

Strengthening the Role of Parliaments in SSG - Challenges and Opportunities from Selected Case Studies



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Contents

Strengthening the Role of Parliaments in SSG: Challenges and Remedies from Selected Case Studies	7
Executive Summary	7
The Role of Parliaments in SSG	8
Introduction	8
Reaffirming and Strengthening Democratic Governance through Effective Parliamentary Oversight	9
Background and Objectives	10
SSG and SSR	10
Analytical Framework	10
Scope of Analysis	11
Methodology	12
The Cases, in Brief	13
Comparative Analysis: Challenges and Remedies	14
Recommendations	20
The Role of Parliaments in SSG: The Case of Colombia	22
Introduction	22
The means by which Congress exercises control over the defence and security sectors	23
The structure and authority of congressional committees	23
Legislative functions of congressional committees	25
Budgetary functions of Congress	27
Elective functions: promotions as a form of control over the armed forces	27
Oversight functions: how Congress keeps tabs on the security sector	29
Challenges and limitations to the role of Congress in security sector governance	32
International assistance: thinking strategically about security sector cooperation	33
Additional challenges and limitations to security sector governance in the COVID-19 era	34
Conclusions and Recommendations	36
Annex 1. Amendments made by legislators when debating the Defence Budget	38

The Role of Parliaments in SSG: The case of The Gambia	39
Introduction	39
Challenges inherited from the authoritarian period	40
A lack of independence weakens the authority of the National Assembly	40
A lack of resources undermines the ability of the National Assembly to engage in oversight	41
A lack of established practices makes it hard to shape attitudes in the National Assembly	42
Emerging challenges related to COVID-19	43
The impact of the COVID-19 pandemic on civil liberties and security	43
The impact of the COVID-19 pandemic on the functioning of the National Assembly	43
Potential remedies to the National Assembly's limitations	44
Reaffirming the authority of the National Assembly through the legislative framework	44
Strengthening the authority of the National Assembly through renewed practices	46
International community support to the National Assembly	47
Efforts by the international community to build capacity and strengthen oversight	47
The contribution of DCAF to strengthening parliamentary capacity in The Gambia	48
Conclusions and Recommendations	49
The Role of Parliaments in SSG: The Case of North Macedonia	51
Introduction	51
Challenges to comprehensive security sector reform	52
A complex parliamentary oversight system	52
Limits to legal authority	53
Limits to capacity	55
The challenges of changing culture	56
North Macedonian successes in security and intelligence reform oversight	56
Legislative successes	57
Improving oversight	58
Improving budgetary functions	59
Improving representative functions	59
The North Macedonian Parliament & COVID-19	60
Support for the Parliament in SSR/G	61
Conclusions and Recommendations	63

The Role of Parliaments in SSG: The case of Tunisia	66
Introduction	66
Background context	66
Authority of the ARP vis-à-vis the security sector	67
Capacity of the ARP to fulfil its mandate vis-à-vis the security sector	68
Commitment of the ARP to the democratic process	71
The ARP and the COVID-19 crisis	73
International and domestic support programmes for SSR	74
Conclusions and Recommendations	75

List of ABBREVIATIONS:

1. AEC	Agency for Electronic Communications
2. ANC	National Constitutional Assembly
3. ARP	Assembly of the Representatives of the People
4. ASL	Alliance Sécurité et Libertés
5. CCISC	Council for Coordination of the Security-Intelligence Community
6. CCS	Council for Civilian Supervision
7. COAAFA	Standing Committee on Administrative Organization and the Affairs of the Armed Forces
8. CPA	Commonwealth Parliamentary Association
9. CSD	Special Committee on Security and Defence
10. CSO	Civil Society Organization
11. EU	European Union
12. FESCOL	Friedrich-Ebert-Stiftung Colombia
13. GDPR	General Data Protection Regulations
14. IA	Foreign Intelligence Service
15. IHL	International Humanitarian Law
16. IPU	Inter-Parliamentary Union
17. IRI	International Republican Institute
18. MP	Member of Parliament
19. NSA	National Security Agency
20. OATP	La Oficina de Asistencia Técnica Presupuestal
21. OTA	Operational Technical Agency
22. SCDS	Standing Committee on Defence and Security
23. SSG	Security Sector Governance
24. SSG/R	Security Sector Governance and Reform
25. SSR	Security Sector Reform
26. UBK	Bureau for Security and Counterintelligence
27. UGTT	Tunisian General Labour Union
28. UN-CTS	United Nations Crime Trends Survey
29. UNDP	United Nations Development Programme
30. WFD	Westminster Foundation for Democracy

List of Tables and Figures:

1. The Role of Parliaments in SSG - Comparative Analysis
a. Table 1. The “Triple A” Framework
b. Table 2. The Five Main Parliamentary Functions in the Context of SSG
c. Figure 1. Framework for Analysis of Case Studies
2. The Role of Parliaments - The Case of Colombia
a. Table 1: Permanent committees, jurisdictions, and average preferential votes and terms
b. Table 2: Bills related to intelligence and counterintelligence, 2003-2021
c. Table 3: Examples of votes in committee and on the floor for military promotions
d. Table 4: Scheduled security-related hearings by committee, 2014-2018
e. Table 5: Themes addressed in security-related hearings scheduled and convened, 2014-2018
f. Figure 1: Comparison of homicide rates in Colombia, South America, and the World, 1990-2018
3. The Role of Parliaments - The Case of The Gambia
a. Figure 1. The educational background of National Assembly Members
4. The Role of Parliaments - The Case of North Macedonia
a. Table 1. Frequency of meetings of parliamentary security and intelligence oversight committees, 2018-2019
b. Table 2. Oversight activities of intelligence oversight committees, 2018-2020
c. Table 3. The activity and transparency of security sector oversight committees
d. Figure 1. DCAF support to intelligence oversight in North Macedonia
e. Figure 2. How DCAF programming is building capacity
5. The Role of Parliaments - The Case of Tunisia

Strengthening the Role of Parliaments in SSG: Challenges and Remedies from Selected Case Studies

Daniel Reimers

Executive Summary

Parliaments play an indispensable role in good security sector governance. As democratically elected representatives, parliamentarians ensure that individual and collective security is provided in accordance with the will of the people. This also requires that security sector institutions subject themselves to parliamentary oversight, which is one of the primary means of verifying that security actors respect the mandate they are given. Recent developments in our global security environment, including a shrinking democratic space – recently compounded by the COVID-19 pandemic – as well as a growing number of states affected by fragility, conflict, and violence, only increase the need for greater security sector accountability. However, this challenging and complex security landscape makes it especially difficult for parliaments to deliver this accountability, and parliamentarians face a mounting multitude of challenges in conducting their SSG responsibilities. Their parliamentary authority vis-à-vis security institutions may not be exercised or respected, they may lack the necessary resources to fulfil their constitutional roles effectively, or they may deliberately eschew their oversight role due to a lack of commitment to the democratic process and/or a fear of potential repercussions.

This comparative study centres observations and lessons drawn from specific country cases, all of which have wider applicability in the field of SSG/R and can be used to inform future policy choices and SSR interventions. The study maps out challenges, remedies, and opportunities for parliaments in exercising security sector oversight, through the analytical lens of the “triple A” framework – authority, ability, and attitude – all of which are necessary conditions for parliaments to play an effective role in SSG. Case studies from Colombia, The Gambia, North Macedonia, and Tunisia form the basis of the comparative analysis in this text, which examines cross-national patterns of institutional variation and their efficacy in contributing

towards good SSG. Special attention was also given to the specific challenges and limitations experienced by parliaments in their oversight role during the COVID-19 pandemic, as well as the impact of international and domestic parliamentary assistance programmes on how parliaments fulfil this role. The resulting recommendations are clustered around three core themes, identified across all case studies: *institutional and legislative architecture, technical expertise, and a culture of oversight*. These recommendations, summarized here, are explained in more detail later in the text.

First, to strengthen the institutional and legislative architecture of parliaments, the legislative framework governing parliamentary conduct and activities should be expanded and developed into lower order laws that specify, delineate, and institutionalize parliamentary authority; anachronistic remnants of authoritarian legacies, in particular the absence of parliamentary immunity in practice, must be addressed and discarded; and parliamentarians must be engaged in more focused efforts to reinforce their role in SSG, particularly given the shift in power towards the executive that has occurred during the COVID-19 crisis. Second, to strengthen the technical expertise of parliamentarians, and in turn, their ability to effectively govern the security sector, capacity building programmes should harness actors and institutions not bound by term limits (e.g., parliamentary staff, in-house advisors and trainers, and external stakeholders of parliamentary academies); lessons- and information-sharing must become a priority; and pragmatic approaches tailored to specific contexts should be utilized (e.g., by integrating interventions into the parliamentary calendar and legislative agenda). Lastly, to strengthen and foster a culture of oversight, structural reforms that refine the legal framework and make it more conducive to democratic norms or enhance existing modalities of engagement between parliamentarians and security sector

stakeholders are key, and have a proven positive effect on parliamentary behaviours and routines; the same is true for multi-stakeholder approaches involving parliament, security institutions, civil society, and academia – which can help to establish a common national vision for security.

Notably, parliamentary assistance should extend across all three parliamentary domains – authority, ability, and attitude. But no common blueprint or script exists for parliamentary interventions. Each parliament, and any parliamentary assistance programme, must account for specific strengths and weaknesses, as well as the political environment in which a parliament operates.

The Role of Parliaments in SSG

Introduction

Strong legislative bodies are a bedrock of representational democracies. As houses of elected representatives, parliaments play an indispensable role in shaping both public policy and the way states exercise power and authority. In the domain of Security Sector Governance and Reform (SSG/R), parliaments fulfil this role by articulating the security needs of their constituencies, as well as by passing commensurate legislation, ensuring the effective and efficient use of resources, and encouraging accountability through scrutiny and oversight. Parliamentary institutions foster public debate and facilitate consensus-based decisions on security, which are consolidated and inscribed into legislation that shapes security sectors. Parliaments further oversee and review security policies, plans, and budgets, authorizing public expenditures and revenue-raising across the full budget cycle. A lack of oversight and management of security providers can permit security structures, institutions, and personnel to unevenly wield their monopoly on the legitimate use of force on different segments of the population. As such, oversight and scrutiny of security providers reduces concrete security risks for the population; and while parliaments are not the only counter-balance to executive power over the state apparatus, they represent a primary means to restraining this power in democratic systems.

Over the past decade, a trend of increasing violent conflict and shrinking democratic space has been observed on a global scale.¹ Strengthening the role of parliaments in democratic societies thus grows ever more important. Indeed, violent conflict has spiked dramatically since 2010, affecting both low- and middle-income countries, and the World Bank estimates that by 2030, two-thirds of the world's extreme poor will live in fragile and conflict-affected settings.² Climate change, new technologies, and other global developments have resulted in a fragility landscape of increasing complexity. Fragility saps growth and can lead to the reverberation of violent conflict through surrounding countries, such as in response to the forced displacement of affected communities. Addressing the root causes of fragility and violent conflict – inequality, exclusion, and corruption – through the promotion of transparency, accountability, justice, and the rule of law is key to combatting this worrying trend and fostering sustainable development.

When we speak of shrinking “democratic space,” we are referring to the arena in which individuals can hold states accountable, participate in politics, shape public debate, and express their needs.³ Across the world, three of the main tactics employed by states to restrict this participation and expression are cause for concern. First is the shrinking of civic space⁴,

1 For example, see European Partnership for Democracy, *Thinking Democratically: A Comprehensive Approach to Countering and Preventing ‘Shrinking Space’* (Brussels: EPD, 2020); Michael A. Weber, *Global Trends in Democracy: Background, U.S. Policy, and Issues for Congress*, Congressional Research Service Report R45344, 17 October 2018; and The Armed Conflict Location & Event Data Project, <https://acleddata.com/#/dashboard>.

2 Paul Corral, Alexander Irwin, Nandini Krishnan, Daniel Gerszon Mahler, and Tara Vishwanath, *Fragility and Conflict: On the Front Lines of the Fight against Poverty* (Washington, DC: World Bank, 2020).

3 Lisa Horner and Andrew Puddephatt, “Democratic Space in Asia Pacific: Challenges for Democratic Governance Assistance and Deepening Civic Engagement,” Working Paper, UNDP, 2011.

4 Civic space is defined as “the freedom and means to speak, access information, associate, organise, and participate in public decision-making.” See Carmen Malena, *Improving the Measurement of Civic Space* (London: Transparency and Accountability Initiative, 2015).

particularly vis-à-vis freedom of expression, assembly, and association, which inhibits the formation of political opposition and hinders the activities of civil society organizations (CSOs) and media. Second, incumbent parties tend to abuse state resources, skew legislation to serve their interests, and permit corruption, thereby establishing an “uneven playing field for political contestation.”⁵ Third, governments have made concerted efforts to undermine the separation of powers, subverting the independence of legal processes and stifling the rule of law. These phenomena form part of a wider trend of authoritarian resurgence occurring at a global level, fuelled by “authoritarian learning and autocratic influencing strategies.”⁶ In other words, as countries learn from their neighbours how to establish the frameworks and practices that shrink domestic civic space, autocratic regimes are simultaneously employing soft power strategies aimed at weakening and discrediting democracy within those same countries.

This trend of shrinking democratic space has been further intensified by the COVID-19 crisis, as a majority of governments have implemented emergency measures that risk exacerbating democratic regression.⁷ In the absence of sufficient oversight mechanisms, various leaders have seized on the opportunity to centralize and consolidate executive power, curtail individual rights, expand state surveillance, and suppress protests, marches, and demonstrations. In some cases, states of emergency have coincided with a complete lack of parliamentary oversight, have led to heightened executive control over media (under the guise of fighting misinformation), or have been used as a pretext to ban anti-government protests.

Reaffirming and Strengthening Democratic Governance through Effective Parliamentary Oversight

Cumulatively, these recent trends have raised the imperative to reaffirm the value of democratic governance and encourage efforts to strengthen it. To that end, this study aims to support the functioning of democratic institutions in fragile contexts by offering recommendations for future parliamentary assistance programmes as well as by gathering best practices and identifying crucial instruments to help parliaments effectively govern security sectors. Indeed, at the heart of democratic governance lies civilian control and oversight.

The competence to oversee government activities, policies, and expenditures means that both policies and their implementation can be assessed in terms of efficiency and capacity to meet the needs of the public. The primary responsibility for this oversight rest squarely on the shoulders of parliaments. While DCAF has published extensively on this topic in the past – most notably in the form of a parliamentary handbook jointly published with the Inter-Parliamentary Union (IPU) in 2003 – this study attempts to address contemporary challenges faced by parliaments and seek to fill a gap in scholarly and policy literature at the nexus of parliaments and SSG.⁸

5 European Partnership for Democracy, *Thinking Democratically*, 6.

6 *Ibid.*, 7.

7 Frances Z. Brown, Saskia Brechenmacher, and Thomas Carothers, “How Will the Coronavirus Reshape Democracy and Governance Globally?” *Carnegie Endowment for International Peace, Commentary*, 6 April 2020, <https://carnegieendowment.org/2020/04/06/how-will-coronavirus-reshape-democracy-and-governance-globally-pub-81470> (accessed 16 April 2021).

8 See Heinrich Böll Foundation – Africa, *Do Parliaments Matter? African Legislatures and the Advance of Democracy* (Cape Town, 2012); Steffen Eckhard, *The Challenges and Lessons Learned in Supporting Security Sector Reform* (Berlin: Frederick-Ebert-Stiftung Global Public Policy Institute, 2016);

Background and Objectives

In line with DCAF's broader mandate and its current strategy, at the core of this study are observations and lessons drawn from specific country examples that have wider applicability in the field of SSG/R and can be used to inform future policy choices and SSR interventions. Four country case studies – from Colombia, The Gambia, North Macedonia, and Tunisia – form the basis of a comparative analysis that examines cross-national institutional variations and the success of different parliamentary institutions in contributing towards good SSG. From this

analysis emerges a set of good practices and instruments that increase the effectiveness of parliament in exercising SSG. Limitations and challenges to parliamentary oversight during the COVID-19 pandemic are also discussed, as well as the impact of international and domestic parliamentary assistance programmes. The resulting conclusions and recommendations are intended to support states in strengthening parliamentary oversight, in order to achieve more accountable, transparent, and effective security sectors.

SSG and SSR

The central role for parliaments in ensuring good Security Sector Governance (SSG) is derived from their functions in law-making, budget scrutiny, oversight, government appointments, and public deliberation. Legislators vested with sufficient legal and normative authority, resources, and commitment are able to perform these functions in a way that contributes to good SSG. In this study, the statutory management and oversight of security providers by parliament is examined.

Good SSG is achieved by applying the principles of good governance to security provision and management, and to the oversight of both state and non-state actors. These principles are *accountability, transparency,*

rule of law, participation, responsiveness, effectiveness, and efficiency. Hence, as a normative standard, good SSG means that the security sector provides state and human security within a framework of democratic civilian control, rule of law, and respect for human rights. Establishing good SSG is the goal of Security Sector Reform (SSR), commonly described as “a process of assessment, review and implementation as well as monitoring and evaluation led by national authorities that has as its goal the enhancement of effective and accountable security for the State and its peoples without discrimination and with full respect for human rights and the rule of law.”⁹

Analytical Framework

All four country case studies presented in this text utilize the same analytical framework, examining the role of parliament in SSG through the lens of parliamentary authority, ability, and attitude (see Table 1). Taken together, these constitute necessary conditions for effective oversight, so that a parliament may contribute to good SSG; yet, on their own, none are sufficient.

Even in political and legal systems that feature well-designed policy frameworks for parliamentary oversight that grant parliamentarians wide-ranging authoritative powers, a lack of individual or institutional capacity can pose major challenges to effective oversight. Similarly, even with sufficient authority and ability, a lack of commitment to democratic principles can render parliamentary activities fruitless.

9 United Nations, Report of the Secretary-General, “Securing peace and development: the role of the United Nations in supporting security sector reform,” 23 January 2008 (A/62/659-S/2008/39).

Table 1. The “Triple A” Framework

Authority	Ability	Attitude
Parliaments must have sufficient normative and legal authority to oversee the security sector. Most countries have constitutions, basic laws, regulations, or statutes that confer this authority formally, but in practice, this authority is not always exercised or respected.	Parliaments must have sufficient resources to effectively fulfil their constitutional roles, including institutional support, access to information, analytical and research capacity, specialized skills, and working relationships with security institutions and civil society.	Members of parliament must maintain a strong commitment to the democratic process because their work is likely to create resistance and provide opportunities for corruption. Members are usually afforded immunity from prosecution for actions taken in the course of their official duties, to protect their independence and integrity.

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Scope of Analysis

The shape of parliaments varies greatly across political and legal systems and from state to state. This inevitably affects the roles and procedures that govern the activity of any given parliament. Still, despite these differences,

parliaments generally fulfil five main functions – legislative, budgetary, oversight, elective, and representative – by which they influence SSG (see Table 2).

Table 2. The Five Main Parliamentary Functions in the Context of SSG

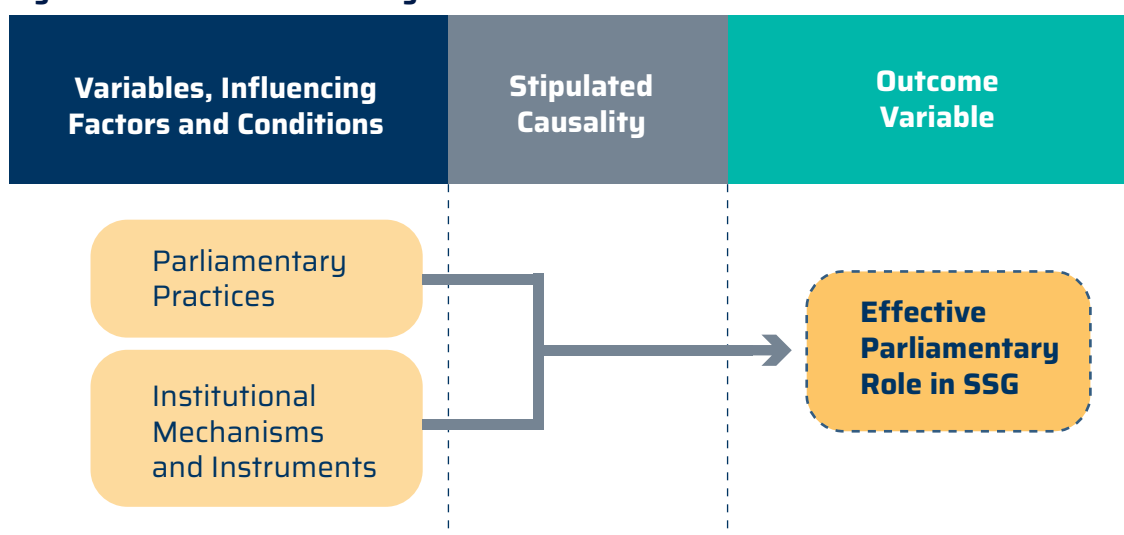
Legislative	Budgetary	Oversight	Elective	Representative
Parliaments adopt laws that establish the mandate, functions, powers, and organization of the security sector and oversight institutions.	Parliaments play a role in approving, amending, or rejecting budgets for the security sector.	Parliaments monitor and verify whether the behaviour of security sector actors aligns with the constitution and any relevant legislation, regulations, and policies.	Parliaments may scrutinize, veto, or approve top-level appointments within the security sector, and may vote no confidence when they disagree with government decisions in the realm of security.	Parliaments provide a public forum for debate, facilitate political consensus through dialogue and transparency, and give voice to popular dissent regarding government security policy.

Methodology

Countries were selected as the focus of case studies based on the significance and role of their parliament in SSG within a given region, as well as the existence of an SSR programme with a parliamentary oversight component or the existence of a parliamentary assistance programme with a security sector component. The countries under examination thus share a set of common factors relating to the role of their parliaments in SSG, along with distinguishing factors that extend from their distinctly different regional contexts.

