Republic. As elsewhere in West Africa, private security services have been fast growing and their status is still unclear and evolving, despite a 1996 decree governing them.

##### 4.1 The Executive Branch

The constitution fairly clearly and succinctly delineates the role and prerogatives of the executive branch in the management of the security sector and armed forces. It should be noted that it remains silent on intelligence agencies *per se*. As in most African republican constitutions, article 44 of the constitution stipulates that the head of state president of the republic is the 'supreme chief of the armies' and that he presides over the 'superior council and the committee of defense of the national defense.' Not atypically, the constitution also gives a major role to the prime minister, who could, in theory, be from a different political persuasion than the president. According to article 55, the prime minister is in charge of the 'execution' of 'national defense.' Article 53 also disposes that the cabinet 'shall determine and direct ...the armed forces.' In application of these constitutional

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<sup>9</sup> It should be noted that these bodies are governed by separate ordinances and decrees enacted recently (between 1999 and 2002) that 'create' and provide for their 'organization' and 'functioning.' Most of these texts were passed when ADEMA was monopolising the National Assembly, but it is not clear to what extent it participated in crafting them.

stipulations, a 1999 Ordinance (No. 99-045/ P-RM of September 30, 1999) organises and divides up tasks and responsibilities in carrying out national defense operations among the prime minister, the minister of defense, down to the chief of defense staff and other service commanders, in periods of normalcy as well as during emergencies.

An innovative provision of the 1992 constitution is the stipulation that '[a]ny coup d'état or putsch is a crime against the Malian people' and that '[t]he people have the right to civil disobedience in order to preserve the republican form of the State' (article 121). Against the background of what led to its crafting, these dispositions are a clear reference to the principle of democratic civilian supremacy the drafters wanted to enshrine in the constitution and the political system it was installing. This is more than parliamentary oversight. It certainly is democratic oversight and control as ordinary Malians are empowered to disobey authorities in order to preserve the republican (and civilian controlled) political order, and to consider an extra-constitutional seizure of power a personal affront and a crime. Not incidentally, though not as atypical as the disposition of article 121, the preamble reminds the adherence of Mali to various international human rights instruments while article 3, for example, prescribes that '[n]o one will be subject to torture, nor to inhumane, cruel, or humiliating treatment.' The constitution reserves no explicit role for civil society although Mali has one of the most active and able civil societies in West Africa. Even before 'civil society' became the catch phrase of the 1990s and 2000s, Mali's civil society was active and contributed immensely to undermining and toppling one of the most repressive regimes in West Africa. It continues to play a vital role in the education and empowerment of the public, the accountability of state agencies and security personnel, and remains fully involved in resolving outstanding sub-regional challenges such as small arms proliferation.

#### **4.2 The Legislative Branch**

The constitution and laws give an important supervisory and regulatory role to the national assembly in defence and security matters. Though, that role does not include 'managing' the security sector in the narrow sense of the word, the review, oversight, and control of the overall functioning of the state's security apparatus are crucial dimensions of the security sector governance.

Titles V and VI of the 1992 constitution are devoted to the powers of the national assembly as a major branch of government and one of the

institutional pillars of the republic. One of its most important powers pertaining to the administration of the security sector is the power to authorize the declaration of war 'in a special meeting for that purpose' (article 71). Furthermore, only the national assembly can maintain the states of emergency or states of siege beyond ten days. More directly relevant to the management of the security sector is the parliament's power to determine by law 'the general organization of the defense and national security' (article 70). Of course, the most significant overall power of the parliament is the 'power of the purse', that is its control (in theory, again) over the general budget of the state, including the military budget (article 69), and the power of the deputies to summon members of the government, including the minister of defence and his staff, and other non affiliated experts for questioning over security sector matters. As indicated by article 75, according to which the 'initiation of laws belongs concurrently to the cabinet and the members of the national assembly,' in theory, the parliament can initiate any law pertaining to any aspect of the security sector, and make any changes to the existing laws it deems appropriate. Indeed article 70 (cited above) expressly gives it the power to enact such laws. Article 78 of the constitution enables the national assembly to also check the general political orientation of the cabinet (which include security matters), or any given law through the vote of censure, which can topple a government.

In addition to these constitutional powers, the by-laws that govern the functioning of the national assembly (*reglement interieur de l'assemblée nationale* enacted on 24 September 2002) also confer on Mali's parliamentarians powers that can translate in the rigorous oversight of the security sector and its utilisation by the executive branch of government. In addition to the committee on national defense, security and civil protection, which is obviously in charge of any security related matters, a number of standing committees, by virtue of their competence and attributions can be said to have an oversight function over the security forces and their management. A good example of this is the committee on foreign affairs, Malians abroad, and African integration, which will be competent to review agreements involving cooperation (training and equipment grants) in military matters with foreign powers. The committee on constitutional laws, justice, and institutions of the republic is another relevant committee. In addition, the national assembly by-laws (article 89) allow it to constitute special commissions of inquiry to gather facts on any subject for submission to the national assembly. More routinely, the by-laws enable parliamentarians to submit to the cabinet oral or written questions. It is the committee on national defense, security and

civil protection that is supposed to first examine in detail the general budget for the security sector and interfaces extensively (again in theory) with the ministry of the armed forces and his senior staff before voting it and presenting it to the national assembly as a whole for vote. It is also this parliamentary committee that is in charge of monitoring the execution of the budget as well as the general management of the security sector and the various security related policy decisions made and carried out by the executive branch. A close approximation of the latter role and the general mandate of this committee was that, in the mid-1990s, at the height of the efforts to arrive at a resolution of the northern rebellion, members of the national assembly played an aggressive role in requesting information and updates from members of the cabinet that were involved in crafting and implementing the 'National Pact' that resulted from peace efforts.<sup>10</sup> Nonetheless, as in nearly all countries in the sub-region, even those making strides toward democracy and government accountability, the practice of parliamentary oversight, singularly in the security sector area lags far behind what in theory it is supposed to be. For example, a tradition of parliamentary access to classified information relating to defence and security matters has not yet been developed. The latter remain the preserve of the executive branch, the presidency more specifically.

### **5. The Practice of Parliamentary Oversight ... and its Woes**

There is no arguing that, given where it was in 1991, Mali has come a long way. Today, all indicators point to healthy democratic accoutrements and practices sustained by a culture and history imbued with democratic values and ethos that appear to be also shared by its elites. In the security sector and civil military relations, much has been accomplished since 1992 and the parliament has quite laudably played a notable role. While an unpleasant surprise can never be ruled out in civil-military relations in Africa, Mali appears to have significantly decreased, if not removed, the likelihood of its military coming back to power. It is certainly clear that, contrary to many of its neighbours, security in Mali is no longer about regime security, or the personal security of the president. Furthermore, its military officers seem to be particularly receptive to civilian political supremacy and control and think that a coup is not an option.<sup>11</sup> Sustained by favourable social

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<sup>10</sup> This is indicated by Sangaré, N. 2005. Les Défis de la Bonne Gouvernance du Secteur de la Sécurité en Afrique de l'Ouest in *Security Sector Governance in West Africa*, edited by A. Bryden *et al.* Verlag, Münster.

<sup>11</sup> Personal communications between the author and several high-ranking officers in Mali's armed forces in October 2003 and June 2004.

## Mali

attitudes and instincts this should bode well for Mali's future as a democracy.<sup>12</sup> However, much remains to be accomplished for Mali's national assembly to truly play the indispensable role it must play particularly in security related areas for Malian democracy to fully mature.

To be sure, the deeply flawed state of civil-military relations and poor situation of the armed forces themselves at the beginning of the 1990s compelled the parliament and other actors to rise to the occasion and transform the dynamics of these relations earlier on. However, the drag of old habits (including a disturbing culture of secrecy and allure of lucre), the unwillingness to vigorously assert parliamentary role *vis-à-vis* the executive, and the lack of resources and expertise have hindered the emergence and blossoming of what could be termed an 'oversight ethos and drive' in the Malian parliament.

Following the remarkable oversight and monitoring of the security situation in northern Mali during the negotiation and implementation of the 'National Pact' mentioned above, the finest hour for oversight (and co-management?) of the security sector by the Malian parliament (among others) was attained in 1997, with the adoption of the 'Code of Conduct of the Armed Forces and Security of Mali.'<sup>13</sup> As Kanté has argued, the elaborate crafting of that code was aimed at anchoring the security architecture in the newly created democratic *milieu*.<sup>14</sup> It took an international seminar and a workshop that brought together experts, deputies, civil society members, and other concerned parties to identify and codify the underpinnings of this new conception of the role and mission of the armed forces in a democratizing country. This endeavour, financed by the UNDP, resulted in the launching of the 'code'. According to some of its members, the parliament was intimately involved in all these phases.<sup>15</sup> The 37 articles of the code impress on members of the armed forces their obligations to the democratically elected civilian authority, to their fellow citizens as well as civilian populations in general. Published in a pocket-sized booklet and widely vulgarised, the code insists on the obligation of armed and security forces to uphold the constitution, the laws, and international humanitarian law and their duty and right not to obey unlawful orders by their superiors no matter what the circumstances are. Without a doubt, this code, the remarkable role of representatives

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<sup>12</sup> See Smith, *op. cit.*, 75-76.

<sup>13</sup> Mali's Code of Conduct for Armed and Security Forces is available in French at <http://www.hrea.org/erc/Library/>.

<sup>14</sup> Kanté, *op. cit.*

<sup>15</sup> Statements made at the Dakar Seminar, see NDI report *cited supra*.

of the common people (parliamentarians and members of the civil society), as well as the other accompanying measures, contributed immensely to launching the notion of civilian control and parliamentary involvement in the managing of civil-military relations in a sensitive post authoritarian period. Among these measures, was the eye-opening and truly educational open-doors campaign during which the public (and parliamentarians) visited the barracks in the early years of the Third Republic to see for themselves the very difficult conditions of service and abject material deprivation under which the troops worked and lived. In this broad context, a number of measures were taken that tended to consolidate civilian supremacy, a concept that encompasses democratic, hence parliamentary oversight. These include the institution of the principle of a civilian head of the ministry of armed forces, the decoupling of police (law and order) and military functions in the maintenance of public order, the emphasis on training, professionalism, and rigor, and the creation of joint civilian and military discussion groups to facilitate on-going dialogue and understanding, and the creation of a press bureau for the military.<sup>16</sup>

As already mentioned, the committee on defense has on occasions asked members of the military hierarchy security related questions and attempted to play its oversight constitutional role, 'holding their feet to the fire.' However, two recent studies have concluded that, singularly when it comes to budgetary issues, there is a rather weak supervision and control over all aspects of the budgetary process, in particular expenditures and other sensitive aspects of the cycle.<sup>17</sup> Indeed, one of the studies is adamant that there is a '[dearth] of parliamentary control' at all stages of the process.<sup>18</sup> This is the result of the old habit of consciously or unconsciously 'deferring' to the executive branch and to the top brass of the security apparatus combined with the severe lack of expertise in military and security matters on the part of most parliamentarians. The tenure of Moussa Traoré, particularly the free rein given to the state security establishment and the omnipotence of the army throughout his regime, even after the advent of the 'civilianised' political system, is largely responsible for this widespread attitude. Not even the representatives of the people in the national assembly are immune from the psychological repercussions of the thorough twenty-three year long militarization of Malian society. Furthermore, Mali like other former

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<sup>16</sup> Kanté, *ibid.*

<sup>17</sup> Ayissi, A. and Sangaré, N. 2005. Budgeting for the Military Sector in Africa, Case Study: Mali in *Budgeting for the Military Sector in Africa*, edited by W. Omitoogun. Stockholm: SIPRI.

<sup>18</sup> Ayissi and Sangaré, *ibid.*

## Mali

French colonies, has inherited extremely strong presidential systems, in which the balance of power between the executive and the legislative branches is often tilted heavily in favour of the former.

While members of the national assembly would naturally want to exercise some control and leverage over the executive's management of armed forces in the new political context, these old habits die hard. It can be argued that with a former army general at the helm, even democratically elected and no doubt a genuine constitutionalist himself, this notion of deferring to the assumed expertise and entitlement to decide will be reinforced instead of being eroded by more than a decade of democratic civilian rule. For example, in early 2003, some soldiers engaged in organised punitive expeditions against police stations and some civilian communities in reaction to violent incidents in which soldiers were mistreated. These clashes had a potential of seriously undermining the security of the country, but they were never investigated by the parliament. The handling of the incident was left entirely to the executive branch and, remarkably, president Touré insisted that perpetrators be held to account.<sup>19</sup> This and similar attitudes must also be traced to the fact that most parliamentarians have very limited knowledge of salient security issues, and have not had the time yet to develop the expertise that experience (long tenure on the defense committee for example) affords. This shortcoming should be corrected with time.

Similarly, the role of the national assembly in overseeing all aspects of foreign aid with defence and security implications is another that area in need of adaptation to democratic ethos and practice. The juxtaposition between the chronically volatile security situation in northern Mali (which worsened in 2006 and 2007), and the full involvement of the United States as a part of its 'global war on terror' makes more salient. Since the beginning of the Third Republic, the government of Mali has intensified its military and security cooperation with the U.S. to the detriment of France, its traditional partner. Starting in 2002, the U.S. has been offering Mali substantial military aid (both financial and material, but also in training, logistics, and joint operations) as a part of its anti-terrorist programs in North-West Africa (Pan-Sahel Initiative, Trans-Saharan Counterterrorism Initiative).<sup>20</sup> As under the Second Republic, the parliament seems to have played no significant role, if any, in this interface with the United

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<sup>19</sup> Author's personal knowledge, on the basis of communications with Malian officials, October 2003.

<sup>20</sup> See Abramovici, P. 'Le cas du Mali,' *Monde Diplomatique* July 2004.

States, in spite of the importance of insecurity in northern Mali in national life and the need for parliamentary implication and oversight. Leaving to the exclusive discretion of the executive such a critical aspect of national life (in light of the important role the parliament played previously in the resolution of the 1990 the rebellion), will constitute a regression. More importantly still, not exercising oversight on any aspect of defence and security cooperation between Mali and the US, particularly the budgetary aspects, will further undermine the 'power of the purse' and oversight functions of parliament given that this aid represents a substantial part of the financing of the armed and security forces of Mali.

Another carryover from the authoritarian period that has by no means disappeared is corruption. It is doubly corrosive to democracy. Some parliamentarians are unfortunately not immune from the impulse of trying to withhold information in hopes of extracting monetary advantage and, in general, taking advantage of their position for personal gain in their capacity as constitutional watchdogs over the security sector. This allows budgetary rules to be circumvented, law breaking, ethical violation and other excesses to be simply overlooked in return for favours. These practices and instincts are still alive and do undermine effective oversight.

These old habits also include a dysfunctional culture of secrecy when no secrecy is warranted. This reality has its origins in the reflexes acquired during the Traoré regime. An illustration of it is the response of the defense committee's chairman to the request of this author to answer simple and clearly innocuous question to prepare this paper. He indicated that any queries or questions must be addressed to the president of the national assembly, who alone is competent to allow him, after meeting the full committee, to answer my request. Clearly excessive recourse to secrecy, whatever the intention, whether by security forces, the executive, let alone by the parliament about information that should be in the public domain, does not serve transparency or contribute to the democratic oversight of the security sector. Of course, this is not to say that there should be no invocation of confidentiality when warranted, or that members of the defense committee should not uphold their oath to confidentiality. It is, however, to state that invoking secrecy about the most trivial information such as the number of the committee members, does nothing to help the committee to meet any of its missions in democratizing the management of the security sector.

## 6. For an Effective Parliamentary Oversight: What is to be Done?

In a democratising country such as Mali, and despite laudable strides toward a better governance of the security sector, the limitations in the oversight of this critical sector of national life by the parliament should not come as a surprise. Even in established democracies, this oversight is far from perfect.<sup>21</sup> Lessons can be learned from these democracies and even from other African countries, such as South Africa, a recognized pioneer in this area. Heeding the admonitions and recommendations many experts have proffered,<sup>22</sup> and importantly, linking up its oversight of the security sector to broader regional and sub-regional emerging security regime and best practices can help guide Mali to move promptly toward more sound oversight philosophies, mechanisms and tactics. First, it is important to recognise that Mali's elaboration of a 'code of conduct' for the armed forces, the institutionalization of 'open doors days' to military facilities and the 'routinisation' of interactions between civilians and the military at all ranks can be cited as a model in its own right and an example for other West African state to follow.<sup>23</sup>

As evident in the discussion of the shortcoming of oversight in Mali, one of the objectives for improvement must be the creation of a 'new culture' of parliamentary oversight. This stems from the fact that such a steady, vigorous, and effective oversight is indispensable for democracy to endure.<sup>24</sup> This 'new culture' must permeate the whole set up, environment (national and regional), and nature of the

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<sup>21</sup> This was the main observation of a seminar on parliamentary oversight in countries with a strong parliamentary tradition. See the report of 'Parliamentary Oversight of the Security Sector in the Commonwealth Countries,' London, Institute of Commonwealth Studies, 28-29 March 2000.

<sup>22</sup> There has recently been a flurry of publications aiming at helping formerly authoritarian states to design and sustain a democratic governance of the security sector. Many of them proffer apt advice. These include Ball, N. and Fayemi, K. 2004. *Security Sector Governance in Africa: A Handbook*. London: Center for Democracy and Development; Lala, A. and Fitz-Gerald, A. M. eds. 2003. *Providing Security for People*. London: Global Facilitation Network; Ball, N. et al. 2003. Good governance in the Security Sector in *Beyond Structural Adjustment: An Institutional Context of Africa's Development*, edited by N. Van de Walle, 263-304. New York: Palgrave; A. Bryden and H. Hänggi eds. 2004. *Reform and Reconstruction of the Security Sector*. Geneva: Lit Verlag Münster. These inform the recommendations for Mali as does my extensive participation in reflection and exchange on these matters over the years with these valued colleagues.

<sup>23</sup> This was one of the recommendations of the NDI seminar in 1999.

<sup>24</sup> This is emphasised in the Commonwealth report cited *supra*.

parliamentary oversight. Increasing the knowledge base of parliamentarians through training, (especially a specialization in security issues), extensive participation in workshops and seminars on oversight, and long tenure on the defense committee, though not sufficient in themselves, will be helpful, indispensable steps. Next, the defense committee should tap into the reservoir of expertise available among retired military officers and the (national or regional) specialized academic community to enhance its expertise in security matters. Of course, the most significant shift must be in adopting new attitudes toward the executive branch and seeking to actively abandon customs that are inimical to democracy, such as excessive secrecy and appetite for personal unlawful gains derived from one's position. The new attitude toward the executive branch and the commanders of the services need not to be, in fact cannot be, confrontational. It must, however, be without complex and be based on the willingness to exercise the full constitutional and legal mandates and roles afforded to the national assembly as an essential pillar of Mali's republican form of government. In fact, without altering the current configuration of the checks and balances between the branches of government in the Malian system, this new stance can be enhanced by the president and prime minister adopting the custom of consulting formally the defense committee in the process of appointing the minister of the armed forces and veterans, as well as senior military positions.

While these are all-important changes that will make oversight in Mali more effective, any improvement of parliamentary oversight in Mali must first adjust to regional realities and tap into the remarkable gains in democratic value orientation over the last decade at the sub-regional level. As Adedeji Ebo argues, no security sector reform can be 'viable' unless it is cast in a 'sub-regional framework' and recognise 'the indivisibility of security,' nationally but also sub-regionally.<sup>25</sup> One of the goals of oversight, ultimately, is to bring about and maintain overall security to the nation both internally and within its immediate geographical environment, and to do so the most efficiently possible. In the case of Mali, a poor country, both imperatives are of critical importance. Because there is no economic development without peace and security and for too long West Africa has been mired in insecurity, but also because the scarce resources available cannot be wasted on ill-advised or unwarranted military and related spending. Luckily, over the last decade, a regime of sorts has been developing with regard to peace and security related issues in the sub-

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<sup>25</sup> Ebo, A. 2004. Security Sector Reform as an Instrument of Sub-Regional Transformation in West Africa in *Reform and Reconstruction of the Security Sector*, edited by A. Bryden & H. Hänggi, 65-66. Munster: Lit Verlag.

region, notably a solid consensus on ways and means to achieve accountability and responsiveness, all of which are germane to parliamentary oversight. Therefore, a critical adjustment of Mali to this reality must be to give a sub-regional dimension to the overall oversight function of the parliament. Since the early 1990s, ECOWAS has defined and reiterated the conditions and parameters for achieving a well governed, peaceful, and democratic sub-region. The many protocols, declarations and resolutions reaffirm the solemn will of the community to be guided, and bound by a number of principles and practices, particularly in the security area.<sup>26</sup> The same spirit is also found in the decision to create the ECOWAS Parliament. These instruments and the political will behind them must be harnessed to move toward a common, West Africa-wide coordination of policies and practices, (national and sub-regional) parliamentary review and supervisory activities. This coordination will aim to ensure that the governments of the sub-region, both individually and collectively meet their obligations in the security arena. An important arena for such oversight (again, individual and collective) can be the ECOWAS moratorium on small arms protocol (now replaced by the Convention on Small Arms and Light Weapons). A clear outcome of such a regionalisation of oversight will be to coordinate and control arm purchases, military spending, and achieve economies of scale by regionalizing many military and security functions. This will reduce arms races and potential for conflicts, usher in an era of sustained 'neighbourly' democracy, while equipping the region to face common threats more effectively. It will also be an excellent way of enhancing and spreading expertise in security matters for the benefit of all (national and ECOWAS) parliamentarians. All the above is, of course, what effective and farsighted parliamentary oversight should be about for a country like Mali.

## **7. Epilogue**

Political developments that are germane to the immediate (and long term) future of parliamentary oversight of the security sector occurred

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<sup>26</sup> These include the Dakar 21 December 2001 'Protocol on Democracy and Good Governance' that supplemented the protocol relating to the 'Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security' (which was initially adopted in December 1999). The 2003 'Declaration on a Sub-Regional Approach to Peace and Security' issued by West African Head of States and Governments at their extraordinary meeting held the 28th of May in Abuja is another. At the continental level other decisions that insist on and link national and transnational good governance of the security sector, have been taken, most recently at the 2004 AU Maputo summit.

between the completion of this chapter and this volume's publication. They are worth an addendum. In July 2007, Malians resoundingly re-elected for a final four-year mandate former coup leader turned democracy mid-wife, General Amadou Toumani Touré, and a new national assembly. Besides a dismal turnout which revealed a worrisome lack of interest of the Malian electorate in the process (most likely in the political personnel and the policies they offer), the legislative elections handed a large victory to the coalition of parties that supported president Touré, reducing drastically the presence of the political opposition in the parliament. The parliament's overwhelming domination by the president's camp will result in a further weakening of the national assembly as an institution and in its relations with the executive branch. It is also likely to make even more difficult attempts to forge for the parliament an independent and far more assertive role in the governance of the security sector. Another development worth mentioning is the resumption of armed conflict in northern Mali between former Touareg rebels and Mali's security forces. The national assembly does not seem to have been associated in the management of this crisis, or at least consulted on the appropriate response to the looming security crisis. As discussed in this chapter, because of its distinctive post-authoritarian evolution, Mali has been a pioneer in the security sector reform movement in Africa. Nevertheless, it is still a long way from a full partnership of its parliament in the governance of the security sector and these recent political developments are likely to slow down progress toward this goal.

