

# The Role of Parliaments in SSG: The Case of Colombia



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## Introduction

Colombia has experienced more than sixty years of internal armed conflict, with state control contested by illicit armed actors ranging from Communist guerrillas and right-wing paramilitaries to drug trafficking organizations and criminal gangs.<sup>1</sup> Accordingly, security and defence is a policy area of vital importance. In the late 1990s, the defence sector took on increasing prominence in the policy arena when a succession of administrations increased military budgets and undertook a variety of professionalizing reforms. The Colombian Congress, however, plays a secondary role in governance of the sector, for a variety of reasons.

Historically, security and defence have been considered the purview of the executive branch, which is reflected in institutional arrangements (favouring the executive in shaping defence reforms) and in the attitudes of members of Congress (many of whom take little interest in shaping defence and security policy). In recent decades, incremental institutional changes have increased legislative oversight of the sector to some degree, including through a trend towards the appointment of civilian ministers of defence after 1991 as well as the creation of Senate committees on human rights (in 1992) and intelligence and counterintelligence (in 2013). Congress still has relatively scant formal authority in this area, however, and is hobbled by its lack of fiscal control, as the executive branch holds the power of the purse.

This is compounded by a deficiency of expertise among members of Congress when it comes to defence policy. The Colombian

Congress has no dedicated non-partisan research staff or facilities, and members have few incentives to develop such expertise for themselves. Indeed, most members see defence policy as a loaded issue that offers little opportunity to extract any benefit for their constituents (and thus for themselves), and simply steer clear of the issue. As a result, Congress often assumes a reactive role on defence policy, exercising minimal effective oversight and control. Given that the current climate in Colombia is characterized by political polarization, a precarious security dynamic with shifts in territorial control among armed groups, and ongoing concerns about human rights abuses, the prospect of implementing oversight reforms is made that much more complicated.

This text will examine the reasons for a lack of effective congressional oversight of the security sector in Colombia. In the next section, parliamentary functions (law making, budget control, and elective, oversight, and representation functions) will be discussed, using data and interviews to illustrate the authority, ability, and attitude of Congress in its interaction with the security sector. Then, common underlying difficulties across these functions will be analysed, along with new challenges brought about by the COVID-19 pandemic. The text concludes with recommendations aimed at increasing legislative capacity for effective security sector oversight in Colombia.

<sup>1</sup> Colombia's recent history has been defined by the war against drugs and its internal armed conflict. While leftist guerrilla groups have their roots in the early 1950s, levels of violence significantly increased in the 1980s, fueled by the rise of illegal drug markets dominated by Colombian cartels. While other Latin American countries moved away from authoritarianism in the 1980s and 1990s, Colombian electoral democracy struggled as it lost control over public security. With weak military and law enforcement capacity, Colombian governments moved between peace talks and open military confrontation with illicit groups, while making incremental reforms to increase the size and capacity of the armed forces. Despite improvements in many security indicators, including military ability and presence across national territory, Colombia remains riven by the recurrence of conflict.

## The means by which Congress exercises control over the defence and security sectors

As in other Latin American presidential regimes, the Colombian Congress is considered a reactive assembly.<sup>2</sup> In other words, though legislators can and do introduce legislation, it is the executive that sets the agenda in many policy areas and the President who introduces

the majority of bills, leaving the legislature to exercise its power principally by amending those bills. This is emphatically true on security matters, for which the legislative authority to introduce reforms is largely limited to initiating constitutional reform.

## The structure and authority of congressional committees

There is no dedicated committee for defence and security in the Colombian Congress. Rather, these functions are among those mandated to committees with a variety of responsibilities, and they are spread across multiple committees. The committees best positioned to take up security and defence reform are the First and Second Committees, which share the same areas of jurisdiction in the House and the Senate.<sup>3</sup> The First Committee is considered rather prestigious, with a mandate that includes constitutional reform, statutory laws, the administrative organization of the state, human rights, and related jurisdictions. The less prestigious Second Committee is also responsible for security and defence, but deals with international relations, treaties, and commemorative bills as well. There are other committees that handle administrative themes related to the special military labour regime as part of their broader purview (e.g., the Seventh Committee, which oversees labour, civil service, health, and the workplace), but have minimal responsibility for defence issues per se.

Table 1 (below) presents an overview of these congressional committees, showing for each committee the number of legislators assigned to it, its jurisdiction, the average number of votes taken by members, and the average number of terms served by members. Notably, the committee most responsible for addressing security and defence – the Second Committee – is among the smallest. The most prominent legislators typically sit on the First and Third Committees, while legislators on the Second have the smallest average number of votes and serve relatively few terms. The complexity of security issues is such that it often takes time for legislators to build necessary expertise, however, meaning that effective legislation and congressional control benefits from political incentives to develop individual understanding and institutional capacity. Yet in the case of Colombia, the opposite is true.

2 Scott Morgenstern and Benito Nacif, *Legislative Politics in Latin America* (Cambridge University Press, 2002); and E. Alemán and G. Tsebelis, eds., *Legislative Institutions and Lawmaking in Latin America* (Oxford University Press, 2016).

3 As established in the Congressional Rules and Procedures (Law 5, 1992).

**Table 1: Permanent committees, jurisdictions, and average preferential votes and terms**

Committee	Jurisdiction	Members		Average 2006-2018	
		House	Senate	Average votes per member	Average terms served
First Committee	Constitutional amendments, human rights, and matters of peace	38	22	41,260	1.8
Second Committee	International relations, security and defence, and local honours and commemorations	19	13	33,684	1.5
Third Committee	Treasury, fiscal reforms, and annual budget	20	16	39,333	1.8
Fourth Committee	Industrial regulation, financial reforms, and annual budget	27	15	36,128	1.5
Fifth Committee	Environment, agricultural policy, and natural resources	20	15	37,780	1.6
Sixth Committee	Communications, public services, and many others	18	13	34,619	1.4
Seventh Committee	Social security, labour	19	14	35,367	1.4

Source: Prepared by the author, based on data from [www.congresovisible.org](http://www.congresovisible.org)

To increase their chances of re-election and public recognition, the most experienced and influential legislators prefer committees with extensive mandates and high-profile jurisdictions, where legislators have a better chance of debating policy-related bills or delivering budgetary resources to their constituencies. Committee *formateurs*<sup>4</sup> assign members based on party recommendations and the preferences of legislators. In the case of the Second Committee, many legislators prefer to transfer to a different committee if they are genuinely interested in policy, and those who stay often do so to avoid being noticed. Indeed, the undesirability of the Second Committee among members of Congress is evident in its nickname - the President's Committee - which refers to the fact that it is often the landing spot for legislators who become the President of either the House or Senate, since these are powerful positions with high visibility and can compensate for service on lower-status committees.