In light of the objective of this study to identify and present good practices and instruments that enable parliaments to play an effective role in SSG, comparative analysis across cases aimed to determine the practices, institutional mechanisms, and tools that are causally linked to an effective role for parliament in SSG (see Figure 1). While some of these factors can be modelled as variables, the majority constitute conditions and influencing factors.

Figure 1. Framework for Analysis of Case Studies



The nature of the study design, employing country cases, means any comparative analysis must be sensitive to the different institutional and cultural contexts that enable or prevent parliaments from playing an effective role in SSG in the countries under study. This makes an analysis that centres independent variables less valuable, as each case study author chose to examine the factors most relevant in their respective contexts. Thus, this comparative analysis uses the technique of explanation building – a special type of pattern matching in which case study data is explained through stipulated causal links between processes, mechanisms, structures, and the outcome variable (here, an effective role for parliament in SSG), and patterns are identified across cases.¹⁰ A similar method that relies on presumed causal links is commonly part of a hypothesis-generating process in exploratory studies; and in this study, the recommendations put forth are in some

ways hypothetical, as causality is inferred and not confirmed. These recommendations may be strengthened by future research that uses an explanatory (i.e., confirmatory) case study design.

Comparative analysis revealed central themes that reoccur across each case study, which emerged through the “triple A” frame of parliamentary authority, ability, and attitude. These themes are interwoven by a particularly dense set of causal links, not only to the outcome variable but to other variables, conditions, and influencing factors. Still, those variables, conditions and influencing factors differ considerably in different cases, often manifesting in dissimilar processes, structures, and mechanisms. Thus, while the recommendations offered here are bound by context and are not necessarily universal, this comparative analysis makes it clear that parliaments have devised various institutional solutions to address similar issues.

¹⁰ B. Glaser & A. Strauss, *The Discovery of Grounded Theory: Strategies for Qualitative Research* (Mill Valley, CA: Sociology Press, 1967); and Robert K. Yin, *Case Study Research Design and Methods* (Thousand Oaks, CA: SAGE, 2014).

The Cases, in Brief

Tunisia is still haunted by the autocratic regime of Ben Ali, which routinely instrumentalized security institutions for political means – including unlawful exclusion, the muzzling of free expression, repression, and disenfranchisement – before it was finally brought to an end in 2011 by the so-called Jasmine Revolution. The Tunisian Parliament operates in an economic and political environment that remains in flux, still marked by institutional and legislative remnants of the former regime that inhibit democratic oversight. On top of this, a lack of trust between Tunisian security officials and parliament at times results in reluctant engagement at best; despite the fact that the country has faced a series of challenges related to violent extremism that have placed the country in a quasi-permanent state of emergency since 2015. Against this backdrop, the authority, ability, and attitude of parliament is understandably limited in Tunisia. A constitution adopted in 2014 conferred generic authority to parliament to govern and control the security sector, but the ability and attitude of the body lag quite a bit behind this authority. The absence of a national security strategy makes it particularly challenging for parliament to exercise effective oversight, as relevant committees are unable to reflect on a set of clear policies and plans, or assess their implementation. Moreover, tension and open hostility between security sector actors and parliamentarians negatively affects the attitude of parliament when it comes to conducting effective oversight.

In The Gambia, following more than two decades of authoritarian rule under former President Yahya Jammeh, a recent political transition has reshaped the landscape for long-awaited security reforms to take root. Like Tunisia, The Gambia has struggled with the legacy of a de facto military regime that brutally repressed political dissent and carried out mass human rights violations. The state security apparatus played a key role in maintaining Jammeh's regime, and was not only complicit in large-scale violations but succeeded in concealing such acts from domestic and international scrutiny. And Jammeh explicitly hamstrung and side-lined parliament through autocratic executive practices institutionalized in constitutional provisions. Yet, Gambian parliamentarians, determined to embrace

their important role in SSG/R, have made great strides since Jammeh's ouster in 2016, and some have demonstrated particular personal courage and legislative initiative. The parliamentary Committee on Defence and Security is vested with considerable authority through strong constitutional language; and has been the focus of numerous assistance programmes implemented by various partners since 2017. That said, the Gambian Parliament faces a significant lack of resources – from material to technical – and must contend with a current President, Adama Barrow, who appears inclined to perpetuate past autocratic practices.

A decades-long legacy of civil strife in Colombia, and the perennial presence of the illegal drug trade, have strongly shaped the role of the country's parliament in SSG. In pursuing SSR, this history of illicit armed actors contesting state control remains front and centre, and has led parliamentarians to concentrate their defence and security reform efforts on increasing the capacity of security forces to guarantee territorial sovereignty. The pressure of these internal security challenges has thus hampered the pursuit of more holistic SSR. An effective parliamentary role in SSG is further challenged by Colombia's sharply politicized environment, disincentives for parliamentarians to engage in complex security sector related initiatives, and the structural deficiencies of parliamentary organs. For instance, SSG oversight is dispersed among several parliamentary committees, which disincentivizes the members of any one committee to achieve comprehensive expertise on security issues. On top of this, the committees vested with SSG responsibilities offer limited potential for members to gain political capital and advance their careers, as SSG is paired in these committees with ceremonial and commemorative issues of low prestige. Frequently, this leads members of these committees to defer security questions to the executive branch, or to informally ally themselves with security authorities against their own institution. Taken together, these factors serve to maintain a state of inertia in the Colombian Parliament, which takes a reactive, deferential stance on SSG/R.

In North Macedonia, the role of parliament in SSG has been strongly shaped by a wire-tapping scandal that unfolded in 2015

and involved senior government officials. Highlighting the misuse of state intelligence services to unlawfully monitor government and opposition members, journalists, civil servants, businesspeople, and activists, the scandal exposed the failure of political, judicial, and security institutions to control this abuse of intrusive powers. Importantly, it also provided the momentum for substantial reforms to North Macedonia's security sector after widespread demonstrations and political turmoil ended the decade-long reign of the incumbent government. A profound transformation of the security sector followed and was further driven by the prospect of European integration, illustrating the influence of geopolitical factors on domestic reform processes.

Despite successful and far-reaching reform and governance efforts that have shifted the focus of security provision from a state-centric

approach towards a new human security paradigm and have established the normative and institutional foundations of good SSG, some shortcomings remain, preventing parliament from most effectively exercising oversight. To fully enable the effective exercise of the oversight powers conferred to the newly defined (and complex) structure of parliamentary standing committees, crucial resources are necessary to establish and maintain technical expertise and perform routine organizational tasks, and yet are largely absent. Moreover, an effective parliamentary role in SSG continues to be impeded by legislative weaknesses that limit the legal authority of parliamentary and civilian bodies, challenges in establishing a culture of oversight, and a lack of communication between parliament and the general public.

Comparative Analysis: Challenges and Remedies

These case studies all concern *institutional and legislative architecture, technical expertise, and the culture of oversight*, themes that correspond to the “triple A” framework, which examines the authority, ability, and attitude of parliaments. Importantly, each of these themes may have indirect implications on another.

Hence, in the following sections, these themes are unpacked as a function of the challenges and potential remedies that emerged across cases studies, observed in varied contexts. This cross-case comparison of challenges and remedies forms the basis for policy recommendations offered at the conclusion of this study.

Authority: The Institutional and Legislative Architecture

Parliaments are conferred normative and legal authority through constitutions, basic laws, regulations or statutes; but the institutional design of democratic regimes shapes the distribution of power among political actors and the effectiveness of their decisions.¹¹ Across case studies, a significant recurrent theme emerged in relation to *the institutional and legislative arrangements that inhibit parliaments from playing an effective role in SSG*. These institutional and legislative arrangements often unduly favour the executive in shaping security and defence policy and stem from past autocratic regimes or are otherwise historically contingent. For instance, during 22 years of dictatorship in The Gambia, the Constitution underwent countless amendments that facilitated the ruling party's manipulation of the political process, including one that allowed party leaders to exert

control over MPs by threatening to exclude them from their party, and by extension, their seat in the legislature. Similarly, Tunisia has experienced a quasi-permanent state of emergency since terrorist attacks in 2015, based on a 1978 decree law that was used at the time to oppress union protestors. In Tunisia, legal ambiguities, inconsistencies, and gaps also mean that parliament lacks the authority to access classified information, and the reluctance of security officials to release sensitive information to MPs may stem in part from the ambiguity of formulations governing precisely how parliamentarians should handle this information without jeopardizing the security of the state or any individual. Colombia's history of civil strife has relegated the ability of its parliament to shape security and defence policy, which is firmly in the hands of the executive, thereby

11 Giuseppe Ieraci, “Power in office: presidents, governments, and parliaments in the institutional design of contemporary democracies,” *Constitutional Political Economy* (September 2020).

undermining the capacity of parliament to hold the security sector accountable. This is evident in the lack of budgetary control afforded to parliamentarians, who cannot introduce budgetary bills or legislation with fiscal disbursement. Debates on the budget are time-limited and deeper deliberation is possible only in committees, depriving parliament of its conventional financial scrutiny role.

Clearly, *institutional and legislative arrangements that grant formal normative and legal authority to parliaments through special powers or prerogatives are crucial to effective parliamentary oversight and the role parliament can play in SSG*. In addition to conventional parliamentary powers, such as the prerogative to extend national states of emergency (as in The Gambia), issue votes of no confidence, conduct hearings and vet high-ranking security officials (as in Colombia), or conduct on-site visits, the countries under study each have context-specific practices and instruments embedded in their respective institutional and legislative architectures. In the Gambian parliament, for example, a Standing Committee on Security and Defence (SDCS) is supported by strong constitutional language that gives it the very broad authority to “investigate or inquire into the activities [...] of [...] any matter of public importance.” This decisive language extends to the performance of its functions so that the SDCS shall have “the same powers as the High Court during trials.” The integrity of parliamentary standing orders is similarly protected by language that bars national courts from inquiring into any “decision, order or direction of the National Assembly or any of its Committees or the Speaker relating to the Standing Orders of the National Assembly, or to the application or interpretation of Standing Orders, or any act done by the National Assembly or the Speaker under any Standing Orders.”

North Macedonia has also engaged creative remedies to increase parliamentary control, establishing an intricate parliamentary committee system geared towards specialization. Four distinct committees are vested with roles and responsibilities, narrowly defined: the first has a wide legislative mandate that covers the entire security sector, and oversight responsibilities over the armed forces and police; the second deals exclusively with the oversight of domestic and foreign intelligence services; the third monitors implementation of

intrusive methods for information collection by all the intelligence and law enforcement bodies authorized to use these powers; and the fourth – composed of seven citizens chosen by parliament – may receive public complaints, initiate investigations into the legality of communication interceptions, and request that the third committee conduct parliamentary investigations into alleged illegal data collection. Reporting mechanisms for committees, with clear requirements and deadlines, helps create and maintain awareness within the public and governmental institutions, and increases the likelihood that issued recommendations will be enforced. Oversight and scrutiny committees in North Macedonia also reserve special roles or grant special powers to members of the opposition. Still, a committee system this complex is only effective when the respective legal and normative authority of parliamentary and civilian oversight bodies is well developed. Importantly, North Macedonia’s parliamentary oversight bodies were strengthened in parallel to legislation that significantly re-shaped its security institutions. Especially pertinent was the decoupling of the technical capacity to collect information from the analysis of this information, by distributing these tasks to separate bodies. The Operational Technical Agency (OTA) now collects information, while the National Security Agency (NSA) analyses it. The NSA was also placed outside the Ministry of Interior and was stripped of policing powers.

Institutional design may also bestow parliaments with formal authority, or deprive them of it, as they pursue oversight. A crucial factor in this context is the level of formality attached to certain practices, processes, and modalities of engagement. In the absence of formal modalities of engagement between security sector officials and parliamentarians, the authority of parliament to conduct oversight tasks may not be respected in practice, as is often evident in the unwillingness of security actors to relinquish sensitive information, even to oversight committees. Lacking formal channels, MPs may resort to engaging with security officials on an individual level, as in the Gambia. To create and strengthen modalities of engagement between parliament and the security sector, the Tunisian Parliament’s Committee on Security and Defence (CSD) has made great strides in establishing channels of communication and cooperation with the Ministry of Defence. Since 2014, it has become customary for the National Defence Institute,

situated within the MoD, to provide a one-week workshop and training to members of the CSD, delving into the structure of defence institutions and the current challenges that face the sector. Still, these trainings offer relatively basic information and do not sufficiently highlight the urgent need to align the security sector with the contours of Tunisia's broader democratic transition. To further strengthen this effort, National Defence Institute trainings should extend beyond the basic level to integrate principles of democratic good governance and specific considerations related to the democratic transition underway in the country at large. Occasionally, knowledge sharing visits with European parliamentarians have been organized as well, so that members of the CSD can learn best practices from the EU for identifying specific reforms and implementing effective oversight.

Notably, imbuing certain processes with a level of formality can itself act as an enforcement mechanism, effectively increasing the authority of parliament when issuing recommendations. For example, while reports issued by Tunisia's Committee on Security and Defence (CSD) are published online, there is no requirement to formally present and discuss these in the general plenary, so that recommendations may simply be ignored and thus become less actionable or unlikely to result in reform. Similarly, in Colombia, parliamentarians can call cabinet members and other public servants to testify in a committee or floor session to account for the implementation of a specific policy, yet these hearings are not held under

oath, minimizing any potential repercussions for lying. A lack of formality in these practices is a significant shortcoming of institutional design.

Institutional deficiencies that negatively impact the authority of parliaments may also manifest in the design of parliamentary committee structures and in committee practices. In both Colombia and Tunisia, the mandate to oversee the security sector is dispersed among multiple committees that were established due to political imperatives at the time of their creation, with little regard for maximizing efficiency in security sector governance. A certain vagueness surrounding the roles of committees may at times provide space for cooperation and collaboration among them, as is the case in North Macedonia, and to some extent Tunisia. But a highly diluted committee structure can adversely impact the authority of committees, as in Colombia, where the main committee tasked with security and defence oversight also assumes ceremonial and commemorative responsibilities, reducing its authority and status to such a degree that most MPs view a seat on the committee as neither desirable nor politically expedient. Certain committee practices may also weaken its authority to conduct oversight. For instance, until recently, hearings were scheduled in the Colombian Congress largely on the basis of personal relationships between a given legislator and committee chair, creating a stark disadvantage for members of the opposition and limiting the effectiveness of hearings as an oversight mechanism.

Ability: Technical Expertise

Even when policy frameworks for an effective parliamentary role in SSG are well designed and infused with sufficient normative and legal authority, *a lack of individual or institutional capacity can pose major challenges to parliamentary oversight.* Such a lack of capacity can significantly weaken the ability of parliamentarians to fulfil their constitutional roles effectively, and *this deficiency is most evident in low levels of technical expertise* on both the individual and institutional levels. This is the result of multiple distinct factors, but the most common are a *lack of sufficient resources necessary to establish and maintain technical expertise and structural weaknesses that dilute technical expertise.* A shortage of sufficient financial and human resources means that

parliamentarians may be unable to fund public hearings, convene witnesses, and conduct on-site visits and inspections, or engage legal experts and specialized support staff to ensure that laws are formulated and implemented as intended; and in all the countries under study, deficient financial and human resources constituted a seemingly perennial challenge. Indeed, parliamentarians in all four countries lack the resources to hire staff to provide independent analysis and assessments, and in North Macedonia, members of its civilian council – a specialized civilian committee with SSG responsibilities – became so frustrated with what they perceived as parliamentary passivity in response to requests for resources that they resigned in protest. And in Tunisia,

where the parliament lacks administrative and fiscal autonomy, this challenge of insufficient resources is one that simply cannot be remedied without fundamental change, which is unlikely to come in the short-term.

Insufficient resources to establish and maintain technical expertise may be confounded by structural weaknesses that further inhibit the acquisition of technical expertise. Illustrative of this are the hiring practices in the Gambian parliament, where parliamentary staff is often hired based on patronage rather than merit. Another example is the committee structure in the Colombian Congress, where the committee tasked with security sector oversight has low political visibility, offers limited political capital, and shares a mandate for ceremonial and commemorative issues, offering little incentive for parliamentarians to develop technical expertise on complex security sector themes. An absence of regular and formal engagement between parliamentarians and security sector authorities in Colombia further diminishes the incentive of parliamentarians and reduces their opportunities to gain knowledge from such interactions; and in the rare instances they do occur, the transaction costs for this flow of information is high, as participants do not share the same level of expertise. In fact, in both Colombia and Tunisia, the ignorance of most parliamentarians to security issues has made security sector officials reluctant to engage, which only exacerbates the inability of parliament to fulfil its role in SSG. In The Gambia, a high turnover rate for parliamentarians - combined with the fact that newly elected members are typically young, inexperienced, and have only low levels of education - drives a loss of institutional knowledge and relationships. Moreover, newly elected Gambian parliamentarians receive little to no training, especially on cross-cutting issues such as Human Rights or Gender. In Tunisia, where parliamentary committee formation is not dependent on technical expertise requirements and parliamentarians can be seated on more than one committee, it is committees that see a high turnover, reducing the incentives to specialize. The ability of Tunisian parliamentarians is further curtailed by the lack of a common, coherent vision of national security, which would allow them to reflect and assess government policies.

These deficiencies in technical expertise have repercussions that may negatively impact the role of parliament in SSG/R, such as by resulting in the improper implementation and interpretation of laws related to the security sector. Strengthening the technical expertise of parliamentarians thus brings the potential to have profound effects on their authority and attitude. But on top of that, parliamentary committees must have sufficient capacity and logistical means to fulfil their mandates. Efforts to strengthen technical capacity have manifested across the countries under study in the institutionalization of technical expertise in specific research and communication units. Institutionalizing technical expertise reduces the loss of knowledge that results from the high turnover of parliamentarians, and in The Gambia, the Westminster Foundation for Democracy (WFD) has supported the establishment of such units - which are now fully functioning. Similarly, in 2016, a joint initiative of UNDP and the Hanns Seidel Foundation undertook the development of a parliamentary academy to educate members of the Tunisian Assembly on a wide range of issues, including SSG/R. These trainings revolve around three core themes: (1) oversight and control of the work of government agencies; (2) understanding legislation in various fields; and (3) communications and media strategy. Shorter workshops and retreats may also build technical expertise. In The Gambia, for instance, WFD held three-day workshops on revising the parliament's standing orders in which participants explored new procedures for legislative scrutiny, the roles and responsibilities of different stakeholders in the process, and effective methods for public consultation and engagement. In Colombia, external actors have led similar expert workshops involving a diverse set of SSG/R stakeholders across the political spectrum; and despite low levels of engagement by Colombian legislators, these exercises do increase technical expertise and foster relationship building among relevant actors. Retreats focused on knowledge-sharing among peers have proven to be an effective remedy as well, across all four cases. Gambian lawmakers undertook a study trip to Ghana to identify concrete strategies to better implement their oversight prerogatives, for example. And multiple knowledge-exchange programmes have been conducted in Tunisia, including with European and British parliamentarians. In North Macedonia, a programme led by DCAF over

three years supported its three parliamentary committees by focusing on peer exchange as well, alongside practical exercises, self-assessments, and independent critical analysis.

On its own accord, North Macedonia also took the step of establishing a parliamentary budget office in 2020, with the aim of improving the financial oversight capacity of parliament. The office was added to an existing joint secretariat, composed of five parliamentary staffers who support the three parliamentary committees. Staffers are vetted and can thus participate in all committee meetings and activities, including those in which classified information is discussed. They assist a specific committee according to a pre-defined division of labour but are gathered in one secretariat to encourage comprehensive expertise, technical coherence, and joint action.

Attitude: A Culture of Oversight

An effective parliamentary role in SSG/R also depends on the commitment of parliamentarians to the democratic process and their willingness to make use of their authority and ability to conduct effective oversight. Across the countries under study, this dimension was captured in the culture of oversight theme, encompassing the various routines and practices of parliamentarians as they fulfil their constitutional role. The challenge to parliamentarians is that *various influencing factors and conditions inhibit a culture of oversight*. Fostering such a culture, committed to the democratic process and to an effective parliamentary role in SSG, is thus a necessity. However, the means to do so remain limited by historical patterns and by contexts that inhibit the implementation of international best practices.

It should be noted that it is difficult to assess authentic commitment to the democratic process on a collective level (i.e., in an entire parliament). But individually, MPs usually enjoy immunity from prosecution for actions taken in the course of their official duties, to protect their independence and integrity. This immunity may be lifted according to internal regulations of parliament itself. In Tunisia, the principle of parliamentary immunity was challenged in 2017, however, when a military court charged a parliamentarian after he criticized the appointment of a high-ranking military officer on social media. Despite ultimately proving

Importantly, *the technical expertise of parliamentarians may be supported by the use of external experts*. This practice is common in The Gambia, Colombia, and North Macedonia, all of which retain some form of a ‘roster’ of subject matter specialists. While delegating tasks that require specialist expertise to external stakeholders is resource-intensive, it ensures a certain continuity of knowledge that cannot be lost due to the high turnover of parliamentarians or their staffers. As an alternative to a more rigid roster of experts, parliaments may rely on ad hoc public hearings that engage civil society organizations, academia, and the media. This is an established practice in Colombia and North Macedonia, and it allows lawmakers to thoroughly review draft legislation while also contributing significantly to the transparency of parliamentary activities.

unsuccessful, the process – and the threat of prosecution with the high crime of treason, among others, by military justice mechanisms – has had a chilling effect on the willingness and attitude of all MPs to enact security sector scrutiny. Such self-imposed parliamentary restraint and censorship was also rife in The Gambia under Jammeh’s rule, due to the wide array of mechanisms through which the executive could impose political sanctions.