## Chapter 9

# Nigeria

*Kabiru Garba*

### 1. Introduction

Nigeria attained independence in 1960, on the basis of a Westminster-type democracy. Among the main political parties, the Action Group (AG) had its roots in the Yoruba ethnic group, the Northern Peoples Congress (NPC) had its base in the North within the Hausa/Fulani group, while the National Convention for Nigeria Citizens (NCNC) had its base amongst the Igbo speaking people of Eastern Nigeria.<sup>1</sup> Thus, political loyalties had strong ethnic and sectional undertones which still continue to define Nigerian politics today, albeit to a lesser extent.

Nigeria experienced its first military putsch in January 1966, which resulted in a protracted period of military rule characterised by enormous political instability, including a civil war (from 1967 to 1970). The long period of military rule not only created an elite group of military men in politics but also destroyed the Nigerian political class. This situation has significant implications for the consolidation of democracy in Nigeria. Indeed, apart from the brief interregnum between 1979 and 1983 (the Second Republic), Nigeria had, until 1999, for the most part been under military rule since independence in 1960. The peak of the dominance of the military in the politico-economic affairs of Nigeria was witnessed in the period from 1993 to 1998, when the country was highly militarised. Democratic structures were dismantled, alongside widespread abuse of human and civil rights. Popular agitation for the reversal of the annulment of the 1993 presidential elections (which had been cancelled by military fiat) was suppressed through the use of state-sponsored violence. Those elections were widely believed to have been won by a prominent

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<sup>1</sup> The crisis of nation building has remained a fundamental problem in Nigeria, resulting from the enormous plurality of the diverse ethnic groups in the country. Back in 1966, the late Chief Obafemi Awolowo was reported to have described Nigeria not as a nation, but as a 'mere geographical expression' put together by the colonial powers.

Yoruba businessman and politician, the late chief Moshood Abiola.<sup>2</sup> The Yoruba group therefore viewed the annulment of the elections as an attempt by the Hausa/Fulani of northern Nigeria to further perpetuate their power; indeed all but one of the previous military rulers were from the northern parts of the country.

Thus, by the eve of the handover to a civilian government on 29 May 1999, Nigeria's history of praetorianism had created an elite military ruling class. As a result of the politicisation of the armed forces, military discipline and *esprit de corps* amongst armed forces members were greatly compromised. Through endemic corruption, several military corps had gained control over several key industries and banks in the country.<sup>3</sup> Various military governments had issued several repressive decrees which were the pillars of military dictatorship. Prominent among them were the State Security (detention of persons) decree No 2 of 1984, the Treason and Other Offences (special military tribunal) decree No 1 of 1986, the Treason and Treasonable Offences decree No 29 of 1993, the Offensive Publications (proscription) decree No 35 of 1993.

The strict implementation of these decrees was the cause of widespread human rights violations in Nigeria. A tragic example of the prevailing atmosphere is the trial and subsequent execution of the playwright and environmentalist, Ken Saro Wiwa, by a special military tribunal that conducted the process in secret and without giving the convicted (and his fellow Ogoni activists) any right of appeal.<sup>4</sup> There were also several cases of disappearances, particularly of human rights activists, journalists and other opponents of the regime, including fellow military men. The most tragically famous cases were those of the sudden disappearance of Bagauda Kalto, a Nigerian journalist working for 'The News Magazine' and Chinedu Offoaro who worked for The Guardian newspaper. The mystery surrounding these two cases has still not yet been unravelled.

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<sup>2</sup> Nowa Omoigui, *History of Civil-Military Relations in Nigeria- The Current Transition*. Nowa at prodigy.net

<sup>3</sup> In modern day Nigeria, most major Industries and in particular Commercial banks are owned by a conglomeration of local and foreign entrepreneurs. Retired Military Officers especially those who held political positions account for a significant percentage.

<sup>4</sup> Ken Saro Wiwa and his fellow Ogoni activists were condemned to death by hanging in 1995. The judgement delivered in secret without any right of appeal attracted world attention on the poor human rights records of the Abacha administration and remained a reference point even to date.

The cumulative impact is the lack of professionalism within the armed forces, and the resilience to civilian oversight. Against this background, this chapter examines the role of the Nigerian legislature, in terms of its authority, ability and attitude (individually and collectively) in the oversight of the security sector, mainly the defence sector. The challenges facing parliamentary oversight in this regard, as well as the opportunities for more active engagement by the legislature are discussed. The conclusion reached is that the parliament has the necessary authority and ability to undertake effective oversight but needs to improve its attitude.

## 2. The Constituents of the Security Sector

Nigeria's security sector comprises the following actors (although for the purposes of this chapter, the main focus is on the defence sector):

- Armed forces (army, navy and air force, of approximately 77000 personnel);
- The Nigerian police service (consisting of about 360000 men and women);
- Paramilitary bodies, including custom and excise, immigration service, intelligence services- comprising military intelligence and state security services (SSS); and,
- Judicial and public security bodies- judiciary, justice ministry, correctional services (prisons).

De facto, non-statutory security institutions are also directly involved in the provision and governance of security and would therefore qualify as forming part of the security sector. These include:

- Private security companies;
- Militia groups- including, for example, Odua People's Congress (OPC), Bakassi Boys, Hizba Corps; and,
- Community vigilante groups.<sup>5</sup>

Several structures are involved in the management of security at the federal level, among which feature the ministry of defence and the ministry of internal affairs, justice and police affairs. In this study, however, particular emphasis will be given to the power and prerogatives of the National Assembly (the legislature). The Nigerian

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<sup>5</sup> Kayode Fayemi J. Nigeria in *Challenges of Security Sector Governance in West Africa*, edited by Bryden, A. N'Diaye, B. and Olonisakin, F. Lit Verlag. Forthcoming 2008.

legislature consists of two chambers, namely the Senate and the House of Representatives. Both chambers have standing committees that handle issues concerning the security sector. The 1999 constitution of the Federal Republic of Nigeria provides a role for the National Assembly in the control of the country's armed forces and security services. In embarking on an assessment of parliamentary oversight of the defence sector in Nigeria, the main yardstick is to examine parliament's authority, ability and attitude with regard to its oversight functions.

### **3. Authority for Oversight**

Authority, in this context, relates to the legal powers granted to parliament to embark on the task of overseeing the security sector.<sup>6</sup> Oversight is an important function of any modern legislature. Since the executive is obliged by law to implement policies for the day-to-day running of a state, it behoves on parliament to exercise the necessary checks and balances on the executive. The oversight functions exercised by the legislative arm of government should not stop only at administering the expenditure of funds but should also include the supervision of the entire activities of the security sector. The fundamental issue is to ensure that activities and operations are geared towards achieving its statutory mandate, and are in tune with the political direction of civilian authority.

#### **3.1 General Powers**

The Nigerian parliament has the power to initiate legislation, in line with its primary functions, as provided in the section 4 of the constitution of the Federal Republic of Nigeria, 1999. Legislative competence is divided into three parts, namely the exclusive legislative list, the concurrent legislative list and the residual list. The exclusive legislative list includes the military (item 38) and arms, ammunition and explosives (item 2). In addition to the powers to make laws as provided for in the 1999 constitution, the National Assembly (NASS) also has oversight functions on all matters falling within its legislative competence. Section 88 of the constitution of the Federal Republic of Nigeria, 1999, makes provision for such oversight powers viz:

Subject to the provisions of this constitution, each House of the National Assembly 'shall have power by

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<sup>6</sup> See Chapter 1 in this volume.

*Nigeria*

resolution... to direct or cause to be directed an investigation into any matter or thing with respect to which it has power to make laws; and the conduct of affairs of any person, authority, ministry or government department charged or intended to be charged with the duty of or responsibility for executing or administering laws enacted by the National Assembly; and disbursing or administering moneys appropriated by the National Assembly.’

Section 89(a) of the constitution empowers the NASS to summon and question members of the executive arm of government. They may be invited to testify before a legislative hearing. Also military officers can be invited to answer questions at legislative hearings. This provision also empowers the NASS to conduct legislative inquiries and obtain oral or written evidence and documents as the case may be.<sup>7</sup>

On the return of civilian rule in mid 1999, the initial attempt at stabilising the nascent democracy came about with the President’s decision to purge the military by retiring officers who were considered politicised. This decision was announced on 10 June 1999 and ninety three (93) officers were affected. This action was both widely welcomed and criticised depending on individual perception and political sympathy. However, it can still be argued whether the present political stability being enjoyed without any reasonable threat at military intervention is not attributed to the ‘cleansing’ of the military through the exercise of 10 June 1999. What is certain is that opponents of the decision regard it being politically motivated, and an attempt to dislocate the hold allegedly enjoyed over the military by the Muslim north. Retirements of this magnitude should ordinarily require an act of the National Assembly to regulate the powers exercisable by the president, as provided for in section 218(4), which states as follows:

- ‘The National Assembly shall have power to make laws for the regulation of-
- a. The powers exercisable by the president as Commander-in-Chief of the armed forces of the federation; and,
  - b. The appointment, promotion and disciplinary control of members of the armed forces of the Federation.’

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<sup>7</sup> Interviews, Chairman, House Committee on Defence and Secretary, Senate Committee on Defence, 2 June 2006.

There is however no law which regulates the powers exercisable by the president in the appointment, promotion and discipline of the armed forces as provided for in the 1999 constitution.<sup>8</sup>

Though Nigeria has not been at war since the current constitution was promulgated, section 5(4) a) and b) of the 1999 constitution gives the National Assembly the power to approve the declaration of war. Furthermore, section 12(1) of the constitution of the Federal Republic of Nigeria 1999 gives the NASS the power to approve treaties entered into between Nigeria and other countries.

As part of its reform agenda of the Nigerian military, the Olusegun Obasanjo administration had, at its inception, entered into an agreement with a US based organisation, the Military Professional Resource Incorporated (MPRI), to help provide technical assistance to a post military rule Nigerian armed forces. The major task was to help re-professionalize the military by making it subordinate to civil institutions and learn the art of peacekeeping in West Africa.<sup>9</sup> This step was taken without adequate consultation with the Nigerian armed forces and legislature, and was greeted with strong resistance by both. Indeed this trend tends to erode rather than strengthen the powers of the Parliament towards enhancing oversight of the defence sector as the MPRI was not under Nigerian parliamentary oversight.

### **3.2 Power over General Security Policy**

The Nigerian constitution 1999 (section 147) empowers the NASS to approve key government appointments, including those related to defence and security. There is no legal instrument that empowers the parliament to either approve or reject policy and crisis management concepts for the military in Nigeria. Such documents are usually sent to parliament for its information. For instance after its adoption by the federal executive council, the Nigeria Defence Policy Act (2004) was sent to parliament for the sole purpose of providing information.<sup>10</sup>

### **3.3 Budget Control**

Section 80 (1 to 4) of the constitution of the Federal Republic of Nigeria, 1999, empowers the NASS to control the budget of the federation by approving all budget estimates before they become law. To that end, parliament has the power to obtain and access budget

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<sup>8</sup> Interview, Secretary, Senate Committee on Defence, 2 June 2006.

<sup>9</sup> Fayemi, J. K. 2004. *Challenges of Security Sector Governance in Nigeria*, Paper presented at DCAF's West Africa Conference, Abuja, 2004.

<sup>10</sup> Interview, Chairman, Senate Committee on Defence, 26 September 2006.

documents at any time. Parliament can also review and amend the defence and security budget as well as approve or reject supplementary defence budget proposals. Apart from the establishment of the consolidated revenue fund and the powers vested in the NASS for its control, the constitution also provides for the authorisation of annual budget by the assembly (section 81 (1 to 2)).

A clear demonstration of the powers of the NASS over military budget was on 7 October 2002 when, probably aware of the impending outcome of the judgement by the International Court of Justice (ICJ) over the disputed Bakassi peninsula, the presidency withdrew a supplementary appropriations bill then under consideration by the NASS. On 10 October 2002, the ICJ passed a judgement in favour of Cameroon. While re-presenting the supplementary appropriations bill on 29 October, 2002, the Presidency proposed a large appropriation for defence, viz N47'924.182.812, for purchase of ammunition and military equipments; N118, 000,000 for upgrading of ammunition depot and N750'000.000 for barrack rehabilitation.<sup>11</sup> While passing the bill, NASS simply approved the last two votes and appropriated the sum of N868m to defence. It totally declined to make any appropriations for the purchase of ammunition and military equipments.<sup>12</sup> This action was taken by the NASS in an apparent attempt to stop the executive from any possible plans to go to war with Cameroon over the Bakassi peninsula.

Further authority is given to the NASS in the control and allocation of funds through the provisions contained in the standing orders of both chambers of the assembly. Article 97(4)1 (a) of the standing rules of the Senate provides for the establishment and functions of the **public accounts committee** as a special committee. The provision states thus:

‘There shall be a committee to be known as public accounts. The jurisdiction of the committee shall include examining the accounts showing the appropriation of sums granted by the Senate to meet public expenditure. The committee shall, for the purposes of discharging that duty, have power to send for any person papers and records, to report from time to time to the Senate. The committee shall have power to examine any accounts or report of statutory corporation and board. The committee

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<sup>11</sup> Daily Trust Newspaper, 30 October 2002.

<sup>12</sup> Daily Trust Newspaper, 17 November 2002.

shall have power to enquire the report of the Auditor-General of the Federation...’.

Furthermore, article 98(8) a) of the standing rules of the Senate provides for the establishment and functions of the **appropriations committee**. The jurisdiction of the committee shall include:

- Appropriation of revenue for the support of the government;
- Issuance of call letters/circulars on appropriation;
- Annual appropriation bill;
- Supplementary appropriation bill;
- Revenue profile of government;
- All matters related to appropriation.

Similarly, the standing orders of the House of Representatives establish the public accounts committee (article 91 (E) 1 to 4)<sup>13</sup> and the appropriations committee of the House (article 93 (B) 1)<sup>14</sup>, with similar prerogatives.

### **3.4 Powers over Personnel Issues**

Although rule 98(10) c) of the standing rules of the Senate provides for the Senate committee on defence to oversee the size and composition of the armed forces (similar provision is also contained in the standing rules of the House of Representatives), parliament is clearly not involved in the recruitment of service personnel. It only provides a manpower ceiling through the instrument of budget

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<sup>13</sup> ‘There shall be a committee to be known as the Public Accounts Committee...It shall be the duty of the Committee to examine the accounts showing the appropriation of sums granted by the House to meet public expenditure, together with the auditor’s report thereon. The Committee shall for the purpose of discharging that duty, have power to send for persons, papers and records to report to the House from time to time...The Auditor General shall bring to the attention of the Committee any pre-payment audit queries raised by the Internal Auditors of the Ministry...The Public Accounts Committee shall have the power to examine any accounts or reports of statutory corporations and Boards...’.

<sup>14</sup> ‘There shall be a Committee known as the Committee on Appropriations...The Committee’s jurisdiction shall cover; Appropriation of the revenues for the support of the government; Examination of bills for imposition of or increase...In any tax, duty or fee or any reduction...The Committee on Appropriation shall...hold Hearings on the budget as a whole with particular reference to: the basic recommendations and budgetary policies of the President in the presentation of the budget the fiscal, financial and economic assumptions used as bases in arriving at total estimated expenditure and receipts.’

approval.<sup>15</sup> In fact in 2004, the House committee on army attempted being involved in the recruitment of non-commissioned officers at the army depot in Zaria, but authorities in the school politely declined, stating that they had not been directed by the army headquarters in Abuja to give any information on the recruitment to the lawmakers.<sup>16</sup>

In terms of training needs, the military solely decides. Parliament does not have the authority to make any input in that regard.<sup>17</sup> Similarly, parliament does not have the authority to decide on the improvement of the welfare needs of the military, in terms of initiating and approving an increase in the salaries, allowances and other fringe benefits of service personnel. The initiative to do so is the prerogative of the executive, through the instrument of the conditions and terms of service. Parliament's role is merely to approve any such increases. The assembly however is authorised to receive petitions from service personnel both serving and retired and act on same. In particular, both the Senate and the House committees on defence receive petitions, investigate same and make necessary recommendations to the military. So far no such recommendations have been turned down.<sup>18</sup>

### **3.5 Power over Peace Missions/Troop Deployment**

Parliament participates actively in the decision making prior to the deployment of troops abroad. Indeed, the Senate takes the final decision in that regard. Section 5(4) a) and b) of the constitution of the Federal Republic of Nigeria, 1999, empowers the NASS to approve any presidential declaration of war by Nigeria against another country. Similarly it requires parliamentary approval before any member of the Nigerian military is deployed outside the country. This therefore implies that the NASS has adequate powers to review/ amend its position on any existing mission and by so doing make the executive withdraw from such mission. Members of the parliamentary committee also have the powers to visit troops serving abroad.<sup>19</sup>

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<sup>15</sup> Interviews, Chairman, Senate Committee on Defence, 26 September 2006 and Chairman, House Committee on Defence, 12 October 2006.

<sup>16</sup> Interview, Secretary House Committee on Army, 9 June 2006.

<sup>17</sup> Interviews, Chairman, Senate Committee on Defence, 26 September 2006 and Chairman, House Committee on Defence, 12 October 2006.

<sup>18</sup> Interviews, Chairman, House Committee on Defence, 12 October 2006, Secretary Senate Committee on Defence, 2 June 2006 and Secretary, House Committee on Army, 9 June 2006.

<sup>19</sup> Interviews, Chairman, House Committee on Defence, 12 October 2006, Secretary, Senate Committee on Defence, 2 June 2006 and Secretary, House Committee on Army, 9 June 2006.

However, the Nigerian parliament does not have powers to approve or reject the military's rules of engagement or the order of battle. This is regarded as the purview of the military authorities, particularly the chief of defence staff and other service chiefs. Similarly, the NASS in Nigeria does not have any role in determining the chain of command and control. It also cannot approve or reject the level of risk of the military personnel deployed.<sup>20</sup>

#### **4. Ability for Oversight**

Having examined the legal provisions underpinning parliamentary oversight of the security sector in Nigeria, it is pertinent to examine parliament's ability to put such powers to effective use.

In selecting senators and honourable members of the House of Representatives to constitute parliamentary committees, due cognisance is given to backgrounds of the members. In this case all the committees dealing with defence and security issues have a sizeable percentage of their membership with military/security backgrounds. In the Senate for instance, four (4) out of the ten (10) senators constituting the committee on defence have had military/paramilitary experience including the committee chairman. Almost all members of the committee are university graduates and about 85% have had public sector experience.<sup>21</sup> In the House of Representatives, the committee on defence has a membership of thirty-five (35) out of which seven (7) have had military/paramilitary experience. Not less than twenty (20) are university graduates and about 50% have public service experience.<sup>22</sup> Similarly, the committee on army of the House of Representatives has thirty (30) members, out of which three (3) have had military/paramilitary experience. About 90% are university graduates.<sup>23</sup> These members contribute particularly in dealing with technical issues of which most committee members do not have prior expertise.

In the Senate, the defence committee has eleven (11) staff, including five graduates who are middle level civil servants. None of the staff have a military background and although one of them is an accountant, he is not tasked to assist the committee in analysing

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<sup>20</sup> Interview, Chairman, House Committee on Defence, 12 October 2006, Secretary, Senate Committee on Defence, 2 June 2006 and Secretary, House Committee on Army, 9 June 2006.

<sup>21</sup> Interview, Secretary, Senate Committee on Defence, 2 June 2006.

<sup>22</sup> Interview, 12 October 2006.

<sup>23</sup> Interview, Secretary, House Committee on Army, 9 June 2006.

*Nigeria*

military budget because he does not have the necessary skill to do so. The committee has no library and does not have an internet connection.<sup>24</sup>

In the House of Representatives, the defence committee has seven (7) staff, out of which three (3) are graduates. They are however considered to lack adequate training. There is no retired military/paramilitary officer among the staff. The staff does not embark on independent research. There is no committee library and no independent budget analyst. The committee chairman who happens to be a chartered accountant undertakes that job.<sup>25</sup>

The House committee on army has ten (10) staff, out of which four (4) are graduates. Like the House defence committee, the committee on army has no staff with military or paramilitary background. The committee has no library and is also not connected to the internet. Its staff does not undertake independent research on military issues. The committee relies on the expertise from the army to analyse budgets estimates submitted to it before approval.<sup>26</sup> This is a misnomer because what the committee needs is a staff or an independent consultant to do the analysis and guide the committee members in taking a position on budgetary issues.

The staff of the defence committee in both chambers of the Nigerian National Assembly do not have the opportunity to attend courses whether within the country or outside with the aim of improving their capabilities on their jobs. They have never been on attachment in the committee secretariat of any parliament to observe the workings of a defence committee.<sup>27</sup> The secretary of the Senate committee on defence had however attended conferences, seminars and symposia.

The committees visit military formations both within the country and outside. The Senate committee on defence visited Nigerian military contingents serving in Liberia in December 2005.<sup>28</sup> The House committee on army had also embarked on a visit to Liberia and Sierra Leone in 2004. The House defence committee also embarked on such visits. A major reason hindering any further visits by the committees

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<sup>24</sup> Interview, Secretary, Senate Committee on Defence 2 June 2006.

<sup>25</sup> Interview, Chairman, House Committee on Defence, 12 October 2006.

<sup>26</sup> Interview, Secretary, House Committee on Army, 9 June 2006.

<sup>27</sup> Interviews, Chairman, House Committee on Defence, 12 October 2006, Secretary, Senate Committee on Defence, 2 June, 2006 and Secretary, House Committee on Army, 9 June 2006.

<sup>28</sup> Interview, Secretary Senate Committee on Defence, 2 June 2006.

is the lack of autonomous budgets for committees since 2003.<sup>29</sup> The Senate committee's visit in 2005 and the House army committee's visit in 2004 were both sponsored by the military. This development is a mockery of oversight, if the overseers are to be sponsored by those to be overseen, then an objective assessment may not be guaranteed, the end result is to permit the military to do what it deems fit without the needed parliamentary control.