<sup>4</sup> To establish committee membership, political party delegates form a commission to determine the number of party/coalition members in each committee and who will sit on each committee. The shape of intra-party negotiations varies, but the most-voted legislators (elected with the highest vote totals) and those with seniority have priority in choosing committee assignments.

## Legislative functions of congressional committees

The disparate political and institutional incentives of congressional committees are reflected in their legislative output. For example, during the presidency of Juan Manuel Santos (2010–2018), the First Committee oversaw almost 35% of the bills introduced in Congress, compared to only 12% for the Second Committee.<sup>5</sup> Moreover, the work of the Second Committee is dominated by treaties and ceremonial and commemorative bills. Out of 167 bills debated in the committee between 2015–2019, only 26 (15.5%) related to security; meanwhile, 58% were commemorative bills.

Overall, 315 bills dealing with issues of security and defence were introduced between 1998 and 2018.<sup>6</sup> Considering that an average of 450 bills are introduced per year in the Congress, these bills accounted for just 2.44% of all those advanced during this period. Of these, only 17 legislative initiatives and 16 executive initiatives were enacted, accounting for less than 15% of all the security and defence bills that were introduced; the notable difference being that most of the executive bills that were introduced were enacted, while legislative bills were frequently filed without ever making it to the floor.<sup>7</sup> Thus, the incentives for members of congress to introduce defence and security legislation are few, as these areas

are viewed as the jurisdiction of the executive. In recognition of this, some proactive legislators amend executive bills and claim credit for these amendments.

It is worth noting that most security-related legislative initiatives are introduced by right-leaning political parties, illustrating the political divide in this policy sector. Hoyos shows, for instance, that between 2015–2019, the right-wing Centro Democrático was responsible for 48% of defence and security-related bills, followed by the centrist Partido de la U with 12% of all initiatives.<sup>8</sup>

One prominent example of a recently approved security-related bill is the statutory Law on Intelligence and Counterintelligence, which established greater oversight over domestic intelligence gathering. However, its enactment as an executive-initiated law was preceded by numerous failed bills introduced by legislators, especially by one particularly dedicated Senator. Indeed, Senator Jairo Clopatofsky from the Partido de la U was the only legislator who showed sustained interest in security legislation over several years, introducing four bills that never made it to the floor (see Table 2).

5 Cristina Hoyos, “Supervisión Legislativa del Sector de Seguridad en Colombia,” Hotel Stelar, Bogotá, 5 September 2019; Mónica Pachón Buitrago, *Seguimiento legislativo y control político al sector de seguridad y defensa en Colombia: Estudio de referencia* (DCAF, 2020).

6 This includes bills that originated from both the executive and the legislature, as well as bills that are bundled together with other bills once introduced into the legislative process. If these are not counted as separate bills, the total number is 212.

7 During this period, former president Alvaro Uribe led the security and defence agenda by enacting a significant number of bills, including reforms of the disciplinary regime of the police and armed forces, the military penal code, and oversight of intelligence and counterintelligence, and changes to military career progression and the benefits awarded to military officers.

8 Hoyos, “Supervisión Legislativa del Sector de Seguridad en Colombia.”

**Table 2: Bills related to intelligence and counterintelligence, 2003–2021**

Senate number	Author	Subject of Bill	Result
75/03	Senator Jairo Clopatofsky	Special Committee on Intelligence and National Security of Congress	Filed
193/03	Senator Jairo Clopatofsky	Special Committee on Intelligence and National Security of Congress	Filed
216/04	Senator Jairo Clopatofsky	Intelligence and counterintelligence legal framework	Filed
163/06	Senator Jairo Clopatofsky	Intelligence and counterintelligence legal framework	Filed
178/07	Minister of Defence Juan Manuel Santos	Intelligence and counterintelligence legal framework	Declared unconstitutional
180/07	Senator Jairo Clopatofsky	Intelligence and counterintelligence legal framework	Filed
211/07	Senator Luis Fernando Velasco Chaves	A legal basis and normative framework for the organization and operation of the National Intelligence System	Discussed jointly with another bill
263/11	Senator Juan Manuel Galán and Minister of Defence	Intelligence and counterintelligence legal framework	Enacted
126/20	Senator Manuel Jose Cepeda	Regulating the Intelligence and Counterintelligence Data and File Debugging System	Pending first debate

Source: [www.congresovisible.org](http://www.congresovisible.org)

In 2007, on the initiative of the executive, a bill on a framework for intelligence and counterintelligence was debated and approved, but the Constitutional Court declared the law unenforceable. In 2011, for the eighth time since 2003, a new version of this statutory law was introduced in co-sponsorship with the executive and was finally enacted in 2013. This case exemplifies how difficult it can be even for

legislators who are dedicated and interested in reforming the sector to introduce defence and security bills that get any institutional traction. All told, this legislative process took more than a decade and was only possible when the bill was put forth by the executive and was actively advocated by the Minister of Defence through legislative procedure.

## Budgetary functions of Congress

Legislative inexperience and a lack of technical capacity extends to budgetary matters as well, and is not exclusive to security sector policy areas. While other North and Central American presidential regimes give legislators the power to introduce bills with fiscal disbursement, legislators in Colombia cannot introduce budgetary bills themselves and are limited to proposing amendments to the four-year development plan and annual budget bill. These modifications cannot increase the size of the budget, though, and must be approved by the executive.

