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# EXCHANGE OF LEGISLATIVE EXPERIENCES ON THE GOVERNANCE OF THE SECURITY SECTOR IN COLOMBIA

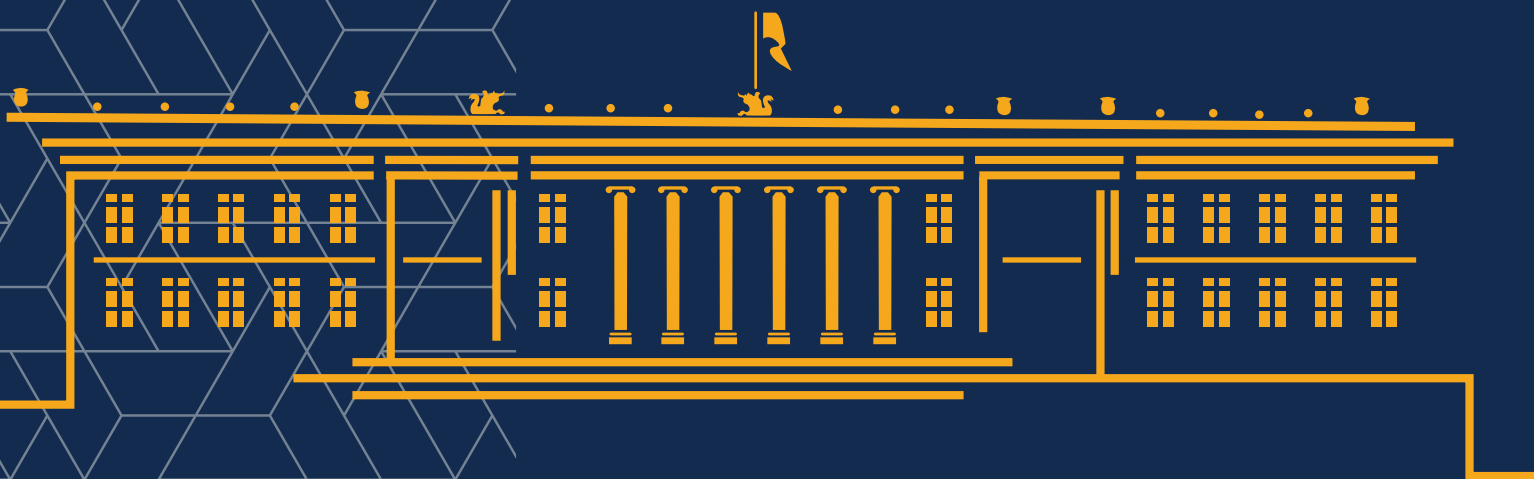
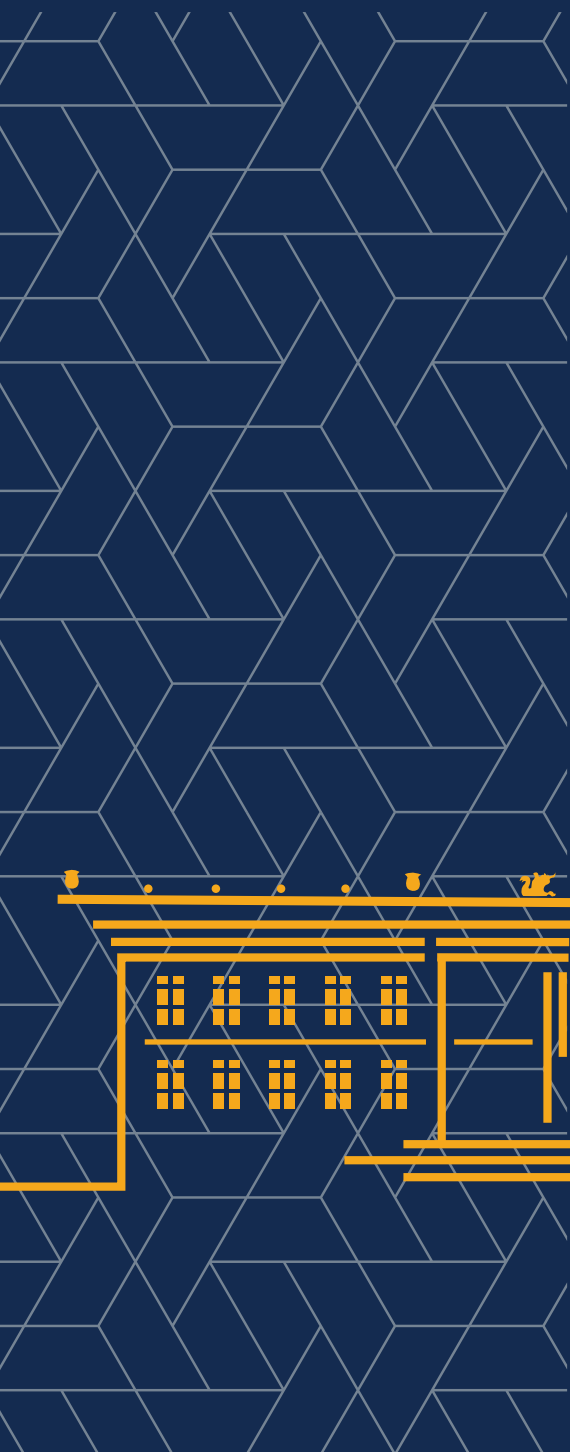
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EVENT REPORT