A democratic culture of oversight is also challenged by the routines and practices that shape parliamentary activities. One of the greatest challenges in North Macedonia, for example, has been the political culture that prevailed prior to the beginning of extensive reform efforts in 2015, which was characterized by the long unfettered habit of individual parliamentarians and security sector officials to exploit loopholes without fear of sanction from oversight bodies. The success of current reform initiatives increasingly depends on the political will to change that political culture. *Some practices that inhibit a functioning culture of oversight take on more subtle forms*. A lack of effective parliamentary routines for oversight and scrutiny is observable in both The Gambia and Tunisia, for instance. In the former, legislation tends to be scrutinized in plenary rather than by the relevant standing committee; yet, allowing all members of parliament to re-introduce amendments – after the careful formulation of a given draft law on a clause-

by-clause basis in the respective committee – undermines the role and effectiveness of parliamentary committees. It also runs counter to a culture of effective oversight when parliaments fail to hold hearings open to citizens and CSOs (as in The Gambia and North Macedonia), when parliamentarians condition support for security and defence bills on personal favours (as in Colombia), or when parliamentarians themselves explicitly support a limited role for parliament in SSG (as in Tunisia).

Across cases, one effective remedy in this context has been the development of strategic plans and common visions with various stakeholders, including security sector institutions and CSOs, which nurtures a greater understanding of respective mandates and the mutual benefits of striving to achieve good SSG. Successfully nurturing a culture of oversight is often dependent on local political will and the commitment and perseverance of individual parliamentarians, though. To increase pressure on MPs in a way that affects their attitude, parliamentarians who are committed to democratic oversight may consider leveraging the capacity of CSOs and the media, as seen in North Macedonia.

COVID-19

The outbreak of COVID-19 has posed yet another challenge to parliaments across the globe, fundamentally testing the interaction between legislative and executive branches of government. There has been a general trend – not limited to the countries under study – towards executive dominance in law-making and the marginalization of parliaments.¹² Parliamentary activities in The Gambia, Tunisia, and Colombia have largely been suspended or delegated to the executive during the pandemic. This has had significant ramifications for the capacity of parliaments to oversee the security sector, but it has also provided parliamentarians with unique opportunities.

In Colombia, where the executive already dominated on security and defence issues, the decoupling of legislative and executive agendas has allowed parliament to develop a parallel agenda. This has actually increased its legislative output and the number of hearings held by the body (over Zoom), though opinions among legislators are split as to whether the quality of control and oversight has decreased as a result. In Tunisia, the COVID-19 crisis has highlighted the need to better define the scope of the CSD, an issue that failed to gain sufficient traction in the five years prior.

Similarly, in North Macedonia and The Gambia, the pandemic has unveiled legal ambiguities and worrying gaps in the enforcement of parliamentary prerogatives. The pandemic reached North Macedonia shortly after parliament had self-dissolved in anticipation of a snap election and subsequent attempts by the temporary technical government to declare a state of emergency exposed legal inconsistencies within the constitutional text, an item that will undoubtedly feature on the parliament's agenda once it reconvenes. In The Gambia, the parliamentary prerogative to end the state of emergency was unilaterally ignored by President Barrow, highlighting the potentially worrying possibility that he may continue his predecessor's practice of ignoring the constitutional rights of parliament with impunity. The COVID-19 pandemic has also worsened political tensions in The Gambia, as elsewhere, and has eroded trust between security forces and local populations. Though the capacity of parliament to perform meaningful oversight and scrutinize potential abuse by security forces has been limited, incidents of rights violations have been exposed in The Gambia, Tunisia, and Colombia.

¹² Elena Griglio, "Parliamentary oversight under the Covid-19 emergency: striving against executive dominance," *The Theory and Practice of Legislation* 8, no. 1-2 (2020): 49-70.

Recommendations

The following recommendations - which align with the themes of *institutional and legislative architecture, technical expertise, and a culture of oversight*, observed across case

studies - were intentionally developed to be broadly applicable to parliamentary contexts around the world.

Strengthening the Institutional and Legislative Architecture of Parliament

The role of parliaments in SSG must be matched by sufficient normative and legal authority, vested in laws, rules of procedure, and standing orders - which define and shape the institutional architecture that parliamentarians navigate. Parliaments with well-developed institutional and legislative architectures are typically better able to fulfil their role in SSG and do so effectively. Thus, parliaments should:

- Recognize that **parliamentary authority to firmly govern security sector activities is determined and influenced by an array of factors, even if strong legal language embedded in the constitution grants parliamentarians the sufficient authority to effectively fulfil their role** in theory. For example, a minimalistic interpretation or improper implementation of the law may significantly diminish parliamentary authority in practice. Hence, parliamentary assistance programmes seeking to improve the authority of parliament by strengthening the legal framework should aim to expand the internal regulations of parliaments through standing orders and rules of parliamentary procedure, as these lower order laws specify, delineate, and institutionalize parliamentary authority. Furthermore, parliamentarians should be trained in how to apply and wield these laws to achieve their intended effect.

- **Consolidate parliamentary immunity** to ensure that parliamentarians can fulfil their role and responsibilities without fear of prosecution. An effective parliamentary role in SSG is often impeded in contexts marked by recent democratic transitions or democratic backsliding, due to an institutional and legislative architecture that fails to ensure the full protection of civic space, often stemming from authoritarian legacies within the military and/or intelligence services. Notably, where parliamentary immunity is challenged, parliamentarians may be subject to military jurisprudence; a situation further compounded when a judicial branch is weak, ineffective, or unable to intervene.
- **Resist executive dominance.** It is important to take lessons from the COVID-19 pandemic, and the role parliaments played in SSG during the crisis. In many instances, the balance of power shifted heavily towards the executive, which was frequently shielded from scrutiny due to the disruption of the pandemic. Grappling with COVID-19 measures raised awareness within some parliaments of deficiencies and gaps in their legislative and institutional architecture in this context, to the detriment of effective parliamentary functioning in times of crisis. Against this backdrop, engagement and assistance to parliaments is crucially important, now more than ever.

Enhancing Technical Expertise

Parliamentarians often lack the capacity to effectively govern the security sector due to insufficient technical expertise. In many cases, this stems directly from an insufficiency of the resources needed to build, maintain, and transfer technical expertise. Yet, this expertise is vital to the functions of parliament, for example by ensuring that the intent of lawmakers is translated accurately into proposed legislation or by allowing parliamentarians to adequately scrutinize security sector activities in alignment

with established good practices and standards. Efforts to build capacity by improving the knowledge of parliamentarians on core SSG/R principles, and to maintain this capacity over time, are therefore crucial to the ability of parliament to engage effectively in SSG. To that end, Parliaments should:

- **Engage actors and institutions not bound by term-limits in efforts to strengthen technical expertise.** A major challenge to capacity building is related to parliamentary

term-limits, which is further compounded in parliaments with high member turnover. To mitigate these limits and avoid institutional knowledge loss, capacity building programmes should include actors and institutions unrestrained by term-limits, such as parliamentary staff, in-house advisors and trainers, parliamentary academies, and external stakeholders like CSOs and academia. These stakeholders also feed new knowledge and ideas into the parliamentary process, expanding the available knowledge base from which parliamentarians can draw.

- **Utilize lessons-sharing** – both among parliamentarians and between former and current parliamentarians – to foster and deepen SSG/R knowledge and facilitate the consolidation and documentation of good practices. It may also be helpful to develop knowledge sharing between members of

parliaments operating in similar contexts, for instance by establishing regional platforms for exchange.

- **Tailor innovative and pragmatic approaches to the specific needs of parliamentarians.** This can offer applied knowledge with great practical value through interventions that align and integrate with the parliamentary calendar and legislative agenda, focus on building routine through technocratic means, and are mindful of the fact that many parliamentarians are currently working from home due to the pandemic. These interventions may seek to strengthen basic standard operating procedures in contexts marked by low levels of institutionalization, for example, or use role-playing exercises to meet the specific needs of parliamentary committee members.

Fostering a Culture of Oversight

To strengthen the role of parliament in SSG, the authority and ability of parliament must be strengthened as well; but parliamentarians must also be willing exercise that authority and ability in the context of SSG. Assistance programmes should therefore foster a culture of oversight by ensuring that all parliamentary dimensions (authority, ability, and attitude) are thoroughly addressed and given equal weight. International assistance mechanisms and parliaments alike must be aware that:

- **The politics of SSR matter**, especially in challenging environments. Where a political system fails to encourage or even disincentivizes efforts to strengthen parliament's role in SSG, this has a marked effect on parliamentary assistance programmes or interventions.
- **Culture follows structure, and structure follows culture.** Structural factors manifest in the legislative and institutional architecture in which parliamentarians operate, such as the legal framework or available channels of engagement between parliament and the security sector. This legal framework must be conducive to a culture of oversight and interventions should aim to build bridges and facilitate communication between parliamentarians and security sector actors, in part to raise awareness of the mutually beneficial outcomes of SSG. Moreover,

factors that inhibit a culture of oversight should be readily discarded. For instance, when parliamentarians face the threat of legal sanction for exercising their oversight responsibilities, this has an understandably chilling effect on the effective exercise of parliamentary power.

- **Inclusive multi-stakeholder approaches, such as joint activities involving parliamentarians and external actors from CSOs and academia, are effective at fostering a culture of oversight** by developing mutual trust and a common understanding of national security. These efforts raise awareness among relevant stakeholders of the benefits of good SSG. Engagement with CSOs and the media also has the potential to increase pressure on parliamentarians in a way that positively impacts their attitude vis-à-vis SSG, as their role and purpose in SSG is effectively communicated to constituents.

The Role of Parliaments in SSG: The Case of Colombia

Mónica Pachón Buitrago

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.¹ 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.

1 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.² 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.³ 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

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*⁴ 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.

4 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.⁵ 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 2018.⁶ 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.⁷ 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.⁸

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

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,⁹ the Colombian Congress lacks an independent, non-partisan technical office to provide independent analysis and fiscal policy assessments.¹⁰ 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 2014.¹¹ 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.¹² 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.¹³

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

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.¹⁴ 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.¹⁵ 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.¹⁶ Members of security forces view

¹⁴ The figure varies depending on the source.

¹⁵ For example, see: “Sigues 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>

¹⁶ 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.*¹⁷

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.¹⁸

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.¹⁹

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

	Total Hearings	% Total Hearings	% Committees
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

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.²⁰

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.²¹ 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...²²

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:

...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).²³

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*.²⁴ 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

²³ Interview by author with Juanita Goebertus, December 2019.

²⁴ 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.²⁵ The Visible Congress Project, or Congreso Visible, reported that the legislature also held more than 100 hearings during this time.²⁶ While some legislators saw this as a positive development, others became entrenched in intense debate over the urgency of mixed or

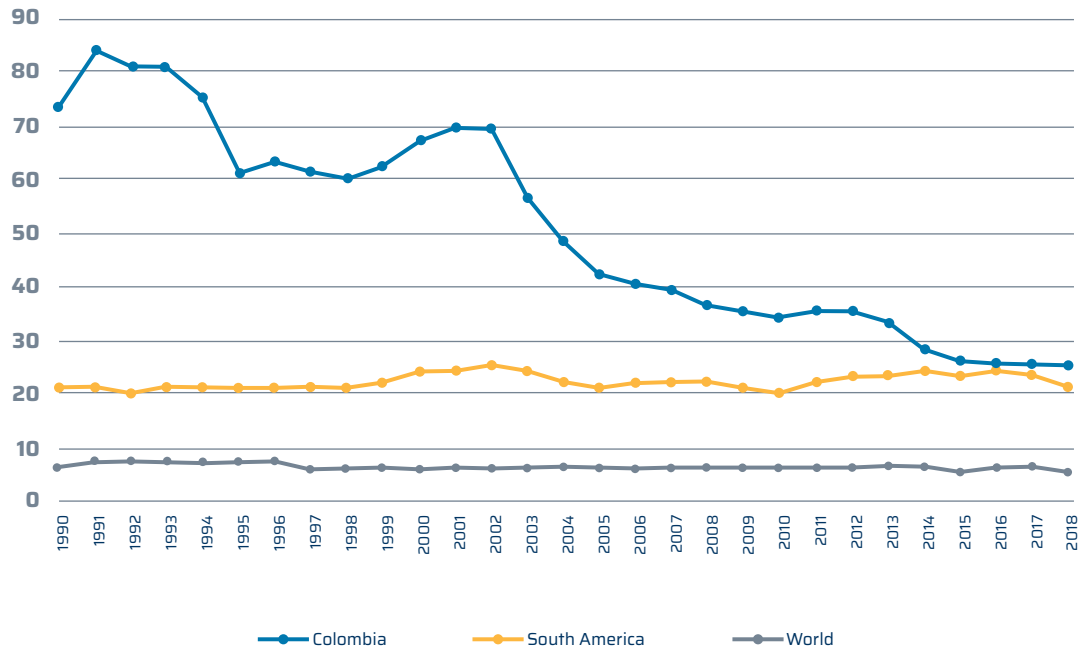
face-to-face sessions, with some arguing that it was impossible to exercise effective control or oversight using remote-access software. As of January 2021, however, Congress was still using Zoom to hold sessions.

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.

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

²⁶ 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.²⁷

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.²⁸ 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 Escriella, 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 Escriella, 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 Escriella, 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 Escriella, 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 veinticinco 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 Escriella, 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 Escriella, 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).

The Role of Parliaments in SSG: The case of The Gambia

Jean Conte

Introduction

The Gambia, one of the smallest and most densely populated countries in West Africa, has recently experienced a political transition after incumbent President Yahya Jammeh, who led the country for 22 years, was democratically succeeded by Adama Barrow in December 2016. This new political landscape has paved the way for long-awaited security reforms, as Jammeh's rule was marked by widespread human rights violations against dissenters, human rights defenders, and independent media – who were the regular victims of arbitrary detention, forced disappearances, extrajudicial killings, and torture.¹ This systematic repression notably reached its peak in July 2005, when security forces arrested about 50 migrants accused of involvement in a coup attempt. Over the next few days, most of these suspects were killed and their bodies dumped in wells.²

The Inspector General of the Police, the Director General of the National Intelligence Agency, the Chief of the Defence Staff, and the commander of the National Guard were reportedly all complicit in this crime and allegedly destroyed key evidence to hinder the work of international investigators. In fact, large-scale violations under Jammeh's rule were mostly perpetrated by or with the consent of the state security apparatus, which was highly politicized and riddled with corruption.³ Indeed, in the 2016 Transparency International Corruption Perceptions Index, released shortly before Jammeh's ouster, The Gambia ranked 145 out of the 180 countries assessed.

Since he entered office, President Barrow has vowed to depart from the misconduct of his predecessor. In keeping with his campaign promises, he has regularly reiterated his commitment to democratic norms, good governance, and the rule of law, as well as his intention to rid the country of a culture of impunity.⁴ To that end, and as part of an unprecedented attempt to reverse authoritarian trends in The Gambia, the government has initiated a series of reforms to promote good governance of the security sector and hold the executive to account for the conduct of security services.⁵

In their capacity as elected representatives, and as a key component of the oversight mechanisms that contribute to greater security sector governance (SSG), Gambian lawmakers should play a leading role in these ongoing reforms. Under the 1997 Constitution of the Republic of The Gambia (hereafter, the Constitution), the National Assembly – in particular, the Standing Committee on Defence and Security (SCDS) – was vested with powers that theoretically enable it to monitor the efficiency, transparency, and responsiveness of security institutions and officials.⁶ However, in the past, the Assembly was “severely constrained by the repressive measures of Jammeh's regime.”⁷ In 2013, for example, three members of the opposition were convicted of sedition and sentenced to five years' imprisonment after allegedly being tortured and deprived of legal representation.⁸ This

1 Amnesty International, *Dangerous to Dissent: Human Rights Under Threat in Gambia* (London, 2016). Available at: https://www.ecoi.net/en/file/local/1066761/1226_1465455365_afr2741382016english.PDF

2 See: Human Rights Watch, “Gambia: Ex-President Tied to 2005 Murders of Ghanaian and Nigerian Migrants,” 16 May 2018, <https://www.hrw.org/news/2018/05/16/gambia-ex-president-tied-2005-murders-ghanaian-and-nigerian-migrants> (accessed 2 March 2021).

3 In several reports, Human Rights Watch found that “the Junglers,” an unofficial unit of up to 40 personnel largely drawn from the Presidential Guard, was most frequently implicated in serious abuses.

4 Abdoulie John and Carley Petesch, “New Gambian president promises reforms, freedoms,” Associated Press, 18 February 2017, <https://apnews.com/article/189d55850c344dcf8aca4bb7a7197bde> (accessed 2 March 2021).

5 This has led to the launch of both transitional justice and SSR processes. See: “Two-and-a-half years after Yahya Jammeh was chased from power, The Gambia stands at a crucial juncture in its transition process,” The Peace and Security Council Report, 24 July 2019, <https://issafrika.org/pscreport/psc-insights/the-democratisation-process-in-the-gambia-remains-fragile>

6 Section VII of the Constitution provides for “additional Functions” of the National Assembly's legislative powers. See: <http://hr-library.umn.edu/research/gambia-constitution.pdf>

7 DCAF, *SSR in The Gambia: Final Assessment*, 61.

8 Amnesty International, “The Gambia must immediately release three opposition members convicted of sedition,” 18 December

climate profoundly weakened the *authority, ability, and attitude* of Gambian lawmakers,⁹ as well as their capacity to provide any meaningful oversight.

To break with this past, newly elected lawmakers have expressed their willingness to adopt a culture of accountability that prioritizes the provision of responsive, people-centred security and justice.¹⁰ Still, despite the country's recent political transition, a number of challenges inherited from Jammeh's rule linger. Truly implementing SSG in The Gambia will only be possible if parliamentarians make full use of both their constitutional powers and

the support of international actors that have been promoting greater accountability in the country's security sector since 2016.

Following a brief overview of the ongoing challenges facing Gambian lawmakers, this case study offers an overview of potential remedies available in the context of SSG. It then reflects on the international support that has been provided to the National Assembly of The Gambia since the 2016 elections, before concluding by providing a series of recommendations aimed at ensuring that elected representatives embrace their role as leading actors in the SSG reform process.

Challenges inherited from the authoritarian period

During Jammeh's rule, the National Assembly was often described as "dormant,"¹¹ for it never fully performed its core functions, including scrutiny of the conduct of defence and security forces. Although the country's

recent political transition has brought new opportunities for Gambian parliamentarians, emerging difficulties related to the COVID-19 crisis are adding to unaddressed challenges inherited from the authoritarian period.

A lack of independence weakens the authority of the National Assembly

Over the past decades, the National Assembly has enacted a number of laws governing the security sector. These include the Gambia Armed Forces Act, the Police Act, the National Intelligence Agency Act, the Gambia Revenue Act, the Prisons Act, the Drug Control Act, and the Official Secrets Act. Yet, none of these laws contain provisions specifying the role of parliament; thus, the extent to which Gambian lawmakers can employ parliamentary tools to influence government policy and oversee the security services relies exclusively on provisions of the Constitution.¹²

The need for a new basic law has long been a central issue of debate in The Gambia. During the country's 22 years of dictatorship, the Constitution was altered through countless amendments that allowed Jammeh's party,

the Alliance for Patriotic Reorientation and Constitution (APRC), to manipulate the political process. This especially applied to Section 91, which provides that a member of parliament can lose their seat if dismissed from their party. In the absence of an intra-party democratic culture and process, this provision implies that, as party leader, a president may exert control over parliamentarians by threatening to exclude them from the party. Similarly, Section 92 stipulates that "An Act of [the] National Assembly may make provision for the recall of an elected member of the National Assembly" but does not explicitly state how. Lacking clear constitutional guidance, and given that Section 88(b) of the Constitution allows the president to nominate five parliamentarians, Jammeh argued that as a nominating authority,¹³ he also

2013, <https://www.amnesty.org/en/latest/news/2013/12/gambia-must-immediately-release-three-opposition-members-convicted-sedition/> (accessed 2 March 2021).

9 This case study analyses the role of the National Assembly in SSG through the lenses of these three features, commonly referred to as "the trinity of As." For more, see: DCAF, "Parliaments," SSR Backgrounder, 2015. Available at: https://www.dcaf.ch/sites/default/files/publications/documents/DCAF_BG_8_Parliaments.11.15.pdf

10 For example, see: Bertelsmann Stiftung, BTI 2020 Country Report: Gambia (Gütersloh, 2020). Available at: https://www.bti-project.org/content/en/downloads/reports/country_report_2020_GMB.pdf

11 DCAF, "Report on capacity building for members of the Standing Committee on Defence and Security," 2018, 2.

12 Adedeji Ebo and Boubaçar N'Diaye, eds., *Parliamentary Oversight of the Security Sector in West Africa: Opportunities and Challenges* (DCAF, 2008). Available at: https://www.dcaf.ch/sites/default/files/publications/documents/bm_parliament_oversightssrafrica_en.pdf

13 Section 88(1)(b) of the Constitution empowers the President to "nominate five members of the National Assembly."

had the legal authority to remove a nominated member from the Assembly. As a result, in every parliamentary term, Jammeh nominated and dismissed as many lawmakers as he pleased, and notably did so when a parliamentarian voted against bills he had proposed.