Further, unlike other countries in the region, such as Brazil, Mexico, Peru, or Ecuador,<sup>9</sup> the Colombian Congress lacks an independent, non-partisan technical office to provide independent analysis and fiscal policy assessments.<sup>10</sup> This institutional design means that scarce information is available on the military budget, despite the fact that military spending accounts for 18% of the national budget, or the equivalent of 3.5 points of annual GDP. The Defence and Justice Unit of the National Planning Department, an executive branch office in charge of investment planning, offers no public information beyond some bulletins published in 2012 and 2014.<sup>11</sup> Reports to Congress from the Defence Minister offer data only at the executing unit level, without any further detail of expenditures.

While legislative debates should, in theory, include input regarding the annual budget, the time allotted for this in the Colombian Congress is limited, and deeper deliberation is possible only in committees.<sup>12</sup> The Ministry of Finance is thus required to introduce the budget in the first ten days of July to allow for formal debates within economic committees. Initial informational sessions outline the size and total amount of the budget; while the second formal round, which starts in September, concerns budget composition. When approved, the budget bill must be ratified on the floor of both houses of Congress.

Significantly, amendments can be introduced to budget bills, and they offer an annual view of the debates legislators seek and the interests they have (See Annex 1 for examples of amendments). The budget bill is a yearly opportunity to negotiate the regional allocation of specific projects and signal preferences for and against certain policy concepts. In the case of defence and security, legislators from more left-leaning parties with pro-peace positions advocate reducing resources in this area and redirecting them towards science and technology and social investment, while right-leaning legislators tend to argue for greater security and defence expenditures in order to consolidate the state's presence across the territory of Colombia.<sup>13</sup>

## Elective functions: promotions as a form of control over the armed forces

The Colombian Senate has the constitutional power to review and ratify promotions of officers of the national military and police forces (Article 173, CPC). The ratification process begins in the Second Committee and moves

to the full Senate, and takes place in June and December of each year. The promotion process commences with the publication of a dossier on each officer in the Congressional Gazette, after which a committee chair selects a rapporteur(s),

9 Adriana Francisca Salinas, "La Oficina de Asistencia Técnica Presupuestal (OATP) como medida de transparencia fiscal," 11 April 2019. Available at: <https://www.ofiscal.org/post/2019/04/11/la-oficina-de-asistencia-t%C3%A9cnica-presupuestal-oatp-como-medida-de-transparencia-fiscal> (accessed 21 February 2021).

10 A bill creating the "Oficina de Asistencia Técnica Presupuestal" was recently enacted (Law 1985, 30 July 2019), but implementation has been delayed.

11 See: [www.dnp.gov.co/programas/justicia-seguridad-y-gobierno/Paginas/justicia-seguridad-y-gobierno.aspx](http://www.dnp.gov.co/programas/justicia-seguridad-y-gobierno/Paginas/justicia-seguridad-y-gobierno.aspx)

12 Ayala Ulpiano and Roberto Perotti, "The Colombian Budgetary Process" in *Institutional Reforms: The Case of Colombia*, edited by Alesina, Alberto (Cambridge, MA: MIT Press, 2005).

13 The security and budget debate has also recurred over the last two decades in bills related to taxation and defence bonds (See: Gustavo Flores-Macías, "Financing Security Through Elite Taxation: The Case of Colombia's 'Democratic Security Taxes,'" *Studies in Comparative Development* 49 (2013): 477-500). In 2002, Alvaro Uribe Vélez decreed a military build-up, funded by a tax on individuals and firms with incomes over 60,000 dollars (See: Juan Forero, "Burdened Colombians Back Tax to Fight Rebels," *New York Times*, 8 September 2002). Congress passed a third security tax for 2007-2010, following previous decrees enacted during states of emergency, and the impact of these "democratic security taxes" was significant (Flores-Macías). Uribe subsequently passed four security taxes to fund refurbishment and updates of military equipment. In 2009 a final tax covering four consecutive years (2011-2014) was passed to consolidate the National Development Plan.

who produces a report consisting of positive or negative promotion recommendations for each Navy, Army, Air Force, and National Police officer. Legislators are responsible for studying all the relevant documentation, including the resumes of officers (education, promotions, positions, distinctions, and commissions), as well as legal and disciplinary reports. This documentation may also include any Human Rights and International Humanitarian Law (IHL) investigations of officers, which hold significant weight as they receive considerable attention from civil society organizations and the media.

The vast majority of officer promotions are ratified by the Senate (see Table 3). Nonetheless, these deliberations provide an opportunity for legislators to raise concerns about security and defence issues. When the armed forces or police have been involved in recent scandals, for example, and particularly when they relate to human rights issues, this may be brought into focus by left-leaning parties and legislators. These opposition forces usually vote no on promotions or abstain.

**Table 3: Examples of votes in committee and on the floor for military promotions**

Year	Vote	Total promotions	Yes votes	No votes	Abstentions
2010	Floor	33	63	0	30
2012	Floor	2	54	8	34
2013	Committee	1	8	5	0
2014	Committee	39	7	1	5
2014	Committee	40	7	1	3
2015	Floor	40	57	4	39
2019	Floor	40	68	0	2

**Source: Pachón Buitrago, 2020. Note that this data does not include every year between 2010 and 2019.**

Individual legislators or committee members rarely possess the ability (or interest) to investigate and verify information regarding the security concerns linked to officers up for promotion, but NGOs, media, and other actors use debates on promotions to undertake research and provide information that can become part of the legislative record and gain media coverage. In 2008, for instance, the news magazine *Revista Semana* publicized the military murders of more than 4,500 civilians who were falsely identified as guerillas killed in combat.<sup>14</sup> This “false positives” scandal, as it became known, ended in the dismissal of more than 32 active officers. Since 2018, at least

26 high-ranking officers have been removed from their posts for scandals uncovered by the media.<sup>15</sup> This media and NGO attention on promotions equips legislators to make more informed decisions about promotions than they otherwise could. Yet, there are some risks from a reliance, or over-reliance, on information from external sources – which may not be recognized as impartial by all parties involved.

Access to information and a basic knowledge of security apparatuses are critical to the effective control of military and security forces, but in interviews with legislators, most admitted knowing little about the security sector.<sup>16</sup> Members of security forces view

<sup>14</sup> The figure varies depending on the source.