**DECEMBER 2018**

Hall of the Constitution of the Colombian Congress, Bogotá

Authors: Cristina Hoyos, Cédric Bolli and Tobias Fontecilla



# OVERVIEW

The election of a new Congress in Colombia in March 2018 provided an opportunity to work on security sector governance and strengthen the role of Congress in overseeing the security sector in a way that helps the country face its current and future challenges. International experiences from other countries can provide relevant technical and conceptual lessons that can enrich the work of the Colombian Congress in matters of security.

In this context, the Geneva Centre for Security Sector Governance (DCAF), the Friedrich Ebert Stiftung in Colombia (FESCOL), the Folke Bernadotte Academy (FBA) and the Swedish Embassy in Colombia organised a forum on legislative experiences in security sector governance. The forum took place on the

6th of December 2018 in the Hall of the Constitution of the Colombian Congress in Bogotá and was attended by members of the Colombian Congress as well as parliamentarians from Sweden, Germany and the Philippines.

The purpose of this event was to enable participants to partake in the debate over the role of the legislative vis-à-vis the security sector, allowing members of the Colombian Congress and their international counterparts to share lessons learned and promote good practices in security sector oversight. The event was moderated by the Honourable Senator Rodrigo Lara Restrepo, who was the Speaker of the House of Representatives (2017-2018).

## Speakers

### Representatives of the Colombian Congress

**Honourable Senator Rodrigo Lara Restrepo**  
Radical Change Party

**Honourable Representative Ángela María Robledo**  
Green Alliance Party (former candidate for the vice presidency)

**Honourable Representative Sandra Ramírez**  
Common Alternative Revolutionary Force (FARC)

**Honourable Senator Jose Luis Pérez Oyuela**  
Radical Change Party

### Foreign Parliamentarians and Experts

**Honourable Parliamentarian Dr. Rolf Mützenich**  
Parliamentarian of the Social Democratic Party of Germany

**Mr. Urban Ahlin**  
Former parliamentarian of the Swedish Social Democratic Party and former spokesman of the Swedish Parliament

**Dr. Mario J. Aguja**  
Former parliamentarian of the Akbayan Party of the Philippines and professor of Sociology at Mindanao State University

### Organisers of the Event

**Ambassador Jörgen Persson**  
Envoy for the Colombian Peace Process

**Mrs. Kristina Birke Daniels**  
Director of FESCOL

**Dr. Cristina Hoyos**  
Head of DCAF's Latin America and the Caribbean Unit

## Why does legislative oversight of the security sector matter?

Ensuring public security and stability whilst upholding democratic standards constitutes one of the major challenges faced by democratic societies. Achieving a balance between these two requires democratic accountability of the security sector. Security sector institutions play a vital function in our lives and as such are also agents of the democratic state: they themselves must be subjected to the various tested mechanisms of transparency and accountability designed to verify that they comply with the mandates trusted upon them. Security sector actors must, therefore, be subjected to control and review by organs which represent the public interest as formulated in the course of the democratic process. Although such control and review are exercised by a variety of actors in society (including non-state actors), the role of legislative bodies, such as parliaments and congresses, herein is particularly important. **The people should be the ultimate deciders of their security policy; in this respect, parliaments and congresses are the institutions that represent them directly.**<sup>1</sup>