Despite the protest of most members of parliament, President Barrow recently dismissed Ya Kumba Jaiteh in similar fashion, in retaliation for alleged criticism. Although supporters of Barrow contend he has the power

to make such a dismissal, the decision was met with strong dissent. Both local and international observers emphasized that no provision in the Constitution grants the president the authority to revoke, dismiss, terminate, or end the tenure of a nominated or elected member of the National Assembly, and that such practices have “profoundly eroded and undermined the fundamental doctrine of the separation of powers.”¹⁴

A lack of resources undermines the ability of the National Assembly to engage in oversight

In addition to the lack of authority afforded to the National Assembly as the result of certain constitutional provisions, Gambian lawmakers also lack the resources and expertise necessary to fully perform their oversight function. According to international standards, these resources should include both the financial means to fund public hearings, convene witnesses, and conduct on-site visits or inspections, and the human capital to ensure that advice from legal experts and specialized support staff informs the intentions of individual lawmakers and is translated accurately into proposed legislation.¹⁵ While the government can draw on large ministerial bureaucracies, Gambian parliamentarians have only a small internal support infrastructure, which prevents them from collecting firsthand information on their own; and notably, the staff mandated to assist in this task may have limited or no expertise in the area of SSG and may lack basic understanding of the research they are expected to undertake, as they have been

hired solely on the basis of personal affinities with either lawmakers or senior officials.¹⁶ As a result, a small number of experts must cover a wide range of activities, from secretarial work to judicial advice, to drafting legislation, documents, research papers, or speeches.¹⁷ To overcome these institutional weaknesses, the National Assembly tends to outsource this work and is heavily dependent on external “Subject Matter Specialists”.

Lawmakers themselves have received little to no training on SSG and/or cross-cutting issues, such as gender equality and compliance with human rights. Moreover, many newly elected members are young and possess only a secondary school diploma, as shown in Figure 1 below.¹⁸ Due to their limited expertise in these areas, efforts by parliamentarians to oversee justice and security institutions are often carried out on an ad hoc basis and fail to reflect any long-term vision for these sectors.¹⁹

14 See: Kebba Ansu Manneh, “Gambia Bar Association Faults Kumba Jaiteh’s Dismissal,” *The Chronicle*, 27 February 2019, <https://www.chronicle.gm/gambia-bar-association-faults-kumba-jaitehs-dismissal/> (accessed 2 March 2020); and Abdoulaye Fatty, “Attempted removal of nominated NAM is constitutionally wrong - Both legally and politically,” *Law Hub Gambia* (blog), 18 March 2019, <https://www.lawhubgambia.com/lawhug-net/attempted-removal-nam-is-constitutionally-wrong> (accessed 2 March 2021).

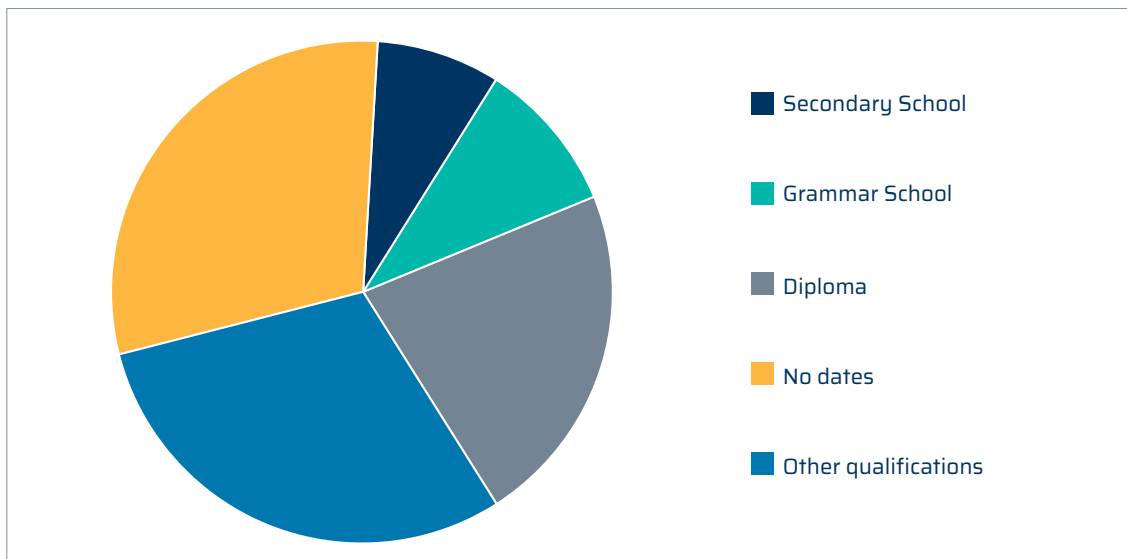
15 See: Commonwealth Parliamentary Association (CPA), “Recommended benchmarks for democratic legislatures,” Articles 5.1.1 and 5.1.4; and Katharine MacCormick, John Mark Keyes “Roles of Legislative Drafter Offices and Drafters,” Canadian Department of Justice, n.d., especially page 12: “a drafter is as critical to drafting than an advocate to a court case...” Available at: <file:///C:/Users/contej/Downloads/LD94-Maccormick.eng.pdf>

16 Interview by author with members of the Assembly.

17 Ibid.

18 According to the Interparliamentary Union, nearly 60% of parliamentarians are under 45 years old. Data on educational backgrounds from the Westminster Foundation for Democracy (see: <https://www.wfd.org/network/the-gambia/>)

19 DCAF, “Report on capacity building for members of the Standing Committee on Defense and Security.”

Figure 1. The educational background of National Assembly Members

Source: ECPR Graduate Conference, 4–6 July 2012

(<https://ecpr.eu/filestore/paperproposal/b72fcc08-74a1-481c-ad7d-40960013d1ba.pdf>)

A lack of established practices makes it hard to shape attitudes in the National Assembly

It is not enough to have the constitutional authority and resources for oversight; lawmakers must also have the will to effectively use the tools at their disposal in the context of well-rounded parliamentary practices. In the case of The Gambia, members of the National Assembly lack such practices, especially when it comes to legislative scrutiny. For example, contrary to international good practice suggesting that parliaments should “refer legislation to a committee, and any exceptions must be transparent, narrowly-defined, and extraordinary in nature,”²⁰ bills in the Assembly tend to be scrutinized in plenary rather than by the relevant standing committee.²¹ Even in cases where standing committees carry out a clause-by-clause analysis of a draft law and recommend amendments in a report presented in plenary, all members of the Assembly may re-introduce amendments, thus undermining the role and effectiveness of parliamentary committees.

Similarly, while international good practice recommends that “opportunities shall be given for public input into the legislative process,”²² there is no parliamentary practice in The

Gambia to hold public hearings that are open to citizens or civil society organizations (CSOs), and the National Assembly does not publish activity reports. The confidential nature of parliamentary hearing makes it difficult to ascertain whether Gambian lawmakers have demonstrated a reluctance to scrutinize the security sector under Barrow’s presidency, though some suspect his recent dismissal of Jaiteh may have discouraged other members of the Assembly from fully performing their oversight duties. Several local CSOs, including the Gambia Bar Association, have collectively denounced what they regard as an unconstitutional act by Barrow and have highlighted the risk of self-censorship that may result.²³

These concerns are even more immediate within the current context of a global health crisis. Indeed, the coronavirus pandemic has upset the balance of power between the legislative and the executive to an extent rarely experienced in peacetime in The Gambia. This has further impacted the authority, ability, and attitude of Gambian lawmakers.

20 Commonwealth Parliamentary Association, “Recommended benchmarks for democratic legislatures,” Article 3.2.2.

21 DCAF, “Report on capacity building for members of the Standing Committee on Defense and Security,” 5.

22 Commonwealth Parliamentary Association, “Recommended benchmarks for democratic legislatures,” Article 3.1.5.

23 Manneh, “Gambia Bar Association Faults Kumba Jaiteh’s Dismissal.”

Emerging challenges related to COVID-19

In addition to the limitations detailed above, the recent outbreak of COVID-19 poses yet another challenge to the National Assembly. President Barrow is already facing serious economic and political crises that extend from Jammeh's legacy of mismanagement, and the global health crisis has the potential

to further destabilize his government if not properly addressed. According to the World Health Organization's COVID-19 Dashboard, The Gambia has reported nearly 4,000 cases of the virus and approximately 130 deaths, which is considerably more than in some of its similar-sized neighbours, like Guinea Bissau.

The impact of the COVID-19 pandemic on civil liberties and security

In a bid to curb the spread of the pandemic, the executive declared a state of emergency on 27 March 2020, subsequently adopting a series of measures restricting the freedom of movement of Gambians. Most of the exceptional measures adopted under this state of emergency have significantly impacted ordinary Gambians, generating widespread frustration, especially among the poorest and most vulnerable – many of whom are cut off from essential services.²⁴ Although officials have begun to ease some restrictions, allowing markets, religious establishments, and high schools to reopen on 8 June, for instance; measures such as curfews and quarantines continue to have an outsized impact on certain populations and restrict many people's access to healthcare.

The COVID-19 outbreak has also had a significant effect on the overall security context in the country. Pandemic-related restrictions and their economic impact have contributed to a worsening of existing tensions, in particular triggering clashes between local populations and the security apparatus. This was seen in a recent crackdown by security forces on thousands of demonstrators who gathered to demand that Barrow step down.²⁵ The police arrested 137 people and fired tear gas at protesters, who responded by throwing stones and setting tyres aflame. These developments are all the more worrying considering that the National Assembly is severely constrained in its capacity to perform its oversight functions as a result of the coronavirus crisis.

The impact of the COVID-19 pandemic on the functioning of the National Assembly

In such an exceptional context, it is essential to closely monitor the security measures adopted by the executive, and to correct them where necessary. Given its traditional oversight function and ability to scrutinize bills introduced by the government, the National Assembly is best equipped to meet this mandate. Yet, unlike most of its neighbours in the sub-region, where parliamentarians have continued to meet either physically or virtually during the pandemic, the National Assembly of The Gambia suspended its regular sessions altogether on 18 March 2020 for the duration

of the state of emergency.

It is important to note, however, that Gambian legislators have rejected motions to extend the state of emergency since May 2020, and President Barrow has unilaterally extended it anyway, despite the vote of the Assembly.²⁶ This has prompted some parliamentarians to consider launching a formal impeachment inquiry. Whether the National Assembly will actually implement such a strategy is unclear, though, raising serious concerns over the de facto permanence of the state of emergency.²⁷

24 See: UNDP, "Update on the Socio-Economic Situation Following COVID-19 Outbreak in The Gambia," Brief #1, 27 March 2020. Available at: <https://www.undp.org/content/undp/en/home/coronavirus/socio-economic-impact-of-covid-19.html>

25 "Gambia launches crackdown on anti-Barrow protests," CGTN, 27 January 2020, <https://africa.cgtn.com/2020/01/27/gambia-launches-crackdown-on-anti-barrow-protests/> (accessed 2 March 2021).

26 Kebba Af Touray, "Gambia: National Assembly Rejects Motion to Extend State of Public Emergency," Foroyaa, 14 July 2020, <https://foroyaa.net/national-assembly-rejects-motion-to-extend-state-of-public-emergency> (accessed 2 March 2021).

27 "Has The National Assembly Dashed The Hopes Of The People Again On The State of Emergency?" Foroyaa, 14 July 2020, <https://foroyaa.net/has-the-national-assembly-dashed-the-hopes-of-the-people-again-on-the-state-of-emergency/> (accessed

Though this situation is ultimately temporary, it has disrupted the work of Gambian lawmakers and has prevented them from performing meaningful parliamentary oversight. Under these circumstances, various rights, from the right to life to other human rights like freedom of expression, have been particularly exposed to violation. In fact, in June 2020, officers of Gambia's anti-crime police unit arrested and

jailed a journalist for photographing the arrests of people protesting COVID-19 restrictions.²⁸ Several CSOs have raised the alarm about this and other incidents, reporting what they regard as abusive practices and calling for greater scrutiny from the National Assembly of seemingly arbitrary measures taken under the state of emergency.²⁹

Potential remedies to the National Assembly's limitations

While the National Assembly of The Gambia has faced and continues to face the numerous challenges described above, all of which prevent it from fully exercising its core oversight function vis-à-vis the security sector, a deep cultural and institutional shift is needed to completely overcome these issues. Existing instruments and tools can help Gambian parliamentarians reclaim some long-neglected prerogatives and mitigate these difficulties,

including some tools and practices that, while flawed, proved useful even during Jammeh's era. And although it has been highly criticized, the institutional framework regulating the activity of the Assembly contains relevant enabling provisions that, when combined with renewed parliamentary practices arising from the political transition, could provide a sound basis for greater security sector oversight.

Reaffirming the authority of the National Assembly through the legislative framework

Despite numerous amendments to the Constitution made by Jammeh to give extensive power to the executive at the cost of the National Assembly, several provisions in the Constitution nonetheless retain effective tools for parliamentary oversight.³⁰ Given the new political landscape in The Gambia,

these provisions could be used to reaffirm parliamentary authority. Beyond this, the authority of the Assembly is reinforced by its Standing Orders, which give it "the power to regulate its own procedure, proceedings and how to make law."³¹

The 1997 Constitution

Section 109(d) of the Constitution is key to oversight by the National Assembly, granting Gambian parliamentarians various powers of monitoring, including the power to "investigate or inquire into the activities (...) of the government (...) or any matter of public importance." Such investigations or inquiries "may extend to making concrete proposals for legislation." Similarly, Section 109 provides

that, for the purpose of effectively performing its functions, the SCDS shall have the same powers as the High Court during trials. Notably, this includes enforcing the appearance of witnesses and examining them - including from abroad - as well as compelling the production of documents, regardless of their confidential nature. Any information collected during SCDS hearings, along with any gathered from other

2 March 2021).

28 "Gambian police detain journalist documenting COVID-19 protests," Committee to Protect Journalists, 15 July 2020, <https://cpj.org/2020/07/gambian-police-detain-journalist-documenting-covid-19-protests/> (accessed 2 March 2021).

29 "The National Assembly Must Maintain Oversight," Foroyaa, 1 April 2020, <https://foroyaa.net/the-national-assembly-must-maintain-oversight/> (accessed 2 March 2021).

30 For more on Jammeh's constitutional legacy, see: Madi Jobarteh, "From dictatorship to a new Constitution in The Gambia: Issues and Concerns," ConstitutionNet, 22 January 2018, <http://constitutionnet.org/news/dictatorship-new-constitution-gambia-issues-and-concerns> (accessed 2 March 2021).

31 The Constitution of the Republic of The Gambia, Section 108(1).

sources, is analysed by the Committee and may result in the formulation of recommendations or the production of a report.

The Constitution also establishes a system of checks and balances to prevent the executive from concentrating or consolidating power, especially in times of crisis. Importantly, Section 34 subjects the exercise of presidential power in declaring a state of public emergency to the oversight and scrutiny of the National Assembly. In constitutional terms, the President has the power to declare a state of public emergency, but the power to extend this extraordinary measure beyond the legal term of seven days is vested exclusively in the Assembly. Still,

a recent attempt by Gambian lawmakers to enforce this provision within the context of the COVID-19 health crisis was unsuccessful.

Gambian parliamentarians made an important change to the legal framework in December 2017 by voting overwhelmingly to repeal Section 91(1) of the Constitution.³² This section rendered its members vulnerable to removal from office by party leaders. According to Hassan Bubucar Jallow, who moved the motion, it was intended to “grant independence to the National Assembly members from their respective parties and political leaders” and “further enhance the freedom of speech and debate as enshrined in the Constitution.”³³

Standing Orders

Standing Orders empower the National Assembly to regulate its own procedure and law making, and the national courts are barred from inquiring into any “decision, order or direction of the National Assembly or any of its Committees or the Speaker relating to the Standing Orders of the National Assembly, or to the application or interpretation of Standing Orders, or any act done by the National Assembly or the Speaker under any Standing Orders.”³⁴ In June 2020, the Standing Orders of the Assembly were thoroughly revised. As the Chairperson of the Standing Order Committee Sidia Jatta has noted, these Orders “are dynamic living documents that require updating and amendments to meet the prevailing time and circumstances (...) and are geared to ensure sanity and order in the current Legislature.”³⁵ To that end, Gambian lawmakers have renewed various instruments at their disposal to fulfil their security sector oversight function. This particularly applies to the SCDS, to which a new Standing Orders confers the duty to “consider and advise the government on all matters connected with defence and security of the Nation.”³⁶

According to Section 36 of the Orders, “The Vice President and Ministers shall (...) be requested to attend sittings of the Assembly to answer... topical questions and urgent oral questions asked of them.” Through this mechanism, Gambian parliamentarians have the power to submit an official request for information or clarification to the government in relation to national security policy. In addition, they may put written questions to the government, either in relation to its general national security policy or to operations under the charge of a specific security department.³⁷ A disagreement between the government and the legislature may, in some circumstances, result in a vote of no confidence.³⁸ Sections 55 and 56 of the new Standing Orders specify the conditions under which Gambian lawmakers can withdraw confidence in the government or organize votes of no confidence against individual ministers or the president, on such grounds as abuse of office, violations of any provision of the Constitution, or misconduct.

32 In the draft constitution of 2020, Section 91 has been replaced by Section 142, which provides that the office of a member of the National Assembly becomes vacant if, “having been elected as a member of a political party, he or she voluntarily resigns from that political party (...) or joins another political party. Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/110050/136735/F-960144044/GMB109558%202020.pdf>

33 “Nams Pass Bill To Strengthen Their Independence,” Foroyaa, 23 December 2017, <https://foroyaa.net/nams-pass-bill-to-strengthen-their-independence/> (accessed 2 March 2021).

34 The Constitution of the Republic of The Gambia, Section 108(2).

35 Kebba AF Touray, “National Assembly Adopt Revised Standing Orders 2019,” Foroyaa, 13 September 2019, <https://foroyaa.net/national-assembly-adopt-revised-standing-orders-2019/> (accessed 2 March 2021).

36 Standing Orders of the National Assembly, 25 June 2020, Section 117(1).

37 Ibid., Section 46

38 Ibid., Section 55

Strengthening the authority of the National Assembly through renewed practices

While various tools and instruments fell into disuse under Jammeh's rule, there has been a notable change in the attitude of Gambian parliamentarians in the post-Jammeh era. In a marked departure from the past, and despite the fact that a majority of lawmakers still belong

to the ruling party, newly elected members of the National Assembly have demonstrated a serious commitment to holding the executive to account. They appear to be willing to use all the mechanisms available to them, including several important renewed practices.

Questioning and hearings

In 2017, the National Assembly posed 180 questions during just one of its four annual sessions. This may not seem remarkable, except that only 17 questions had been raised by the previous Assembly in the entire 22 years of Jammeh's dictatorship.³⁹ Some parliamentarians in the new legislature, including Halifa Sallah, Sidia Jatta, Dawda Jawara, and Ya Kumba Jaiteh, have been particularly active in that regard and therefore enjoy considerable popularity among CSO activists and local media. On 9 July 2020, for example, Sallah

put forth a motion, which was subsequently adopted, to summon Vice President Isatou Touray to clarify the position of the government on the declaration of a state of emergency and its potential extension.⁴⁰ Similarly, members of the SCDS have summoned security sector actors to hearings, either to gather information for the purpose of reviewing a draft bill or to obtain relevant documents to help them make better-informed decisions; often resulting in the formulation of recommendations or the production of a report

Motions and vetting

To regain its influence and perform its oversight function more effectively, the National Assembly has also been instrumentalizing motions – both by issuing them and by rejecting those put forth by the government. As discussed earlier, the Assembly adjourned a motion to extend the state of public emergency on 3 April 2020, and referred the issue to the parliamentary Standing Committee on Human Rights and Constitutional Matters to ensure that the appropriate choice was made “for the well-being of Gambians.”⁴¹ Although President Barrow disregarded the vote of the Assembly

and unilaterally extended the state of emergency, this attempt by parliamentarians to hold the government to account and monitor its actions even under exceptional circumstances clearly demonstrated the renewed commitment of members to their oversight duties. The Assembly has proven quite effective at vetting the appointments of high-ranking security sector officials as well, for example rejecting the December 2019 appointments of Baboucar A. Suwaneh as Ombudsman and Col. Ndow Njie to serve on the Gambia Armed Forces Council.

On-site visits

Since President Barrow's election, relevant committees of the National Assembly have also carried out several on-site visits to strengthen their relationship and build trust with local communities. In October 2020, for instance, the Standing Committee on Human Rights and Constitutional Matters spent a week visiting

detention centres in various parts of the country. According to a public statement released on the Assembly's website, the purpose was to enable the Committee to collect and analyse “first-hand information on the level of compliance of the country's detention facilities with human rights standards.”⁴²

39 The Gambia National Development Plan (2018-2021), p. 186. Available at: <https://www.thegambiatimes.com/wp-content/uploads/2018/02/1.-The-Gambia-National-Development-Plan-2018-2021-Full-Version.pdf>

40 “State of Emergency: Halifa Sallah Casts Proposal For National Assembly To Summon Vice President,” The Fatu Network, 9 July 2020, <https://fatunetwork.net/state-of-emergency-halifa-sallah-casts-proposal-for-national-assembly-to-summon-vice-president/> (accessed 2 March 2021).

41 Ismaila Sonko, “Assembly refers motion for extension of State of Public Emergency,” The Point, 3 April 2020, <https://thepoint.gm/africa/gambia/article/assembly-refers-motion-for-extension-of-state-of-public-emergency> (accessed 2 March 2021).

42 Facebook post of The Gambia National Assembly, 20 October 2020, <https://www.facebook.com/GambiaAssembly/posts/685258678763400> (accessed 2 March 2021).

International community support to the National Assembly

In addition to these enabling instruments and practices, Gambian parliamentarians can also rely on support from the various international actors that have encouraged the country's transition towards democracy since the 2016 presidential election. Within this framework, several notable assistance programmes have been implemented to help strengthen the ability of the National Assembly to perform its oversight function. Indeed, while

the international community's disappointment with Jammeh led to significant cuts in foreign aid to The Gambia during his rule, the country has gained renewed international attention since Barrow was elected and has benefited from numerous assistance projects designed to support its democratic transition – including through capacity building among National Assembly members.