<sup>15</sup> For example, see: “Sigue purga en ejército, llamados a calificar servicios 9 oficiales,” *El Tiempo*, 24 May 2020, <https://www.eltiempo.com/justicia/investigacion/sigue-purga-en-ejercito-llamados-a-calificar-servicios-9-oficiales-498894>; or “Martínez ascendió a varios militares relacionados con las carpetas secretas,” *La Silla Vacía*, 12 May 2020, <https://lasillavacia.com/martinez-ascendio-varios-militares-relacionados-las-carpetas-secretas-76647>

<sup>16</sup> To counteract the lack of information in these processes, opposition legislators have introduced various bills intended to suspend promotions for any public force officer who has an open investigation at the time of promotion, and to make it compulsory for

this lack of knowledge among members of Congress as a threat and, consequently, strategically engage with only well-informed and sympathetic legislators, who are considered one of the “troops” (*propias tropas*). The Ministry of Defence tends to rely on these legislators, both in the policy-

making process and for support on issues like promotions. House member Juan David Vélez of the Centro Democrático is an example of such a sympathetic lawmaker with an interest in defence policy. In an interview, he described a lack of understanding of the security sector among his fellow lawmakers:

*I believe that what we see here are great political speeches with a lack of knowledge, in this case, of military matters. I think that Congress requires a closer relationship with the Public Force to have an even greater understanding of the capacity, strategy, knowledge of operations, of International Humanitarian Law, and the different procedures that the Armed Forces carry out in our country. Of course, debates must have a political component; we are politicians. We should also have more solid arguments... in some way more technical.<sup>17</sup>*

Legislators who are uninterested in either security or defence policy may condition their support for specific promotions on assistance or favours paid out to their constituents, to their contacts within the armed forces, or to themselves. They may request that an individual receive a more preferred post, for example, or

may conversely want an officer to be pushed out of the force. This represents an additional burden on the promotion process, and can generate tensions that result in additional constraints on the availability of information from security actors.<sup>18</sup>

## Oversight functions: how Congress keeps tabs on the security sector

Hearings are critical to interactions between the executive and Congress, which can call hearings (*citaciones del control político*) in an attempt to hold the executive branch accountable, as well as to represent their constituents by debating issues of concern. Congressional rules (Law 5 of 1992) establish that Congress can call cabinet members and other public servants to testify in a committee or floor session to explain the implementation of a specific policy. Public servants have five days to appear once they are summoned, but are not under oath; meaning, there is no criminal penalty for lying. Senator Rodrigo Lara (Cambio Radical Party) considers this a significant shortcoming of institutional design.<sup>19</sup>

Colombia’s security and defence apparatus includes public servants in the Ministry of National Defence, the Superintendency of

Surveillance and Security, the General Command of the Armed Forces, the National Director of the Police, and the Colombian Institute of Legal Medicine and Forensic Sciences, as well as in each of the decentralized institutions that belong to the Ministry of Defence. Hearings dealing with security sector issues serve as an opportunity to draw public attention to these issues, particularly in cases of potential wrongdoing by security actors. In this vein, recurring themes include: violent encounters by civilians with security forces, involving possible police or military abuse; regional increases in criminality and violence; and ongoing security situations such as military tensions on the border with Venezuela.

While hearings are held frequently, it is unclear whether they generate new information that informs public policy implementation,

civil society organizations to have a say in promotions. For more, see: “El proyecto que busca responsabilizar a congresistas por votar ascensos cuestionados,” *El Espectador*, 20 July 2020, <https://www.elespectador.com/noticias/politica/los-proyectos-para-reformar-al-ejercito-que-aterizaran-en-el-congreso/> (accessed 21 February 2020).

17 Interview by author with House member Juan David Vélez, December 2019. Translated by author.

18 Interview by author with former legislative liaison officer, 14 December 2019.

19 From comments at a seminar, Bogotá, 3 September 2019. The Senator, discussing hearings, said: “We have to find the mechanisms so that political control is really effective in our country. One of our missions, perhaps the most complicated, involves empowering the Congress of the Republic, *giving it sharper teeth*, so that it assumes the oversight role that our democracy needs.”

especially given that testimony is not taken under oath. Table 4 shows the security and defence hearings scheduled in permanent committees from 2014 to 2018. It is clear that the First and Second Committees schedule the most hearings in this area, with other committees carrying out only a handful. In the First Committee, security-related hearings

represented 22% of all the hearings held, and in the Second Committee, these hearings accounted for more than half the total hearings. It is notable that, while most hearings are held in committee – with only 19% taking place on the floor – those held on the floor draw the most media attention.

**Table 4: Scheduled security-related hearings by committee, 2014–2018**

	<b>Total Hearings</b>	<b>% Total Hearings</b>	<b>% Committees</b>
First Committee	33	18%	22%
Second Committee	100	54%	67%
Third Committee	2	1%	1%
Fourth Committee	2	1%	1%
Fifth Committee	3	2%	2%
Sixth Committee	2	1%	1%
Seventh Committee	7	4%	5%
Total all committees	149	81%	100%
Senate Floor	14	8%	40%
House Floor	21	11%	60%
Total committees and floor	184	19%	100%

Source: [www.congresovisible.org](http://www.congresovisible.org)

The most common issues raised in hearings relate to public order disturbances in different regions of the country, human rights violations (generally linked to the actions/ineffectiveness of security forces), and security for victims of armed conflict (see Table 5, below). When it was still ongoing, the historic peace process between the Colombian government and Fuerzas Armadas Revolucionarias de Colombia (Revolutionary Armed Forces of Colombia, or

FARC) also accounted for a significant number of hearings (20%) during this 2014–2018 period. Likewise, hearings were held on the subsequent effects of this and other peace processes with illicit armed groups, as well as on border-related challenges, especially with Venezuela. Hearings that focus on security sector budgeting and administration or intelligence and counterintelligence are relatively rare.

**Table 5: Themes addressed in security-related hearings scheduled and convened, 2014–2018**

Themes	Scheduled	% of Total	Convened	% of Total
Administrative issues of the Armed Forces	5	3%	2	3%
Arms	4	2%	3	4%
Illicit crops and drugs	8	4%	2	3%
FARC	8	4%	2	3%
Intelligence and counterintelligence	3	2%	0	0%
Law and order issues at the national level	11	6%	5	7%
Law and order issues at the local level	29	16%	12	16%
Frontier problems and security	15	8%	8	11%
Peace process related issues, victims	34	19%	14	19%
Human rights violations	22	12%	8	11%
Security and victims	3	2%	1	1%
Human security	8	4%	6	8%
Others	29	16%	11	15%
Total	179	100%	74	100%

Source: Pachón Buitrago, 2020.