As far as facilities are concerned, the NASS complex has a library, though it is temporary as the substantive one is under construction. The library is headed by a deputy director, with two (2) assistant directors and twelve (12) senior staff, all of them being specialists in the field of library science. The library has had an internet connection since 2002, but not all readers have access to it as its use is limited to a few staff. There are however no publications on defence available in the library. Similarly, no international journals are available in the library, while the indexing is not automated, thereby making it difficult for readers to easily trace the materials they want to consult.<sup>30</sup> Although the NASS has a research unit, the researchers recruited to work do not have research skills.<sup>31</sup> They are civil servants on regular deployment but without any prior training in research. As a remedy, the assembly in collaboration with the African Capacity Building Foundation in September 2003 established the Policy Analysis and Research Project (PARP). PARP's objective is to articulate, distil, disseminate and document the perspectives and positions of the National Assembly on relevant policy issues. It is designed to operate not only as a think tank of the NASS but also as a capacity builder. PARP is positioned to enhance the capacity of the NASS through research and deployment of highly rated technical and professional resources in all legislative processes and particularly development and evaluation. The project has the following objectives:

- a. Assist the National Assembly in the task of conception, drafting and passage of bills;
- b. Play a central role in the design, analysis and evaluation of development policies;
- c. Build and consolidate database on relevant development issues for utilisation in drafting of and deliberation on bills and the community functions of the assembly;
- d. Stock and improve the quality of library information for in house and public uses;

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<sup>29</sup> Interview, Secretary, House Committee on Army, 9 June 2006.

<sup>30</sup> Interview, Library Assistant, 9 June 2006.

<sup>31</sup> Interview, Library Assistant, 9 June 2006.

*Nigeria*

- e. Design and coordinate short term training courses for members of staff of the National Assembly.<sup>32</sup>

As well organised as this arrangement appears, PARP does not focus on defence issues in its capacity building efforts. It has only six experts out of which none is a defence expert. Since its inception PARP is yet to organise a capacity building course for MPs and their staff serving on the defence committees. Similarly, PARP has yet to establish a formal working relationship with the defence sector in Nigeria. It has also not done any work with the defence committees.

*Public accounts committee and ability towards oversight*

In its control and regulation over public expenditure, the NASS relies on its special committee, the public accounts committee. As earlier stated, the public accounts committee (PAC) is charged with the responsibility of monitoring all matters relating to the use of public funds. The committee however lacks the technical expertise to carry out the auditing of all government establishments and present a report to the Assembly.

Section 85 (1 and 2) of the constitution of the Federal Republic of Nigeria, 1999, provides for the position of the Auditor General of the Federation (AGF). Section 86 of the constitution of the Federal Republic of Nigeria, 1999, further provides the office of the AGF with autonomy. The appointment of the AGF shall be made by the president upon recommendation of the federal civil service commission, subject to confirmation by the Senate. Similarly, the AGF shall not be removed from office before his retiring age as prescribed by law. His removal can only be effected by the President acting on advice by 2/3 majority of the Senate.

The public accounts committee and the office of the Auditor General of the Federation (OAGF) work together in order to maintain accountability, probity and transparency in the public sector. The committee gives support and added effectiveness to the efforts of the AGF. The main function of the PAC is to discuss the annual report on the accounts of the government of the Federation as presented by the office of the OAGF. After making comments on the financial report submitted to the government by the Accountant General of the Federation (ACGF), the AGF will send his comments to the plenary of NASS. The plenary will refer the report to PAC for comments. Each

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<sup>32</sup> Interview PARP Research Fellow, 19 June 2006.

ministry and extra ministerial department has a file at the PAC division of the OAGF, containing observations made by PAC on audit reports.<sup>33</sup> PAC has the powers to invite the auditor in charge of any given ministry to explain and the eventual decision of PAC prevails.

As to membership, in the Senate, PAC has ten members of staff, headed by a deputy director, who is not an accountant. Other staff serving PAC is sourced from the NASS, OAGF, OACGF, the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices Commission (ICPC). The staff from the ICPC and EFCC are accountants and together they embark on the auditing exercise of government ministries and extra ministerial departments, after every dissatisfactory public hearing on the finances of such ministries and extra ministerial departments. Although PAC relies on staff from the executive branch to conduct its oversight functions of auditing accounts, it does not regard that as a limitation, since the three arms of government are expected to cooperate.<sup>34</sup> To enhance checks and balances, PAC in both the Senate and the House of Representatives is headed by members of the opposition party; the All Nigeria Peoples Party (ANPP) in the Senate and the Alliance for Democracy (AD) in the House of Representatives.<sup>35</sup>

It however remains doubtful whether PAC can have the absolute loyalty of the other staff from the OAGF, OACGF, ICPC and EFCC. For instance, in January 2003, the then AGF, Mr Vincent Azie submitted a 300-page annual report to the NASS, covering the 2001 financial year. In the report, the AGF pin-pointed various acts of corruption, particularly in the presidency, involving a number of suspicious payments of honoraria to politicians. The following month, the president relieved him of his position.<sup>36</sup> With an incident like that it may be very difficult for any future AGF to perform his task objectively and cooperate fully with the assembly, where the interest of the executive is at stake. Parliament therefore requires yet another independent method to conduct effective oversight on government expenditure.

The major difficulty in PAC's operations is the inability on the part of the ministries and oarastatals to get themselves disengaged from the mentality of deemphasising issues of transparency and accountability that was in vogue during the military era. It took time for PAC to

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<sup>33</sup> Interview, PAC Chairman, Senate, 12 September 2006.

<sup>34</sup> Interview, PAC Chairman, Senate, 12 September 2006.

<sup>35</sup> Interview, PAC Chairman, Senate, 12 September 2006.

<sup>36</sup> The Global Report of the Global Integrity, 2004. Washington DC. Available at <http://www.globalintegrity.org>.

succeed in sensitising the ministries and para-statal to realise their statutory responsibility. It is pertinent to state however that the military appears to respond to PAC more promptly than other institutions.

## 5. Attitude towards Oversight

Basically the Nigerian parliament performs its oversight functions. This can be understood when one views the commitment of the honourable parliamentarians towards conducting public hearings on virtually most issues that are regarded as vital to the interest of the electorates. It is however necessary to point out that the major constraint towards effective oversight is the culture of corruption that has become endemic in the relations between the executive (especially cabinet ministers) and the MPs.

Corruption is regarded as bribery and any other conduct of person who is entrusted with certain duties in public and private sector that leads to breach of those duties.<sup>37</sup>

From its inception in 1999, the assembly began on a wrong footing in terms of corruption. Early in its life there was a controversy over the payment of N3.5m to each lawmaker as furniture allowance. The Nigeria Labour Congress (NLC) argued then that it was unfair for the parliamentarians to collect that amount of money when the government could not even pay the low salary it was paying workers.<sup>38</sup> The honourable law makers were however of the opinion that there was a deliberate attempt to sensationalise the issue. In the first place, the furniture allowance given to them in 1999 was N2.6m, which if properly analysed was not enough to purchase and meaningfully furnish an average residence given the current prices of furniture in Nigeria. Furthermore, the sum collected by honourable members fell short of the quotation by the Federal Capital Development Authority (FCDA) for the same purpose, which amounted to the sum of N5.8m for each residence.<sup>39</sup>

The allegation of corruption against Nigerian MPs remains very difficult to prove. The major issue is that the legislature is very much misunderstood and because of that there is the general tendency to misconstrue the actions and deeds of lawmakers, while ignoring the

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<sup>37</sup> Onakuse, S. *A Review of Corruption and Sustainable Development in Nigeria*, Paper Presented at the Conference on Globalisation and Inclusion: Challenges for Professional Education, the Third Level Sector, University of Cork, June 2004.

<sup>38</sup> The Global Report of the Global Integrity, *op. cit.*

<sup>39</sup> Interview, Deputy House Whip, 12 October 2006.

activities of ministers who are not elected but are political appointees.<sup>40</sup>

Notwithstanding the above arguments by the MPs themselves, the general impression that the average Nigerian has remains that MPs are corrupt. This belief was further buttressed when not long after the inauguration of the assembly, *The News Magazine* published a story titled 'the face of a lair', where it accused the then Speaker of the House of Representatives, Alhaji Ibrahim Salisu Buhari of forgery for his claim of having obtained a certificate from Kings College Lagos, while in reality he did not attend the school. The magazine also disputed his claim of having obtained a Bachelor degree from the University of Toronto, in Canada, stating that the former speaker was never at any point in time a student of that university. Furthermore, he was accused of falsifying his age by forging a birth certificate to meet the thirty (30) years requirement to contest, while in reality he was twenty-nine (29), but he claimed to be thirty-five (35) years of age.<sup>41</sup> The allegations of *The News* were later proved to be true. The speaker was made to resign and subsequently arraigned before the court, but was given a light punishment.

As the legislative/executive feud became more severe, particularly between the House of Representatives and the presidency, allegations of bribery to honourable members became open. In August 2000, honourable Adams Jagaba, chairman, House committee on anti corruption, dramatically displayed the sum of N4m on the floor of the house, alleging that it was money given to him and eight other members as bribe by some officials of the presidency to oust the then speaker of the House, Alhaji Ghali Umar Naabba. Although the House resolved to investigate the matter, some honourable members succeeded in getting a court injunction restraining the house from undertaking such an investigation.<sup>42</sup>

The Senate had its own share of allegations of corruption. There were allegations that in 1999 at the inaugural sitting of the Senate to elect its president, the executive paid some Senators the sum of N850,000 to ensure that senator Evans Enwerem was elected president.<sup>43</sup> Following the ouster of Senate president Evans Enwerem and the election of his successor senator Chuba Okadigbo as Senate president,

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<sup>40</sup> Interview, Immediate past Senate Committee Chairman on Ethics, 18 October 2006.

<sup>41</sup> The Global Report of the Global Integrity, 2004, *op. cit.*

<sup>42</sup> The Global Report of the Global Integrity, 2000, *op. cit.*

<sup>43</sup> The Global Report of the Global Integrity, 2000, *op. cit.*

*Nigeria*

the legislative/executive feud gained so much momentum in the Senate. In July 2000, a government investigation uncovered what was described as inflated procurement contracts in the NASS where it was alleged that some of the contracts were awarded to companies in which the legislators had financial interests. Both the Senate president and his deputy were implicated in the deal.<sup>44</sup> Eventually senator Okadigbo was impeached as Senate president in August 2000 for corruption and misappropriation of funds. He was indicted for spending public money on cars and car furnishing. The impeachment of Senate president Okadigbo was however not only on allegations of corruption against him. A notable senator confessed in the senate chamber that he had personally distributed money as a bribe to a number of senators for the purpose of impeaching senator Okadigbo as Senate president.<sup>45</sup>

In 2003, the minister of the federal capital territory, Mallam Nasir El Rufai alleged that some senators solicited for sums ranging from N10m to N54m to confirm him as minister.<sup>46</sup> The matter was referred to the senate committee on ethics, code of conduct and public petitions for investigation. After several sessions of questioning all parties concerned, the distinguished senators mentioned were cleared on the grounds that the accuser could not provide enough evidence to prove his case, thus there was clear want of evidence.<sup>47</sup>

In a more recent case, a former Nigerian minister of education confessed that he had given the sum of N50m to some senators and honourable members of the House of Representatives on the education committees. The aim was to have the 2005 budget proposal of his ministry approved in parliament.<sup>48</sup> This phenomenon, popularly referred to as the 'bribe for budget' syndrome, had created so much interest that the then president of the Nigerian Senate was forced to relinquish his position because of his alleged complicity. In fact the minister himself was relieved of his position by Nigeria's president. In a nationwide broadcast over the incident, president Olusegun Obasanjo challenged the NASS to cleanse itself. He further states as follows:

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<sup>44</sup> The Global Report of the Global Integrity, 2000, *op. cit.*

<sup>45</sup> *Daily Champion* Newspaper, 19 May 2006.

<sup>46</sup> *Daily Champion* Newspaper, 19 May 2006.

<sup>47</sup> Interview, Immediate past Senate Committee Chairman on Ethics, 18 October 2006.

<sup>48</sup> *This Day* Newspaper, 23 March 2005.

‘...National Assembly should show Nigerians that it deserves their respect, to rebuild public confidence and to flush out those members who continue to derogate and degrade its integrity and status’.<sup>49</sup>

The attitude of the Nigerian parliament towards oversight therefore needs to tremendously improve if parliament’s leading role in the sustenance of democracy is to be achieved.

The attitude of most MPs towards their duties in relation to attendance at daily parliamentary business is also far from ideal. The Senate has a membership of one hundred and seven (107). The only instance when an attendance of about that number was attained was during its inauguration in 1999 and 2003. Similarly high attendance was recorded only when there was a crisis leading to the removal of principal officers like the case of the impeachment of Senate presidents Chuba Okadigbo and Adolphus Wabara.<sup>50</sup> In most cases although quorum was obtained (thirty six Senators form the mandatory 1/3 quorum), attendance does not exceed between sixty (60) to seventy (70) senators.<sup>51</sup>

This situation is replicated in the House of Representatives, which has a membership of three hundred and sixty (360). The House hardly forms a quorum (120) and on several occasions, sittings have had to be delayed to await the arrival of a handful of honourable members.<sup>52</sup> Several MPs use the official working days in parliament to attend to their personal programmes both within and outside the country. Many MPs are not committed to their primary assignments because their selection process is faulty. The leadership of the political parties is viewed as highly corrupt, hence the screening of candidates is not properly conducted, as money is alleged to exchange hands in the exercise.<sup>53</sup> Furthermore, although there is a small library at the assembly complex, hardly do MPs use the facilities there. In most cases they rely on their aides for such duties.<sup>54</sup> But legislative aides do not directly participate in the business of parliament and may therefore not be in position to provide the needed data to help promote the quality of legislation.

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<sup>49</sup> Cited in *This Day* Newspaper, 23 March 2005.

<sup>50</sup> Interview, Senate Sergeant-at-arms, 10 June 2006.

<sup>51</sup> Interview, Confidential Source at NASS, 10 June 2006.

<sup>52</sup> Interview, Deputy House Whip, 12 October 2006.

<sup>53</sup> Interview, Confidential Source at NASS, 15 August 2006.

<sup>54</sup> Interview, NASS Library Assistant, 9 June 2006.

*Nigeria*

Meanwhile section 68(f) of the constitution of the Federal Republic of Nigeria, 1999, provides for sanctions for MPs who, without any just cause, absent themselves from the business of Parliament. The section *inter alia* states thus:

‘A member of the Senate or of the house of Representatives shall vacate his seat in the House of which he is a member if without just cause he is absent from meetings of the House of which he is a member for a period amounting in the aggregate to more than one-third of the total number of days during which the House meets in any one year’.

Should this provision be adhered to strictly, many senators and honourable members of the Nigerian legislature would have lost their seats a while ago. The difficulty arises from identifying the competent authority that should implement the provision. The leadership of the assembly may find it difficult to do so because they are merely first among equals. Thus attendance at parliamentary functions is for now left in the hands of the MPs themselves, who should allow maturity, commitment and their deep sense of responsibility to prevail. The people that elected the representatives also have a role to play. They must take interest in the activities of the representatives and devise the means of cautioning those that have erred.<sup>55</sup>

This study has also discovered that MPs often do not really understand the technicalities associated with defence issues. They do not appreciate the enormous role they have in possessing the authority to fully scrutinise all aspects of defence, including deciding on items/weapons to be procured. In the present circumstances, members see their role as limited simply to budget approval and monitoring budget implementation. They do not venture into technical areas. This may well be because they lack the necessary technical knowledge to do so.<sup>56</sup> This is a major set back for oversight.

Indeed the negative attitude of Nigerian MPs towards oversight in particular and their primary responsibilities in parliament in general, has created a window of opportunity for possible executive interference, especially in dealing with defence issues. A case in point was an occasion in which the House committee on defence received a petition from soldiers serving in peacekeeping missions abroad,

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<sup>55</sup> Interview, Immediate past Senate Committee Chairman on Ethics, 18 October 2006.

<sup>56</sup> Interview, Confidential Source at NASS, 15 August 2006.

wherein they complained about not having been paid their allowances. Accordingly, the committee requested that the ministry of finance furnish it with records of all payments made to (defence headquarters) DHQ on that matter. Upon receipt of the figures, the committee made similar request to the DHQ and realised that the figures from the two sources did not tally. The committee therefore sought an explanation from DHQ over the discrepancy in the figures, which amounted to some N2.2 billion. However, the president of the Federal Republic reportedly responded by inviting the leadership of the two defence committees in both chambers, where he reportedly asked them to stop probing professionals at the DHQ and concentrate only on the technocrats. He further threatened that if the MPs did not stop, he would ask the professionals to start ignoring such probes.<sup>57</sup>

Another case of executive interference, apparently taking advantage of the negative attitude of MPs towards their parliamentary duties was the case of lack of proper accountability in administering funds/reimbursements from the UN on foreign peace keeping operations. The UN reimburses Nigeria and other countries that participate in foreign peacekeeping operations for expenses incurred by transportation personnel and equipment. Such refunds for expenses incurred by the federal government of Nigeria are not returned to the consolidated revenue fund, but to a dedicated account in New York, which the NASS does not have access to and has no knowledge of how much it contains and what use the money will be put into. The leadership of NASS is aware but very reluctant (or weary) of investigating it.<sup>58</sup>

## **6. Challenges of Parliamentary Oversight**

As parliamentary democracy is new reality in Nigeria, due to the prolonged period of military rule, there are several challenges confronting oversight, particularly of the defence sector. The following have been identified:

**Secrecy/Confidentiality-** Issues concerning the defence sector are generally regarded as secret. It is therefore difficult to determine where oversight functions stop and state secret commences. Although some degree of confidentiality is necessary, the need for confidentiality must however not be used to justify a reduction in

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<sup>57</sup> Interview, Confidential Source at NASS, 15 August 2006.

<sup>58</sup> Interview, Confidential Source at NASS, 15 August 2006.

scrutiny by the parliament and the general populace at large.<sup>59</sup> A high degree of confidentiality can be retained without compromising the principle of public accountability. For instance, while war plans are to be held confidential, public scrutiny is necessary where the armed forces is exceeding its budget allocation, purchasing expensive military equipments and hardly pay attention in maintaining such equipments or engaging in illegal, off budget activities.<sup>60</sup>

Confidentiality versus secrecy remains a sensitive area. A member of parliament elected by, and representative of the people cannot be considered as an outsider where discussions and decisions about vital national interests are concerned. This is because under an ideal setting, national interest should be the collective interest of the people and only their representatives is best placed to determine it.

A major factor promoting secrecy in public service is the Official Secrets Act of 1962 which states inter alia that a person 'who transmits any classified matter to a person to whom he is not authorised on behalf of the government to transmit it or obtains, reproduces or retains any classified matter which he is not authorised on behalf of the government to obtain, reproduce or retain...shall be guilty of an offence.'<sup>61</sup> The provision of this act affects oversight as several government officials regard parliament as alien to government.

**Corruption-** As discussed earlier, corruption has remained a hindrance to effective parliamentary oversight, since it compromises the integrity of the honourable representatives. It is a phenomenon that remains difficult to prove and is mainly associated with top government functionaries in Nigeria including MPs. There is a general stigma attached to MPs as corrupt public officials, probably because they are closely watched by the public/electorates for any slight positive changes in their life styles as evidence of corruption. For effective parliamentary oversight in Nigeria, there is the need to overcome the menace of corruption. It is important to state that corruption is not only common to members of parliament but rather a wider societal phenomenon.

**Security Vote-** As a hangover from the many years of military rule, the executive arm of government at all levels in Nigeria still continues

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<sup>59</sup> Ball, N. and Fayemi, K. 2004. *Security Sector Governance in Africa: A Handbook*, CDD: Lagos.

<sup>60</sup> *Ibid.*

<sup>61</sup> Laws of the Federation of Nigeria, 1990.

with the practice of appropriation of public money meant to be spent by the president or the chief executive officers of a state. The money referred to as the 'security vote' is not accounted for and is normally a sizeable amount. The practice of unaccountable expenditure is in contrast with the principles of transparency and accountability. The public accounts committee of the two chambers of parliament must be properly informed of and should approve all expenditures in this vote.

**Secretariat Staff-** As earlier pointed out, all committees dealing with the defence sector are supported by a staff who provide them with technical and administrative assistance. Since parliamentary practice in Nigeria is still at its embryonic stages, support staff is mainly composed of civil servants who have not had the opportunity to benefit from adequate training in security issues. Meanwhile, MPs have a short tenure of four years, therefore it behoves on the technical and administrative staff to have enormous expertise to assist the members and ensure continuity. It would be appropriate to recruit technical and administrative support staff among people with a sound expertise on security matters, whether or not they have a military or paramilitary background. Indeed, the support staff plays a crucial role in assisting parliamentarians which are appointed for a short mandate of four years, thus ensuring the necessary continuity of expertise.

**Budget Implementation-** By far, one of the greatest challenges to oversight is the issue of non implementation of budget as approved by the NASS and assented to by the president. This phenomenon has affected many programmes expected to be carried out by the security sector, since non availability of funds will naturally affect anticipated programmes. Although section 81(1) of the constitution of the Federal Republic of Nigeria, 1999, empowers the executive to prepare the annual budget estimates, such estimates are expected to be thoroughly scrutinised by the legislature before any approval is given. Since the advent of the fourth republic in 1999, budget implementation has remained one of the contending issues in executive-legislative relations. The NASS has always altered the budget by reviewing figures upwards and the President has always refused his assent, arguing that there is material differences between the expenditure proposal and the bill returned for assent. Even where there was legislative override, the president reluctantly implements the budget, leaving many aspects of it unimplemented.<sup>62</sup> A school of thought holds that the legislature can reduce but not increase the total amount

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<sup>62</sup> Essiet, J. and Onyekpere, E. 2004. *2004 Budget Controversy: The 1999 Constitution Should Be The Guide*, Press Statement, Abuja, 1 April 2004.

of the budget, because an increase partakes of the nature of initiation as regards the excess amount over and above the total figures in the appropriations bill.<sup>63</sup> It is pertinent to state that the constitution is silent thereby creating a vacuum, which can only be filled when there exists perfect understanding between the two arms of government.

**Non State Actors: Ethnic Militia-** It is necessary in any discourse on security in Nigeria to highlight the role of the non formal security sector. According to Ball and Fayemi (2004), the activities and even the very existence of non state actors point to some deficits in the activities of the formal sector.