Efforts by the international community to build capacity and strengthen oversight

Certain parliamentary committees, including the SCDS, must have sufficient capacity and logistical means to effectively perform their mission. Every parliament must therefore ensure that lawmakers operate in a workspace well-equipped for this purpose. Thus, since 2018, the Westminster Foundation for Democracy (WFD) has been supporting the National Assembly in building internal structures and increasing the capacity of staff. For the first time since the National Assembly was established, this initiative has contributed to the creation of specific research and communication units, which are now fully functioning.⁴³

To strengthen the internal processes of the Assembly at large and improve the capacity of members to perform their core law making and oversight functions, WFD also helped Gambian parliamentarians undertake a review of the Assembly's Standing Orders. In a three-day workshop organized by WFD in 2019, participants explored new procedures for legislative scrutiny, the roles and responsibilities of different stakeholders in this process, and effective methods for public consultation and engagement.⁴⁴ This was important groundwork in the process of updating the Standing Orders, which has reinforced the oversight authority of the Assembly, as noted above.

Given the critical importance of the national budget and the highly specialized skills needed

to analyse it, several international organizations have also focused their support on strengthening the financial oversight capacity of Gambian lawmakers.⁴⁵ Notably, in November 2020, the International Republican Institute (IRI) organized a three-day retreat to help Gambian deputies carry out a comprehensive analysis of the 2021 draft estimates of revenue and expenditures of the government.⁴⁶ In accordance with Section 27 of the Public Finance Act (2014), which requires the National Assembly to appoint a small core of technical staff ahead of its deliberations on the national budget, this activity enabled Gambian lawmakers to improve the overall efficiency, transparency, and accountability of public services – including in the security sector.

The EU has provided support on budgetary oversight to Gambian lawmakers, too. In fact, within the framework of the INTER PARES initiative, and in collaboration with International IDEA, a fully-fledged financial management system has been developed for the National Assembly. Several activities to ensure that committees have the necessary procedural, human, and financial resources in place to perform budgetary oversight have been implemented by the EU as well. Further, it has developed a parliamentary management structure establishing an effective operational framework to clearly outline the roles of different political and administrative actors and ensure an effective and operational organizational chart.⁴⁷

43 Information provided by WFD.

44 See: Commonwealth Parliamentary Association UK, "The Gambia - Standing Orders Workshop," 12 April 2019, <https://www.uk-cpa.org/news-and-views/the-gambia-standing-orders-workshop/> (accessed 3 March 2021).

45 The importance of budget scrutiny as an element of parliamentary oversight is emphasised, for example, in: Ornella Moderan, "Political Leadership and National Ownership of Security Sector Reform Processes" in Toolkit for Security Sector Reform and Governance in West Africa (Geneva: DCAF, 2015), Tool 5: Parliamentary Oversight of the Security Sector.

46 Facebook post of The Gambia National Assembly, 13 November 2020, <https://www.facebook.com/GambiaAssembly/posts/702502413705693> (accessed 3 March 2021).

47 For more on the work of the INTER PARES initiative – which is part of the EU Global Project to Strengthen the Capacity of Parlia-

The contribution of DCAF to strengthening parliamentary capacity in The Gambia

In this context, DCAF has been another important international partner for The Gambia, contributing to various capacity-building initiatives in the country since 2018. Two projects – funded by the EU and France – have allowed the organization to pursue the objective of supporting a fully inclusive, coordinated SSR process, and one with genuine civilian oversight. The EU-funded project, Support to Security Sector Reform in The Gambia (2018-2020), is structured around two main axes: (1) supporting SCDS members in exercising oversight of the security sector in an effective and transparent manner, and (2) strengthening awareness among relevant CSO and media representatives of key security-related issues.⁴⁸ To ensure local ownership and impartiality throughout implementation, all project activities have been designed and implemented jointly with members of the National Assembly. In particular, training was delivered on topics that Gambian parliamentarians themselves identified as priorities, which led to the adoption of a strategic plan. To encourage the involvement of the greatest number of Assembly members, DCAF also remained flexible in its implementation of the project; for instance, removing some training topics from the schedule in order to dedicate more time to strategic planning based on real-time feedback from SCDS members.

Other activities organized by DCAF have helped Gambian lawmakers to set up clear oversight goals. Notably, a study trip to Ghana gave them an opportunity to exchange views and knowledge with their Ghanaian peers and identify concrete strategies to better implement oversight prerogatives. Gambian lawmakers highlighted some of the direct outcomes of this effort, including: their scrutiny of the bilateral security agreement between The Gambia and Turkey, which led members to convince the government to substantially modify some key provisions;⁴⁹ the decision to hold proactive meetings with the

heads of security institutions during 2019 budget deliberations and jointly address priorities and concerns throughout the drafting phase; and the organization of parliamentary hearings to inquire about agreements between the government and SEMLEX for the production of biometric national identification cards.⁵⁰

Still, in a final evaluation report for the project, DCAF noted that most parliamentarians who were interviewed expressed concerns that they would be prevented from making full use of their newly acquired skills by the lack of parliamentary infrastructure. For example, due to high turnover in the National Assembly, many SCDS members may not be nominated or re-elected in upcoming legislative elections, and in the absence of an effective handover mechanism, lawmakers worry about significant losses of institutional knowledge. On top of this, though SCDS members reported improved relations with the heads of key security institutions, notably in the defence sector, they still viewed their interactions with these officials as too limited and said that information exchange occurred primarily between individuals with minimal influence on the legislative process.

For these reasons and others, SCDS members were pessimistic about the reform process, despite their positive assessment of the support provided by DCAF and the outcomes of the project. Many also cited a lack of political will from the executive as an obstacle, as well as the increasing politicization of parliamentary debate following the break between President Barrow and his former party.⁵¹ This may make it even harder to reach consensus over what SSG implies in The Gambia.

ments – in The Gambia, see: <https://www.inter-pares.eu/partnerships/inter-pares-partnership-national-assembly-gambia-round-i> (accessed 3 March 2021).

48 For more on DCAF's activities in The Gambia, see: <https://www.dcaf.ch/ssr-gambia>

49 "Gambia, Turkey to strengthen bilateral relations," Agence de Presse Africaine, 24 January 2020, <http://apanews.net/en/pays/gambie/news/gambia-turkey-to-strengthen-bilateral-relations> (accessed 3 March 2021).

50 The thoughts of lawmakers were included in DCAF's final evaluation report for the project.

51 See: "Gambia: President Adama Barrow launches his political party," The North Africa Post, 3 January 2020, <https://northafricapost.com/36670-gambia-president-adama-barrow-launches-his-political-party.html>; and Sarah Mukabana, "Gambia president forms new political party," CGTN, 1 January 2020, <https://africa.cgtn.com/2020/01/01/gambia-president-forms-new-political-party/> (accessed 3 March 2021).

Conclusions and Recommendations

Since the peaceful end to Jammeh's 22-year authoritarian rule in 2017, The Gambia has been implementing SSR processes as part of national reconstruction efforts.⁵² Once known as a country where forced disappearances, arbitrary arrests, torture, and extra-judicial killings were perpetrated with impunity by security services against political opponents of the regime, significant improvements have been made to enhance the accountability, professionalism, and democratic civilian controls of security forces. Indeed, in close collaboration with the international community, a series of SSR initiatives were implemented to develop policy frameworks and to reform the Gambian military, police, and intelligence services. However, The Gambia continues to grapple with numerous challenges, and remnants of former autocratic state institutions remain.⁵³

It is promising that newly elected parliamentarians have expressed their willingness to adopt a culture of accountability that focuses on the provision of responsive, people-centred security and justice.⁵⁴ But the overall lack of capacity and resources within the National Assembly, coupled with the lack of political consensus over what good SSG entails, will make their task challenging for the foreseeable future. Whether the country can establish a stable political system that fosters security and create an environment conducive to economic growth and democracy will largely depend on its ability to ensure that the National Assembly fully takes on its leading role in the SSR reform process.

While this case study did not seek to identify specific programmatic strategies for future assistance – which would require extensive dialogue with Gambian parliamentarians – several avenues of support may be worth exploring going forward, to strengthen the impact of members of the National Assembly on SSR/G:

1. Firstly, although Gambian lawmakers have received comprehensive training through various international assistance programmes since 2017, they have not (and cannot be expected to) become SSR/G specialists in this short time and still lack experience in this field. Therefore, efforts should be sustained to expand their knowledge of core SSR/G principles as well as to raise their awareness about the impact of parliamentary functions on the overall SSG process. To ensure greater continuity, training should be delivered at regular intervals by “in-house advisors” and/or include a “training-of-trainers” (ToT) component.
2. Secondly, and similarly, efforts to engage former and current parliamentarians in a lessons-sharing process should be continued, to avoid institutional knowledge loss and more effectively mitigate the effects of parliamentary turnover. This exchange should include key tips for incumbents and documented good practices, and could lead to the adoption of recommendations that the Assembly could eventually translate into internal policy.
3. Thirdly, capacity-building programmes should place a greater emphasis on involving staff in the Assembly, including senior clerks and legal advisors. Impartial, highly professional, and qualified staff with institutional knowledge are a key resource for both continuity and sustainable change in parliaments.⁵⁵ To prevent Gambian lawmakers from over-relying on reports from so-called Subject Matter Specialists, who often fail to provide them with in-depth analysis of current security issues, parliamentary staff should receive regular training to help them effectively collect and analyse information that is relevant to the daily work of parliamentarians. Hence, future assistance programmes should consider providing ongoing training and mentoring of staff, possibly through the development of a training centre. Training programmes could be supplemented by

52 Chido Mutangadura, “Security sector reform in The Gambia: What is at stake?” Institute for Security Studies, West Africa Report 31, November 2020. Available at: <https://issafrica.s3.amazonaws.com/site/uploads/war-31-1.pdf>

53 Ibid.

54 BTI 2020 Country Report: Gambia

55 Inter-Parliamentary Union, “Common Principles for Support to Parliaments,” 2014. Available at: http://archive.ipu.org/pdf/publications/principles_en.pdf

the production of guidance documents and handbooks on good practices in research and analysis.⁵⁶

4. Lastly, to mitigate the lack of direct communication between Gambian parliamentarians and state security providers, future efforts should encourage both parties to interact on a more formal, regular basis. This could be achieved through joint activities, such as seminars and study tours, involving Gambian lawmakers and the senior leadership of relevant security institutions. In addition to forging new communication channels, this would enable Assembly members to share views on common SSG issues and adopt a holistic approach to the ongoing reform process; a task that the parliament is now better equipped to take on.

⁵⁶ For example, see: DCAF, "Training Toolkit for Parliamentary Staffers," June 2012. Available at: https://www.dcaf.ch/sites/default/files/publications/documents/Toolkit_PSAP_all.pdf

The Role of Parliaments in SSG: The Case of North Macedonia

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Introduction

In 2015, Macedonian society was shaken by a massive wiretapping scandal. Hundreds of telephone conversations released online revealed that some 20,000 government and opposition members, journalists, civil servants, businesspeople, and activists had been unlawfully monitored for years. The scandal exposed the complete and spectacular failure of political, judicial, and security institutions to control the use of intrusive powers. It led to mass protests, triggering snap elections that ended the decade-long reign of the country's largest right-wing party. Importantly, it also initiated a profound transformation of the security sector, driven by the need to restore accountability and public trust. Reforms in this sector have been followed and encouraged, and at times even required, by the European Commission in the context of the larger (and longer) Euro-Atlantic integration effort of North Macedonia, which began in 2005.

In North Macedonia today, the normative and institutional foundations of good security sector governance (SSG) are largely in place. Security and justice sector reforms have shifted the focus of security provision away from a state-centric approach and toward a new human security paradigm in which citizens are the ultimate beneficiaries of security policies. Institutional and legal safeguards have been established to protect against human rights violations and abuses of power while developing professionalism and effectiveness in the work of security and justice providers. Legislation on issues of security and defence

emerges from a clearly defined structure of standing parliamentary committees, together with independent specialized bodies (such as audit offices and ombuds institutions) established to ensure accountability in public spending and respect for human rights. As a result, national expertise on security governance has developed slowly but steadily within state bodies and within civil society, alongside a democratic vision of security and the widespread acceptance of democratic oversight principles and mechanisms.

In fact, North Macedonia is a perfect showcase of the benefits induced by the conditionalities of EU accession in combination with sustained and substantial financial and technical assistance. The power of prospective European integration is, in this case, an uncontested and effective driver of change. Moreover, a shift in norms and the creation of adequate systems for democratic governance in the security sector was relatively swift and thorough in North Macedonia; though transforming norms and principles in local, everyday practices remains a challenge.

This case study explores some of the key accomplishments of the Assembly of the Republic of North Macedonia in the security sector reform process, by focusing on the architecture and effectiveness of the country's intelligence oversight system. However, first, challenges to reform and to the ability of parliament to perform oversight are outlined.

Challenges to comprehensive security sector reform

The comprehensive reforms started by the North Macedonian government in 2016 have been four-pronged, targeting (1) intelligence institutions, (2) the interception of communications, (3) the judiciary and prosecutor's offices, and (4) democratic oversight bodies.¹ A solid parliamentary majority has allowed executive and legislative actors to work in tandem to enact ambitious legislative reforms that have redefined the country's security landscape in only several years.² In that time, a number of key institutions have been established, including:

- The National Security Agency (NSA), created as the country's main domestic intelligence service and mandated to gather intelligence in order to guarantee state security. Unlike its predecessor, the Bureau for Security and Counterintelligence (UBK),³ the NSA is an independent agency positioned outside the Ministry of Interior, without police powers.
- The Council for Coordination of the Security-Intelligence Community (CCISC), mandated to coordinate security sector institutions.
- A brand new Operational Technical Agency (OTA), to facilitate links between telecommunication service providers and the state bodies authorized to intercept communication, and to guarantee the legality of this process.
- The Council for Civilian Supervision (CCS), designed to supplement the already strong parliamentary oversight system (composed of three standing committees), is mandated to receive complaints from the public and to supervise the legality of intercepts.

These new institutions have been matched by legislative reforms, enacted in 2018 and 2019, that clarify and strengthen the role of parliament in intelligence oversight, especially in the post-facto review of the use of intrusive powers by intelligence agencies. Still, some challenges remain regarding the capacity and efficiency of oversight mechanisms, and some legislative gaps must yet be filled.

A complex parliamentary oversight system

The establishment of the current oversight system of the North Macedonian Parliament represents an evolution toward specialization and institutional complexity seen in other European parliaments, but with added elements and processes that are unique and potentially very effective in ensuring accountability in the use of special powers by intelligence and law enforcement agencies. The system relies on three standing committees and one council, with complementary mandates.

The Committee on Defence and Security has a broad legislative mandate that covers the entire security sector, as well as oversight competency for the two principal security sector ministries (defence and interior) and the forces they administer (military and police).

The Committee is composed of thirteen members and their deputies; both the chairmanship and the majority of seats are usually held by ruling parties.

The Committee for Supervising the Work of the National Security Agency and the Intelligence Agency – the intelligence oversight committee – deals exclusively with the oversight of North Macedonia's domestic and foreign intelligence services.⁴ It is led by an opposition member and has a total of nine members, the majority of whom are from ruling parties.

The Committee on Oversight of the Implementation of Measures for Interception of Communications has the very precise and specialized oversight mandate of monitoring the use of intrusive methods for information

1 These four areas were characterized as requiring urgent intervention in the European Commission's "Priebe Report" (2015). Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf

2 For example, see the Law on Interception of Communications (Official Gazette of the Republic of North Macedonia, no. 71/2018); the Law on Operational-Technical Agency (Official Gazette, no. 71/2018); the Law on the National Security Agency (Official Gazette, no. 108/2019); the Law on Coordination of the Security-Intelligence Community in the Republic of North Macedonia (Official Gazette, no. 108/2019).

3 The UBK was disbanded and part of its personnel was reintegrated into the NSA.

4 These are the National Security Agency (domestic) and the Intelligence Agency (foreign).

collection by the intelligence and law enforcement agencies authorized to do so. Among the diverse intelligence oversight structures created by European parliaments, this committee is unique.⁵ It is led by an opposition member and is composed of only five members, the majority of whom are also from the opposition.

The recently created Citizens Supervision Council is now a fourth body through which security and intelligence actors can be held accountable. Composed of seven citizens elected by members of the Assembly, the Council is separate from and external to parliament but works on the same premises and in close relationship with parliament.⁶ The Council can receive complaints from the public and initiate investigations into the legality of communication intercepts. But innovatively, the Council may also request that the Committee on Oversight of the Implementation of Measures

for Interception of Communications conduct a parliamentary investigation on alleged illegal intercepts, therefore acting not only as an independent security oversight body but also guiding the work of a parliamentary oversight body. In this way, the Council can ensure continuity in oversight, helping to compensate for the absence of parliament between parliamentary sessions or when the Assembly is suspended before elections are organized.

This institutional structure is ambitious and demonstrates the commitment of North Macedonian parliamentarians to avoid the mistakes of the past, when the existing political and judicial safeguards were unable to prevent abuses of intrusive powers. However, ensuring the functionality and efficiency of each of these oversight bodies, and their coherence and complementariness as a system, has been and will continue to be a challenge.

Limits to legal authority

The sources of legal authority for the parliamentary and civilian bodies tasked with intelligence oversight in North Macedonia are relatively well developed. Nonetheless, the speed with which legislative reform was undertaken in 2018 and 2019 left some potential shortcomings in this legislation. The further development of an effective oversight system depends on how these loopholes are addressed.

The first source of legal authority for parliamentary oversight is the constitution and general laws, which clearly lay out the democratic principle of parliamentary control over the executive. While the Committee on Defence and Security extracts its legal authority mainly from general legislation and parliamentary Rules of Procedure, the mandates of the intelligence and intercept oversight committees are further defined by statutory legislation that regulates the functioning of intelligence services. Two laws in particular clarify and enhance the oversight powers of these bodies: the Law on Interception

of Communications and the Law on the National Security Agency, both adopted by parliament in 2018.

The intelligence oversight committee has a strong mandate to oversee both the domestic (NSA) and foreign intelligence (IA) services of North Macedonia; including by reviewing the legality of their work, the respect of these agencies for the rights and freedoms guaranteed by the Constitution and the laws, their employment policies, and their technical capacities.⁷ Both intelligence services are obliged to provide any information necessary for realization of the commission's oversight mandate, based on the need to know principle, and must also submit an annual activity report to the committee.⁸ On top of this, the NSA submits an annual working program as well. However, the committee has no competence when it comes to the appointment of the directors of either service.

The committee that oversees communications interception is endowed with legal authority that is detailed in a chapter of

5 The few other oversight bodies mandated to exclusively monitor communications intercepts (as in Germany and Sweden) are external to the parliament, and their members are not parliamentarians.

6 Members are selected by parliamentarians after a public vacancy announcement; three are subject experts, and three are representatives of non-governmental organizations with a focus on the protection of basic human rights and freedoms, security, and defence.

7 Parliamentary decision no. 08-1396/1, 31 May 2017.

8 Law on Intelligence Agency (Official Gazette of the Republic of North Macedonia, no. 19/1995), Article 10; Law on the National Security Agency, Article 60, Paragraph 6.

the Law on Interception of Communications, which elaborates the committee's composition, mandate, and powers.⁹ These provisions are a textbook case for the double-sided effects of well-intended but imperfect legislation, though; the law does not contain sufficient clarity, specificity, and thoroughness, and thus risks limiting rather than enabling action. On the other hand, the law does state that the committee must be chaired by a member of the opposition. Giving the opposition a leading role in oversight is considered a good practice in establishing the accountability of government activities that occur in secrecy, where the abuse and arbitrary use of power may be more likely to occur. Importantly, the committee may perform oversight without prior announcement when necessary, and at least once within a three-month period even in the absence of majority votes. The access of committee members to classified information is conditioned by a security certificate, issued within 30 days after their appointment.¹⁰

This committee is mandated to oversee the legality and effectiveness of intercepts by analysing technical and statistical data on their use, in sources specified in the law. Technical data consists mainly of information about log-ins and anonymized court orders; statistical data refers to the number of authorizations issued, the types of surveillance, and the categories of offences that triggered surveillance, and is generated by service operators, OTA, the public prosecutor, and other authorized bodies. This type of oversight provides important information on the *legality* (and overuse) of intrusive powers, but it offers less clarity about their *effectiveness*.

For example, statistical information may support an assessment that the use of intercepts by law enforcement is effective in building criminal cases, but evaluating their use for national security and defence purposes requires more diverse and insightful sources of information. Yet the law does not refer to other sources of information, tools of oversight that could be utilized, or possible

alternative scopes of the oversight mandate – such as by including operational activities and their efficiency. A lack of explicit inclusion in the law does not mean these issues are necessarily beyond the reach of the committee, but how the law is interpreted depends on the reader. Ultimately, the committee must strive to obtain information that meets the needs of its oversight responsibilities, which means looking beyond the “paper trail” and the comparative statistical data, to develop a fact-finding capacity within the committee so that it can investigate relevant agencies.

The Council for Civilian Supervision, which was created by law in 2018 and formed in 2019, adds several original functions to the North Macedonian oversight system.¹¹ It opens new opportunities for increased accountability in the security sector, and in parliament itself. Based on complaints received from citizens, the Council can request that the communication interception oversight committee conduct investigations to determine whether abuse has occurred. The law gives the committee just 15 days to notify the Council of its findings. The Council can also undertake oversight on its own initiative, conducting announced visits to OTA and other bodies to compare data from anonymized court orders and log-ins.

As in many other countries, the North Macedonian Assembly has long periods before elections when parliamentarians are involved in political campaigning and are completely disengaged from their parliamentary duties, including oversight. At other times, parliament is dissolved, leaving an institutional void when it comes to oversight. The Council for Civilian Supervision is therefore the only institution, external to the executive and the intelligence community, that can exercise consistent democratic oversight in the sector even in these times of parliamentary absence. This is an important factor in incentivizing the consistent legal use of special intrusive powers by intelligence and law enforcement agencies, but requires the Council to function effectively and credibly.