An analysis of the percentage of hearings scheduled versus those ultimately convened reveals that about half of scheduled hearings never occur. When asked about this disparity, congressional staff members said that much depends on a given legislator's relationship with a committee chair. The consequence of this is that members of the opposition face a disadvantage in using hearings as an accountability mechanism, compared to members of the governing coalition, which weakens the value of hearings as means of exercising effective control more broadly. While most hearings have no visible direct impact, this control mechanism is nonetheless essential; and in some cases, hearings have generated enough pressure on cabinet members to force them to leave their posts. In November 2019, for example, the opposition held a hearing to reveal that military officers had killed seven minors in a confrontation with illegal forces that the government had conveyed as a great success against a dissident FARC group. The scandal was followed by an attempted no-confidence vote and ultimately led to the resignation of the Minister of Defence.<sup>20</sup>

While the legislative procedures of the Colombian Congress still render hearings relatively ineffectual, the enactment and implementation of the Opposition Statutory Law in 2018 has helped empower the opposition and promote a more accountable relationship between Congress and the executive branch.<sup>21</sup> The law stipulates opposition members must be among committee leadership, allows opposition members to set the order of the day in three sessions of the legislative year, and establishes a sanction for public servants who don't attend opposition-scheduled hearings.

Specialized debates in which classified information is presented are now mandated to the bicameral Committee on Intelligence and Counterintelligence, created in 2013 by the statutory law discussed earlier. However, sessions began only recently in this committee, which lacks staff, the organizational capacity to protect archives, and facilities secure enough to host discussions of classified materials. Still, an amendment to strengthen this committee is unlikely to be adopted in the near term.

20 Pachón Buitrago, *Seguimiento legislativo y control político al sector de seguridad y defensa en Colombia: Estudio de referencia*.

21 "Por medio de la cual se adoptan el estatuto de la oposición política y algunos derechos a las organizaciones políticas independientes," Law 1909, 8 July 2018.

## Challenges and limitations to the role of Congress in security sector governance

Even though the Colombian Congress is highly institutionalized and plays a crucial political role in the approval of laws, with ample jurisdiction over essential policy areas, it has limited technical capacity relative to the executive. As this text has shown, the role of the executive and the legislature is differentiated in the context of security and defence policy, with a structural imbalance between branches. Legislators have few incentives to specialize and develop expertise, since the executive branch firmly controls most of the legislative activity in this area, and given the sensitivity of security topics and the time it takes to understand them, most lawmakers decide it isn't worth the significant effort to engage in policy topics seen as less electorally profitable than an array of others. Hence, few legislators show an interest in defence and security matters and the Second Committee – the purview of which includes defence issues – is not considered an attractive committee assignment for ambitious members of Congress, as it is often invisible to the government and to the media. Even on the Second Committee, defence takes a back seat to international relations and commemorative bills, which are much more frequently on the agenda. For the most part, questions of security are addressed in hearings, which can happen in any committee or in the plenary.

Legislators on the First Committee, on the other hand, receive a great deal of attention

from both the government and the media. The Committee is tasked with constitutional matters, making it permanently relevant in political negotiations, as the committee vote is an important bargaining chip. Thus, most legislators want to serve on the First Committee, while most see the Second Committee as a last option.

In theory, Congress should play an essential role in governance of the security sector. In practice, however, members of security forces tend to be sceptical about the competence of most legislators and their ability to act reasonably and wisely. As a consequence, all parties involved attach a high transaction cost to information exchange; and a lack of information results in a lack of institutional trust. Given the new role for the opposition, discussed earlier, interactions between the Ministry of Defence and the legislature are often fraught and even antagonistic. This lack of expertise and trust extends even to members of the executive branch and to civil servants in the Ministry. Yet, given its salience, nominations to positions in the Ministry have significant political outcomes.

Many of the experts consulted for this text questioned the capacity of former Ministers of Defence to lead the armed and security forces, in light of the complexities of the Colombian security context. One noted that:

*A civil defence minister should be an arbiter. But... how does one help to command something that one does not know? What do I mean by this? If you want them to be civilians (referring to the Minister of Defence), okay! But then have civilians who know about security and defence, who understand that the military forces function as structures and that the police forces by unit; know the ranks, know the anthems! Look, silly as these things are, the mentality of people who belong to the military and police forces is different; their language is different...<sup>22</sup>*

Because the civil conflict has lasted for so long in Colombia, security issues constitute a significant policy cleavage in the political system, with the “right” promoting an armed solution and the “left” advocating “political negotiations” to end the violence. These discursive associations make it more likely for defence and security expertise per se to

develop among congressional members on the right. In an interview with House member Juanita Goebertus of the Green Party, a former employee of the Minister of Defence, she discussed the tendency of left-wing lawmakers to withdraw from defence issues, explaining that when “political control of the defence sector” was being debated:

22 Interview by author.

...congressmen, whom I admire a lot... and despite having the information on the table, said: on this issue, we do not want to get involved, it is better to have good relations with security forces, do not step on their toes, [do not] discuss sensitive topics... A feeling of “solidarity” to honour and protect members of our security forces meant not controlling them... (emphasis added).<sup>23</sup>

Among right-leaning legislators, those with specialized knowledge in this area often defend the armed forces and their performance from left-leaning members of Congress.

They rationalize the need for this “defence” by emphasizing the perceived vulnerability and victimization of service members.

## International assistance: thinking strategically about security sector cooperation

Over the past five years, a common concern of international cooperation in Colombia has been the Peace Agreement signed with FARC in 2016. Soon after, national and international NGOs joined forces and led discussions to invite all interested parties in the public sector to think strategically about the “post-conflict era,” or at least the post-agreement era. Most of these efforts are directed towards strengthening the capacity of legislators to exercise effective oversight of implementation of the Peace Agreement, but many activities relate to the security sector. For instance, FESCOL (Friedrich-Ebert-Stiftung Colombia) and the Colombian NGO Fundación Ideas para la Paz (Ideas for Peace Foundation) have been involved in leading expert workshops that bring together high-level armed forces officers, policymakers, and national and international academics to exchange ideas and experiences and shed light on needed reforms in the security sector.