The poor performance of the Nigerian police along with its poor equipments and lean personnel has led various interest groups, particularly the divergent ethnic groups to form their vigilante groups. The primary idea was to make up for the inadequacies of the Nigeria police. But they were later used to fulfil political ends, one of which was the call for a state controlled police force, an idea that was championed by several state governors. The phenomenon of ethnic militia became even stronger when certain ethnic groups felt marginalised and unprotected in the present federal arrangement.

In particular, the example of the Odua Peoples Congress (OPC), which was formed at the wake of the political crisis that engulfed the country resulting from the annulment of the 12 June 1993 Presidential election, largely believed to have been won by Chief MKO Abiola. In the words of its leader Dr Frederick Fasehun, the OPC is formed to 'defend the rights of Yoruba persons on earth'.<sup>64</sup> In its fight to achieve its set objective, the OPC has had to meet so much resistance from the Nigerian state, but the Congress has often appeared to be much more organised than the Nigeria police force, particularly in terms of weapons. There were several clashes with casualties on both sides.

The ethnic militia based in the East, the Bakassi boys, started as an organisation to protect traders against the menace of armed bandits. Given its numerical strength and its determination to stamp out the activities of bandits, the various eastern states governments became interested and started funding the organisation. In Anambra State for instance, the former governor, Chief Chinwoke Mbadiniju legalised

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<sup>63</sup> Nwabueze, B. O. The President, National Assembly and Rights to Initiate Budget *The Guardian Newspaper*, 22 May 2002.

<sup>64</sup> Babawale, T. The Rise of Ethnic Militias, De-Legitimisation of the State and the Threat to Nigerian Federalism *West Africa Review*. 2001.

the activities of the Bakassi boys through the state house of assembly and renamed it the Anambra Vigilante Services.<sup>65</sup> Its members were however accused of extra judicial killings, even though its actions succeeded in reducing crime rate in the south east. The services it provides have grown to include adjudication on civil matters like marital and family issues, unpaid debts etc. Indeed, there is no accountability in its activities.<sup>66</sup>

The Ijaws of the Niger Delta have the Egbesu Boys of Africa as the prominent ethnic militia movement. In view of the abundance of proven reserves of crude oil in the area, the Egbesu have severally attacked oil fields to expel personnel of the multinationals and stop further exploitation of the resource. Their frustration is based on their belief that the Nigerian state has not been fair to them in the sharing of the revenues accruing from oil, mostly found in their area.

In the North, particularly among shariah practising states of Kano, Sokoto, Zamfara, Katsina and some parts of Kaduna, there is the Hisba group, representing the local police that is expected to implement the Islamic shariah. Like the OPC in the South West, the Bakassi boys in the South East and the Egbesu in the Niger delta, the Hisba in the North does not come under effective scrutiny of any parliamentary committee, hence posing a great challenge for effective parliamentary oversight.

## **7. Conclusion**

By and large, it is essential to state that the Nigerian National Assembly has significant but not total authority to be deeply involved in military issues, considering that it has no role to play in appointment, promotion and discipline of the military. The provision in section 218 of the 1999 constitution which empowers the assembly to make laws to regulate the excesses of the executive in this regard has not been exercised. Parliament also lacks power to be involved in deciding military procurements. It only vets the budget for procurement and approves or disapproves it. Similarly, the practice by the executive to maintain a secret defence budget outside what NASS has approved means that MPs do not have total control over defence expenditure. To that extent, parliament appears as more of a rubber stamp. It is pertinent to note that after an examination of the powers of the NASS, it is clear that it is not merely a policy influencing

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<sup>65</sup> Babawale, *op. cit.*

<sup>66</sup> Ball and Fayemi, *op. cit.*

## *Nigeria*

parliament but has powers for policy initiation as well which has so far been grossly under-utilised.

In terms of the ability of parliament to undertake oversight, while the composition of the parliamentary committees on defence is adequate, the facilities available, including the staffing of the committees, is grossly inadequate. There are no standing budgets for the committees, which makes them rely on the military to embark on foreign missions to visit troops serving outside the country. There are poor facilities, poor office accommodation, scarcity of competent staff to assist the committees particularly because defence is a complex area requiring expertise. The Nigerian National Assembly therefore lacks the ability for effective oversight. In addition, the attitude of the Parliament towards oversight is believed to have been marred by corruption, which has significantly affected effective oversight.

The NASS itself has not been able to provide the necessary checks against the executive on all areas of defence. Indeed, this study has been able to reveal instances of executive interference. At the level of financial appropriation the assembly is effective, but a follow up to ensure that what is appropriated is not misused is lacking. The much needed reform of the armed forces to reposition it from a force that was highly politicised and corrupt, into a professional force to meet the challenges of modern day Nigeria remains a continuing challenge, as most MPs involved in defence matters seem not to understand the technicalities and dynamics in the area. Generally the oversight of the defence sector in Nigeria is very weak and significantly ineffective. Although there is adequate authority to undertake oversight, there are limits in terms of the ability to undertake this essential assignment. Similarly, this study has shed light on the poor attitude on the part of the members of parliament towards embarking on oversight of the defence sector in particular.

### **8. Recommendations**

To ensure enhanced oversight of the defence sector in Nigeria, there is the need to improve the ability of the parliament, particularly the requirements of parliamentary staff serving in the committees. This study recommends the following:

- Provision of adequate office accommodation for the parliament staff;
- Provision of other working tools, such as internet facilities and telephone lines;

- Adequate facilities for research in defence related fields;
- Recruitment of a budget analyst for the committees to minimise their dependence on the executive in analysing budget proposals;
- Provision of adequate books and other materials relating to defence issues in the library of the Nigerian National Assembly;
- Provision of adequate training on defence issues for parliamentary staff serving the defence committees of the two chambers;
- Provision of training on defence issues for members of parliament;
- Provision of adequately trained manpower for the public accounts committee to avoid its present state of reliance on the Auditor-General of the Federation, whose loyalty may be tilted more towards the executive.

## Chapter 10

# Senegal

*Boubacar N'Diaye*

### 1. Introduction

In a sub-region long beset by seemingly endless political instability, and grim, repressive regimes, Senegal has stood out as a relatively open, rather tolerant and stable polity. Remarkably, has been spared *coup d'état* induced breakdowns, devastating civil wars, and even debilitating political turmoil that many of its neighbours have experienced. Though never labelled a 'miracle' as Côte d'Ivoire once was, Senegal has enjoyed a special niche in the literature on African political development, governance, social and economic dynamics, though as a recent study of its national assembly has lamented, little was written about its parliament and its dynamics.<sup>1</sup> Many authors have suggested or posited its 'exceptionality' in West Africa.<sup>2</sup> Its political elites having grown adept at managing the contradictions and strains of the country's perennial economic and social difficulties, Senegal seems to have firmly anchored its democracy when Abdoulaye Wade, the long time opposition leader was elected to the presidency in March 2000. It has also enjoyed an enviable international status. However, recent convulsions in the body politic would tend to suggest that the road ahead will by no means be easy for Senegal, and severe strains and social turmoil could reconfigure Senegalese politics as we know it.<sup>3</sup> Seemingly haphazard government reshuffles, more or less genuine scandals, dangerous social and political tensions, and abuse of the judiciary are as many signs of this malaise. Whether these simmering, potentially far-reaching changes will affect the country's remarkably stable civil-military relations and security sector architecture and *modus operandi* remains to be seen.

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<sup>1</sup> See Thomas M. and O. Sissokho. 2005. Liaison Legislature: The Role of the National Assembly in Senegal *Journal of Modern African Studies* 43 (1): 97-117.

<sup>2</sup> This theme was critically addressed in a review article by an authority on Senegal. See O'Brien, DBC. 1996. The Senegalese Exception *Africa: The Journal of International African Institute* 66 (3): 458-464.

<sup>3</sup> For a rather unsettling account of aspects of these convulsions revolving around the political wrangling Senegal has experienced recently, see Seck, C.Y. 2005. Le Dossier Seck *Jeune Afrique/l'Intelligent* No. 2325 31 July: pp. 62-63; Seck, C.Y. Wade/Seck. 2005. Règlement de Comptes *Jeune Afrique/l'Intelligent* No. 2323 17 July: 48-50.

Yet, with the December 2004 'final and definitive' peace agreement signed with the separatist movement in its southern region of Casamance, the prospects of a deepening of democracy and stability and predictability in civil-military/security relations, together with continuing progress in social and economic arenas, appear promising enough. In part because of its special colonial status but also because of a remarkable culture of tolerance and openness reflected in very little ethnically, or religiously based sectarianism, Senegal has managed to avoid the level and frequency of violence that has undermined other states in West Africa.<sup>4</sup>

Again, while Senegal has enjoyed a special place in the political and economic development literature, the governance of its security sector and the parliament's role in it have received scant attention.<sup>5</sup> This chapter intends to fill this lacuna. To understand fully the role of parliament in the security arena, it is first necessary to take a closer look at the Senegalese singular political evolution since independence. First, it is necessary to say a brief and preliminary word about Senegal's security sector architecture, its generic relations to state elites and the challenges involved. Like other francophone African states, the security sector in Senegal was built on the remnants of the colonial security forces and fashioned to mirror the security sector of the former colonial power. Its pillar is, of course, the national army. According to the *2007 Military Balance*, in 2006, not counting the national police, the totality of Senegal's armed forces was 13, 620 with the army making 11, 900 enlisted personnel. The air force and the navy respectively comprised 950 and 770 men. For the purpose of national defence, the national territory is divided into four military zones: North (St Louis), South (Bignona), East (Tambacounda), and West (Dakar). An important component of the security forces, the gendarmerie is a 5, 000 member paramilitary force with its separate headquarters and command structure. It has a presence throughout the national territory, although its police functions are mainly exercised in rural areas, in contrast to the national police, a civil force, which, under the authority of the ministry of the interior, fulfills police and security functions in urban areas. The importance of the gendarmerie resides in the fact it is the second largest uniformed body, and that it

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<sup>4</sup> For further details on the country see Clark, A.F. and L. Colvin Phillips. 1994 *Historical Dictionary of Senegal*, (2<sup>nd</sup> ed.) Metuchen, N.J.: Scarecrow Press.

<sup>5</sup> This negligence was already decried by other students of Senegal's civil-military relations. See Diop M.C. and M. Paye. 1999. The Army and Political Power in Senegal in *Military and Militarism in Africa*, edited by E. Hutchful and A. Bathily, 315-353. Dakar: CODSRIA.

*Senegal*

functions as a much-respected paramilitary auxiliary to the judicial system in all matters of law and investigations.

Although to a lesser extent than their counterparts in the sub-region, members of the security sector in Senegal are not immune from charges of violating the rights of citizens, or engaging in unethical behaviour. Indeed the national police was dismissed *in toto* by president Diouf in 1987 for indiscipline. Nonetheless, the Senegalese military is reputed for its professionalism and discipline. Over the years, and in part because of this reputation, it has been deployed in a number of theatres for UN or AU peacekeeping operations, in Liberia, Côte d'Ivoire, the DRC, Burundi, and Sudan among others. According to the CIA yearbook, Senegal's military budget stood at 1.4 % of its GDP in 2006.

Senegal is one of the rare countries to have escaped the praetorianism that gripped most West African states throughout the first decades of independence. However, its army has not escaped the (soft) politicisation induced by the uncertain outcome of intra-elite struggle for power that occurred during those decades. As Momar C. Diop and Moussa Paye have argued, '[i]n the first decade of independence the military establishment broached the formation of an elite and was responsible for the ruling class's (*sic*) political agenda. The military became a means of managing a domestic balance of power.' As part of this muted wrestling for power, the army as the pillar of the state structure (...) has been reorganised several times as a mark of the constant determination of the civilians to maintain control over the army.'<sup>6</sup>

Earlier on, as Diop and Paye maintain, the first president of Senegal recognised the potential danger the army represented for his power and maneuvered to ward off such perils by not only co-opting the top brass,<sup>7</sup> but also by keeping it busy through the manipulation and implementation of the concept of 'armée-nation' whereby the army is assigned nation-building and economic development missions, such as vaccination campaigns and other highly visible and prestige enhancing tasks. Such missions were supposed to forge strong bonds between the army and the people it is supposed to defend, but also keep it occupied enough not to think about politics. In fact, the Senegalese army is one of the few armies in Africa whose members are allowed to cast a vote. Since 1981, Senegal has experienced a low intensity armed insurgency

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<sup>6</sup> Diop and Paye, *op. cit.*, 317.

<sup>7</sup> *Ibid*, 321-326.

situation in its southern region of Casamance. An armed group, the *Mouvement des forces démocratiques de la Casamance*, has been battling the Senegalese state and armed forces with as its objective the independence of the region, they feel has been economically neglected and marginalised. Evidently, this situation poses multiple challenges to the parliament in its oversight mission, including the spending of the state budget in counterinsurgency context, the behaviour of the armed forces not only in battle situations but also in the areas where the state is challenged.

The role of the parliament in watching over the security sector can be understood better when put in the context of the general political evolution of the country as shaped by its three successive presidents.

The constitutional and legal framework provided for by the 2001 constitution, which regulates the actual functioning of the parliament and of the other branches of government is then presented. The next section describes and analyses the actual role of the parliament and the relevant oversight committee(s) and the challenges they face. The data presented are gathered from a visit to the parliament and interviews with relevant actors, as well as from secondary sources. A concluding section reflects on the Senegalese experience and the lessons it offers. The analysis aims at assessing to what extent the parliamentarians in Senegal are invested with the appropriate authority of oversight of the security sector and whether they exercise their prerogatives with the necessary ability, attitude, and acumen.

## 2. The Framing of Post-independence Politics

Mr. Abdoulaye Wade's coming to power following the March 2000 presidential election, the fifth since the restoration of the multiparty system in 1976, was the culmination of a long evolution and dramatic turns Senegal has undergone since its independence on 4 April 1960. As one of the first African territories to be encroached and settled by Europeans, Senegal represents a unique colonial experiment, with political parties and electoral politics starting as early as 1918 (though until the 1940s, limited to four enclaves).<sup>8</sup> As far as parliamentary activities are concerned, legislative-like or fully legislative bodies

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<sup>8</sup> Only inhabitants of the communes of Gorée, Saint Louis, Rufisque, and Dakar in the entire French colonial empire could become French citizens and participate in political activities up until the end of World War II. See Coulon, C. 1988. Senegal: The Development and Fragility of Semidemocracy in *Democracy in Developing Countries: Africa*, edited by Larry Diamond *et al.*, 142-143. Boulder, Colo: Lynne Rienner.

## Senegal

were in existence in Senegal as far back as 1879, starting with the *Conseil General* (1879-1920), the *Conseil Colonial* (1920-1946), *Conseil General* (1946-1952), the *Assemblée Territoriale* (1952-1958), and the *Assemblée Constituante* of the immediate pre-independence period starting in 1958.<sup>9</sup> The Republic of Senegal was left to chart its destiny as an independent country when France's efforts to salvage its colonial empire through a confederal Franco-African community unravelled. Pan-Africanists, among whom Leopold Sedar Senghor, future first president pushed for the creation of a West African federal state but failed. So did also the Mali federation soon after the *Assemblée Législative de la Fédération du Mali* in existence only from April 1959 to August 1960 collapsed. As in all other fledgling African states, the challenges were daunting and multiple. Prominent was the need to shape a political system that did not destabilise the state or exacerbate the divisions of an already rapidly splintering political class. In this context, new institutions were created, such as the national assembly (August 1960). Among the chief challenges were civil-military relations and security issues, as the 1962 coup attempt illustrates (see below).

With the strong backing of France and an undeniable political acumen and drive, Leopold Sedar Senghor, a brilliant intellectual and poet, imbued with western cultural and political ideals, despite being a theoretician of 'negritude',<sup>10</sup> worked to meet these challenges in Senegal. Soon after independence, through deft manoeuvres, where cooptation was freely combined with coercion and blackmail, Senghor succeeded in imposing a *de facto* single party system by the mid-1960s.<sup>11</sup> This did not happen, however, without political arm wrestling, that opposed Senghor to his more radical prime minister Mamadou Dia, and an early near incursion of the armed forces in the political arena in 1962. Attributing the responsibility of this incursion to Dia, Senghor arrested and imprisoned him for many years.<sup>12</sup> With his major rival out of the way, president Senghor soon became the undisputed boss of the political game in Senegal, having made sure, through skilful manoeuvring, that the military top brass were tightly

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<sup>9</sup> See 'Bref Historique de Assemblée Nationale' accessible at <https://www.assemblee-nationale.sn/> (accessed 14 December 2005).

<sup>10</sup> This is a cultural and literary movement launched in the 1930s by young African descended intellectuals such as Senghor, Aimé Césaire and Alioune Diop. It reaffirms the pride of the black race and rejects its vilification and the French colonial assimilation policies.

<sup>11</sup> Coulon, *op. cit.*, 148-150.

<sup>12</sup> Diop and Paye, *op. cit.*, 321-326.

controlled.<sup>13</sup> President Senghor had a keen political sense and a deep knowledge of Senegalese political culture. Together with his ties with France (which kept a military base in Wakam near Dakar and important economic interests in its former pivotal colony), with the powerful leaders of Muslim brotherhoods in a predominantly Sunni Muslim country<sup>14</sup> and with the *marabouts* (religious leaders), he managed, throughout his tenure, to successfully weather crises, and outmanoeuvre rivals with remarkably little wanton violence, and without fundamentally altering the relations between the postcolonial state and Senegalese society.<sup>15</sup> The economic fundamentals and networks inherited from the colonial era, the production of ground peanuts as a cash crop, remained also largely untouched. This economic situation and other failings typical of African states in the first two decades of independence started to erode and call into question the legitimacy of Senghor's regime and its policies, eventually leading to serious threats to his power and to the supremacy of his party, as indicated by the worker and student led movements in 1968. The imposition of a single party did not eliminate indeed Senegalese intelligentsia's long tradition of political contestation and left leaning semi clandestine political formations and unions.

As typical of parliaments under single party political systems, the *Parti Socialiste* dominated national assembly was a rubberstamp institution, even when in 1974 the opposition party, *Parti Democratique Sénégalais* (PDS), won a few seats. As Sheldon Gellar noted, '[u]nder Senghor, the national assembly did little more than rubber stamp the legislation introduced by the government.'<sup>16</sup> This was certainly the case as far as the security sector governance was concerned, since the executive power loomed large over all other branches, the Senegalese constitution being a near carbon copy of the French Fifth Republic presidential constitution. The president's constitutional attribute as '*chef suprême des armées*' (commander-in-chief of the armed forces) was construed, as in much of Francophone

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<sup>13</sup> *Ibid.*

<sup>14</sup> For a complete analysis of Senghor's relations with the Muslim establishment see Villalon, L. A. 1995. *Islamic Society and State Power in Senegal: Disciples and Citizens in Fatick*. New York: Cambridge University Press.

<sup>15</sup> Catherine Boone provides an excellent analysis of the Senegal's postcolonial political economy and Senghor central role in shaping it. See Boone, C. 1990. State Power and Economic Crisis in Senegal *Comparative Politics* 22(3): 341-357.

<sup>16</sup> Gellar, S. 2003. *Democracy in Senegal: Tocquevillian Analytics in Africa*, 158. New York: Palgrave MacMillan.

Africa, as meaning his exclusive, unfettered dominion over the management and use of all the security apparatus.

Senghor's personal prestige as a poet-president and humanist was enhanced when he decided to step down as president and withdraw from politics in 1980. He crafted a smooth transfer of power to his young protégé, Abdou Diouf, his former prime minister and chief of staff, with a solid reputation as a technocrat, an able manager with a strong sense of service to the state. Senghor's other astute move consisted in enshrining in the constitution a limited political pluralism. Confronted with ever bolder challenges to his rule due to the combined effects of lingering droughts that squeezed even more the rural sector, the worsened overall economic conditions, and a restless political opposition, his move to allow two more, and then altogether three political parties to represent the spectrum of political ideologies came just in time to ease the pressure on the *Parti Socialiste (PS)* regime by providing a manageable and safe outlet for bent-up political and social frustrations. By the time president Senghor left power, to the unanimous praise of observers, Senegal's political landscape was fundamentally altered and, unwittingly doubtless, the seeds for Wade's presidency two decades later were all but sown. The latter's bid had started in 1976 when a constitutional change allowed him to run against president Senghor. In the meantime, Senghor's handpicked successor put his own imprint on Senegalese politics.

### **3. Abdou Diouf's Regime and the Limits of Constrained Democratisation**

When Abdou Diouf assumed power on 1 January 1981, he had to carry the burden of filling the shoes of Senegal's 'founding father', a master politician, and meet head on the pending economic and social crises he had inherited. An even more pressing concern was to fend off multiple challenges to his legitimacy as president without being elected. Soon president Diouf proved to be a tough and shrewd politician in his own right. He proved adept at manipulating freely and judiciously the system, co-opting or dividing his opposition, using repression, imprisonments, and abusing the judicial system and other state coercive institutions, even as he faced an energized opposition in the parliament. Regardless this, he dutifully continued to project the image of a liberal democratic Senegal to the rest of the world. One of the most significant political decisions he took soon after becoming president was to lift all restrictions on the number of parties legally allowed to be represented in the parliament and to start a process of liberalisation. This move met the demand of the opposition and

simultaneously weakened it because it led to its atomization through the proliferation of political parties, making the emergence of a threatening anti-*Parti Socialiste* coalition unlikely.

The blend of the above continuities in methods and thrust, as well as deliberate changes, served president Diouf well, just as they did president Senghor in the early independence years. They did enlarge the democratic space and the field of liberties (of the press, association, etc), thus enriching immensely the political system and its discourse. They also allowed Diouf's party to win resounding presidential and legislative victories in 1983 and 1988 and, to a lesser extent, in 1993 over its main opposition, Abdoulaye Wade's *Parti Démocratique Sénégalais* (PDS). However, these victories did not come without a steady erosion of the PS's legitimacy to govern, accelerated by the presence of a handful of vociferous PDS deputies in the national assembly. The presence of the opposition in the parliament did not alter the largely rubberstamp status of the parliament or improve its role in the management of the security sector. The latter remained resolutely under the exclusive control of the executive as, in contrast to Senghor who had an experience of parliamentarian in the French national assembly, Diouf never served in a parliament. President Diouf's decision to use the army to quell a rebellion against Gambian president Sir Dawda K. Diawara in 1981 without seeking the opinion of the national assembly clearly illustrates the lack of a culture of consultation and association of the parliament in security related matters.