9 Law on Interception of Communications, Articles 38–46.

10 Background checks on these members are carried out by the very institution that is subject to their oversight – the NSA – but the certificate is issued by the Directorate for the protection of classified information. If a security clearance is denied, the Directorate has no legal obligation to elaborate the reasons, but the law stipulates an appeal mechanism in such cases.

11 Law on Interception of Communications (Official Gazette of Republic of North Macedonia no. 71/2018), Articles 47 to 53

Limits to capacity

Legal authority is a necessary condition for effective oversight, but it must be met by capacity. The normative framework has significantly improved in North Macedonia since 2018, providing parliamentarians with more powerful tools to ensure accountability in the use of communications intercepts, yet the ability and political will of parliamentary committees to conduct meaningful oversight has not developed at the same rapid pace as legal reforms. A complete lack of routine, insufficient expertise among staff, and inconsistent political will have resulted in uneven oversight practices and performance among the three competent committees.

Parliamentary staff support all three of these parliamentary oversight committees. A joint secretariat is composed of five staffers, each of whom assists a specific committee according to a predefined division of labour. Staffers are vetted and hold a security clearance, and can participate in all committee meetings and activities, including those in which classified information is discussed. Gathering the staff who support these committees in one secretariat, and under the coordination of one head of unit, is a good practice that should foster expertise and a solid institutional memory within the parliamentary administration, while also encouraging coherence, collaboration, and joint action among the three committees.

Nonetheless, access to external expert support is a challenge. In fact, insufficient expertise in intelligence matters is one of the biggest obstacles to effective oversight in any country. North Macedonian committees should thus consider different ways to increase the expertise of their secretariat. For example, the Rules of Procedure allow every committee to elect two external members from the ranks of scholars and professionals (one elected by the majority, the other by the opposition), who may participate in the work of the committee without voting.¹²

Moreover, the new legislative framework for communications interception provides for some exceptional measures intended

to increase expertise on the Committee on Oversight of the Implementation of Measures for Interception of Communications, to enhance the ability of members to engage in effective oversight.¹³ By law, the committee must hire two experts for permanent technical support within 50 days after its formation, and within 6 months, must create a roster of national and international experts who can provide support on a case-by-case basis; other state agencies must also provide expert support at the request of the committee, a requirement that should generate increased cross-institutional expertise, trust, and information exchange.¹⁴ Still, a lack of budgetary resources has meant that outside experts have not been engaged by any of the three security and intelligence oversight committees, which rely only on the parliamentary secretariat for expertise.

From its very beginning, the Council for Civil Supervision has also faced problems related to institutional limitations. One proposal to help remedy this, by giving civil servant status to the Council's members, has been highly controversial. On top of this, the Council has repeatedly asked parliament to provide it with the necessary administrative, technical, and financial means to facilitate its functioning, with no success. These unresolved issues were key reasons why three Council members, including the president and the deputy, resigned in the first months of 2020. Indeed, when the Macedonian Parliament was dissolved for more than six months in 2020 because of parliamentary elections and the COVID-19 crisis, the Council should have stepped in to ensure democratic oversight over the use of intrusive powers.¹⁵ But unfortunately, it conducted no oversight activities during this time. The resignation of several members came in response to the passivity of parliament in addressing legal ambiguities related to the investigative powers of the Council, and its lack of secretariat and budget. The institutional deadlock that is paralyzing the Council must be resolved by the new legislature, which was installed in August 2020, as effective civilian oversight

¹² Rules of Procedures of the Assembly of the Republic of North Macedonia, Article 119, Paragraph 2 and 3

¹³ Law on Interception of Communications (Official Gazette of Republic of North Macedonia no. 71/2018), Article 39

¹⁴ Mainly the Agency for Electronic Communications, the Directorate for Security of Classified Information and the Agency for Personal Data Protection

¹⁵ The Assembly was not in session from 16 February 2020 until the formation of the new parliamentary committees on 14 September 2020. Elections were scheduled for 12 April 2020, then postponed until 15 July 2020, due to the COVID-19 crisis.

of the use of intrusive methods will play a role in alleviating public mistrust in the state. The Council will only be effective, efficient, and

legitimate if it is made complete with experts and if it possesses all the necessary capacities to fulfil its tasks and duties.

The challenges of changing culture

Even the best laws cannot be formulated to erase all potential for abuse of power. In other words, laws must be implemented in good faith to have their intended impact; and until recently, some institutions in North Macedonia failed to do so, and hence, failed to control the abuse of intrusive powers. The 2015 wiretapping scandal revealed that this problem was rooted in the institutional and political culture of the country, which allowed both individual politicians and security services to exploit loopholes without any reaction or sanction from oversight bodies.

The cross-party consensus and mobilization

for intelligence sector reform that emerged after the scandal marked a dramatic shift from the political divisiveness of the past. However, there is always a risk that reforms intended to redistribute power and resources will be watered down, resulting in only moderate changes in the end. In the current stage of reform, success is also increasingly dependent on local political will to change long-embedded habits and overcome long-standing enmities, and breakthroughs often depend on individuals and not on manageable drivers of change.

North Macedonian successes in security and intelligence reform oversight

The renewed capacity of civil society to inform public debate and undertake research, watchdog, or advocacy projects is a positive development in North Macedonia, mainly because it adds to the external pressure on oversight bodies to fulfil their mission; compensating for insufficient political will, interest, or courage. This has influenced parliamentary practices and instruments, and in the midst of the last wave of reforms aimed at aligning the country to the European Union *acquis*, it is clear that members of parliament have started to take their role in oversight more seriously. Indeed, the Assembly is increasingly viewed as a forum for constructive

political dialogue and is moving proactively toward fulfilling its legislative, oversight, and representative functions. Existing checks and balances over the executive have been restored in the last few years, and new accountability mechanisms have been defined through EU-guided laws.

Importantly, the transparency of parliament toward the public has also improved dramatically. A look at the increased frequency of committee meetings from 2018 to 2019 reflects this growing functionality of parliament (see Table 1).¹⁶

¹⁶ Because 2020 was an atypical year, in which COVID restrictions hampered the normal functioning of government, it is not included in this Table.

Table 1. Frequency of meetings of parliamentary security and intelligence oversight committees, 2018–2019¹⁷

Committee	Meetings	
	2018	2019
Defence and Security	20	25
Intelligence Oversight	1	6
Interceptions Oversight	1	12
TOTAL	22	43

Legislative successes

The North Macedonian Parliament adopts an average of 200 laws per year, and reforms undertaken by the Government have been fully backed by legislation in the Assembly, where relevant laws have been adopted with appropriate expediency. While this indicates that political forces in the country have developed the maturity to join together to achieve national goals, there is a danger that a sense of urgency has encouraged a weakening of the democratic process and an avoidance of meaningful parliamentary debate, as the number of laws adopted under a shortened legislative procedure rose considerably in 2019, from 2018. In fact, just 20% of laws were fast-tracked in 2018, compared to 62% in 2019.¹⁸ Using the fast-track procedure means that proper public consultations and impact assessments are not undertaken, and the amendment process is circumvented.

Four laws passed since 2018 have defined key benchmarks in security and intelligence reform in North Macedonia and have underpinned a regulatory framework for the non-partisan operation of intelligence services. Reform began in April 2018 with passage of the Law on Interception of Communications and the Law on the Operational Technical Agency. A year later, in May 2019, the Law on the National Security Agency and the Law for Coordination of the Security and Intelligence Community finalized the new institutional architecture of

the country's intelligence system. The Law on Interception of Communications and the Law on the National Security Agency are both organic laws, which require a two-thirds vote in the Assembly; their smooth adoption was solid proof of cross-party support for intelligence reforms.

More pieces of the intelligence and security reform puzzle were added in later 2019 and in 2020, with renewed legislation on classified information and personal data protection, aligning internal regulations with EU standards and the General Data Protection Regulations (GDPR).¹⁹ A new law on defence as well as amendments to the law on military service also paved the way for the acceptance of North Macedonia as a full member of NATO, as of 27 March 2020.²⁰

The Committee on Defence and Security is responsible for legislation in the security sector and took the leading role in the legislative process that shaped the intelligence reform package. However, the intelligence and intercept oversight committees also played a role, providing opinions on draft laws concerning institutions covered by their mandates.

¹⁷ The Annual Report on the work of the Assembly of the Republic of North Macedonia for 2018–19 is available at: <https://www.sobranie.mk/content/izvestai/IZVESTAJ%20%20SOBRANIE%202019.pdf>

¹⁸ European Commission, North Macedonia 2020 Report, No. SWD(2020) 351 final, 6 October 2020, p. 13. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/north_macedonia_report_2020.pdf

¹⁹ Law on Classified Information (Official Gazette of the Republic of North Macedonia, no. 275/2019); Law on Personal Data Protection (Official Gazette of the Republic of North Macedonia, no. 42/2020).

²⁰ Law on Ratification of the North Atlantic Treaty (Official Gazette of the Republic of North Macedonia, no. 36/2020).

Improving oversight

The parliamentary oversight exercised during the last legislative session - from May 2017 to January 2020 - was a definite improvement over the past. Yet, the frequency of formal oversight activities (questions and debates in the plenary, committee hearings and

field visits, analysis of annual activity reports by security institutions, etc.) remained limited, with only 14 oversight activities organized by the relevant committees (see Table 2). These consisted of 5 hearings and 9 inspection visits.

Table 2. Oversight activities of intelligence oversight committees, 2018–2020

Committee	Oversight activities			
	2018	2019	2020	TOTAL
Defence and Security	1	0	0	1
Intelligence Oversight	1	1	0	2
Interceptions Oversight	3	7	1	11
TOTAL	5	8	1	14

In fact, during the last legislative term, the Committee for Supervising the Work of the National Security Agency and the Intelligence Agency (the intelligence oversight committee) conducted only one pre-announced visit to the intelligence service. Two members of the committee also participated in a multi-stakeholder commission for the selection and transfer of personnel from the former UBK to the newly formed NSA.²¹ However, one of these members (representing the opposition) resigned in October 2019, at the end of this process, claiming it had been compromised and subjective.

The Committee on Oversight of the Implementation of Measures for Interception of Communications, created in 2006, did not meet regularly in the first decade after its formation (not even once a year) and didn't exercise its functions and powers effectively; it collected no statistics on the use of intercepts, requested no activity reports, and carried out no inspections of the intelligence directorate. The unsurmountable obstacle to the functioning of the committee seemed to be a lack of access to classified information, as the law stipulated that the five members were to obtain a security clearance through the very agency they were tasked with overseeing (the UBK). Thus, at any given point in the first ten years of its existence, the committee included one or two members

without the necessary security clearance; they refused to apply, denouncing the inherent conflict of interest in receiving it from the UBK.

Since the intercept scandal and the elections that followed, which brought the previously long-standing ruling party into the opposition and into the leadership of this committee, all members have acquired a security clearance and the committee has become functional. The dynamics of the committee have also been strengthened by the legislative authority endowed by new communications interception legislation. The committee has thus been meeting regularly and now engages in frequent exchanges with intelligence and security agencies. But public trust in the use of intrusive measures for information collection has only improved by 1% from July 2018 - when the Law on Interception of Communications was adopted - to February 2020.²² So, it is clear that parliament needs to better communicate with the public about its oversight activities and their impact on the conduct of security sector actors.

Parliamentary oversight is at the centre of a more complex system envisioned by new laws to ensure accountability in the use of special powers within intelligence and security institutions. Hence, other bodies have also been created to support and complement parliamentary oversight, such as the

21 Law on the National Security Agency (Official Gazette of the Republic of North Macedonia, no. 108/2019), Article 186.

22 See the public survey conducted in February 2020 by the International Republican Institute's Center for Insights in Survey Research, available at: https://www.iri.org/sites/default/files/iri_n_macedonia_february_2020_poll_presentation.pdf

Operational Technical Agency (OTA), designed to increase accountability within security sector institutions. Its establishment by the legislature separated the technical capability to engage in surveillance from the agency responsible for collecting and analyzing intelligence.²³ The OTA acts as an interface between information and

the intelligence services, performing an external control function that reduces the possibilities for abuse, and can implement measures related to the interception of communications only on the basis of a court order. The director of the OTA is appointed by parliament.

Improving budgetary functions

The Assembly approves the budgets of security sector institutions and oversees their spending. The Committee on Defence and Security deliberates on proposed allocations to the sector and takes the lead in controlling budget outlays. The other two intelligence oversight committees are limited to submitting amendments to the budget, during debate of the state budget law in the plenary. However, recently increased legal authority of the committee that oversees the use of intercepts gives it a role in the deliberation and approval of the OTA budget.²⁴ This was materialized through hearings with the OTA Director in January 2020.

Both the Committee on Defence and Security and the intelligence oversight committee have a legal mandate to oversee budget allocations to the institutions in their competency. A lack of expertise, time, and interest has limited the ability of committee members to effectively

analyze and scrutinize budget spending, however, making this a “decorative” function of parliament that is currently meaningless. Significant effort should be invested in making the process meaningful, and a first step was taken in this direction in 2020 with the creation of the Parliamentary Budget Office. Of course, it remains to be seen if and how the expertise concentrated in this office will improve financial oversight in the long term. A cross-party agreement on amendments to the Rules of Procedure, which are due to be adopted by the newly composed Assembly, should also strengthen the role of parliament in the budgetary process by introducing public hearings, a strict budgetary calendar, and procedures for EU-flagged laws. Promisingly, the preparation of the 2020 budget has already included open public consultation. Good communication with the State Audit Office should be a goal of parliamentarians as well.

Improving representative functions

According to the 2020 European Commission country report, the North Macedonian Parliament has deployed significant efforts to strengthen democracy and the rule of law in recent years, including through broad public outreach, discussions, and debates on key policy and legislative issues, as well as by promoting the protection of human rights and deepening cooperation with external oversight actors. The new legislature is expected to work inclusively to build on previous achievements, while further improving the functioning of parliament.

The adoption of EU-related laws, with the support of the opposition in cases that require a two-thirds majority vote, is a success as far as representation of the public interest. The

Assembly also helped monitor the protection of human rights and fundamental freedoms. Indeed, the Club of Women Members of Parliament supported several human rights initiatives, and the wider parliament adopted a cross-party declaration on the right of persons with disabilities to participate in political processes.

The organization of public hearings, with significant participation by civil society representatives, has become a frequent occurrence, at the initiative of the Committee on Defence and Security. In shaping recent reforms of the intelligence and security apparatus, the deliberation of every major law included a public hearing with independent experts, government representatives, academia,

²³ Law on Operational-Technical Agency (Official Gazette of the Republic of North Macedonia, no. 71/2018).

²⁴ This is composed of the state budget and revenues from the Agency for Electronic Communications of the Republic of North Macedonia (AEC), in accordance with the Law on Electronic Communications, on the basis of a previously approved annual financial plan of the OTA. See the Law on OTA, Article 33.

and concerned professionals. This allowed committee members to thoroughly review draft laws and assess the need and best options for amendments.

Public hearings also contribute to the transparency of the Assembly. However, a civil society assessment of parliamentary transparency found a significant difference in the transparency of the three security sector oversight committees.²⁵ Along with meeting much more frequently, the Committee on

Defence and Security scores a significantly higher transparency index than the two other committees (see Table 3). Conversely, the intelligence oversight committee is the least active and also the least transparent, which may be partially explained by the nature of its mandate. The intercept oversight committee, the most affected by legislative reforms – which have increased its legal authority – is trending positively in both its activity and transparency.

Table 3. The activity and transparency of security sector oversight committees

1 January 2018 – 30 June 2019													
	Sessions held per trimester						Total	Transparency index per trimester					
Defence and Security	7	8	2	3	8	4	32	59	67	67	40	50	62
Intelligence Oversight	0	1	0	0	0	4	5	0	0	0	0	0	0
Interceptions Oversight	0	2	0	1	6	3	12	0	0	0	0	27	33

When intelligence oversight is “secretized”, it is a sign that a parliament’s concern for secrecy prevails over its responsibility to inform the public about intelligence accountability issues. In many parliaments, intelligence committee meetings are closed as a rule, and even agenda items and conclusions are kept secret, as none of their reports are disseminated to the public.

But for the public, oversight done in secrecy is oversight undone. Parliamentarians in North Macedonia must recognize that failing to create an open record in the process of denouncing errors, abuses, and individual or systemic problems in security and intelligence institutions undermines their credibility as representatives of the people.

The North Macedonian Parliament & COVID-19

The COVID-19 pandemic, from its outbreak to the present, has generated serious economic and political challenges, and most EU members and candidate countries have declared states of emergency in an effort to prevent the spread of the virus. In North Macedonia, handling of the situation was affected by the fact that the pandemic reached the country after the self-dissolution of parliament, which occurred in anticipation of snap elections.²⁶ The Technical Government in place had only limited powers and the obligation to organize parliamentary elections; but a state of emergency allowed it to take measures necessary to address the health crisis.

The law stipulates that a state of emergency can be introduced by the Assembly on the proposal of the President, the Government, or at least 30 members of parliament. The determination must be made by a two-thirds majority of the Assembly, and a state of emergency lasts for thirty days. If parliament cannot convene, the President decides on the introduction of a state of emergency and submits this decision to the Assembly for confirmation, as soon as it is able to convene.²⁷ In this case, even though members were still within their mandate, the Speaker of the Parliament refused to reconvene on the premise that it

25 The report was published by the Citizen’s Association “MOST” as part of its Included Citizens for Accountable and Transparent Assembly Project. The Index is calculated from public data available on the websites of the Assembly and the Official Gazette, responses to requests for free access to public information by parliament, and the National Program for Adoption of the Acquis (2017-2020).

26 Elections were scheduled for 12 April 2020 but were postponed to 15 July 2020 due to the COVID-19 crisis.

27 Constitution of the Republic of North Macedonia, Article 125.

was constitutionally impossible to reconvene a self-dissolved Assembly. This decision was contested by many national experts and uncovered legal ambiguities and contradictions that should be resolved in specific legislation on states of emergency, which should be placed on the agenda of the new legislature.

On the proposal of the (technical) Government, the President declared a state of emergency on 18 March 2020. This was extended several times, finally ending on 23 June 2020. This gave the Government full

executive and legislative power for the first time in the history of North Macedonia, enabling state authorities to act swiftly to introduce measures to protect against the coronavirus. It also allowed for the concentration of power in the Government, the restriction of basic human and civil rights, and the suspension of parliamentary oversight. Fortunately, at least as far as we know, this did not lead to violations of human rights or abuses of the power in the name of the “collective good.”

Support for the Parliament in SSR/G

The international programme most focused on strengthening the role of the North Macedonian Parliament in SSG is DCAF’s “Intelligence sector reform programme,” initiated in 2017. The programme supports the country’s Euro-Atlantic integration efforts with the aim of backstopping its democratic transition and encouraging the return of public confidence

in state institutions. This is one of DCAF’s most comprehensive SSG programmes, and is built around three pillars: strategic management in the intelligence sector (addressing mainly internal control mechanisms and executive control), parliamentary oversight, and judicial control of the use of intrusive methods for information collection (see Figure 1).

Figure 1. DCAF support to intelligence oversight in North Macedonia

PROCESS	PLANNED ACTIVITIES	OUTPUTS	OUTCOMES	IMPACT
INTELLIGENCE REFORM	BASED ON GOVERNMENT REFORM REQUIREMENTS	Improved knowledge and managerial capacity to initiate, support, implement reforms	Achieve Euro-Atlantic integration goals; Harmonization of law and practice with European standards	INCREASED SECURITY AND INTELLIGENCE ACCOUNTABILITY
PARLIAMENTARY OVERSIGHT	DEVELOP AWARENESS, EXPERTISE, PROCEDURES	Increased oversight abilities of committees, including independent critical analysis	Development of effective oversight mechanisms, processes, practices	
JUDICIAL SUPERVISION	STEER LOCAL DEVELOPMENT OF NEW KNOWLEDGE PRODUCTS	Expertise and capacity to make more objective judgements on the use of intrusive methods	Foster a Rule of Law culture characterized by robust judicial supervision	INCREASED PUBLIC TRUST IN THE STATE

Unlike other parliamentary assistance programmes that address general services or parliamentary administration as a whole,²⁸ DCAF’s initiative in North Macedonia offers focused support to the three committees mandated to provide security sector oversight. The members and staff of these committees have been able to access technical expertise and European best practices in their area of work, and sustained programmatic activities

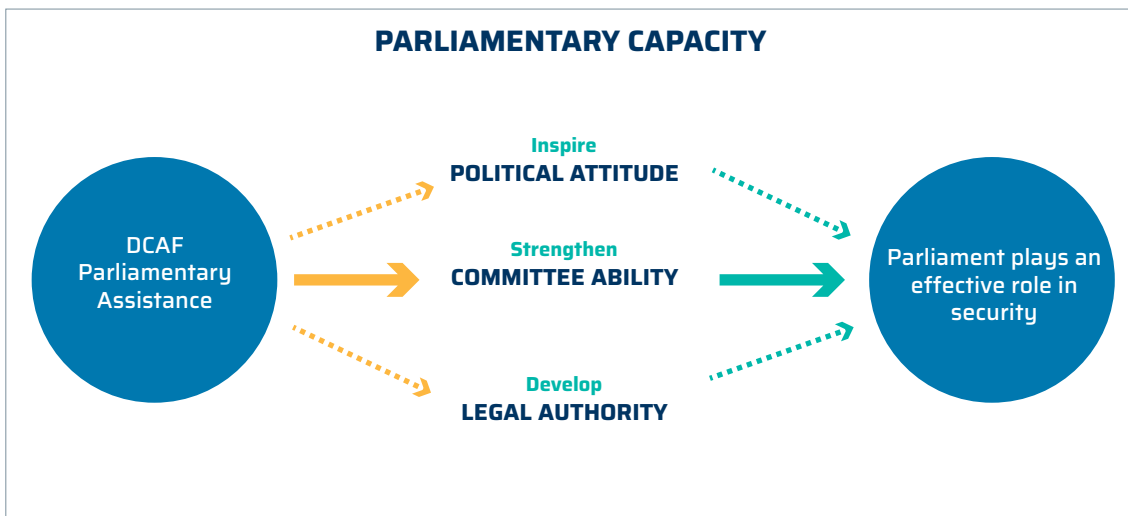
(about 30 capacity building events over 3 years) have created an educative environment that facilitates peer exchange, self-assessment, and independent critical analysis. The program has steered the development of new knowledge products (created *for* and *by* local practitioners), as well as procedures and practices that have helped build parliamentary expertise and have increased confidence in the way oversight is conducted.