Other workshops organized by FESCOL, the Open Society Foundation, and local civil society partners have gathered participants from across the political spectrum and from public institutions involved in criminal-legal, judicial, and security matters. Still, Professor Arlene Tickner, who has led some of these recent discussions, noted in an interview that legislators do not usually participate. Indeed, despite a recent initiative by DCAF to directly engage legislators from all political parties, only some have gotten involved in these information sharing efforts; overall, their numbers are still

quite low.

Another project aimed at building capacity among legislators has taken them into “the field” and is known as *De Capitolio al territorio*.<sup>24</sup> This multiparty effort, led by House member Juanita Goebertus and funded by the UK, the Open Society Foundation, and the International Republican Institute (IRI), facilitates the travel of Congress members throughout the country so that they can observe implementation of the Peace Agreement, gather testimonies, and analyse the achievements and challenges of this process alongside experts. While most activities of the project are formally carried out through the Legal Peace Committee, donors suggested in several interviews that Goebertus’s legislative team carries much of the burden.

According to IRI regional representative Gabriela Serrano, most of the programmes they have supported in Congress work in a similar way: funding is allocated to activities for legislators, travel assistance, and staff - who are put in charge of implementing planned activities. Since Congress has such limited technical capacity and its staff is administrative, institutional relations between staff and committees or plenaries are unusual. Further, committee chairs hold their posts for only one year, and this lack of continuity makes it difficult for international cooperation agencies to maintain close associations with relevant committee leadership. Thus, international cooperation activities in Colombia

<sup>23</sup> Interview by author with Juanita Goebertus, December 2019.

<sup>24</sup> See the website of the project here: <https://delcapitolioalterritorio.com/>

benefit from legislators who have a proven interest in security sector oversight as well as a willingness to invest their time, staff, and

influence into persuading other legislators to expand their knowledge of the sector.

## Additional challenges and limitations to security sector governance in the COVID-19 era

Since the global COVID-19 pandemic began, over 55,000 Colombians have died from the virus. The crisis has represented a grave challenge to individuals and institutions across the country, and the legislature is certainly no exception. While most institutions have adapted in one way or another to working remotely, the Colombian Congress has needed some time to adjust. It took two months just to debate whether they could meet and vote remotely, and whether those virtual sessions would be legal and constitutional. While these discussions were ongoing, an emergency declaration by the President assigned all legislative power to the executive; and in the first 90 days following the emergency declaration, 70 decrees were issued, with another 50 promulgated in the 90 days after that.

Given this extensive unilateral power of the executive, the legislature developed a parallel agenda that was not tied to the legislative activity of the President. From July to December 2020, only 4.42% of the bills introduced in Congress were put forth by the executive, which is usually responsible for 12–15% of the bills brought up in each legislative period.<sup>25</sup> The Visible Congress Project, or Congreso Visible, reported that the legislature also held more than 100 hearings during this time.<sup>26</sup> While some legislators saw this as a positive development, others became entrenched in intense debate over the urgency of mixed or

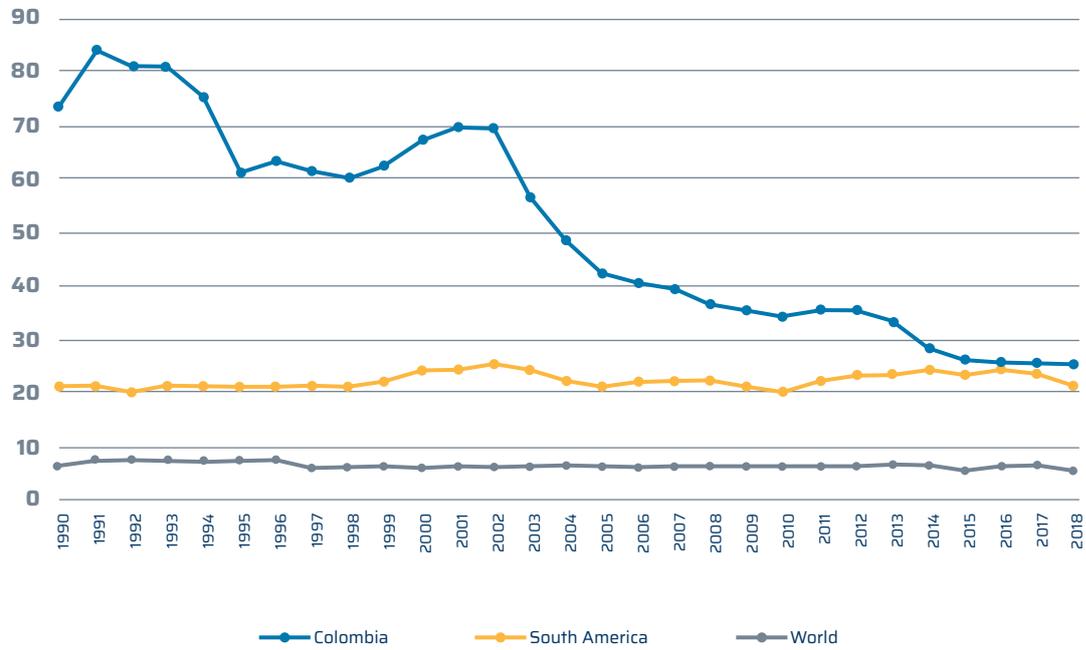
face-to-face sessions, with some arguing that it was impossible to exercise effective control or oversight using remote-access software. As of January 2021, however, Congress was still using Zoom to hold sessions.

Among the themes debated in the legislature during the pandemic have been abuses of force by police and the recurring assassinations of community leaders. The lockdown has empowered police with greater enforcement authority to ensure that citizens comply with restrictive measures, such as by stopping citizens on the street for no reason except that they are outside their homes. News reports of police abuses have appeared on every media outlet, and the confidence of citizens in the police has declined. Moreover, violence across the country has not been brought to a stop by the demobilization of FARC. While homicide rates have dropped steadily since 2002, they are still very high by international standards (See Figure 1). Organized violence also remains a major threat, and community leaders have been the most frequent targets; according to INDEPAZ, 91 were assassinated in 2020. Consequently, the campaign promise of higher security without impunity made by President Duque has not yet been delivered, adding another layer to the already complicated reality of economic and social despair in Colombia that has been augmented by the COVID-19 pandemic.