The corrosion of Diouf's power manifested itself through recurring political unrest, forced national unity governments, imprisonment of political leaders and, at times, outright political violence, culminating in the assassination of the vice president of the constitutional court after the bitterly disputed 1993 presidential election.<sup>17</sup> President Diouf remained caught up in the intractable contradiction of wanting, on the one hand, to maintain a formal multi-party system and project Senegal as a stable democracy to the international community and an unwillingness, and on the other hand, to abide by the rules of democratic competition in fear of losing power. Keen observers of the country's politics have rightly labelled Senegal a 'semi-democracy'<sup>18</sup> a 'quasi-democracy'<sup>19</sup> and a 'semi-authoritarian' regime.<sup>20</sup> Coulon

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<sup>17</sup> Villalon, L.A. 1994. Democratizing a (Quasi) Democracy: The Senegalese Elections of 1993 *African Affairs* 93 (371): 163-193.

<sup>18</sup> Coulon, *op. cit.*, 141-178.

<sup>19</sup> Villalon, *op. cit.*

<sup>20</sup> Ottaway, M. 2003. *Democracy Challenged: The Rise of Semi-Authoritarianism*. Washington D. C.: Carnegie Endowment for International Peace, 91-108.

*Senegal*

highlighted the Diouf regime's inability to really resolve its predicament. In addition, soon after coming to power, Diouf had to face an armed separatist movement in the southern Casamance region, as well as a variety of tensions and crises with its neighbours Mauritania and Guinea Bissau, all of which involving the use of the armed forces. As Diop and Paye's discussion of his management of these crises suggest, Diouf did not request any input whatsoever from the national assembly on the management of the crises<sup>21</sup> The same attitude of ignoring the parliament seems to have also prevailed when he faced the major crisis provoked by the strike of the police in 1988, with potentially dangerous consequences for the entire country, illustrated by the near gunfight between police elements and the *gendarmerie* which was tasked by president Diouf with bringing the police mutiny under control.<sup>22</sup>

Since the 1988 presidential elections, president Diouf's regime and party were forced to find a compromise with the opposition and, grudgingly, agree to enact measures to ensure transparency in future elections. Among these, there was the decision to set up an impartial and autonomous body to carry out electoral operations and ensure their legality and transparency. The PS itself became rife with infighting and was undermined by the Abdou Diouf's regime's inability to attend to the basic needs of the struggling rural population and urban dwellers alike. A sense that political change was desirable, and even necessary, started to creep into the body politic. This sentiment was driven by the main opposition party, the PDS, and its allies with the slogan '*Sopi*' (change!) in the national Wolof language. The tide started to perceptively turn when long time PS cadres, in addition to long standing opposition party leaders supported Abdoulaye Wade's candidacy in the second round of the 2000 presidential election, after an unprecedented opposition mobilization was garnered to render vote rigging very difficult. In a tense atmosphere, Diouf admitted defeat, leaving to Wade to write the next pages of the consolidation of democratization in the country, and more specifically the role of parliament in it. Today, the political, social and economic set up and challenges Wade inherited have by no means disappeared. If anything they have become compounded and even more overwhelming than previously while other challenges have surfaced.

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<sup>21</sup> Diop and Paye, *op. cit.*, 334-340.

<sup>22</sup> Diop and Paye, *op. cit.*, 332-333.

#### 4. The Wade Regime

Undeniably, throughout the 1970s and 1980s Senegal was not a full-fledged democracy although its political system and its management were qualitatively better than elsewhere in West Africa, due in part to Senegal long standing pluralism and to the parliament's role in the polity. The election of Abdoulaye Wade represents a further step toward the consolidation of the Senegalese democracy and the improvement of civil-military relations. However, as Christian Coulon has argued, one critical ingredient of Senegalese political culture is 'a propensity for the *accumulation of power*.'<sup>23</sup> Wade has certainly not proved to be immune from this proclivity and many of the decisions Wade made risk interfering with the consolidation of democracy. In fact, when he became president, 'Wade made little effort to strengthen the national assembly';<sup>24</sup> on the contrary, and despite the promised institutional reforms, which consisted only in eliminating the Senate, the new constitution further strengthened presidential powers to the detriment of the legislative branch.<sup>25</sup> When, given his ripe age, he is keen on fending off impatient heirs to be, eager to replace him at the helm, Wade's approach to power and to checks and balances between different branches of the government is especially worrisome.<sup>26</sup> His decision to prolong the mandate of members of the national assembly to make parliamentary elections coincide with presidential elections is particularly controversial. Wade's policy decisions will necessarily have implications on the security sector governance and on the role of the parliament in it. Such a role is formally prescribed in the 2001 constitution, proposed by president Wade and adopted by the Senegalese overwhelmingly in January 2001, which, in many respects, follows the previous constitutions as far as the parliamentary powers and oversight of the armed forces are concerned. It bears mentioning that despite the serious shortcomings the political system in Senegal has displayed throughout the various regimes, the international community has always given Senegal the benefit of the doubt, if not overlooked outright these shortcomings, including during the last presidential election when undoubtedly president Wade used underhanded means to win. Senegal has enjoyed extensive financial aid and investments without any conditionalities regarding the

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<sup>23</sup> Coulon, *op. cit.*, 160, (emphasis in the original).

<sup>24</sup> Gellar, *op. cit.*, 159.

<sup>25</sup> Thomas and Sissokho, *op. cit.*, 101.

<sup>26</sup> The recent problems of former Prime Minister Idrissa Seck are seen as resulting from manoeuvres initiated by President Wade to eliminate him as a contender to power. See Seck, C. Y. 2005. Wade Signe l'Armistice *Jeune Afrique/l'Intelligent* 2321, 3 July: 42-43; also Seck, Y. 2006. Le Dossier Seck, 62-63.

governance of the security sector in particular. Indeed, the international community has always assumed that, not having succumbed to the excesses of its neighbours, Senegal's governance is good enough. As a consequence, no serious pressure was ever put on the various regimes to correct the governance deficits they displayed recurrently. More importantly, the gap between theory (even rhetoric) and practice when it comes to parliament oversight has remained large and persistent.

The next section presents and analyses the role and activities of the members of the national assembly as provided for by the 2001 constitution and some of the parliament's main achievements.

### **5. The Oversight Role of Parliament...In Theory**

The 2001 constitution does not differ markedly from the earlier constitutions as to the role of the national assembly in Senegal's institutional setting generally, and in the oversight of the security sector in particular, the 2001 constitution that frames it does not differ markedly from the earlier constitutions it replaced. Its titles VI and VII enumerate the prerogatives of the legislative branch. The national assembly does not exercise exclusively the legislative power since the executive may introduce bills, according to articles 67 and 76 of the constitution. Article 67 stipulates that the national assembly exercises the legislative power (though not exclusively since the executive power can introduce bills, art. 67, 76), in a number of areas, including the authorisation to declare war (art 70). The national assembly has the power to extend beyond the initial twelve days the length of the state of emergency and of siege, once decreed by the President. The national assembly also determines by law the procedure to be followed and specifies the limits on the emergency powers or the rights that can be suspended (art. 69). Moreover, the national assembly has the power to authorise the ratification of treaties by the President (art. 95). Article 85 of the constitution empowers members of the national assembly, through the president, to pose oral and written questions to members of the government who must provide answers. Similarly, articles 62 and 85 stipulate that the national assembly can designate *ad hoc* commissions of inquiry, whose organisation, functioning, and powers are determined by law by the national assembly itself. Article 49 of the '*règlement intérieur de l'assemblée nationale*' (internal regulations on the functioning of the national assembly) empowers permanent committees to gather information on any subject of 'major interest' in order to enlighten the national assembly and to help it to be more efficient in the

performance of its constitutional duties. The national assembly can also establish by resolution, pursuant to article 32 of the constitution, temporary 12-member commissions, and task them with the investigation of specific subjects. Thus, matters pertaining to security sector governance can be investigated by the national assembly through the competent permanent commission or through temporary *ad hoc* commissions of inquiry. Furthermore, the legislative branch can provoke the demission of the government by a vote of censure (article 86 of the constitution).

In all areas of national life, the national assembly exercises its oversight powers through eleven specialised permanent committees, including those in charge of the economy and finances, control and accounting, and foreign affairs, the purview of which has implications for civil-military relations and security. In the area of the security sector governance, the oversight function falls with the 30-members defence and security committee, which is competent to exercise the legislative oversight over issues pertaining to national defence and security. Article 24 of the by-laws of the national assembly specifically states that the mandate of this committee encompasses 'national defence and the preservation of territorial integrity, international military cooperation, military and paramilitary establishments, the civil and military personnel of the armed forces, public safety, security, gendarmerie and military justice.'

Article 41 of the same text requires this committee to be notified of the finance bill during the annual budgetary session for advice; the committee must issue a report on the portion of the budget that falls under its purview to be addressed to the finance, economy, and planning committee. Formally, therefore, the defence and security commission is empowered to exercise supervision, and give advice on the defence budget items and related security sector matters, at least once a year. As all other permanent committees of the national assembly, the defence and security committee can also interview any person deemed useful to consult, though if such a person is a civil servant, the competent minister must authorise him or her (article 44 of the internal rules). The described legislative and oversight powers are consistent with the democratic tradition of separation of powers and clearly give the parliament the *authority* needed to control and monitor critical aspects of the security sector whose management lies mainly in the hands of the executive branch, whose constitutional and legal powers in this domain are now briefly discussed.

The powers of the executive branch, the president of the republic and the government, are addressed in titles III and IV of the constitution.

Article 45 expresses the extent of the president's powers in the security sector as it states that he 'is responsible for national defence. He presides over the National Defence Superior Council and the National Security Council. He is the commander-in-chief of the armed forces; He makes appointments to all military functions and disposes of the use of armed force.' As it is evident, this provision sets an imbalance of power in the governance of the security sector in favour of the executive. As in the previous Senegalese constitutions, such a far-reaching set of powers and prerogatives is what allowed the executive branch to have an effective monopoly on the use of force and on the management of the armed forces. A number of laws govern the general organisation of national defence in Senegal, the structure of the armed forces and the roles and attributions of the various branches (army, gendarmerie etc).<sup>27</sup> The armed forces remain under the authority and at the disposal of the president for national defence and international security purposes.

As to the judiciary, the extent of its constitutional role in the management of the security sector seems to be stipulated in article 91 only, which states that it is the 'guardian' of constitution and of 'rights and liberties.'

## **6. Parliamentary Oversight in Practice: Limitations and Challenges**

This assessment of the actual oversight powers and practices of the Senegalese parliament, especially through its committee of defence and security (CDS), is based on extensive interviews with the chairman of the committee, in addition to the responses to the project questionnaire. Studies and analysis of other relevant actors on the ground are also used to present an accurate picture of the actual oversight role of the parliament over the security sector, keeping in mind the analytical framework set out at the beginning of this chapter. A good starting point for our analysis is a recent study by Thomas and Sissokho on the actual role of the Senegalese national assembly. According to this study:

'[a] common characterisation of the national assembly is an institution where deputies only need to know 'how to raise their hand and how to applaud.' Given the limited

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<sup>27</sup> These are, among others, laws nos. 70-23 of 6 June 1970, modified by no 72-92 of 29 November 1972 and 82-17 of July 1982; no. 84-62, of 16 August 1984,) and decrees (no. 91-853/PR/MFA, 23 August 1991.

role of the national assembly in law and policymaking, there is little lobbying of the legislature with respect to its legislative activities. 'It is not a place of decision,' said one private sector leader.<sup>28</sup>

The same authors further argue that the Senegalese parliament does not often take legislative initiatives, is ill-equipped to scrutinise or exercise rigorous oversight in budgetary matters, and is at best a 'consultative body' for the executive branch.<sup>29</sup> The assessment of another scholar of Senegalese politics is equally severe and unforgiving. In one of his most recent comprehensive study on the functioning of the Senegalese democracy, Gellar concludes:

'Rather than working to strengthen their institution's powers vis-à-vis the executive and to introduce legislation on their own initiative, most Senegalese deputies have little attachment to the national assembly as an institution and have devoted more time and energy to increasing their perks—salaries, vehicles, and other benefits. As in the past, the national assembly remains a weak institution with poor attendance and little will and capacity to check the powers of the president or to initiate legislation on its own'.<sup>30</sup>

The evidence on the real functioning of the national assembly's oversight responsibility over the security sector largely confirms these rather bleak depictions. For instance, the report of the National Democratic Institute for International Affairs (NDI)<sup>31</sup> on the *Role of the Legislature in Defence and National Security Issues*, which reflects the assessment of Senegalese participants (overwhelmingly parliamentarians), clearly indicates that the national assembly 'has abstained from exercising control over the military, preferring to defer to the executive branch on all defence and security related issues.'<sup>32</sup>

The bulk of the security sector oversight function of the parliament is supposed to be carried out by the committee of defence and security, chaired since the 2001 parliamentary elections, by Mr. Moussa Cissé, member of the presidential majority party, the *Parti Démocratique*

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<sup>28</sup> Thomas and Sissokho, *op. cit.*, 107-108.

<sup>29</sup> Thomas and Sissokho, *op. cit.*, 109-113.

<sup>30</sup> Gellar, *op. cit.*, 159.

<sup>31</sup> Report on the seminar the National Democratic Institute for International Affairs, (NDI) sponsored in 1999, in Dakar.

<sup>32</sup> National Democratic Institute for International Affairs, *Report on the Role of the Legislature in Defense and National Security Issues*, Washington, D.C., 1999, 10.

## *Senegal*

*Sénégalais* (PDS). While Mr. Cissé admits that he does not have any particular expertise in security governance issues, he appears well aware of the issues and their implications and the challenges they represent in a country like Senegal. He participated in a number of seminars and other instructive activities, including attending a brief seminar at the *Hautes Études de la Défense Nationale* in France. The committee is made up of 30 members, not selected on the basis of their expertise in defence and security matters, with the exception of Professor Abdoulaye Bathily, a renowned scholar of military issues, and member of the opposition. The committee does not meet regularly; its meetings are not open to the public. Confirming what sustained in the above mentioned studies and report, the committee has never initiated legislation on security sector governance or weighed significantly on any specific aspect of its governance. Recently, the situation has been slightly improving. According to the chairman of the defence committee, over the last two to three years, members of the committee have asked questions to the minister of defence on three occasions and once tried to obtain documents from him or from the army. On two occasions over the same time period, the committee had access to defence budget documents and participated in missions to visit Senegalese peacekeepers before their departure.

With regard to public safety, the national police provide the commission with weekly reports containing statistics aimed at presenting the security situation of the country, which include for example information on crimes committed, on the activities of the police in combating crime and providing security, on public safety-related services throughout the national territory. The CDS's chairman insisted that in the plenary sessions of the parliament, deputies now and then raise security-related questions and concerns, and call on the government to solve them. Among these preoccupations, the issue of corruption and abuse of authority still constitute 'serious problems' in the behaviour of members of the security forces who are in contact with the general population. An assessment of the situation with the chairman reveals that while these behaviours are less prevalent and less flagrant than in neighbouring states,<sup>33</sup> instances of corruption and victimization of the general public do exist and have proven resistant

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<sup>33</sup> This writer's extensive travels in the sub-region yielded infinite anecdotal evidence that tends to substantiate the chairman's comparative assessment of the prevalence of corruption in West Africa. Senegal does seem to be relative better than all its neighbours and seems to be less affected by the blatant and in your face corruption travellers are subjected to in its immediate neighbours and elsewhere in the sub-region.

to most measures to combat them. This is due to the resourcefulness and cunning of those who engage in corruption and the more or less active cooperation of would-be victims. Though the chairman has recounted anecdotes of his personal efforts in this regard, no specific initiative of the CDS could be pointed to that was aimed at combating corruption in the security forces, recognised as a scourge in the sub-region. With regard to instances of corrupt practices affecting members of the parliament themselves, contrary to their counterparts in the sub-region, the Senegalese deputies seem to have been spared attention grabbing newspaper headlines. Ironically, as Thomas and Sissokho seem to suggest, this may be due to the limited power of the national assembly to significantly affect policy outcomes, thereby eliminating incentives to corrupt parliamentarians. As they put it, since the national assembly is not the body where decisions are made, 'both lobbying and bribery are directed to the executive.'<sup>34</sup> To be sure, this is meager consolation for advocates of more effective and assertive parliamentary oversight, but it does seem that, as the recent embezzlement case against the former prime minister Idrissa Seck and other former ministers and high ranking officials suggests, corruption seems to be the 'exclusive' province of the executive branch and to have so far spared the legislative.

When given the opportunity, particularly during meetings with representatives of the executive branch and in discussions about the budget, members of the committee do echo the safety/security related preoccupations of their constituencies. According to its chairman, members of the committee are sometimes also given detailed briefings on peacekeeping operations, and frequently visit the barracks, and intermingle with troops. Undoubtedly, these activities of the committee are important, particularly the intermingling with the troops, given the fact that (returning) peacekeeping troops were responsible for major disturbances, including mutinies and coup attempts in many African states (and the committee chairman seems to be keenly aware of this).

The committee's powers, (investigations, hearings on defence and security issues, close scrutiny of budgetary matters, participation in security or defence policy framing, preparation of any aspect of the Senegalese peacekeepers or visiting them abroad), would give it a consistent role in the overall governance of the security sector. However, none of the many powers of the committee were actually exercised.

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<sup>34</sup> Thomas and Sissokho, *op. cit.*, 108.

Nevertheless, there has been a positive evolution. The few issues being raised in national assembly debates are a sign of this development, although the interactions between parliamentarians and the executive branch and the top brass of the security sector are still characterised by much tentativeness, and hampered by ‘the problem of secrecy’ (the chairman’s words). While recognising that certain regional developments, as the ECOWAS moratorium on small arms, and other international developments make old notions of national security such as ‘*secret d’état*’ and ‘*secret défense*’ readily used to justify opacity no longer tenable, the chairman still admitted that committee members are unwillingly to raise ‘certain issues’ on defence budget and general defence and security strategies. The reason for this appears mostly to be that commission members are conscious of their wide knowledge gap *vis-à-vis* the executive branch in defence and security matters and therefore do not feel competent to raise question to the executive and to follow through on their oversight responsibilities in these areas. They therefore defer to representatives of the executive branch and the top brass of the security sector. As confirmed by prominent NGO leaders with a long history of involvement with the Senegalese parliament and the CDS in particular, this knowledge gap remains real in its consequences and must be remedied.<sup>35</sup> As a matter of fact, therefore, the situation described some six years ago in the NDI report, immediately before the transfer of power to the current regime, does not seem to have significantly improved.

## 7. Conclusion: Lessons and the Way Ahead

This chapter has purported to present a picture of the role the parliament has been playing in security sector governance in Senegal. The necessary look at the colonial and post-colonial political system and dynamics has revealed that this former pivotal French colony, which hosted the political capital of the French West African Federation, has an old and rich history of pluralistic political activities. Both in the colonial era and after independence, the political developments in Senegal include a more or less assertive role for the

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<sup>35</sup> Dr. Agboton-Johnson is the executive director of Malao, a Dakar based NGO working on the small arms issue and on consolidating peace in the *Casamance* region. Interview on December 21, 2005 in Dakar. Alioune Tine is the executive Director of RADDHO (*Rencontre Africaine de Defense des Droits de l’Homme*), a Dakar based renowned NGO active in the defense of human rights in Africa. RADDHO has been active in not just the promotion of human rights but also good governance throughout Africa. It has taken a lead role in these areas, including in Senegal. Interview in Dakar, 3 January 2006.

parliament (or its functional equivalent), although the executive, led by politically astute leaders with strong authoritarian tendencies, has typically been the locus of real power. The national assembly, both under the *de facto* single party system established by president Senghor soon after independence, and under limited or unrestricted multiparty system later on, was in essence a rubberstamp institution. When Abdoulaye Wade, a long time opposition leader, came to power in March 2000 he offered an opportunity to strengthen the parliament, but neither the new 2001 constitution nor the practice of government after the transfer of power accomplished such promised change.

A wide gap remains between the realities of the actual discharge by the parliament of oversight of the security sector in Senegal and in comparison to the 'theoretical' role the 2001 constitution assigns to the national assembly as an institution reveals that there is a notable gap between that role in theory and the actual discharge of the assigned duties and responsibilities. The analysis leaves no doubt that the security and defence committee fell short of the required ability, attitude, and acumen to carry out its oversight charge. Though the parliament clearly has the authority to carry out its oversight functions as representative of the Senegalese people, the CDS displays neither the ability nor the attitude that would make it possible to meet its obligations. The CDS has not adopted a new attitude or acquired markedly new abilities to engage the executive and play a more assertive role in the governance of the security sector after the change of regime in 2000. It becomes therefore premature to investigate the acumen parliamentarian would have to display in order to navigate the defence and security policy development and oversight in which they have vocation to engage. Even with the right attitude and after filling the knowledge gap, it will take Senegalese deputies much acumen to deal with, and overcome the resistance that is bound to exist among those (military top brass and executive branch authorities) who are used to running, unfettered, all aspects of the security sector. This clearly suggests that the parliamentary oversight of the security sector faces a number of challenges that must be met before Senegal can truly be held out as the model many believe it can be in West Africa.

The first challenge to meet is for deputies of the national assembly to overcome the prevailing belief that the parliament is at best the junior partner of an omnipotent executive branch which is not to be constrained in the management of the security sector. This attitude must change both at the institutional and personal level. Only then the rather strong authority the constitution gives the national assembly and its members to have a voice, as the representatives of the people,

### *Senegal*

in the definition of the security agenda and to oversee such vital matters as the use of the security apparatus, will translate in concrete and sustained oversight activities.

Another challenge that must be met is to overcome the still wide gap in knowledge on the security sector management that prevent members of the national assembly in Senegal from displaying the confidence and sense of efficacy critical for exercising their oversight functions. Senegal's international partners can contribute to this by organizing capacity building activities with the Senegalese parliament. In partnership with the relevant Senegal or West Africa-based NGOs active in security sector governance, the members of the commission of defence and security can benefit from seminars and other pertinent training activities aimed at increasing substantially their knowledge and capacity to exercise oversight of the security sector. These highly needed activities can be financed by donors with an interest in enabling the Senegalese democracy to reach its potential in terms of parliamentary oversight generally and more effective security sector governance in particular.

An obvious lesson that one can learn from the Senegalese case is that even a long history of political pluralism sustained by culturally based tolerance and openness does not guarantee that the parliament takes seriously its oversight function, in particular over security sector. Clearly, the remarkable Senegalese history of relative political pluralism and of democratic ethos and practice did not translate into a culture of parliament's checks and balance of the powers of the executive branch. This cultural legacy must be re-examined seriously and remedies are to be found urgently if Senegalese democracy is to deepen and consolidate. The 2000 transfer of power to the opposition could have been an excellent opportunity of change which has been unfortunately missed, as president Abdoulaye Wade, despite a firsthand experience of the imbalance of power between the executive and the parliament to which he belonged for years, never lived up to his electoral promise to correct it. Had power changed hands in 2007, there would have been another opportunity not be let pass by. In the end, however, power did not change hands after the 2007 presidential and legislative elections. These elections were therefore a missed opportunity to usher in another regime (with a different president and a different approach to handling political power) that could have finally addressed the glaring imbalance between the legislative and executive branches. This only means that the challenges identified above remain unaddressed and Senegal no closer to becoming the regional model of democratic praxis it wishes so strongly to become.