The importance of legislative oversight for a good governance of the security sector can be further highlighted through the following key features: **First**, security sector oversight is a cornerstone of democracy preventing autocratic rule. The oversight of the security sector by representatives

elected by the people is an essential element of power-sharing at the state level, and if effective, sets limits on the power of the executive or the president. **Second**, the security sector utilizes a substantial share of the state budget. It is incumbent upon the representatives of the people- the taxpayers- to ensure that these financial resources are effectively and efficiently utilized. **Third**, the creation of legal parameters for security issues remains a domain of legislative bodies. It is an inherent right of any parliament that these policies are reflective of current security needs, and in accord with its democratic values, and therefore has the responsibility to ensure that these policies are properly and fully implemented.<sup>2</sup>

Depending on their constitutional mandate, resources and capacities, legislative bodies have various tools at their disposal to oversee the security sector, ranging from security legislation, budget approval, arms procurement, appointments of personnel and oversight activities such as conducting hearings and inspections.<sup>3</sup> However, lawmakers face many challenges in effectively overseeing the security sector, which can be evidenced by performing the so called “Triple-A” test of parliamentary oversight: Authority (legal powers), Ability (resources/capacities) and Attitude (political will).<sup>4</sup> The following presentations and discussions offer solutions in the form of good practices and lessons learned on how these challenges can be addressed in Colombia.

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1 Born, H., *Parliamentary oversight of the security sector*. Office for Promotion of Parliamentary Democracy (2013).

2 Aguja M., *DCAF Think Piece No. 1: The Role of Parliament in Good Security Sector Governance and Peace Process*. Prepared for the “Exchange of legislative experiences on the governance of the sector Security in Colombia” (December 2018).

3 Aguja M., *DCAF Think Piece No. 1: The Role of Parliament in Good Security Sector Governance and Peace Process*. Prepared for the “Exchange of legislative experiences on the governance of the sector Security in Colombia” (December 2018).

4 Ibid.



## PRESENTATIONS AND DISCUSSIONS

### The Colombian Case

The Colombian context is unique to say the least. In 2016, the Government signed with the Common Alternative Revolutionary Force (FARC) a historic peace agreement which officially put an end to an internal conflict that lasted for more than 50 years. Nonetheless, pockets of resistance from other rebel groups (i.e. National Liberation Army (ELN)) and FARC dissidents still continue to operate in rural areas, but also in urban settlements, hidden in plain sight. As a result of this continued and latent conflict not much attention was brought to security sector oversight. Consequently, previous governments focused their efforts on capacitating

the army rather than ensuring that it was subjected to political control from democratically elected legislators. Furthermore, Colombia operates under a presidential system entrusting the head of state with full control of the executive branch, leaving the extent of its oversight mostly to his discretion. As a result, **legislators in Colombia tend to see themselves more as lawmakers often neglecting their primary task of political control.** Even though Colombia has experienced an ongoing armed conflict which started in 1964, oversight of the security sector was not an item on the political agenda that has been discussed extensively, partly due to conflicts of interest.

In contrast, Colombia's increasing international cooperation in security matters requires the application of good governance principles to their security sector, including legislative oversight. Colombia became a member of the OECD in March 2018 and has been a "partner across the globe" of NATO, with whom it has cooperated since 2013 in NATO's Building Integrity programme that aims to strength integrity, accountability and transparency in the Ministry of Defence and security sector.

## Perspectives on the needs of the Colombian Security Sector<sup>5</sup>

Discussion amongst Colombian lawmakers revealed divergent perspectives on how national security, and in a broader sense how security sector reform and security sector governance, should be addressed in Colombia and what role the Congress should play in this matter. On one hand, it was argued that instead of reducing the capacities of the armed forces, more should be invested in the modernisation and professionalization of the institution. Through their budgetary work, some Colombian lawmakers see as one of their roles to secure sufficient resources for this modernisation process.

On the other hand, Colombian lawmakers also raised strong concerns over the high defence expenses and the continuous militarisation of internal security in the country. Public life in Colombia found itself restricted due to a decades-long internal conflict. Despite the signing of the peace agreement, it was noted that the appeal for an "iron fist" (*mano dura*) approach to security persisted. Demilitarisation of internal security and public life is therefore a vision that continues to be contested, particularly with regards to remote regions of the country.

The presentations of some Colombian lawmakers also highlighted the various **security challenges in the country in the context of the implementation**

**of the peace agreement that hampers effective security sector oversight.** Particularly affected are the "*Espacios Territoriales de Capacitación y Reincorporación*" (ECTR), territories that were located in areas formerly controlled by the FARC and where state presence and trust towards state institutions often remains low. Despite an increased deployment of security personnel, insecurity persists in these areas. The adopted amendments to Colombia's Public Order Law showcased some of the disputes surrounding the question of how Colombia should address its evolving security challenges in these areas.