<sup>25</sup> See: <https://congresovisible.uniandes.edu.co>

<sup>26</sup> Erika Cepeda and Beatriz Gil, "Balance Legislatura 2019-2020," Congreso Visible, 7 July 2020. Available at: <https://congresovisible.uniandes.edu.co/agora/post/balance-legislatura-2019-2020/10630/> (accessed 21 February 2021).

**Figure 1: Comparison of homicide rates in Colombia, South America, and the World, 1990-2018**



Source: UNDOC, United Nations Crime Trends Survey (UN-CTS).

## Conclusions and Recommendations

As Grabendorff argued in 2009, the defence and security reforms passed in Colombia thus far have had as their primary objective “completing and guaranteeing the presence of the state in the territory,” with the possible exception of early modifications to the organization of the armed forces in the 1991 Constitution. The persistent threat of illegal armed groups over decades has shaped the most significant reforms and budgetary efforts, which have therefore been aimed at increasing the capacity of security forces – especially their ability to coordinate and gather intelligence. Though some legislators and academic experts seek holistic security sector reform (as discussed above in the context of international cooperation), it is difficult to follow through on such initiatives under the pressure of these internal security challenges. As a result, structural reform of the National Police has not been tackled since 1993, with only minimal measures taken subsequently.<sup>27</sup>

The opposition has raised questions about the lack of capacity on the part of Congress to exercise effective control and be proactive on defence and security policy, but reforms meant to increase legislative capacity to exercise this oversight have been modest at best. Further, given the structural deficiency of technical expertise in the institution, legislators mostly assume their oversight responsibilities in response to specific crises, and less when analysing budgets or introducing legislation. Ultimately, legislators in Colombia delegate a great deal to the executive and cases in which they have worked jointly with the executive to introduce and pass legislation are an exception, not the rule.

Legislators are most effective when dealing with topics related to their region and constituency, and when exercising control through hearings. Still, even then, political polarization is an obstacle to finding common ground, including when it comes to the desired

outcomes of security sector reform.<sup>28</sup> While the current Duque government takes a protective stance towards security forces (in practice, objecting to reform bills in the legislature), the congressional opposition has used its legislative authority to reduce the budget of the Public Force (police), limit promotions, and question members of the security forces in hearings. While the need for reform is recognized across the political spectrum, the government contends the process should start within armed forces institutions themselves, and not in the legislature.

Yet, as more and more police and military abuse scandals come to light, the legislature – through its political control – has forced changes to the cabinet by seizing on the tendency of social media and online platforms to amplify the frustration of citizens over the frequency and scope of abuses by security forces throughout the country. These recent debates highlight the need to revise the institutional security governance framework, protocols, and transparency measures for these forces. So, while it is hard to say whether reforms will be adopted, or implemented, and it seems unlikely for now, it is nonetheless important to be prepared. To improve and enhance the role of Congress in overseeing the security sector in Colombia, international agencies can promote specific actions:

1. **Support implementation of the Office of Budgetary Technical Assistance of the Congress of the Republic:** The budget is an excellent place to start, to increase congressional expertise on matters of security. Changing the debate from how much money is spent in the security sector overall to what that money is spent on may help legislators find common ground, allow them to focus on what concrete actions can be taken, and engage in constructive dialogue with the executive.

27 For example, see: “La movida de sectores de Gobierno para hundir reforma a la Policía. Partidos de la coalición de Gobierno buscan el archivo. Proyecto busca evitar abuso de la fuerza,” *El Tiempo*, 26 November 2020, <https://www.eltiempo.com/politica/congreso/reforma-a-la-policia-la-movida-para-hundir-reforma-a-la-policia-551287>; and “Ministro de Defensa aseguró que la reforma a la Policía no será de forma fragmentada, sino integral,” *asuntos legales* (blog), 16 September 2020, <https://www.asuntoslegales.com.co/actualidad/ministro-de-defensa-aseguro-que-la-reforma-a-la-policia-no-sera-de-forma-fragmentada-si-no-integral-3061116>

28 Political polarization in Colombia increased after the 2016 plebiscite and endorsement of the Peace Agreement signed by President Juan Manuel Santos and the FARC in November of that year. The close result, in which the “no” option won by a very narrow margin (50.21% versus 49.78% for “yes”), and the subsequent presidential election in which Centro Democrático candidate Ivan Duque won in the second round, is a reflection of the difficulties that arise in this highly polarized political environment.

2. **Offer technical support to the Committee on Intelligence and Counterintelligence:** Given that the committee already exists, but is short on resources and expertise, both legislative staff and legislators need help developing expertise that can increase their own effectiveness as well as that of the committee.
3. **Support academic work:** Universities and NGOs can provide empirical analysis and institutional support to encourage engagement in reform conversations and increase the type and amount of information available to both the media and legislators on security and defence matters.
4. **Support efforts to evaluate the impact of the statutory law that empowers the opposition:** This law was approved as part of peace negotiations with FARC and has represented a significant departure for opposition leaders when it comes to legislative procedure by creating greater opportunity for them to bring policy issues to the agenda, hold special hearings, and maintain a presence in committee leadership. Given the recent interest of opposition legislators in pursuing security sector reform through the First and Second Committees, it is vital that the effect of these changes is assessed, and especially whether it has revealed common ground for debate across political party divides.
5. **Support changes in armed forces protocols for dealing with civilians:** This proactive reform would minimize the likelihood that legislators must engage in reform as yet another response to crisis, and should include efforts to increase transparency and move towards better service delivery.