Using strong arms tactics and deft political manoeuvring, president Wade managed to keep his political opposition off balance and divided, which enabled him to win a first round victory on 25 February amidst allegation of widespread fraud. More significantly to this study, following the presidential elections, the opposition boycotted the June 3rd legislative elections, paving the ways to a legislature overwhelmingly dominated by the presidential party, the PDS (with 131 deputies out of 150). As a consequence, it is unlikely that a national assembly so dominated by the PDS (and parliamentarians beholden to party leader president Wade in a divisive political atmosphere) will assert its constitutional role in security sector governance as recommended above. If anything, the hands-off attitude and extreme deference to the executive as described above will worsen. An fact that is still unsettling is that the authoritarian tendencies observers have discerned in all Senegalese presidents seem to be exacerbated in an aging president Wade who is clearly less and less patient with his political opposition. This tendency was displayed during and after the 2007 elections. The only institutional reform president Wade enacted was to reinstitute the Senate as the upper house of the parliament, which he had insisted on eliminating after his first electoral victory. Clearly, in Senegal as in other West African states, the challenge of establishing more balance between the executive and the legislative branches and, more specifically, a tradition of parliamentary oversight over security continues unabated.

## Chapter 11

# Sierra Leone

*Osman Gbla*

### 1. Introduction

Sierra Leone is an interesting and very important West African case study for analysing the opportunities and challenges of parliamentary oversight of the security sector. Given the country's history of authoritarian single party and military rule (1978-1992, 1992 -1996 and 1997-1998) and the rebel war (1991-2002), Sierra Leone's parliamentary oversight efforts take place against the realities of an authoritarian political system as well as that of a post-war situation. Long years of authoritarian single party and military dictatorship in the country, for example, undermined the smooth functioning of parliamentary oversight. This is the case because this centralised political system stood in the way of implementing democratic principles including parliamentary oversight. Against this background, it is not surprising to know that parliamentarians and parliamentary staff put in place after 1996 are inexperienced in their duties and responsibilities. In such circumstances there is therefore a need to develop conventions of political behaviour such as that of a loyal or official opposition.<sup>1</sup>

Years of war (1991-2002) coupled with the realities of an authoritarian political system also brought to the fore the inadequacies of unprofessional, corrupt and politicised security forces as well as the poor capacity of parliament to provide oversight functions over these security forces. Furthermore, at the time of electing members of parliament (MP's) for the 1996 elections, widespread insecurity in the country did not allow for a national census to be conducted that would have served as the basis for constituency demarcation and the eventual use of the constituency electoral system. This situation precipitated the use of the proportional representation electoral system where MP's represent a political party as opposed to traditional constituencies. This situation did, in a way, affect the relations between the electorate and the MP's as most citizens perceived the MPS as people

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<sup>1</sup> *Sierra Leone Parliamentary Development Support (PDSP) Project Memorandum and Framework*, October 1998. London: DFID WAND, 16.

representing the interests of their political parties rather than those of the people.

As a post-war country, Sierra Leone also has the opportunity to make good use of some donor goodwill interventions to support parliamentary strengthening. The United Kingdom's support to the Sierra Leone security sector reform has parliamentary strengthening at the top on its agenda.<sup>2</sup> Additionally, the country's post-war recovery strategy prioritises good governance and democratic consolidation including the strengthening of parliamentary oversight capacity. A pillar of the country's Poverty Reduction Strategy Paper (PRSP), entitled Good Governance, Peace and Security, articulates this good governance and democratic consolidation aspect of Sierra Leone's post-war poverty reduction strategy. These and many other issues will be discussed in the subsequent sections of this chapter.

## 2. Background

Sierra Leone is a small West African state with a total landmass of 72,000Sq.kms. Its current population is estimated at 4.7 million who are divided into eighteen ethnic groups. The two largest of these groups are the Mendes in the south and the east (30.9%) and the Temnes in the north (29.8 %).<sup>3</sup> Other minority groups include the Limbas, Konos, Krios, and the Vais. Unlike many other West African countries, Sierra Leone had a very good head start and potential in many crucial areas. Its capital city Freetown used to be the headquarters of British West Africa, which was comprised of the Gambia, Ghana, Nigeria and Sierra Leone. The country also boasts of having the oldest university in West Africa- Fourah Bay College which opened in 1827, and is an achievement that earned it the prestigious title of the former Athens of West Africa.<sup>4</sup> Furthermore, Sierra Leone is endowed with many rich mineral resources including iron ore bauxite, gold and rutile. Against this background, it is paradoxical to learn that the country is consistently ranked at the bottom of the ladder by UN Human Development Reports. Finally, Sierra Leone was one of the most stable and democratic countries in

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<sup>2</sup> *Sierra Leone Parliamentary Development Support Project (PDSP). Project Memorandum and Framework*, October 1998, 12.

<sup>3</sup> Mkannah, T.J. 1996. *Handbook of the Population of Sierra Leone* Freetown: Toma Enterprises Limited, XVII.

<sup>4</sup> Sesay, A. 1999. Paradise Lost and Regained? The Travails of Democracy in Sierra Leone in *Governance and Democratisation in West Africa*, edited by Olowu *et al.*, 285. Dakar: CODESRIA.

the West African sub-region until the late 1960s when it became embroiled in a spate of military coups in 1967.<sup>5</sup>

Sierra Leone gained its independence from Great Britain on 27 April 1961 and Sir Milton Margai of the Sierra Leone Peoples Party (1961-1964) became the country's first post-independence Prime Minister. On achieving independence, as was the case for many other former British West African colonies, Sierra Leone inherited a parliamentary system of government patterned along the Westminster model although with a unicameral legislature. Sir Milton's regime was relatively democratic and politically stable characterised, among other things, by political pluralism, constitutionality, respect for the rule of law and human rights. In spite of these positive democratic credentials, the regime did not take effective steps to restructure the security sector to enable it to face the challenges of post-independence Sierra Leone by making a radical break with the past- self-seeking and oppressive colonial security sector.<sup>6</sup> With the exception of the change in nomenclature of the armed forces from Sierra Leone Battalion of the Royal West African Frontier Forces to the Royal Sierra Leone Military Forces (RSLMF), the institution was still as it was during the dying days of colonialism. The heads of both armed forces and the police were, up until 1963, all British. On a more positive note however, the regime did not politicise the security sector as was the case with subsequent political regimes.

Sir Albert Margai, his younger brother from the same Sierra Leone People Party (SLPP) (1964-1967), was made prime minister after Sir Milton. Unlike his predecessor, Sir Albert moved on several fronts to perpetuate his power, a move that stifled among other things programmes to ensure effective parliamentary oversight of the security forces in the country. His moves to politicise the security forces, especially the armed forces and police, for example by appointing his closest allies and relatives to senior positions including, and by elevating his brother-in-law and fellow Mende tribesman David Lansana to Brigadier and Force Commander, undermined serious democratic control of these forces.

Although the Sir Albert SLPP-led government initiated the moves to politicise the security sector as well as to undermine multiparty

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<sup>5</sup> For details on this see the Draft Sierra Leone National Security Policy Paper, February 2000: 4. Freetown: Discussion Document.

<sup>6</sup> See Gbla, O. 2002. *Security Sector Reform in Sierra Leone*, Paper presented at the African Security Dialogue and Research (ASDR) Workshop, 24-28 September 2002, Accra, Ghana.

democratic principles by proposing the idea of a one-party system, the All Peoples Congress Party (APC) (1968- 1992) intensified these political tendencies. By declaring the country as a one-party state in 1978 and appointing the army chief of staff and the inspector general of police as members of parliament, the APC regime not only politicised the security forces but also undermined the democratic control of these forces. Fourteen years of APC one party rule (1978 – 1992) also stymied effective competitive politics including the role of a vibrant parliamentary opposition and eloquent civil society. Consequently, there was very little civil democratic control of the country's security forces. This and many other factors precipitated security sector excesses like unprofessionalism, poor discipline and corruption.

It was during this political and security predicament that the country was plunged into a rebel war which began in March 1991. Led by Foday Sankoh, an ex-corporal in the Sierra Leone Army, the Revolutionary United Front (RUF) in close working cooperation with Charles Taylor's National Patriotic Front of Liberia (NPFL) attacked Bomaru, a small village in eastern Sierra Leone. The war, which lasted for eleven years, adversely affected the smooth functioning of a vibrant parliament capable of subjecting the security forces to democratic control and oversight. The National Provisional Ruling Council (NPRC) coup of 1992 ended APC misrule but also obstructed parliamentary oversight functions over the security forces. The multiparty elections of 1996 ushered in the SLPP-led government of Alahji Ahmad Tejan Kabbah. This government was toppled by the Armed Forces Revolutionary Council (AFRC) coup of May 25, 1997 under the leadership of Johnny Paul Koroma. The democratically elected government of Tejan Kabbah was restored in 1998.

The May 2002 elections ushered in the second term government of Alhaji Ahmad Tejan Kabbah. As a country in transition from war to peace, Sierra Leone faces specific challenges in efforts to ensure parliamentary oversight of the security sector with very interesting lessons. In the first place, the intensity of strained civil-military relations engendered mainly by the conflict requires very serious parliamentary sensitisation efforts to address tensions with the potential to destabilise the post-conflict peace and security of the state. The deputy minister of defence of Sierra Leone eloquently articulates this point in noting that there is a need for constant interaction between parliament and the security forces with a view to dialogue on

contending issues.<sup>7</sup> Secondly, the war exigencies saw the adoption of the District Block electoral System (DSB) instead of the first –past – the post system. As it were, many Sierra Leoneans doubt the commitment of parliament to reflecting their aspirations as their obligation according to the DBS is to their parties and districts rather than to their constituents. This will greatly affect parliament’s credibility to provide oversight functions over the security forces. Thirdly, as a country that is highly dependent on external actors for the rebuilding of battered state institutions including parliament, there is huge financial and resources constraint to implement parliamentary oversight of the security sector.

Finally, serious reports of corruption, especially in the use of security sector funds during the war, require a vibrant parliament to not only probe and investigate corruption cases but also to implement stringent anti-corruption measures. The role of parliament through its various committees including the public account committee is very crucial in ensuring that public funds are utilised consistently with legislative intent.

### **3. Parliamentary Oversight of Security Sector in Sierra Leone (3A’s)**

This section of the chapter discusses Sierra Leone’s parliamentary oversight of the security sector in terms of the 3A’s – authority, ability and attitude.

Sierra Leone’s major security sector actors include:

- The Republic of Sierra Leone armed forces (RSLAF);
- The Sierra Leone police (SLP);
- The correction service (Prisons);
- The Office of National Security (ONS);
- The Immigration Department;
- The National Fire Force;
- Ministry of Defence (MOD);
- Central Intelligence Security Unit ( CISU);
- Ministry of Internal Affairs.

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<sup>7</sup> Interview with Deputy Minister of Defence, April 2005.

### 3.1 Authority: Constitutional and Legal Framework

The need for civil management and control of Sierra Leone's security sector through parliamentary oversight has for a very long time been acknowledged in post-independence Sierra Leone. The country's various constitutions and acts of parliament's have over the years endeavoured to reflect this important democratic requirement. Section 73(1) of the 1991 constitution establishes a legislature, which shall consist of the president, the speaker and members of parliament.<sup>8</sup> Section 73 (3) of this same constitution also empowers parliament to make laws for the peace, security, order and good governance of Sierra Leone.<sup>9</sup> What is clear from the latter provision is that a key tenet of the Sierra Leone parliament is to fully represent the aspirations and concerns of the people. The constitution therefore makes parliament the principal agent for the general enforcement of democratic accountability. In this context, the day-to-day work of the executive is carried out with the assent and under the direction of parliament. What the government does and intends to do must be justified to parliament and government must receive parliamentary support for proposed legislations before they become laws. Even the budget of the government must be approved by parliament, as well as the means of raising money before such means can be effected.

Additionally, the president as chief executive of the state is part of the law making body as well as chairman of both the national security council and defence council and is also minister of defence (article 2(2) of the National Security and Intelligence Act, 2002 and article 167 (1) of the 1991 constitution respectively). Subject to the advice of the police council, the president is also responsible to appoint the inspector general of police.<sup>10</sup> The reason behind empowering the president with such powers is to ensure civil control of the security sector at the highest political level. Furthermore, the establishment of the national security council under section 2(1) of the National Security and Central Intelligence Act 2002 was also another move to ensure civil control of the security sector in the country. The national security council is charged with the responsibility of providing the highest forum for the consideration and determination of matters relating to the security of Sierra Leone. Its membership has a very good mix of civilians with just the heads of the armed forces and police as professional representatives. In its further quest to

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<sup>8</sup> 1991 Constitution, Act No 6 of Sierra Leone.

<sup>9</sup> *Ibid.*

<sup>10</sup> Article 157 (1) of the 1991 Constitution (Act No 6 of 1991).

discourage members of the security forces from politics, the Constitution Act No 6 of 1991, section 155(3) prohibits, for example, any member of the Sierra Leone police force to participate in politics ranging from holding executive position to being a member of the legislature.<sup>11</sup> Section 165 (3) of the constitution prohibits members of the armed forces from participating in politics as well. In fact section 165(2) clearly describes the functions of the armed forces as to guard and secure the republic of Sierra Leone and preserve the safety and territorial integrity of the state, to participate in its development, to safeguard the people's achievements and to protect the constitution. This latter provision is ambiguous and has over the years been seriously misinterpreted by powerful members of the security and armed forces to topple democratically elected civilian government under the guise of protecting the constitution.

There are also constitutional provisions for parliamentary scrutiny of public funds in Sierra Leone. The 1991 constitution of Sierra Leone, 93 (1) (e) and the standing orders of the Sierra Leone parliament (70)(6)(a) establish the public accounts committee. The mandate of this committee shall be: 'to examine the annual accounts showing the appropriation of the sums granted by the House to meet public expenditure together with the report of the Auditor General thereon.'<sup>12</sup> The standing orders also give the committee unhindered access to persons and documents that are helpful to discharge the responsibilities of the committees.

The current Sierra Leone parliament has 124 members, of which 112 are elected, and 12 are representatives of paramount chiefs of the twelve districts. Out of the 112 elected members, 83 of them (74%) are from the ruling SLPP. There are sixteen elected women parliamentarians accounting for some 14.2% of the entire membership of parliament.<sup>13</sup>

The powers of the Sierra Leone parliament to enforce democratic accountability in general and security sector oversight in particular are clearly stated in the constitution. The 1991 constitution (Act No.6 of 1991) clearly articulates these powers in saying that committees may be established with the express purpose of investigating and inquiring into the activities or the administration of ministries or departments

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<sup>11</sup> Section 155 of the 1991 Constitution.

<sup>12</sup> Standing Orders of the Sierra Leone Parliament 70 (6) (b), 71.

<sup>13</sup> Lahai, B. 2005. *Parliamentary Oversight: Sierra Leone Experience and Constraints*, paper presented at the Workshop on *Strengthening Legislatures in Commonwealth West Africa*, held in Freetown, Sierra Leone 22-25 February 2005, 4.

(section 93 (2) and (3) and section 107 (2) (a) and (b). In some instances, sessional standing committees also double as oversight committees. Owing to the vigour with which these committees discharge their functions, they are popularly known as watchdog committees. Some 26 out of the total number of 31 committees in the Sierra Leone parliament are oversight committees.

The following are some of the major oversight committees charged with the responsibility for monitoring the activities of the security sector in the country:

### ***I. Committee on Presidential Affairs and Defence***

Established under section 93 of the 1991 constitution as a sessional committee by a motion of parliament, it is made up of fifteen (15) members. Its chairman, like those of all other committees is appointed through the joint consultation of the speaker, majority leader and clerk of parliament. This appointment is largely informed by professional experience. In constituting the membership of this committee, like all other committees, consideration is given to three important factors: the strength of political parties, gender and regional balance. This explains why the various committees are represented by 4 or 5 opposition members, 2-3 women and at least one member from the fourteen political districts of the country.<sup>14</sup>

In order to ensure that people with the relevant expertise are included in the committee, members are asked to submit their CVs during the parliamentary briefings and orientation. It is the select committee of parliament that does the selection of members. Like all other parliamentary oversight committees, the committee on presidential affairs and defence is charged with the responsibility for investigating any matters of public importance especially relating to the security forces; requesting that members of the security forces appear before it; proposing legislation and requesting that members produce various documents. In 2005, the committee summoned the deputy minister of defence and the chief of defence staff to discuss the 2005 budget. During this meeting, members of the MOD –SL including the CDS were able to explain constraints like low budgetary allocation, the UNAMSIL draw down plan and the armed forces restructuring.<sup>15</sup> The committee also receives documents from the MOD, i.e. those pertaining to the budget and their newsletter. As an oversight committee, it specifies how the budget for the security sector is to be

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<sup>14</sup> Lahai, *op. cit.*, 5.

<sup>15</sup> Interview with Committee Clerk of Parliament, Freetown, 1 February 2005.

presented, checks the figures factored in the budget to ensure that they fall within authorised expenditure requirements, and follows up on budget implementation. Accordingly, parliament ensures that budgets of all government ministries including MOD are implemented as approved. Regarding the approval of top-level appointments in the military, it is only the appointment of the chief of defence staff (CDS) that is subject to the committee's approval. Regarding peace support operations, the committee approves the mission but not the rules of engagement, command and control, as these are purely administrative military matters decided within the chain of command.<sup>16</sup>

The committee members participated in a seminar on civil military relations organised by the United States Embassy in Freetown in partnership with the MOD of Sierra Leone in 2004. In the seminar, participants raised a good number of issues including military professionalism, parliamentary oversight, budget, civil-military relations as well as constraints and the way forward. The committee members also conducted one base visit to Wilberforce barracks to ascertain the living conditions of members of the armed forces. Unfortunately nothing like a report with recommendations for government action was produced after the visit.

## ***II. Committee on Internal Affairs and Local Government***

This committee deals mainly with the ministries of internal affairs covering the police and prisons, local government and community development and the office of the vice president. It discharges all the functions of oversight committees; it conducts hearings from the executive in both the committees and plenary, reviews government documents and organises field visits in addition to a number of other duties.

### **3.2 Oversight's Ability of the Sierra Leone Parliament**

It is not enough for parliament to have the authority or power to discharge oversight functions; equally important is the requirement of ability in terms of having the necessary human and material means to function effectively. This section of the chapter examines the ability of the Sierra Leone parliament to effectively discharge oversight functions.

Preceding discussions indicate that the necessary constitutional and legal provisions for the parliament to exercise its oversight functions especially over the security sector do exist. What is however worrying

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<sup>16</sup> *Ibid.*

is the very low capacity in terms of resources including competent research and administrative staff, equipment, infrastructure, library, resource centre, cooperation with competent research institutions (think tanks) and financial and logistical support. Regarding the issue of administrative staff, it is disquieting to learn that there are only four (4) parliamentary clerks in the whole of the Sierra Leone parliament to service the 31 parliamentary committees. What this means technically is that one clerk is expected to service about 8 committees and to discharge various functions including organising meetings, calling witnesses, making travel arrangements, preparing reports and dealing with the necessary paper work. These few clerks are not only overworked but also rendered inefficient.

There is also the obvious issue of the different professional background, skills and knowledge of legislative work, especially of oversight, by members of the various oversight committees. Over 80% of the parliamentarians are first timers, thus lacking the necessary grounding in legislative work generally and oversight work in particular, which has strong implications for effective oversight.<sup>17</sup>

Access to adequate office space and parliamentary committee meeting venues is also crucial to enhancing parliamentary oversight functions. In Sierra Leone, there is clear evidence of lack of such capacity. Members of parliament lack adequate office space for themselves as well as convenient meeting venues especially for committee work. There are only two committee-meeting rooms to serve the 31 committees. There is also very low capacity in terms of essential facilities to enhance the work of members of the committee on defence, internal and presidential affairs including mobility to embark on military site visits and other on-site missions. This situation is informed mainly by the lack of sufficient financial and logistical support. There is for example, a lack of adequate incentives such as sitting allowances and refreshments during committee meetings.

### **3.3 Attitude of Parliamentarians**

The effectiveness of parliamentary oversight work would be enhanced if the attitude, including the integrity and courage, of members of parliament was largely positive. Understanding the way in which the constitution as well as its provisions works has been a major problem for both the general citizenry and the parliamentarians and members of the executive in Sierra Leone. The 1991 constitution is a complex document as it is a hybrid of African traditions, a Westminster –style

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<sup>17</sup> Lahai, *op. cit.*, 10.

parliament and a US-style executive headed by a president and made up of ministers outside of parliament. It is therefore important to organise joint seminars and workshops involving ministers, parliamentarians and the general public for increasing the understanding of the constitution among all the principal stakeholders.<sup>18</sup>

The inferior status of parliamentarians as compared to cabinet ministers which is a view widely held by both Sierra Leonean citizens and members of parliament is also hampering the effective discharge of parliamentary oversight functions in Sierra Leone. Whilst cabinet ministers are given decent vehicles some parliamentarians have to walk to parliament and this feeling of inferiority dampens their attitude towards their work. A conversation between a former and current MP clearly articulates this point: 'I don't envy the MP's of today's parliament'. The current MP responded by saying: 'Say it again brother. I don't think I will seek a return in 2007'. The listener to this conversation said to himself: 'But wait a minute, isn't parliament the body that passes the budget? And what about the constitutional provisions which empower MPs to determine their conditions of service'.<sup>19</sup>

Some Sierra Leoneans also hold the view that a number of MPs are generally interested in chasing commissions from the award of contracts at the expense of their work, as stated by a military representative at the one day panel discussion seminar on 'Advancing Human Security in Post-Conflict Sierra Leone: Challenges and Prospects'.<sup>20</sup>

In addition to the behaviour of the MP's, the attitudes of some Sierra Leonean citizens towards the legislature also affect the effectiveness of parliamentary oversight work. Although there is evidence available of the poor conditions of service for MP's compared to those of cabinet ministers in Sierra Leone, civil society groups do not consider

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<sup>18</sup> Dumbuya, A.R. 1999. *Parliament and the Enforcement of Democratic Accountability in Sierra Leone*. Paper presented in Pan- African Commonwealth Seminar on *Democratic Structures in Public Service Improvement*, Pretoria, South Africa, 23- 25 April 1997, 22.