28 The Assembly receives consistent support from Switzerland and NDI, for example, but their programmes do not target security sector oversight specifically.

The DCAF programme has thus contributed to the ongoing development of new dynamics and attitudes in the relationship between parliament and the intelligence community. Oversight activities are now taking place, and are slowly becoming more meaningful, effective, and consistent. Moreover, draft intelligence legislation is undergoing genuine review in committees, where new intelligence directors

are being called to testify in oversight hearings and respond to questioning. The challenging and often unpredictable political situation in North Macedonia has been largely mitigated by DCAF through flexibility, continuous dialogue with local stakeholders, transparency, and cooperation with other international actors in the country.

Figure 2. How DCAF programming is building capacity



Conclusions and Recommendations

Thus far, the Republic of North Macedonia is a success story of post-conflict stabilization and democratic change under the auspices of Euro-Atlantic integration. Despite some deficiencies in the legislative framework, the formal requirements of democracy and good security governance are in place. Still, transforming norms and principles in local practice and daily conduct is a remaining challenge.

Democratic transitions should not be taken for granted but should be encouraged and backstopped, as democratic consolidation relies on long-term support that goes far beyond the establishment of normative frameworks. Indeed, it implies a transformation of society that includes changes in cultural values and norms. This is a process that must essentially be domestically driven; meaning, local agents of change must be identified and championed.

It may be relatively easy for parliamentary institutions in a country like North Macedonia to fail in their oversight mission simply due to traditions of bad practice and poor capacity. Human resources, funding, and expertise are all scarce within the parliamentary administrations of transitioning countries, which makes legislative work almost completely dependent on the government's own monopoly of information. Considering this - and given that intelligence oversight is an ambitious, evolving, and bold endeavour for any parliament - the process of improving oversight mechanisms must be understood as both long-lasting and vital to the separation of powers, the rule of law, and the preservation of citizens' trust in the state. With that in mind, the following recommendations for strengthening parliamentary performance can be drawn from the Macedonian case study:

1. Members of parliament and staff advisors involved in oversight should **avoid a minimalistic interpretation of the law** that downplays their oversight options and responsibilities. Clearly defining the oversight authorities of parliament in law is always a desirable step towards enhanced accountability, but any authorities defined by law are *always non-exhaustive*. Law sets the legal authority for oversight, but defines the mandate of overseers as involving certain functions, processes, and flows of information, which can be interpreted by parliamentarians as

a limited mandate. Laws should be read in their letter, but also in the spirit of the Constitution, and in democratic states, constitutions affirm the right of legislative powers to supervise all government activities.

2. **Oversight should be demystified.** After they are established in a newly elected parliament, committees should engage their legal powers and quickly transform them into oversight action by organizing meetings, debates, expert analysis on reports, hearings, and field inspections. Most often, parliamentary committees operate in a less than ideal environment, characterized by insufficient staff, expertise, and access to information. However, this should not discourage and prevent them from engaging with government agencies. Committees learn by doing and only become effective in keeping government accountable when oversight becomes a routine.

3. **Effective oversight must be recognized as a holistic enterprise.** Whenever several parliamentary committees and/or independent oversight bodies are mandated to oversee the security sector, they must work together to achieve meaningful oversight. In most parliaments, oversight has developed institutionally, with parliamentary committees focused on specific government departments and agencies. There may be overlap between the mandates of committees, but there may also be aspects of security and intelligence work that slip between the gaps, enabling some actors to avoid accountability. What is required today is functional oversight which recognizes that security services do not act in isolation. The traditional division of labour between various government agencies is now challenged by trans-border security threats, an increased integration of executive responses to threats, intense cross-government and international cooperation, and blurred lines between intelligence functions or between the public and private use of information due to the utilization of contractors. Parliaments must therefore develop a comprehensive understanding of security related processes and networks.

4. In the same vein, **communication, expert collaboration, and joint action between oversight bodies are indispensable** and bring significant benefits. First, this helps different oversight bodies to understand the security and intelligence sector better. Second, it allows these bodies to pool limited resources (staff, time, budgets) and expertise, strengthening their oversight ability. Third, joint action by oversight bodies generates increased political leverage. By working together, committees can better influence both the executive and the intelligence sector. On their own, committees have no power of enforcement, offer recommendations that are not legally binding for the executive, and must rely on the force of argument, publicity, and multi-partisan support to convince the parliament to follow their advice and the executive to comply with recommendations. When acting together, committees have increased legitimacy and their united voice carries greater political weight. It is the right and responsibility of committees to define when (the situations) and how (the procedures) they work together in oversight.

5. **Committees can and should adopt their own Rules of Procedure** to facilitate the organization of their activities and formulate well-defined rules of engagement in oversight. Parliamentary Rules of Procedure enable the smooth and efficient functioning of parliament and provide a basis for resolving any questions of procedure that may arise, while taking into account the rights of members, but they often fail to clearly define the mandate, scope, and powers of parliamentary committees. In many cases, the rights and responsibilities of committee chairpersons, committee members, and staff are also unclear. For these reasons, committees with especially sensitive and difficult mandates, such as security and intelligence oversight, should detail their mandate, modus operandi, and oversight powers in committee-specific Rules of Procedure. Such a document not only supports the smooth functioning of decision-making processes within a committee, but gives committees more legitimacy and confidence while engaging with third parties.

6. Within committees, **expertise and independent analytical capacity should be consolidated** through continuous learning that includes both elected members and committee staff. This would address the most significant problem in oversight – the asymmetry of information and expertise that exists between parliament and security services. Indeed, parliamentarians with a deep knowledge of security and intelligence issues are relatively rare and in almost every circumstance, security services have the upper hand in terms of expertise, access to information, and freedom of decision making over their process, tasks, and resources. Developing expertise and knowing what to look for and what questions to ask is a precondition for effective oversight, yet acquiring expertise in this field takes time and requires dedication and persistence. The development of a strong expert staff capacity within the parliament is also essential; without this, a committee’s capacity for research is limited, obliging members to rely on information provided by the government and the very security institutions overseen by the committee.

7. Parliaments must **understand multi-stakeholder dialogue on oversight principles and practices as a key enabler of accountability**. Effective oversight depends on a common understanding of oversight procedures and objectives, but also an appreciation of the legal responsibilities, requirements, and limitations of the “other side” and a degree of consensus between the overseers and the overseen about the principles and benefits of oversight. Parliament should initiate dialogue on these principles and lead the development of specific tools for facilitating oversight activities and improving communication with the security sector. Such tools may include protocols for the inter-institutional exchange of information, formal reporting requirements for security institutions, criteria for the analysis of activity reports, communication procedures, or the identification of points of contact/oversight responsible officers in security institutions. The discussion and joint development of tools such as these will foster transparency, trust, and mutual respect between overseers and the overseen, contributing to the consolidation of a security culture that enables accountability.

8. Parliaments have a responsibility to **inform the public about security sector accountability** and must reconcile the democratic requirement for transparency with the equally important constraint of protecting classified security information. The work of parliament cannot be kept exclusively behind closed doors, even when it involves security and intelligence oversight and state secrets. Intelligence oversight bodies are especially and profoundly influenced by the norms of secrecy, and in many countries this amounts to a 'secretization' of oversight. Yet, a lack of transparency in denouncing mistakes, abuses, and individual or systemic problems in security undermines the credibility of parliament as competent supervisor of the public interest and as vigilant defender of individual rights. Any protracted silence by committees on intelligence and security matters gives the impression that they, and parliament in general, are ineffective and even compliant in relationship with the executive. While full transparency of oversight is neither possible nor desirable, for the public, oversight done in secrecy is oversight undone. Thus, oversight committees must distinguish between information that can be published or should be kept in the 'ring of secrecy'. They also need to better inform the public about their work; reach out to media, civil society, and other independent oversight bodies; and build alliances and partnerships dedicated to improving democratic accountability. The value of oversight mechanisms depends not only on how and whether they foster accountability, but also on their own transparency and engagement with the public.

The Role of Parliaments in SSG: The case of Tunisia

Maxime Poulin, Hamza Mighri

Introduction

The Tunisian Parliament and SSR/G: 2014–2019

Protests in Tunisia that led to the fall of Zine el-Abidine Ben Ali's regime in early 2011 – popularly referred to as the Jasmine Revolution – initiated a series of uprisings that impacted neighbouring countries, such as Egypt and Libya, in the so-called Arab Spring. The Tunisian case provides an opportunity to examine the link between security sector reform (SSR), security sector governance (SSG), and central democratic institutions in a developing democratic system. Compared to other countries of the Arab Spring, Tunisia was most successful in adopting a democratic constitution; and it also created

several novel public institutions tasked with ensuring transparency and governance in the public sector.

The objective of this case study is to analyse the extent to which Tunisia's most representative body, the Assembly of the Representatives of the People (ARP), has been able to influence the national agenda towards necessary reforms of the security and judicial apparatus in the post-constitutional period. We will focus mostly on the first mandate of the ARP (2014–2019), which followed almost four years of the National Constitutional Assembly (ANC).

Background context

The 2014 United Nations Security Council resolution on the security sector (2151) stressed the importance of reforming the sector in developing countries by urging states to foster an inclusive approach and vision for security sector reform and governance, aligned with international democratic values and human rights frameworks. But making such reforms is generally challenging, and the process can be met with extreme reluctance and resistance.

Under Ben Ali's regime in Tunisia, the Ministries of Interior and Defence both paid little heed to principles of SSG, and both played an instrumental role in sustaining the agenda of the dictatorial regime – to oppress human rights activists and ensure every step towards reform was pre-emptively thwarted. These institutions were also rarely subject to monitoring and oversight by the ARP. The post-Ben Ali years have brought significant progress in terms of individual freedoms, though the results are still mixed. Successive governments, hindered from acting most effectively by social and partisan conflict, have been unable to assume their leadership role in a way that has allowed the economy to fully recover. Thus, they have

struggled to implement good governance and the rule of law; i.e., security sector reforms.

Though the ANC may have laid the foundations for a constitutional project in 2014, and one which generated authentic goodwill and consensus, their accomplishment was sadly eclipsed soon afterwards by the increasing partisanship of the domestic political landscape, and an absence of trust and cooperation among political forces and between institutions and civil society. Since the adoption of the Tunisian Constitution, the political class has failed to concretize its vision for the country's future, leaving political leaders without reference to clear principles of governance and elaborated methods for managing public affairs.

Moreover, it is worrying that Tunisia has been in a quasi-continuous state of emergency for years, so that this exceptional and temporary state has ceased to be exceptional and temporary. When establishing trust between security forces and citizens is so critical, one has to wonder just how useful such an operational paradigm can be. Indeed, a lack of trust was among the root causes of the downfall of Ben Ali's regime.

But also, and maybe even more importantly, it is important to question the degree to which the *de facto* permanent application of a state of emergency has become a pretext for *not* engaging the country in difficult and tedious security sector reforms. In the 2019 elections, Tunisian voters rebuked the ruling government

coalition for its inaction and rewarded a fresh crop of political actors with seats of power. President Kaïs Saïed and his supporters are thus political newcomers, without a party base, and it is in this context that the ARP must fulfil its mission and play a leading role in security sector reform and governance.

Authority of the ARP vis-à-vis the security sector

The new constitutional framework of Tunisia sets out the authority of the ARP. It is commonly recognized that parliaments must have sufficient normative and legal authority to oversee the security sector, in order to be effective; and the Tunisian Constitution reinforces the legislative and financial oversight powers of the ARP over the security sector. The text provides for no exceptions to the government's control by legislative power (unlike the Egyptian Constitution, which excludes the military domain), and it demands the Assembly adopt any texts related to the organization of the armed forces and internal security forces in organic laws. This marks a significant advancement as far as security sector governance, given that most texts relating to the security forces were previously adopted by decree (many of which were also deemed "non-publishable"). Additionally, while the Constitution attributes a crucial role to the president in defence and national security policies, it stipulates that decisions related to war and peace require a 60% majority vote in the ARP (Art. 77).

That said, the Constitution also contains some ambiguous formulations, such as when it comes to the obligation of the government to provide the Assembly with all the information necessary to exercise effective control over government activities. Article 59 concerning the powers of standing and special committees, for example, provides that "all authorities must help them in the accomplishment of their tasks," which represents a critical inroad but does not clarify the actual mechanics of implementation. Hence, this will remain an issue of debate for years to come, as it will require more than mere laws and regulation, but changes in institutional culture as well.

Ultimately, laws related to the security sector are now accepted or refused in plenary session, or the plenary can abstain from voting and refer them back to committees. To various degrees, the following committees play a role

in SSR and SSG:

- The Standing Committee on General Legislation, responsible for examining projects, proposals, and questions on the judicial systems and criminal laws;
- The Standing Committee on Rights and Freedoms and External Relations, responsible for examining projects, proposals, and questions relating to public freedoms and human rights, general amnesty and transitional justice, civil society and the media, and external relations and international cooperation; and
- The Standing Committee on Finance, Planning and Development, which plays a role in the fight against corruption, money laundering, and terrorism funding.

Two other committees have an even more direct responsibility for security sector legislation and oversight within the Tunisian parliament:

- The Standing Committee on Administrative Organization and the Affairs of the Armed Forces (COAFA); and
- The Special Committee on Security and Defence (CSD).

This structure emerged from discussions and debates over the rules of the new parliament in late 2014 and early 2015, which were sometimes more responsive to political imperatives than to the goal of efficiency. In short, the distribution of legislative and oversight functions between two committees was a liveable compromise meant to satisfy diverse political forces.

The COAFA is charged with: (1) the general organization of public administration; (2) the administrative decentralization and organization of local authorities; and (3) developing laws related to the armed forces. Meanwhile, the CSD is concerned with overseeing and ensuring the effective implementation of national security strategies through means such as listening sessions with security officials and hearings on reform

proposals. While the mandates of these committees remain vague in some cases, this lack of more strictly defined roles also leaves room for greater cooperation and coordination between the committees. For instance, although budget matters are theoretically the role of the COAFA, members of the CSD are available for support and consultation during budget reviews in the Ministries of Interior and Defence. At the launch of these committees, this kind of dual competency or redundancy posed some coordination challenges, especially in a parliament still in its early stages. Though they are not resolved completely, these problems have diminished over the years, but many political actors believe nonetheless that legislative and oversight functions of the security sector should fall to a single, powerful committee.

While committees within the Tunisian Parliament are each tasked with monitoring and overseeing a specific sector/field of expertise, it is worth noting that both the new constitution and the rules of parliamentary procedure allow for regular parliamentary

oversight of government work more generally, as previously mentioned. This takes the form of a vote of confidence for a new government (Art. 143), as well as written and oral questions and inquiries addressed to the prime minister or to cabinet members (Art. 145). The rules specify the timeframe and means of communication between members of the ARP and a concerned party (government agencies). As such, the President of the Parliament is responsible for ensuring the receipt of any questions by the government, and that an answer is provided within ten days.

Similarly, the parliament can organize monthly discussions with the government on public policies and strategies, during which parliamentarians can address their questions to relevant ministers. *Ad hoc* discussions can also be held on an as-needed/emergency basis.¹ Thus, despite some operational imprecision, the ARP has all the authority it needs to both legislate and oversee the security sector. So, let us take a closer look at how qualified it is to perform these functions.

Capacity of the ARP to fulfil its mandate vis-à-vis the security sector

It is often the case that parliamentarians and their staffs lack technical expertise in the area of security sector reform. To improve the ability of the ARP to initiate reforms and conduct oversight of the sector, it must have sufficient resources to fulfil its constitutional roles effectively (particularly through the COAFA and the CSD), including institutional support, access to information, analytical and research capacity, specialized skills, and working relationships with security institutions and civil society. Little has been done to ensure the financial and administrative autonomy of the Tunisian Parliament, though, given that the parliamentary budget is part of the government's overall annual budget. This has direct consequences in terms of the resources available to committees to hire the appropriate personnel to conduct necessary research on the security sector and on international standards.

Furthermore, the composition of any committee is not based on technical expertise requirements. Following parliamentary elections, committee membership is open

to all parliamentarians on the proportional representation principle; meaning, the weight of each party/coalition in the parliament is represented on committees with one seat for every ten members. A lack of security sector expertise on the part of parliamentarians has at least partially contributed to a lack of effective reform of the sector since 2014, despite some timid efforts by committee members to bridge the gap on the most pressing SSR and SSG issues.

The ability of the ARP to exercise effective oversight of the security sector is also challenged by the fact that a well-defined national security strategy has yet to be developed, from which detailed policies and plans can be elaborated. In theory, under Article 77 of the Tunisian Constitution, the President of the Republic spearheads the National Security Council and is exclusively competent for defining the national general defence and security policies. But a former member of parliament (MP) who sat on both the COAFA and the CSD, and spoke with the authors, emphasized that a

1 See (in Arabic): http://arp.tn/site/main/AR/docs/reg_int_arp.pdf

document spelling out the general orientations of the national security and defence strategy from the perspective of the President would have been critically helpful in improving the effectiveness of the work of committees with a security sector mandate. This would have allowed committee members to frame a clear set of actions, including hearings, field visits, inquiries, and other control mechanisms, and to reflect on these in the context of those orientations, in order to assess how efficiently they were implemented.²

Budgetary control, for example, which is the competence of the COAFA, entails reviews of the annual defence and security budgets. Yet, without a clear vision for Tunisian national security, it is virtually impossible to conduct valuable financial scrutiny of the sector's spending. Thus, budgetary control is conducted according to the very general guidelines and goals laid out in the current national security strategy, and members of the COAFA essentially compare budget line items against those goals.

Along with the COAFA, the CSD - which has taken on various facets and forms - has also conducted oversight through several field visits to garrisons and other military facilities to check on the condition of stationed troops and discuss challenges with officers in charge. Additionally, security oversight from the CSD has involved questioning the ministers of Interior and Defence regarding response planning for events involving terrorist attacks or national security. On top of this, the CSD has issued written inquiries regarding individual nominations to high-level positions within the Ministry of Interior, often in the wake of public discontent or controversy in the sector. However, to date, none of these inquiries have resulted in changes to nominations for these positions.

Parliamentary oversight by the CSD, in all its forms, is lacking enforcement; and has so far resulted only in reports providing detailed summaries of the questions asked by members of parliament, the answers provided by officials, field observations, and recommendations. These reports are published on the ARP website so that they are accessible to the public, but

current members of the CSD have emphasized the need to present these results during the general plenary to make recommendations more actionable and to result in real reforms.³

According to an MP who was formerly on the CSD, the role of oversight and control was carried out successfully by the Committee when it came to hearings, field visits, and written inquiries; and this is reflected in the annual report published on the ARP website. For instance, in 2019 and 2020, the CSD accomplished the following:

1. field visits to land border-crossing points at Rash-Ejdir and Shousha (on the border with Libya);
2. field visits to airspace border-crossing at Carthage International Airport;
3. field visit to the naval base in Bizerte and to the Coast Guard station in Sidi Bousaid;
4. receipt of testimony of the Minister of Defence regarding news circulating on social media regarding the presence of an American military base; and
5. receipt of testimony of the Director-General of Tunisian Customs.

This MP noted that, even in the absence of a pre-defined action plan, these accomplishments represents a foundation for effective parliamentary oversight of the security sector moving forward.⁴

Under Article 73 of the rules of procedures of the ARP, the CSD, like any other committee, has the right to access all official documents from public institutions in conducting their monitoring and oversight mission. Members of the CSD are also entitled, per their parliamentary prerogatives, to visit any security facility and request information from any relevant official. Similarly, Article 74 of the rules stipulates that the ARP develop legislation that regulates the interactions of committees with public institutions and any other external entities. This law is meant to precisely define: (1) the means of communication between committees and public agencies; (2) the department at each public agency charged with communicating information to committees; and (3) the timeframe allowed to public agencies to share internal data when requested. To date, this

2 Interview by authors, 18 August 2020.

3 "La Commission de la Sécurité et de la Défense décide d'auditionner le ministre de l'Intérieur sur les événements de Tataouine," *La Presse.tn*, 29 June 2020, <https://lapresse.tn/66657/la-commission-de-la-securite-et-de-la-defense-decide-dauiditionner-le-ministre-de-linterieur-sur-les-evenements-de-tataouine/> (accessed 21 February 2020).

4 Interview by authors, 17 September 2020, Tunis.

legislation has not been finalized or debated.

The lack of such a law may limit the power and legitimacy of the CSD to ensure democratic practices within security institutions, and more importantly, to generate real reforms that meet the principles of the Constitution and the needs of the general population. The cooperation of all public agencies, including the Ministries of Interior and Defence, is crucial to oversight; but despite an access to information law in place since March 2016, these ministries have been reluctant to share information.⁵ Without the law set out in Article 74, the MP who sat on both the COAFA and the CSD contends it is much harder to get high-ranking military and security officials to comply with requests and hand over sensitive information regarding national security issues. But this is complicated by the fact that committee sessions are generally open to the public and can be joined by other parliamentarians without invitation. In these circumstances, it is not surprising that security sector actors often refuse to release specific information that may be discussed during meetings of these committees. This legislation would therefore need to define precisely how parliamentarians handle sensitive information without jeopardizing the security of the state or any individual.