## Annex 1. Amendments made by legislators when debating the Defence Budget

The proposals of Senator Maria del Rosario Guerra, Centro Democrático, governing party

40	Maria del Rosario Guerra de la Espriella, Ciro Alejandro Ramirez, Nicolás Pérez y otras firmas	Adiciónese al presupuesto de inversión del Ministerio de Agricultura y Desarrollo Rural la suma de \$800.000.000.000 (Ochocientos mil millones de pesos) para financiar programas como la inclusión productiva de pequeños productores agropecuarios, ordenamiento social y uso productivo del territorio, sanidad agropecuaria, inclusión de ciencia tecnología e innovación, provisión de bienes públicos, entre otros.
41	Maria del Rosario Guerra de la Espriella, Ciro Alejandro Ramirez, Nicolás Pérez y otras firmas	Adiciónese al presupuesto de inversión del Ministerio de Ambiente y Desarrollo sostenible la suma de \$200.000.000.000 (doscientos mil millones de pesos) para financiar programas como el fortalecimiento del desempeño ambiental de sectores productivos, conservación de la biodiversidad, gestión del recurso hídrico, ordenamiento ambiental territorial, gestión del cambio climático y educación ambiental, entre otros.
42	Maria del Rosario Guerra de la Espriella, Ciro Alejandro Ramirez, Nicolás Pérez y otras firmas	Adiciónese al presupuesto de inversión del Ministerio de Ciencia, Tecnología e Innovación la suma de \$200.000.000.000 (doscientos mil millones de pesos) para financiar programas como fortalecimiento y generación de conocimiento, mejoramiento de la investigación en el sector salud, impulso a la bioeconomía, fortalecimiento regional de ciencia tecnología e innovación, formación de capital humano, entre otros.
43	Maria del Rosario Guerra de la Espriella, Ciro Alejandro Ramirez, Nicolás Pérez y otras firmas	Adiciónese al presupuesto de inversión (literal c) del Ministerio de Cultura la suma de \$125.346.000.000 (ciento veintiocho mil trescientos cuarenta y seis millones de pesos) para el fomento, desarrollo y divulgación de planes, programas y proyectos contemplados en la Política Integral De Economía Naranja; fortalecimiento de la infraestructura cultural para potenciar empleo local; apoyar la reactivación de las escuelas municipales y comunitarias de danza y música, así como la circulación de artistas de las diferentes áreas artísticas; y llevar a cabo la Campaña Colombia Crea Talento, los Talleres Escuela y Programa Nacional de Estímulos para apoyar al sector artístico a lo amplio del territorio nacional.
44	Maria del Rosario Guerra de la Espriella, Ciro Alejandro Ramirez, Nicolás Pérez y otras firmas	Adiciónese al presupuesto de inversión (Literal C) de la Agencia Nacional de Tierras, la suma de \$20.000.000.000 (veinte mil millones de pesos) para la implementación del 'Dotación de Tierras' en el componente de ordenamiento social y uso productivo del territorio rural.
45	Maria del Rosario Guerra de la Espriella, Ciro Alejandro Ramirez, Nicolás Pérez y otras firmas	Adiciónese al presupuesto de inversión (Literal C) del Ministerio de Defensa Nacional la suma de \$ 1.376.289.000.000 —un billón trescientos setenta y seis mil doscientos ochenta y nueve millones—, para la implementación de programas, planes e iniciativas como Proyecto Agentes PNC; la Estrategia de Erradicación; las Zonas Futuro; la inteligencia y contrainteligencia; las dotaciones y municiones; instalaciones militares, alojamiento y campaña; servicios públicos, impuestos, materiales de construcción y redes hidráulicas; la Ley de Veteranos (ajuste a pensiones SLR/SLP); el Programa de Desmovilización y el Sistema de Defensa técnica de miembros activos y retirados.

The proposals of Senator Maria del Rosario Guerra, Centro Democrático, governing party

**TABLA 1: PROPOSICIONES CONGRESISTAS**

No.	CONGRESISTA	PROPOSICIÓN
		monitoreo integrado de ecosistemas de alta montaña de Colombia (EMA).
283	León Fredy Muñoz Lopera	Redúzcase la Sección 1501 – Ministerio de Defensa Nacional, la suma de UN BILLÓN QUINIENTOS MIL MILLONES DE PESOS (\$ 1.500.000.000.000). Adiciónese a la Sección: 2201 – Ministerio de Educación Nacional, la suma de UN BILLÓN QUINIENTOS MIL MILLONES DE PESOS (\$ 1.500.000.000.000). Lo anterior con el fin de poder financiar la matrícula gratuita en todas las instituciones de educación superior públicas del país durante el año 2021.
284	León Fredy Muñoz Lopera	Redúzcase la Sección 1501 – Ministerio de Defensa Nacional, la suma de CIENTO MIL MILLONES DE PESOS (\$ 100.000.000.000). Adiciónese a la Sección: 3301 – Ministerio de Cultura, la suma de CIENTO MILLONES DE PESOS (\$ 100.000.000.000). Lo anterior con el fin de poder ayudar a las personas del sector cultural afectadas por la pandemia y sus efectos económicos durante el año 2021.
285	León Fredy Muñoz Lopera	Redúzcase la Sección 1501 – Ministerio de Defensa Nacional, la suma de DOSCIENTOS MIL MILLONES DE PESOS (\$ 200.000.000.000). Adiciónese a la Sección: 3901 – Departamento Administrativo De La Ciencia, Tecnología E Innovación, la suma de DOSCIENTOS MIL MILLONES DE PESOS (\$ 200.000.000.000). Lo anterior con el fin de poder financiar internet gratuito en los hogares más vulnerables del país en una primera fase durante el año 2021.
286	León Fredy Muñoz Lopera	Redúzcase la Sección 1501 – Ministerio de Defensa Nacional, la suma de DOSCIENTOS MIL MILLONES DE PESOS (\$ 200.000.000.000). Adiciónese a la Sección: 3602 – Servicio Nacional de Aprendizaje (SENA), la suma de DOSCIENTOS MIL MILLONES DE PESOS (\$ 200.000.000.000). Lo anterior con el fin de realizar una inversión fuerte y seria en la formación para el empleo y la reactivación económica que puede brindar el Servicio Nacional de Aprendizaje – SENA.
287	León Fredy Muñoz Lopera	Redúzcase la Sección 1501 – Ministerio de Defensa Nacional, la suma de DOSCIENTOS MIL MILLONES DE PESOS (\$ 200.000.000.000). Adiciónese a la Sección: 1901 – Ministerio de Salud y Proyección Social, la suma de DOSCIENTOS MIL MILLONES DE PESOS (\$ 200.000.000.000).







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