<sup>19</sup> See Gbondo, D. 2005. Financial Scrutiny of the Executive: Parliament and the Public Accounts Committee, a discussion paper presented at the Workshop on *Strengthening Legislatures in Commonwealth West Africa*, 22- 25 February 2005, Freetown, Sierra Leone, 10.

<sup>20</sup> Military representative view at the one day panel discussion seminar on *Advancing Human Security in Post-Conflict Sierra Leone: Challenges and Prospects* held in Freetown, Sierra Leone on 21 March 2006.

the effects of these disparities between members of the legislature and the executive. A female participant at the one-day panel discussion seminar on 'Advancing Human Security in Post-Conflict Sierra Leone: Challenges and Prospects' also argued this point. She noted that civil society groups are not assisting the work of parliament by refusing to recognise and articulate the many constraints facing the legislature.<sup>21</sup>

#### 4. Analysis

What is very clear from the forgoing discussion is that there are various constitutional and legal provisions for parliamentary oversight of the security sector in Sierra Leone. In spite of this, there is a very wide gap between the availability of these powers and their practical implementation to ensure effective parliamentary oversight especially over the security sector. The study has also clearly shown that the effective practical implementation of the various parliamentary oversight constitutional powers depends on a number of factors including the nature and type of political regime in power. During the single party and military dictatorships (1978-1992, 1992-1996 and 1997-1998) it was very difficult to have serious parliamentary oversight of the security sector. This was largely due to the fact that parliament was not only incapacitated but there was the prevalence of bloated, poorly paid and undisciplined security forces that were not easy to convince to adhere to democratic principles including parliamentary oversight.

However, with the reintroduction of a multiparty democratic system in 1996, serious efforts and steps were taken to ensure parliamentary oversight of the security sector. As a democratically elected government was in place, steps were taken to enhance the parliamentary oversight functions over the security sector.

Since 1996, the committees on presidential affairs and defence, local government and internal affairs have tried to discharge oversight functions, though with some difficulties. Its fifteen members chaired by a member of the ruling SLPP have been involved in budget hearings convened by the ministry of finance; authorisation of the budget and follow-up on its implementation. Interestingly, the committee has only two members with military background and this in a way impact on the efficiency of its functions.

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<sup>21</sup> *Ibid.*

Parliament also made a positive move in 1996 to bridge the differences between members of the armed forces and those of the civil defence forces especially the kamajohs.<sup>22</sup> Its members called through Standing Order 23 – Personal Explanation –the government’s attention to the deteriorating situation in the armed forces and the dangers emanating from the frequent clashes between the Kamajohs and the units of the army. One member of parliament even introduced a private member’s motion calling on the government to take immediate remedial action. The president in his capacity as commander-in chief of the armed forces, made a prompt response by directing the vice president, the deputy minister of defence and the chief of defence staff to look into the matter and submit a report.<sup>23</sup> These efforts were underway when the military coup of 25 May 1997 obstructed the entire political landscape of the country till February 1998. Follow-up action was obstructed by the coup.

The defence committee on internal and presidential affairs has been trying to monitor the implementation of the military budget in the country since 1996. Firstly, it sends out questionnaires to the director general of defence as vote controller soliciting vital information on budget allocation for the previous year. It requests for example details on actual amount received, critical areas affected by the budget reduction and donor funding. It also usually invites the minister of finance, vote controllers and relevant account staff to offer explanations on certain unclear financial matters. During the 1997 budget debate for example, members of parliament asked the finance minister a series of questions touching on financial improprieties at the treasury. He was asked to account for monies that had been appropriated earlier in the year and the bill was only passed after the provision of satisfactory answers. However, a lot still needs to be done by the defence committee on internal and presidential affairs (and the parliament more in general) regarding the broader provision of oversight functions over military and security issues, and also in terms of leadership over security sector reform processes in Sierra Leone.

It is however noteworthy that the Sierra Leone parliament faces several constraints in trying to discharge oversight functions as it is emerging from the background of an authoritarian single party and military dictatorship and war. Especially before the UK-led security

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<sup>22</sup> Kamajoh is a Mende word for hunter and in the context of the Sierra Leone conflict was used to refer to a group of local hunters in the south and east formed as a civil defence force to fight the rebels.

<sup>23</sup> See Letter by His Excellency, Alhaji Ahmed Kabbah to the Chief of Defence Staff, Ref: N/3 of 27 September 1996.

sector reform programme, the Sierra Leone parliament was faced with the arduous task of getting both MPs and members of the security forces to recognise, respect and embrace the democratic principles of checks and balances and accountability, which are the major principles of parliamentary oversight. Furthermore, before the introduction of the Medium Term Expenditure Framework (MTEF) budgeting system in the country in 2001, budgeting process, including that for the security forces, did not strictly adhere to budgeting rules and practices. The Sierra Leone parliament shares this limitation with most other West African parliaments with a history of authoritarian political systems.

The Sierra Leone parliament's oversight functions are also constrained by the fact that the necessary information like audit reports is not available in a timely manner to enable it to track budgetary implementation. Additionally, there is a shortage of administrative and technical staff to facilitate the work of parliament. Out of a total number of 31 sub-committees, there are only four parliamentary clerks to service their work. In fact the only clerk servicing the committee has no support staff. Furthermore, the sub-committee handling defence issues is overburdened with so many other functions, like addressing the problems of the ministry of presidential affairs, with very little capacity. And the fact that the committee is mainly composed of members of the ruling SLPP party including its chairman suggests among other things that there is very little scrutiny of the sector. This is the case because it is difficult for party members to critically debate issues before it. Out of a total number of fifteen members, there are only two opposition members in the committee. It is also instructive to note that only two members are retired military personnel. This suggests among other things that there is very little military expertise within the committee membership and considering the lack of training opportunities, this is a lacuna that needs to be addressed urgently.

It is also obvious that in Sierra Leone, like in many other West African countries, the oversight functions of parliament are in most cases misinterpreted and considered with great suspicion by the people as designs to witch hunt individuals rather than as a necessary dimension of a democratic environment.<sup>24</sup>

Another major constraint of parliamentary oversight of the security sector in Sierra Leone is the lack of political will. The executive lacks

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<sup>24</sup> Interview with Clerk of Parliament, Freetown, Sierra Leone, 1 February 2005.

the political will to make parliament efficient as it is very reluctant to provide it with the much needed resources. Over the years there have been very little effort on the part of the executive to improve the working conditions of MPs. Additionally, excessive executive powers is a source of problem for the effective operation and strengthening of parliamentary institutions such as oversight committees. This is particularly the case where constitutional powers given to president are significantly greater than those accorded to parliament.

Parliamentary oversight functions are also stymied by the poor professional background, skills and knowledge of legislative and budgetary work of a significant number of parliamentarians. Over 80% of the parliamentarians are first timers and may lack the necessary grounding in the legislative and budgetary process. Less than 10% of the committee members are computer literate or operate e-mail. This may limit their access to information on parliamentary procedures.<sup>25</sup>

Another major impediment to effective parliamentary scrutiny and democratic accountability is the constitutional limitations on parliamentarians with regard to political party alliances in parliament. The 1991 constitution was designed to promote a healthy political competition in order to ensure effective checks and balances. Accordingly, the constitution provides for mechanisms to prevent not only the carpet-crossing of political party members but also the voting and sitting constantly with other political parties other than their own parties.<sup>26</sup> Though these provisions appear to be well meaning, they adversely affect parliamentary oversight functions as they deny members liberty to critically examine issues from their own individual perspectives in parliament.

In spite of the aforementioned constraints or challenges facing parliamentary oversight work in Sierra Leone, there are certain opportunities available especially as a post-war country. In the first place, the country's post-war recovery strategy, outlined in many national documents, including the Poverty Reduction Strategy Paper (PRSP) of 2005, has introduced several measures aimed at reforming Sierra Leone's security sector, even though emphasis appears to have been more on operational effectiveness than on democratic governance mechanisms. For example, only a sentence of the PRSP mentions that 'also the coordination and oversight mechanisms will be

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<sup>25</sup> Lahai, *op.cit.* 9.

<sup>26</sup> See Constitution of Sierra Leone, ACT No 6 of 1991, Section 77(I) (k).

transformed to ensure effective civilian control of the forces for transparency, accountability and responsiveness of the forces.<sup>27</sup> Also in the SSR Report 2005<sup>28</sup> oversight is repeatedly discussed mostly in relation to the executive, i.e. roles of the ministry of internal affairs, the National Security Council Coordinating Group, etc. with negligible roles for the legislature.<sup>29</sup> The recent Sierra Leone security sector reform programme seems to put more emphasis on oversight mechanisms. The box below lists the main strategies by which the Sierra Leone security sector reform programme aims to transform and improve the institutional capacity of security sector ministries, departments and agencies.

**Box 11.1**

**The Sierra Leone Security Sector Reform Programme: Strategies to Transform and Improve the Institutional Capacity of Security Sector**

- Policy and legislative reform;
- Training of personnel;
- Provision of adequate logistics;
- Establishment of effective inter-agency partnerships;
- Effective oversight mechanisms;
- Rehabilitation and reconstruction of facilities;
- Community ownership and participation in security related matters;
- Curbing cross-border smuggling and illegal trafficking;
- Conflict prevention; and
- Poverty reduction.

Source: Brig (rtd) Kellie Conteh  
Sierra Leone Case Study: Local Ownership of the Security Sector Review and Transformation Processes, in No Ownership, No Commitment: A Guide to Local Ownership of Security Sector Reform, ed. Laurie Nathan, May 2007

It is however noteworthy that the implementation of this programme is not problem-free. The main problems are related to the lack of sufficient national resources to fund the process, which therefore has to depend largely on international funding; the external dependence of

<sup>27</sup> Government of Sierra Leone, *Poverty Reduction Strategy Paper: A National Programme for Food, Job Creation and Good Governance 2005-2007*, March 2005. See <http://www.inf.org/external/pubs/ft/scr/2005/cr05191.pdf>, 119.

<sup>28</sup> *Sierra Leone Security Sector Review Report*, 2005. Security Sector Review Secretariat, Office of National Security, State House, Freetown, March 2005.

<sup>29</sup> Ebo A. The Challenges and Lessons of Security Sector Reform in Post-conflict Sierra Leone *Conflict, Security & Development*, Volume 6, Issue 4 December 2006, 481 – 501.

### *Sierra Leone*

the SSR process risks to undermine national ownership and sustainability of reforms. Other serious problems are the reluctance of some members of the security institutions to support the reform process primarily because it tends to obstruct the realisation of their own interest and finally, the lack of adequate knowledge and understanding of the process by civil society at large.

Secondly, the various international actors aiding the post-war transition programme are also providing support for parliamentary oversight through their engagement in the security sector reform programme, as analysed more in details in the following paragraph.

Besides externally-led programmes, important national initiatives, like the introduction of the above-mentioned MTEF budgeting process in 2001 and the creation of the ministry of parliamentary and political affairs to serve as a link between parliament and the executive, have also in a way helped parliamentary oversight work in the country.

Another development in Sierra Leone with a positive impact on parliamentary oversight work is the parliament's moves to networking with international parliamentary associations like the Commonwealth Parliament Association (CPA), the Inter-Parliamentary Union as well as with regional and sub-regional parliaments like the Pan-African Parliament and the ECOWAS Parliament. A weak aspect however is its interface with civil society groups in the country. In fact, most civil society groups are only recently beginning to see the need to venture into security matters as they were previously regarded as no go area. Very few are now emerging to break this myth including the Centre for Development and Security Analysis (CEDSA), a research think tank committed to the task of enhancing sustainable peace and security in the country through capacity building initiatives, sensitisation programmes and research.

#### *The role of foreign aid to parliament*

As a post-war country, Sierra Leone has also profited from some donor interventions to support parliamentary strengthening. Various international 'aid providers' engaged in the post-war transition process demonstrated to be very active in supporting the reform of the legislative framework of security sector governance. In this context, external actors play a central role in contributing to building the capacity for parliamentary oversight over the security sector in Sierra Leone.

The United Kingdom Department for International Development (DFID), for example, launched the Sierra Leone Parliamentary Development Support Project (PDSP) in 1998. The project was designed to enhance awareness of parliamentarians on their roles and functions as well as to enhance its capacity through the provision of necessary equipment and training.<sup>30</sup>

The British-led Sierra Leone Security Sector Reform Programme (SILSEP 1-3) that was initiated in 1998 also targets parliamentary oversight of the security sector. In the first place, SILSEP is aimed at restructuring and equipping of the security institutions to constitutionally and adequately perform their role in modern state building. Its major goal is the creation of sustainable peace in Sierra Leone to allow its government and people to make progress towards millennium development in a stable environment. Its specific objectives are the establishment of effective and appropriate civil control structures and efficient army command and management arrangements. Related to parliamentary oversight of the security sector are the legislative reforms to update the legal and constitutional frameworks, workable oversight, budgeting, control and civilian complaints mechanisms and support parliamentary oversight through workshops.

Finally, the National Democratic Institute, an US based institution affiliated to the Democratic Party, is also playing a crucial role in enhancing parliamentary oversight work in Sierra Leone's post-war transition programme. Its series of sensitisation workshops, especially on civil-military relations and on the role of parliamentarians, have proven to be very helpful.

In general, the above-mentioned SSR interventions have positively contributed to correcting certain negative behaviour of members of the armed forces, especially regarding human rights issues and issues of national commitment, thereby enhancing the professionalism and efficiency of members of the security forces. Concerning the impact on parliament, the SSR has at least facilitated a process of capacity assessment by the sub-committee on defence, internal and presidential affairs.

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<sup>30</sup> *Sierra Leone Parliamentary Development Support Project (PDSP) Project Memorandum and Framework*, October 1998, 12.

## **5. Conclusion**

This chapter has examined the opportunities and challenges of parliamentary oversight of the security sector in Sierra Leone. One of the major conclusions of the chapter is that Sierra Leone's authoritarian single party and military dictatorship and war background offer both challenges and opportunities for parliamentary oversight of the security sector. This is the case because during the long years of authoritarian political system in the country, parliamentary oversight was threatened by undemocratic practices of corruption, mismanagement and abuse of public office.

The study however acknowledges that the post-war situation provides opportunities for parliamentary oversight of the security forces as the post-war recovery programme prioritises parliamentary strengthening. The PRSP and security sector reform programme, for example, have programmes for parliamentary enhancement.

As discussed above, the various available opportunities have the prospects for enhancing this very important democratic principle. However, the prospects will be high if the following suggestions and recommendations are considered:

- Need for massive education and awareness building on the role of parliamentary oversight of the security sector in a democratic Sierra Leone. This would enhance the understanding of the citizenry including civilians and members of the security sector on the crucial role of oversight in a democracy. This could be through seminars, radio and television discussions;
- Need for training of members of the defence, internal and presidential affairs on the principles of security sector oversight;
- Need for capacity-building for the committee in terms of more trained staff, facilities including computers, research opportunities, mobility and increased support staff;
- Enhance parliament-civil society interaction through the creation of a common forum for exchange of views;
- Ensure the interaction of parliament and research institutions;
- Put in place an effective mechanism to facilitate interaction between the legislature and the executive as a basis for understanding, supporting and complementing each other's work;
- Strengthen civil society to research, analyse and synthesize information for use by parliament;

*Osman Gbla*

- Institute and support mechanisms for transparent public discussion of national budgets and other legislations before they are enacted.

## **PART III**

# **Conclusions**



## Chapter 12

# Towards a ‘Culture of Oversight’ of the Security Sector in West Africa

*Boubacar N’Diaye*

### 1. Parliament’s Strategic Role

As constitutional democracies spread around the world, the diverse ways in which they are structured raises the question of whether there is a single optimal role for legislatures in a constitutional state. More likely there are diverse roles for legislatures in diverse constitutional states due to historical, socioeconomic, and cultural variations among states. If we are attuned to such variations, we are likely to arrive at different answers to how legislatures can best function in varying societal context even as we hold constant the high level goal of furthering constitutionally democratic values.<sup>1</sup>

More than fifteen years ago, West Africa started to turn its back on the single party rule and the one-man-show authoritarian regimes—military or civilians—of the pre-1990s era. Though unevenly, and with varying degrees of commitment and determination, most states have adopted liberal democracy as a basic form of government and *modus operandi* for states and societal institutions. Since 1990, the year of the trend-setting *Conférence Nationale Souveraine* in Benin, every national constitution in West Africa has been changed at least once. Indeed in some cases such as Mali, specific clauses were pointedly added to entrench civilian control of the military and eliminated military coups. These include article 121 making coups an imprescriptible ‘crime against the Malian people,’ and the right and responsibility of all to reverse it. Similar amendments- typically meant to deepen democracy and strengthen the democratic character and functioning of institutions- were enacted, and hundreds of elections were held with, in some cases, a remarkable turnover of the political personnel. Remarkable changes were introduced that heightened the profile of the legislative branch and undermined, or at least

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<sup>1</sup> Gutman, A. 2006. Foreword in *The Least Examined Branch*, edited by R. W. Bauman and T. Kahana, X. Cambridge: Cambridge University Press.

questioned, the hitherto lock of the executive branch on national political discourse and decision-making.

In many states, Cape Verde being an example, the plenary sessions of the national assembly are broadcast on national radio along with other measures to make room for this institution. Chief among these changes, again with more or less sound processes and to uneven outcomes as a recent study chronicles,<sup>2</sup> were attempts to alter the manner in which the post-colonial state's security sector was managed. These efforts were geared toward synchronising democratisation and the governance of the security sector. A critical corollary to these efforts was the painstaking endeavour to recapture the pivotal role that fledgling parliaments, as the very symbols of democracy, were stripped of in the previous phase of the political evolution of the sub-region (and the whole continent, for that matter). That role is, of course, the legislative and oversight functions, as intended by the theoreticians of liberal democracy.<sup>3</sup> For any modern state, singularly African states, nowhere is that oversight function more important than in the security sector. No less than the fate of democracy itself depends on it.

As democratisation reached a feverish pitch in Africa in the mid-1990s, one of the foremost theoreticians of democracy identified five '[e]ssential conditions for democracy,' and listed '[c]ontrol of military and police by elected officials' as the number one condition.<sup>4</sup> It is unlikely that among the five fundamental prerequisites that Robert Dahl carefully selected, this one was listed first by chance. It is much more likely that this deliberate choice simply reflects the criticality for democracy that the means of coercion and how they are used be firmly under the authority of those who have been selected by the people to run the state and to make decisions. After all, some of these decisions will be enforced through coercion. This choice most likely also reflects the notion that for democracy to flourish, only those who are elected by the people can use or authorise the legitimate use of force, to the exclusion of all others. Indeed Dahl emphasises that '[u]nless the military and police [one might add the intelligence services too]

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<sup>2</sup> See Bryden, A., N'Diaye, B. and Olonisakin, F. 2005. *Security Sector Governance in West Africa: Turning Principles into Practice*, DCAF Policy Paper No. 8. Geneva: Geneva Centre for the Democratic Control of Armed Forces.

<sup>3</sup> See for example, Stuart Mill, J. 1991. *Considerations on Representative Government*, Buffalo: Prometheus Books; Locke, J. *Two Treatises of Government*, edited by P. Laslett. Cambridge: Cambridge University Press, 1988; Keefe, J. W. and Ogul, M. 1997. *The American Legislative Process and the States*, 9th edition. Upper Saddle River, NJ, Prentice Hall.

<sup>4</sup> Dahl, R. 1998. *On Democracy*, 148. New Haven: Princeton University Press.

are under the full control of democratically elected officials, democratic political institutions are unlikely to endure.<sup>5</sup> Dahl goes on to stress that:

...the most dangerous internal threat to democracy comes from leaders who have access to the major means of coercion: The military and the police. If democratically elected officials are to achieve and maintain effective control over the military forces, members of the police and military, especially among the officers, must defer to them. And their deference to the elected leaders must become too deeply ingrained to cast off.<sup>6</sup>

Of course, Dahl includes the executive among the 'elected officials.' It is well known, however, that the parliament is considered as the very embodiment of democracy and that, without its presence and proper functioning, there is really no liberal democracy. Indeed, in the evolution of a culture of oversight, the role of parliament is strategic.

## **2. State, Society and Parliaments in West Africa**

While it is beyond the purview of this study to examine closely to what extent the typical post-colonial state in West Africa, particularly after the shift operated in the 1990s, has adjusted its relationship with its society, it should be noted that the estrangement between the (West) African society and the modern state will make it more difficult for even the most democratically minded parliament to function according to the liberal model in existence for centuries in the West. In addition, remnants of the era of single party systems, i.e. plebiscitary elections and elections processes that lack integrity, have often led to the holding of fraudulent elections where the party that controls the executive nearly always wins. This resulted in parliaments with little legitimacy in the eyes of the public, the more so because, too often, most seats were held by politicians with dubious records and whose political career and strong ties to the party in power made them least likely to exercise faithfully their duties. This situation of course breeds cynicism among the populace and further undermines the legitimacy of the parliament because the institution itself ends up tainted when it is identified with such individuals and its actions and performance rest on them. Even though these two countries were not included in the study, the recent parliamentary elections in Togo and Mauritania amply illustrate this phenomenon.

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<sup>5</sup> *Ibid.*, 148.

<sup>6</sup> *Ibid.*, 149.

Of course, this is not to say that West Africans cannot learn from, and adapt 'best practices' from other parts of the world, indeed they can and should, as chapter 2 demonstrates. It is to say, however, that there is an added task for parliaments in West Africa. For, on top of the 'normal' difficulties even the oldest parliaments encounter in their constitutional functions (particularly the oversight of defence and intelligence sectors),<sup>7</sup> is that of functioning in an environment where major issues regarding its congruity with the socio-cultural milieu remain unsettled. In effect, post-colonial institutions in West Africa have all been inherited from the former colonial masters, and quite often, little or no effort was made to connect organically and culturally these institutions to the socio-cultural referents of the populations. It is reasonable to expect that this dimension of the interactions between institutions, branches of government and people's perceptions of these institutions will impact the degree to which parliaments fulfil their missions, on the one hand. On the other hand, it will affect the extent to which these institutions are accountable to the citizens. The very low turnout of the electorate at recent parliamentary elections in two of the countries studied (Mali and Senegal) may very well reflect, at least in part, this feeling that there is a gap between the institution and citizens. It may also reflect--another safe assumption--the sense of impotence voters—quite rightly—associate with the parliament (compared to the executive, for example). There certainly is a continuous effort, on the part of African parliaments to come to terms with the necessity to 'indigenise' this quintessentially Western institution. To be sure, worldwide, parliamentary elections tend to have a low turn out (and Africans voters may generally do a better job being present on election days). Nevertheless, not only is there a generally lower turnout than presidential elections (again, not unusual *per se*), there has been, for these two countries a steady and substantial decline in turn out when the two last parliamentary elections turnout are compared.<sup>8</sup>

The struggle by African parliaments to connect the institution with the population is illustrated in a recent study titled *African Parliaments*. The editor M.A. Mohamed Salih, states that:

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<sup>7</sup> See for example, Sammonds, N. (not dated). *A Need to Know: The Struggle for Democratic civilian oversight of the security sector in Commonwealth countries*, London: Commonwealth Policy Studies Unit; also Georges, B. and Morgan, J.D. *Parliamentary Scrutiny of Defense: Westminster—An Example or a Warning?*, unpublished conference paper.