Since 2014, the CSD has gone to great lengths to establish channels of communication and cooperation with the Ministry of Defence. It also has been customary since then for the National Defence Institute (situated with the Ministry) to deliver a one-week workshop and training for members of the CSD, to explain the structure of defence institutions and the current challenges facing the security sector. Yet, these trainings offer relatively basic information and do not sufficiently highlight the urgency of the need to align the sector with the democratic transition undertaken by the country at large. In addition to these trainings, the parliament has occasionally organized knowledge sharing visits with European parliamentarians, so that members of the CSD can learn best practices from the EU in identifying specific reforms and implementing effective oversight.

Still, while knowledge sharing and training are useful tools to improve the capacity of members of the CSD, the scope of the committee's mandate remains undeveloped and is not yet substantive enough to effectively address the sector's most pressing issues. Moreover, it is difficult for MPs to transfer this knowledge into their day-to-day practice, and the continuous rotation of committee members as well as the option that MPs can sit on more than one committee makes it strikingly difficult to instil in parliamentarians a culture of truly effective security sector oversight and reform. This becomes a particularly salient issue when dealing with security establishments that are as arcane and impenetrable as the Tunisian Ministries of Interior and Defence, where officials are sometimes especially reluctant to cooperate with committees if they deem MPs have not absorbed sufficient important knowledge and understanding about these institutions; which hinders the ability of relevant committees to bring critical security reform issues to debate in the public sphere.

The unrealized potential of Article 49 of the Tunisian Constitution is another example of how the capacity of the ARP, and state authorities in general, has yet to be fully manifested. Article 49 concerns limitation clauses that can be imposed on the exercise of the rights and freedoms guaranteed in the Constitution, stipulating that these limitations - at one time, set by decree - must be established in law. Restrictions could be put in place, for example, to preserve a civil and democratic state and protect the rights of certain groups; or to ensure public order, national defence, public health, or public morals, with the caveat that some proportionality between these restrictions and any stated objectives must be sought. The Article also stipulates that judicial authorities are to ensure that guaranteed rights and freedoms are protected against violations, and that no amendment to the Constitution may undermine the human rights and liberties guaranteed within it.

Bringing Article 49 to life requires political will, however, and means that Tunisia must grapple with certain realities. Indeed, compliance with the Article demands legislative reforms that touch on the entire arsenal of rights and freedoms established in this rather legalistic country. But a lack of understanding

5 Efforts to apply the Law on Access to Information (adopted 24 March 2016) have been ongoing and it will likely take years to fully implement, if this is ever achieved.

or assimilation of the content of the Article and, consequently, of its legal and practical effects, is hampering its realization. Various actors are hesitant about or concerned by the prospect of applying Article 49, even within the limits of their respective roles (parliament, executive authorities, and the courts), and it is vital that all of them strengthen their understanding of its provisions to enable its appropriate implementation, especially when it comes to the principle of proportionality.⁶

The sensitive security context that has faced Tunisia since the fall of Ben Ali's regime has served as a pretext to disparage Article 49, and to continue practices that significantly limit rights and freedoms. Meanwhile, the absence of legislative advances in this area has enabled the executive, based on unconstitutional laws that remain in force, to use the Article to carve out exceptions within the new constitutional framework.

Commitment of the ARP to the democratic process

A strong commitment to the democratic process is a requisite among members of parliament, both because their work is likely to meet resistance and because it invites temptations to enrich oneself illicitly. But if parliamentarians must have sufficient normative and legal authority to oversee the security sector, they also need some form of immunity to protect them from retribution. The principle of parliamentary immunity is enshrined within the 2014 Tunisian Constitution in Article 68, which states that “[a] member of the Tunisian parliament may not be prosecuted in civil or criminal proceedings, arrested or tried for opinions, prepositions, or acts accomplished as part of his/her parliamentary tasks.” It is possible to lift this immunity in some cases, according to the internal regulations of the parliament itself (Section IV), through a request submitted by the judiciary to the President of the Parliament for investigation by the Standing Committee on Immunity and Parliamentary and Electoral Laws. On the basis of this investigation, the Committee presents its findings during a plenary session, before a vote on whether immunity should be lifted.

But even where immunity exists, it does not entirely mitigate tensions between MPs and actors in the security sector. A canonical case has been that of Yassine Ayari, elected to parliament in 2017, who has a long history of hostilities with the Tunisian Army that date back to 2013, when he was civilian blogger. In March 2018, Ayari was charged by military justice mechanisms with crimes including treason and defamation of the military institution, following a Facebook post that criticized the President's nomination of a high-ranking military officer.

However, the verdict was not implemented due to the immunity from which Ayari benefits, and no parliamentary action was taken to lift it.

Numerous journalists have also been tried in military courts for supposedly attacking the reputation and waning morale of the military. In other cases, the military justice code has been used by those with political ambitions to eliminate rivals. It has become apparent that this code, written in 1957, is no longer compatible with Tunisia's new path towards democratization and must be reformed. In fact, several of its clauses are clearly at odds with democratic values and human rights, and hence pose a direct threat to effective democracy building.

Indeed, it is no wonder that military courts have been suppressed, or their powers narrowed to only military concerns, in Western democracies. There is a clear lack of independence of military judges from the executive, as their appointments, promotions, and transfers are all approved by the Minister of Defence.⁷ At times, parliamentary oversight bodies have represented the concerns of the general public and civil society on this issue, especially in the case of two highly controversial laws - one aimed at reforming military courts and the other on the protection of security officers.

In 2018, the need to reform the military justice code, and specifically to prohibit the trial of civilians by military courts, entered public debate after a sequence of cases in which civilians and journalists were all tried by the military in similar circumstances. Human rights activists, civil society organizations, and international non-governmental organizations

6 It should be noted that a national commission for the harmonization of legal texts relating to human rights conventions has been established to identify unconstitutional laws and propose modifications to them that take into account Article 49.

7 Mighri and Grewal, “Reforming Tunisia's Military Courts: Order from Chaos,” The Brookings Institution.

joined efforts and urged members of parliament to shed light on this trend. Yet, debate on these reforms within the COAFA was soon curtailed and then overshadowed by discussion of the prevailing law on decentralization; and to date, a law to reform military courts has not returned to the agenda of the Committee. This puts the personal freedom of journalists, bloggers, and regular citizens at risk. It is typical in authoritarian states that their military justice system has jurisdiction over civilians, and it is difficult to root this out, which is why this is often the last thing to be reformed in democratizing countries. It seems this may also be the case in Tunisia.

Since the fall of Ben Ali, Tunisia has also grappled with attacks on Ministry of Interior forces, which have especially increased since 2015.⁸ This has led to debate over a controversial proposed law, put forth in 2015 (No. 2015-25), related to protection for armed forces and customs officers. It should be noted that the Tunisian security sector is resistant to change and has been seeking, for some five years now, to insulate itself through several legalistic efforts, mostly presented as indispensable to the fight against terrorism and money laundering. These initiatives have often undermined individual and collective freedoms and have been repeatedly denounced by Tunisian and international civil society organizations.

Still, by far, the law proposed by the sector that has generated the most controversy has been No. 2015-25, which was brought about by an attack on an officer of the National Guard. As presented to parliament in April 2015, it included several articles that increased the powers of security forces and reduced scrutiny over them. Since then, the Standing Committee on Rights and Freedoms and External Relations has held several rounds of discussion with civil society organizations to amend the draft law. According to a member of that committee, the bill has undergone several amendments, and articles that risked violating human rights have been abandoned. Still, the Constitutional Court has not yet been established (to offer review), and the rise of the COVID-19 pandemic as a national priority is likely to further postpone its inception.

On the topic of legislation, it is worth noting that neither the CSD nor COAFA have proposed any noteworthy legislation in the past six years. However, in November 2018, a group of parliamentarians presented a security bill proposing a legal framework to organize the structure and work of the intelligence community in Tunisia. Proponents of the bill argued that adoption of this law was crucial in order to clearly define the work of this vital yet enigmatic part of the national security system. This would have centralized information sharing among the country's three main intelligence centres - in the Ministry of Interior, the Ministry of Defence, and the Presidency. Moreover, it would have provided a clear set of prerogatives for these intelligence bodies in terms of data collection and sharing, while ensuring respect for privacy and human rights. The bill did not pass, but MPs who proposed it are convinced that if it had become law, it would have improved the confidence and trust of citizens in security institutions.⁹

Ultimately, the success of proposed laws is also contingent upon any draft laws emanating from the Presidency of the Republic and the Government, as those always take precedence over any others. Article 62 of the Constitution explicitly states that laws proposed by the Premier and the President have the highest priority, and that parliament should prioritize them in its own agenda. For instance, in the case of the bill described above on information sharing among intelligence agencies, the Presidency had also put forth a bill in the same period meant to address this issue, but from a somewhat competing perspective. Although the co-existence of these two bills may have created some tension between MPs and the executive, relations between the executive and legislative branches must evolve so that tension of this sort does not hinder the adoption of legislation affecting entire sectors. The ARP can undoubtedly add value in the security sector, but the legislative and executive will need to find ways to improve their cooperation on legislation that develops in response to issues emerging from the sector.

8 "Tunisie: Une attaque « terroriste » au couteau tue un gendarme en patrouille," 20 Minutes, 6 September 2020, <https://www.20minutes.fr/monde/2854991-20200906-tunisie-attaque-terroriste-couteau-tue-gendarme-patrouille> (accessed 21 February 2020).

9 Interview by authors with former MP, 18 August 2020.

The ARP and the COVID-19 crisis

Since the start of the COVID-19 pandemic in March and April 2020, the Tunisian government has decreed several partial and total lockdowns, the effectiveness of which has been impacted by a lack of both proper health infrastructure and public awareness. Security forces have been an integral part of the national campaign to stop the spread of the coronavirus, and President Saïed has deployed the military to support security forces in enforcing lockdowns. Within parliament, the CSD has met to discuss the evolving COVID-19 pandemic, and on March 16th, Committee chair Imed Khmiri issued recommendations to close Tunisian borders to international travel as soon as possible, and urged that security forces be deployed to impose safety measures on citizens.¹⁰ Despite considerable efforts by forces of the Ministry of Interior, violations of the lockdown were common, and only lessened after the deployment of Army forces.

In concrete terms, though, the Tunisian security services have been omnipresent and, in some ways, more powerful than ever. At the beginning of the crisis, actors who typically play a part in monitoring the security sector and holding security forces accountable to local populations were under curfew and confined to their homes, stuck behind computer screens, striving just to keep democratic processes functioning at a minimum level. And on April 4th, parliament approved a bill that delegated legislative power to the Prime Minister for two months, allowing the unilateral declaration of decree-laws to mitigate the pandemic; with 178 votes in favour out of 197 MPs present, and backing from all political parties.¹¹ A previous version of the bill had allowed just one month

of this unilateral power, but the period was extended due to the need to contain a clearly ongoing pandemic.

All members of the parliament also agreed to allow the government the legal tools to ensure the pandemic is contained by the enforcement of laws on confinement and mobility. However, as we mentioned earlier, an official state of emergency – which involves the transfer of additional powers to the executive – has been practically applied in Tunisia since 2011, but for a few short periods between 2011 and 2015. With additional prerogatives granted to the government, and consequently to internal security forces, there is the risk of an overuse/abuse of power by security agents. Indeed, several human rights watchdog organizations such as the Alliance Sécurité et Libertés (ASL) and Inkyfada have reported cases of excessive use of force by Ministry of Interior forces against the elderly and minorities.¹²

This has been brought to the attention of the CSD, which held a meeting in April 2020 with the Minister of Interior Hichem Michichi and other ministry officials to discuss instances where police officers had overreached in enforcing containment measures and how to prevent this behaviour. In this way, the COVID-19 crisis has highlighted the importance of better defining the scope of the CSD, something that several parliamentarians attempted to do between 2014 and 2019, without success.¹³ It is clear that trust between the authorities and average citizens needs to be rebuilt and strengthened; a goal that may take a painstaking long time to reach given the legacy of the Ben Ali era and the instrumental role of the police in meting out the trickled-down oppression of his regime.

10 “Coronavirus : La commission parlementaire Sécurité et Défense appelle à la fermeture immédiate de toutes les frontières,” Kapitalis, 16 March 2020, <http://kapitalis.com/tunisie/2020/03/16/coronavirus-la-commission-parlementaire-securite-et-defense-appelle-a-la-fermeture-immEDIATE-de-toutes-les-frontieres/> (accessed 21 February 2021).

11 “Law on delegating power to PM to issue decree-laws, submitted to Presidency (Parliamentary source),” Tunis Afrique Presse, 6 April 2020, <https://www.tap.info.tn/en/Portal-Politics/12533648-law-on-delegating> (accessed 21 February 2021).

12 Par Haïfa Mzalouat, “COVID-19 en Tunisie: Concentration et abus de pouvoirs sous couvert d’épidémie,” Inkyfada, 30 June 2020, <https://inkyfada.com/fr/2020/06/30/tunisie-covid19-concentration-abus-pouvoirs/> (accessed 21 February 2021).

13 Interview by authors with former MP, 17 September 2020, Tunis.

International and domestic support programmes for SSR

Since the early stages of the Arab Spring, the international donor community has placed its bet on Tunisia as a potential success story in a turbulent region. Consequently, several international donors – including the United States Agency for International Development (USAID) and the EU – have invested considerably to support Tunisia’s democratic transition. While most of this aid has been targeted towards voters and civic engagement, inclusive growth, and reducing socioeconomic disparities, donors have also had their eye on reforms of the security sector due to the imminent terrorist threat of neighbouring Libya. Historically, bilateral aid in this area took the form of technical assistance, trainings and exchange programs for Tunisian officers meant to improve their preparedness to deal with terrorism, and the facilitation of access to advanced armaments. Now, with Tunisia in the midst of a democratization process, that pattern of aid has evolved and now extends to the ARP and its security committees, as well as to the Ministries of Interior and Defence. For example, external actors such as DCAF, the United Nations Development Programme (UNDP), the EU, and the Westminster Foundation for Democracy (WFD) have all been focused entirely or partially on supporting reforms of the security sector, working closely with parliamentarians and competent ministries, and sharing expertise.

The longstanding problem of technical knowledge deficiency in the ARP is not unique to the security and defence sectors, though, and looms over the work of the institution as a whole. A survey administered several years ago to the 217 members of parliament showed that a large proportion simply lack the requisite knowledge to effectively carry out their mandate. This motivated the development of the Parliamentary Academy, created in late 2016 in partnership with the UNDP and the Hanns Seidel Foundation. Although the role of parliamentarians in security sector reform and oversight does not occupy a pre-eminent place in the curriculum of the Academy, it is certainly not ignored. The training revolves around three main areas: (1) oversight and control of the work of government agencies; (2) understanding legislation in various fields; and (3) communications and media strategy.

DCAF has initiated similar projects that are focused on involving citizens in security-related

decision making. It has also cooperated with the UNDP to promote more strategic planning among the parliamentary committees with a security sector mandate. This initiative, underway in 2015–16, was less fruitful than anticipated, but it could be relaunched and has the potential to generate more political will for the structural optimization of parliament. The objective of the initiative was to support parliamentary committees in reflecting on how they may fulfil their respective mandates better, including by considering ways to improve their structures and capacities but also by developing strategies to make their interactions with stakeholders more productive. It was meant to be a trust-building exercise between MPs and the institutions they oversee. But opposing views among parliamentarians themselves on the role of the ARP vis-à-vis the security sector kept this effort from moving forward. Some MPs felt their engagement on security sector issues should remain limited, allowing the executive to adopt a more traditional model of control. Others insisted that their actions on security matters should reflect the spirit of the 2014 Constitution, which is quite explicit about the importance of legislative oversight of the sector.

DCAF has worked closely with the CSD specifically, to improve capacities and expand the knowledge of committee members to help them better carry out their oversight mission. Just in the months before the 2019 elections, and then the pandemic, DCAF offered support to parliamentarians on a wide range of security-related issues – including on parliamentary oversight of the intelligence community, the application of the state of emergency, and the protection of human rights – with the objective to inform and encourage parliamentary debate on related draft bills. DCAF has also consulted on the role of the ARP in budgetary and financial control of security sector and defence procurements.

On top of this, DCAF is an implementer of an EU effort to create a police ethics commission, which is part of its larger programme to reform and modernize the Tunisian police forces in alignment with international standards and human rights. The actions of DCAF are aimed specifically at supporting the process of creating a police ethics body, as an independent commission or as a sub-commission of a body

tasked in the Constitution with overseeing the application of the code of conduct of the internal security forces of the Ministry of the Interior. In the end, this necessitates engagement by parliament, as legislation is required. The principle of involving parliament in establishing an ethics commission for police is based on acceptable practices; the approach is quite a novelty in a nascent democracy, however. Donors must understand that, despite this new era for Tunisia, the ARP might as well be a UFO to many in the security apparatus, composed in part of members of political parties who were not in the good graces of the former regime. This lack of trust between leading security providers and the ARP will certainly affect any parliamentary effort to create an ethics commission, meaning that patience and

understanding will be necessary to move this initiative forward.

The phenomenon of corruption is often associated with the security sector and is thus another crucial issue to tackle in sector reforms. In 2015, the WFD played an important role in establishing the Special Committee on Administrative Reform, Good Governance, Anti-Corruption and Oversight on the Management of Public Money in the ARP. The WFD emphasizes the necessity of parliamentary financial oversight in the MENA region and provides training to MPs on financial scrutiny, even organizing visits to the British and Scottish parliaments, allowing parliamentarians from places like Tunisia to observe and learn from the parliamentary oversight of public money management in these countries.¹⁴

Conclusions and Recommendations

Ultimately, the value of the COAFA and the CSD hinges upon the fate of the ARP. The need to debate and finalize a legal structure that ensures its financial and administrative autonomy is key to providing sufficient financial and technical resources to members of parliamentary committees with security sector mandates, so as to assess and implement the most needed reforms. But effective reform and oversight also require a legal framework; one that regulates relationships between the various committees and other public institutions. And while legislation regulating access to information was passed and has been implemented to some extent, the Ministries of Defence and Interior remain largely impenetrable and continue to use the threat to national security as an argument for refusing to share security-related documents with the public and with the ARP.

To ensure the ARP has a significant impact on the security sector, and in compliance with the country's democratization process, several important reforms must be discussed by parliamentary committees:

1. **Establishment of the Constitutional Court (per Article 147 of the Tunisian Constitution)** - the Court is critical to strengthening the democratic model and to effective reform and governance of the security sector. It is the only independent

guarantor of the constitutionality of laws and the practice of parliamentary oversight. Equally importantly, the Court will ensure high standards for human rights protection and will thereby improve the trust of citizens in security institutions.

2. **Military justice reform** - the current code of military justice represents an infringement on the democratic values enshrined in the 2014 Constitution by allowing the trial of civilians in military courts. As has been a common practice in more classic democracies, Article 5 ought to be amended to: (1) limit the competence of military courts to strictly military affairs, and (2) avoid any ambiguities that may grant the military the right to arrest civilians.
3. **Reforms to the State of Emergency law** - following terrorist attacks in 2015, a state of emergency was again declared, and has been extended for various reasons since then, from imminent terrorist threat to the spread of COVID-19. The text used by the president to declare a state emergency is the same decree-law (No. 78-50 of 26 January 1978) that was used to oppress Tunisian General Labour Union (UGTT) protesters in what is known as "Black Thursday." In 2019, a law organizing the state of emergency was submitted by President Béji Caid Essebsi after consultation with the ministerial

14 "Towards effective financial scrutiny in Tunisia," WFD, 16 May 2016, <https://www.wfd.org/2016/05/16/towards-effective-financial-scrutiny-in-tunisia/> (accessed 21 February 2020).

council, but it has not yet been taken up. It is critical that members of security sector committees and other parliamentarians examine this text closely, as it has raised eyebrows among human rights activists and legal experts. In particular, the law gives additional power to the executive to use security forces and the Army. Without the control of a seasoned parliament, this has the potential to result in human rights violations and risks running afoul of the democratic principles enshrined in the Constitution.¹⁵

- 4. Regulation of the intelligence sector** – regulating the work of security intelligence organs has become more urgent than ever, not the least because Tunisia remains imperilled by terrorist threats due to its geographic location. It is crucial to establish a legal base that sets the structure, prerogatives, and limitations of intelligence services. According to one expert on legislation in the sector, this will also contribute to improving the efficacy of the security sector in general, since there are intelligence directives within the Ministries of Defence and Interior, as well as within the Presidency. Regulating their work would improve intelligence-sharing capabilities while ensuring respect for human rights and privacy.¹⁶

Given the Tunisian context, the accomplishments of parliamentary legislative and oversight committees thus far is promising. Continuing down this path could very well lead to the eventual implementation of reform proposals mentioned above. Indeed, MPs in general and especially those with seats on security sector committees have the necessary immunity and protection to carry out their mission of controlling, overseeing, and recommending reforms in the sector. However, in its current form, the ARP lacks the resources to ensure regular monitoring of the security sector and best governance practices. International donors continue to provide valuable technical assistance, including training and knowledge sharing with countries that have succeeded in implementing effective SSG, and this support is critical to helping MPs in Tunisia build the strong analytical and research skills required to understand current issues in the sector and areas in need of reform. Still, because oversight tasks demand a clearly defined authority for MPs so that they can access information related to national security, a lack of legislation in this area is a hindrance to effective reform, especially in areas related to data privacy, human rights protection, and intelligence collection and sharing.

15 "Projet de loi de l'état d'urgence en Tunisie: Est-ce si urgent?" Leaders, 13 March 2019, <https://www.leaders.com.tn/article/26684-projet-de-loi-de-l-etat-d-urgence-en-tunisie-est-ce-si-urgent> (accessed 21 February 2020).

16 Interview by authors with expert on security sector legislation, 4 September 2020



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