<sup>8</sup> See Soudan, F. 2007. Pourquoi les Africains ne votent plus *Jeune Afrique/l'Intelligent* 2429 29 July-4 August, 72-74; and Seck, C. Y. 2007. Sénégal, désertion des urnes *Jeune Afrique/l'Intelligent* 2429, 29July- 4 August, 74.

while it was found that the generic functions of African parliaments are not different from those of their Western counterparts...they differ markedly in terms of the political culture within which they deliver these universal parliamentary functions. African parliaments operate at the pulse of society representing not only the modern forces (public, civil society, and party), they are also slaves (*sic*) of African ethnicity, regional interests, and patronage, Africa parliamentarians often undertake more burdensome functions such as managing local conflicts and participating in social events, from marriage ceremonies to death celebrations.<sup>9</sup>

Beyond these 'other' functions of the parliaments in West Africa, what is of concern is the extent to which the parliament as an institution borrowed from the Western experience has permeated enough African societies and socio-political relations and risen up to the singular challenges Africans face. The same study found that there has been a lack of coordination, if not a chasm between African parliaments and civil societies.<sup>10</sup>

Given the time elapsed since the launching of the current phase of the political evolution of African states, it is fitting that a reality check on what was accomplished so far is done. This study provides such a reality check. The sample of West African countries examined offers a unique insight into how the sub-region as a whole went about navigating arguably the most critical step away from the old ways and the adoption of new ways in the governance of security. It bears stressing that this 'reality check' focuses only on the role of parliament in the governance of security. As an external reviewer has rightly noted, such a focus may give only a partial picture of how the security sector is governed in West Africa's post-1990 political systems and that what is absent is a more detailed understanding of the complex nature of the relationship between the executive branch as a whole (not just the president) and all the components of the security sector. Such a study is most certainly called for but is not a prerequisite for this one.

One of the surest conclusions of this study has been that in spite of some progress here and there, West African countries have a long way to go to reach the objective of getting parliaments to play their rightful

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<sup>9</sup> Mohamed Salih, M.A. 2005. *African Parliaments*, New York: Palgrave MacMillan, 260.

<sup>10</sup> Mohamed Salih, *op. cit.*, 262-263.

role in overseeing adequately all facets of the functioning of their security sector. Another conclusion is that the countries studied are not at the same level in their efforts to make parliaments more effective in controlling how the security sector is run. They range from countries such as Ghana, and to a lesser extent the other former British colonies where parliamentarianism as a distinct feature of the political system was interrupted by *coups d'état*, to Mali for example where strong presidential systems were the norm. While the conclusions we reach broadly apply to all the cases, it is important to keep in mind that each of these states has charted its own course when it comes to parliamentary oversight (or the lack thereof) based on unique national socio-political and cultural realities. No country can be held out as a model or for having accomplished the most clear cut progress although despite serious shortcomings, Ghana and Mali seem to have achieved some progress. In other words, across the cases studied, a real 'culture of oversight' still needs to be established and nurtured. The clear challenge lying ahead is to arrive at a 'routinisation of oversight' that plainly remains far away in all the cases studied. This is true in the initial budgetary process, the control of spending, and the supervision mission of the various elements of the security system and their activities. It is certainly true in the initiation of framework legislation for the security sector.

In all the cases studied, legislation governing the general functioning of various bodies of the security sector was initiated by the executive branch, which thereby controlled its language, specific clauses, and other crucial aspects. In established democracies this may not raise any concerns given the scrutiny with which bills usually undergo in the legislative process, including the input of the society at large. In some West African states, however, in the absence of a strong tradition of legislation-crafting and parliamentary circumspection with regard to executive branch, especially in security matters and human rights, the will of the executive, no matter how ill-considered or detrimental it may be, inevitably becomes law. The necessary scrutiny and the checks on opposing views on such crucial issues just do not take place.

The general lack of initiative on the part of parliaments, even in cases where the constitution clearly gives them the power to impact on how the executive branch will manage its own powers in this area, is illustrated by the Nigerian example. While section 218 sub-section 4, of the Nigerian constitution clearly stipulates that 'the National Assembly shall have power to make laws for the regulation of a) the powers exercisable by the president as commander-in-chief of the

armed forces of the federation; b) the appointment, promotion and disciplinary control of members of the armed forces of the federation,' the Nigerian parliament did not exercise this particular responsibility, not even when doing so would have enabled the institution to put its imprint on how critical aspects of the powers of the executive in these areas are in turn exercised. This was particularly important given the major changes that occurred right during president Olosegun Obasanjo's first term, when a window of opportunity clearly opened for parliament to put its imprint on how the security sector would be run thenceforth. What this example suggests is that, even in one of the most well-endowed countries (with material and financial means, but also in terms of expertise, skills, and the political resourcefulness of the political class) there is no guarantee that the appropriate initiatives would be taken to affect the balance of power between the branches of government in the management of the security sector.

A remarkable observation across the cases is that there is an absence of any national security strategy as the overall framework in which security priorities, objectives, and policies are pursued. Where embryos of what could be construed as a national security strategy exist, (although contested among the security establishment and the political class for instance Nigeria), it was conceived entirely by the executive branch, without input or participation from the parliament. It is no wonder that these two branches of government typically worked, not in concert, but often in ignorance of each other on the critical issue of a national security policy. Of course, in the context of West African states where the preponderance of means and clout belongs to the executive, the parliament was invariably the loser. It is critical that parliaments (and executives, for that matter) put high on their agenda the necessity to craft a comprehensive, regionally informed, if not coordinated national security strategy to guide their activities, particularly in the security sector. The centrality of security in the future of each of the states of the sub-region (and the sub-region as a whole) demands it.

### **3. Assessing the 3 A's**

In nearly all the cases, the evidence shows that parliamentary oversight as commonly understood has been stifled throughout the single party regimes era with enduring deleterious consequences. The most nefarious of these has been what seems to be an extreme deference to the executive branch in all matters, especially concerning security. In some cases, the attitude amounted to a readily acknowledged abdication of responsibility by members of parliament.

Therefore, the re-establishment of proper oversight was bound to be difficult, even after the democratic opening of the 1990s and overall defiance of the state (as over represented by the executive branch in the typical West African state). Given the centrality of the security sector in the workings of all West African political systems, parliamentary oversight in this area was bound to be even more so. It is certainly true that this legacy and the widely accepted fact that parliamentarians, by the admission of most of those interviewed for this study, have very limited knowledge about security matters are objective reasons for this excessive deference to the executive. It is also undeniable that many parliamentarians have a strong personal ambition to end up in the executive branch, considered as the branch of government most likely to affect events and to make an impact on policy. These considerations, sometimes self-serving, cannot but affect the attitude of many parliamentarians toward the executive. Moreover, much less lofty reasons, the prospect for personal, illegitimate, indeed illegal, gains once they move to the executive side of government cannot be discounted as factors affecting the attitude of some parliamentarians. It is very likely that many parliamentarians hold back when it comes to carrying out their duty to hold to account representatives of the executive branch, particularly when corrupt practices are involved for the same reasons. Finally, in most West African countries, and certainly those in our sample, the political party that dominates the parliament and controls its agenda and activities always happens also to be the party of the chief of the executive branch. Their loyalty is to the party first and to its leader (typically the president), not to the parliament as an institution. This phenomenon also explains the extreme deference of parliamentarians to the executive.

Our sample presents ample evidence that in every aspect and step of what is supposed to be the proper oversight function of a parliament in a liberal democracy, West African parliaments fall short. More specifically, in about every area of the process of determining the ways and means of the security sector and ensuring that the executive branch is true to mandated ways and means (and only to them) as determined by the 'will of the people' through their elected representatives, there were large gaps between theory and practice and between constitutional and legal stipulations and actual performance and approaches. In all cases, the *authority* for oversight (as we operationalised it and its companion concepts in this study) was granted (though with uneven clarity and varying strength in the mandate) by the constitutions and other pertinent laws. In all cases, the constitution and relevant laws grant the power of the purse to the

parliament, as well as the power to question the government, to carry out investigations, and to scrutinise government actions through its defence and/or security committees. Much less discernable in most instances, is the *ability* of members of parliament to carry out oversight. Whether because of understandable deficits in expertise, knowledge or experience, or the very limited capabilities in material, staff, or funding, all the parliaments studied display a marked, though uneven inability to carry out their constitutional and legal duties. In addition, a significant number of parliamentarians in our sample are illiterate in the European languages used as official languages, which are, in some case, such as in Mali, quite shamefully, the *only* language allowed to be spoken during parliamentary sessions. They are also technologically illiterate, and will need to seriously update their skills in the use of modern technological tools to enable them to effectively carry out their mission in the security area. Consequently, what was also equally and uniformly lacking was the *attitude* and acumen displayed by parliamentarians in their oversight responsibilities.

These overarching observations and other more specific lessons of the study point to a variety of challenges parliaments in West Africa must overcome if the ongoing democratic experiments are to be given the boost they need to finally democratize the management of security sectors in the sub-region. There is no need to lament once more about the lack of capacities in so many areas states of the sub-region display. This has been decried enough and blamed not just on economic underdevelopment, but also a very poor use, if not mismanagement of resources. Of course, more rigorous and genuine parliamentary oversight would certainly mitigate the latter cause. Nonetheless, to create and encourage the culture of oversight we are calling for, the help of the international community will be essential. Starting as early as 1999, when the US based NDI held a seminar in Dakar on the parliamentary role in civilian control of the military, international NGOs have rightly understood the importance and interconnectedness of parliamentary oversight, the rule of law and respect for human rights for the consolidation of good governance, singularly the governance of security. Western donors, particularly the United Kingdom through various activities funded by DFID, have also demonstrated the interest they attach to the role of parliaments in the necessary redirection of the security sector. The recent United Nations Security Council report on the subject also reiterates the same interest for and central role of oversight i.e. that of the parliament specifically in SSR. This is to say that the donor community is certainly aware of the role it can play to foster parliamentary oversight.

Parliamentarians in West Africa are quick to stress their lack of capacity in every area and are eager to see donor resources be used to build capacity and enable them to address the challenges identified in the case studies. The most consistently heard request is the need to impart expertise in, and increase awareness of key aspects of parliamentary oversight of the security sector. This particular appeal can constitute a ready entry point for donor countries and institutions willing to help meet the challenges West African parliaments face.

The first of these challenges is, of course, to create an adequate context for the exercise by the parliament of its oversight and control function, in other words, the establishment of a national consensus on what national security strategy a given country ought to pursue, for what ends and according to what means. This forward-looking framework does not exist clearly in any of the case studies, which makes the oversight function lacking coherence and sense of purpose and direction. The little bit of oversight that exists in this vital area is necessarily *ad hoc* and haphazard at best. In effect, if one of the purposes of parliamentary oversight is to ensure that a given strategy is adhered to through a set of given policies and laws, how can oversight be normally carried out if there is no strategy in the first place and therefore no coherent policy to speak of? For one of the elements of oversight is to ensure that no significant deviation or distortion is made of set policies and that if, in the course of the oversight, a deviation or distortion is noticed, the proper corrections are brought to put back practice in line with intended policy, and more fundamentally, the law. Obviously this is impossible if there is no policy framework and defence and security activities are conducted largely according to the judgment or whims of the Executive (or parts thereof). As Len Le Roux put it, '[i]n the absence of such long-term plans, budgets are meaningless and *ad hoc* in nature, often leading to fruitless expenditure.'<sup>11</sup>

A recent study on budgetary practices using a sample of African states has found that all but one (South Africa) had no 'strategic defence plan' nor 'defence programmes' a budget for national defence is supposed to carry out, though all the countries did have, of course, a defence budget.<sup>12</sup> The same study concluded that the parliament's oversight of that military budget for all the countries studied, except

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<sup>11</sup> Le Roux, L. Parliamentary Oversight of Public expenditure management: A focus on security services *African Security Review* 15 (4): 38.

<sup>12</sup> Omitoogun, W. 2005. A Synthesis of the country studies in *Budgeting for the Military Sector in Africa: The Processes and Mechanisms of Control*, edited by W. Omitoogun and E. Hutchful, 228. Oxford: Oxford University Press, 2005.

South Africa again, was 'weak.'<sup>13</sup> Our study largely confirms these findings. More specifically, corruption is acknowledged as one of the most serious challenges West African countries and their political systems face in all the cases considered in the study. Parliaments, while not immune seem to be less affected by the scourge than the executive (since that is where relevant decisions are made), have not been able to play a significant role in combating it.

As already stated in the case studies, parliaments have typically shied away from vigorously tackling how budgetary prescriptions are carried out. Indeed, as one president of a defence and security committee admitted, he and his committee members pointedly did not 'ask certain questions.' While rhetorically all parliamentarians decry it, in the cases studied, no major legislation has been passed to combat corruption specifically in the security sector nor was any particular aggressiveness shown in areas where it is most likely to flourish, i.e. arms procurement. While it is well known that governments all over the world are rather reluctant to share information in this area,<sup>14</sup> security sector, and more specifically defence budgeting has been hands-off for the parliaments studied, leaving it particularly opaque and lacking the minimum of transparency. The excuse seems to be the lack of adequate knowledge and the necessary secrecy that ought to accompany sensitive issues such as the types of weapons systems with which the military is equipped. Admittedly, there certainly is a knowledge gap and lack of expertise among parliamentarians in many aspects of procurement, and the latter does require a certain balancing act between secrecy and accountability, as Le Roux rightly argued.<sup>15</sup> However, the knowledge gap and this requirement should not prevent scrutiny on the basis of budgetary and accounting principles and processes, in particular honesty, transparency and accountability.

To appreciate the importance for the parliament to exercise oversight, particularly in weapon procurement and related contracts, suffice it to recall that watchdogs of corrupt practices rank the defence industry as the number one culprit in such practices and that, according to the International Monetary Fund, 'procurement is an important channel through which corruption affects military expenditures,' and 'bribes account for as much as 15% of the total spending on weapons acquisition.' Therefore, the general abdication of this responsibility in the case studies is almost tantamount to a license for corruption.

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<sup>13</sup> Omitoogun, *op. cit.*, 246.

<sup>14</sup> Born, H., Fluri, P. and Johnson, A. 2003. *Parliamentary Oversight of the Security Sector: Principles, mechanisms and Practices*, 171-172. Geneva: DCAF.

<sup>15</sup> Le Roux, *op. cit.*, 39.

Over time, the high personal stakes in corrupt practices for members of the armed and security forces who are affected and for the executive branch make them even less receptive to parliament's genuine oversight. Of course, if conducted properly, careful oversight is likely to uncover criminal activities punishable with prison. Indeed, in some cases, individual members of parliament, as a price for their silence, become implicated in the cycle of influence trafficking and corrupt practices that accompany the procurements of arms and services to the military without the proper oversight. Here, it bears saying emphatically that corruption is not some tropical disease that affects only parliamentarians in Africa. As the recent case of Randall 'Duke' Cunningham, the chairman of armed forces committee of the United States Congress amply illustrates,<sup>16</sup> venality is a much widespread human flaw that can afflict even the oldest, most institutionalised parliaments. For West Africa where these institutions are new and weak, this only means that additional vigilance is required to insure that they take very seriously their oversight mission over the security sector so that these fledgling institutions do not fall prey to corrupt practices that are inherent in large purchases and contracts. Quite often transactions involve foreign partners (in the case of arms procurement and related activities) willing to tempt members of even the most regulated and scrutinised parliaments and states agencies to engage in corrupt practices as long standing 'ways to do business.' The Cunningham and other cases illustrate this abundantly.

Similarly, parliaments in our cases have also shied away from carrying out the responsibility and duty bestowed by laws and regulations to investigate major security related incidents, particularly when serious human rights violations occurred. In the majority of the case studies, there were high profile situations in which the armed and security forces, often under direct orders from members of the executive branch, have clearly violated the constitutional and legal rights of citizens. These events were often never investigated by the parliament of the country in which they happened. In the sample of countries studied there was, in some instances, a concerted effort on the part of parliamentarians (through the defence committee) to keep abreast of the deployment of troops outside the national boundaries,

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<sup>16</sup> See Broder, J. M. Lawmaker Quits after He Pleads Guilty to Bribes, *New York Times*, November 29, 2005. Mr. Cunningham pled guilty and received a long prison sentence for unlawfully accepting millions of dollars in gifts from defence contractors in return for legislative actions he initiated on their behalf. His actions, as chairman of the powerful defence committee in the House of Representatives generated millions in revenue for companies the committee was supposed to oversee.

usually in peacekeeping operations. There were even, more or less frequently, intermingling with the troops in their barracks. This is a positive development in Mali, Ghana and elsewhere. It has given parliamentarians a much needed reality check on the true living conditions of the troops and prepared them to fill the knowledge gap mentioned earlier as a serious handicap to their mission.

In all of the cases, with the possible exception of Ghana, the intelligence sector is completely left out of even the most modest oversight and control efforts. Evidently, this means that the executive branch is left entirely free to run this important aspect of the security sector. The politicisation of intelligence has always been a feature of the political development of African countries to devastating effects. The complete abandonment of any oversight to hinder at least that politicisation creates a serious risk for the whole democratisation process. Here too lies an important challenge to West African parliamentarians. Again, the various constitutions typically empower them to meet this challenge effectively through their legislative power first, and then through vigilant oversight. It is critical that this challenge be met given the importance of intelligence for and its utilisation by even the most democratically minded presidents in West Africa, let alone their counterparts who are not so inclined. Given the history of the abuse of intelligence agencies throughout the authoritarian era, this will not be done easily, although, here again, Ghana's example suggest that there is hope.

#### **4. Summing It Up: Realism and Policy Implications**

Lest our conclusions read unduly discouraging and pessimistic, it is important to hasten to add that it should not be unexpected that, at this juncture of the evolution of West African states, parliaments do not perform as centuries old parliaments do. As already stated, even these are still facing major hurdles. These hurdles are just compounded by underdevelopment and other predicaments highlighted throughout this volume. In spite of these hurdles, the last decade can already be said to have taught valuable lessons as West African parliaments stumble and fall, and start over, and even achieve small victories. For example, while not directly related to the oversight of the security sector, it should be recalled that in Nigeria parliamentary vigilance and efforts are widely credited for the failure of the third term bid president Olosegun Obasanjo is believed to have pursued in secret. In other words, these parliaments are still assiduously learning the ropes of the proper workings of liberal democracies and doing so under the heavy weight of a legacy of subjection to an overbearing executive branch.

This was not going to be easy. A positive development to point to is that parliamentary oversight and the need for checks and balance are now universally accepted. It is beyond rhetoric and lip service for any serious political actor that parliaments have a critical role to play as a watchdog for democracy generally, accountability and human rights, more specifically, and that they should be given the means to carry out their functions.

In other words, what is called for is the emergence of a veritable culture of oversight in West Africa as in the rest of the continent.<sup>17</sup> This simply means that as efforts on numerous fronts are carried out to consolidate the democratic openings of the 1990s, a special attention must be paid to ensuring that the propitious environment, outlook, consciousness, and conditions emerge and endure. Parliaments, to be sure, but also all who are concerned about security sector governance and see it as the centrepiece of democratic consolidation, including the donor community, must strive to make sure that the following obtains in each state:

- The solemn recognition by the executive, the head of state more specifically, of the role of the parliament as a co-equal branch of government and its role in security sector governance in particular;
- The creation or strengthening of support for, and close collaboration with organs of inspection, audit, and oversight within security sector agencies and bodies;
- A parliament that is widely perceived, and more importantly sees and asserts itself as the most representative of institutions, guardian of the republican principles on which the polity is formulated, and as a critical counterweight to the powers of the executive in all matters, security and human rights in particular;
- A parliament willing and eager to collaborate closely with civil society organisations, including security oriented think-tanks and media, and share with them the responsibility of overseeing the functioning of the security sector;
- A parliament eager to constantly upgrade its own capacity in security and constitutional/legislative matters as well as its expertise in investigatory techniques and methods;

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<sup>17</sup> Insightful critiques and suggestions by Hans Born and Eboe Hutchful were adapted to clarify our conception of the 'culture of oversight,' and in general improve an earlier version. We are grateful for these reviewers' suggestions, and hereby acknowledge their contribution.

- An institution ready to carefully follow all developments in the security sector of the country and, if needs be, willing to 'get to the bottom' of developments in the security sector that necessitate facts finding, investigation and evaluation;
- A parliament's and other supervisory organs within security forces or services' willingness to collaborate with external actors (donors, experts, as well as regional actors) to strengthen oversight and increase transparency;
- Parliamentarians' adoption and promotion of an image of reliability and earnestness for the institution, including through the adoption of a code of ethics with the highest standards for members of parliament; and,
- A citizenry that is aware of its constitutional rights in security matters and is willing to exercise its rights and responsibilities fully.

To sum up, while parliaments are the first line for bringing about that culture of oversight, control of the executive and its uses of the security sector in particular, oversight should not rest only on the shoulders of parliamentarians alone. It can be argued that the sub-region now has a rigorous and very capable civil society that has steadily accumulated a vast security sector related expertise. The responsibility and the duty for oversight, of being a watchdog over the commissions and omissions of the executive branch should also be shared by that civil society and the populace at large. In West Africa, the judicial branch also has an important role to play for the same purpose. It too has shared the experience of parliaments under authoritarian regimes of being dominated, tightly controlled, and used as a political instrument by the executive branch. A study of the judicial system's role in the security sector in West Africa will doubtless reveal the same flaws observed in this study of the parliament's role. Given that legacy of dominance of the executive, only a coordination of efforts between parliaments, civil society organizations, and the judiciary can stand a chance of balancing the scales in the management of the security sector. In the end, security sector governance will take the assertion of role of these actors, a critical press, an informed and engaged citizenry with a clear sense of civic responsibility, especially in the area of security sector governance. Given the stage of the political evolution in West Africa, to bring about that dispensation the very first step starts with and in the parliament.



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