Discussions surrounding the ECTRs specifically underlined the need for more investment in development and education programmes as well as the need to protect community leaders, activists and former guerrilla combatants in order to prevent human rights violations and contribute towards a sustainable peace process.

**Strengthening the national commission in charge of overseeing the intelligence services** was raised as another important issue for Colombian legislators, who stressed the need for additional resources and increased autonomy to comply with their mandate.

A common denominator between all Colombian speakers was their appeal to **promote greater overall involvement of the Congress in security sector oversight as well as garner sufficient interest of lawmakers to address this issue.** This, as was concluded, requires raising awareness on this subject throughout Colombian society, as security is still perceived as something that falls exclusively within the realm of the executive. In this sense, Colombian civil society has the potential to hold their elected members of Congress responsible for taking a more active role in overseeing the security sector and work towards a more accountable and transparent security sector.

First steps to strengthen the capacities of the

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<sup>5</sup> Disclaimer: The opinions of this discussion belong to the various members of the Colombian Congress and Senate that participated at the event and do not reflect the opinions of the organisers.

Congress in this field were taken, such as through the creation of the “Office of Technical Budget Support for the Congress of the Republic”, a technical body that will assist the Congress in budgetary matters, thereby contributing to a more informed analysis and decision-making process over budget proposals, including those made by the Ministry of Defence. Nonetheless, all speakers agreed that the Congress requires additional mechanisms to ensure effective security sector oversight.

Despite contextual differences, the presentation of the international speakers proved that the Colombian Congress can greatly benefit from best practices and lessons learned from other countries who share a similar history of violence or otherwise have experience in conflict resolution.

## The Case of the Philippines<sup>6</sup>

In the Philippines, the Senate and the House of Representatives have enormous constitutional powers of oversight through the exercise of the power of appointment, the power of the “purse”, and in legislation including the conduct of congressional inquiries in aid of legislation. The power of appointment is exercised by the joint Committee on Appointments. Members of the cabinet, diplomats, and officers of the armed forces with the rank of colonel and higher are vetted by the Commission. The power of purse is exercised by the Committee on Appropriations of the House of Representatives and by the Committee on Accounts of the Senate. Other legislative and oversight functions are exercised through the numerous committees in both chambers.

**The Philippine Congress likewise plays a vital role in the peace processes.** With the threat posed by the communist factions and the Muslim secessionist groups in the Southern Philippines, Congress played an active role in mediating the intense relations between the national government

and the rebel groups. The Congress has formed committees dedicated to overseeing the peace processes, with jurisdictions on matters directly and principally relating to negotiations and other policy and program initiatives in pursuit of peace consolidation and national reconciliation.

When there is an impasse between the government and rebel groups during the negotiations, or contention about the implementation of the peace agreement, **Congress serves as an important platform to facilitate discussions amongst all relevant actors.** Likewise, it also uses its power to listen to stakeholders of the peace process, especially in the passage of laws in support of a peace agreement. In many instances, especially during negotiations with secessionist movements in the Southern Philippines, Congress was successful in passing legislation or otherwise breaking an impasse during the negotiations. From time to time, it even acts as an observer during negotiations. The experiences from the peace process in the Philippines offer insights to Colombian lawmakers on what role the legislative branch in Colombia could take in its own implementation of the peace agreement.

While the legal framework for congressional oversight in the Philippines is robust, challenges such as the quality of oversight, the fast turnover of legislators and the exercise of political will remain.

## The Case of Germany

In Germany, security sector reform support has become a well-established element of the federal government’s approach to crisis prevention, conflict resolution and peacebuilding. The armed forces in Germany are democratically overseen by the German parliament, the “Bundestag”. Regarding security sector oversight, the creation of a parliamentary Defence Committee was convened to deliberate on bills and motions for resolutions referred to it by the plenary of the German parliament. It can also consider issues on

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<sup>6</sup> Aguja M., *DCAF Think Piece No. 2: The Role of Parliament in Good Security Sector Governance, Overview of Southeast Asia and the Philippines*. Prepared for the “Exchange of legislative experiences on the governance of the sector Security in Colombia” (December 2018).

its own initiative, mostly to discuss reports the Committee has requested from the Federal Ministry of Defence. It has the right to summon a member of the government to a committee meeting at any time. On the budget, the committee has an indirect role in reporting its examination (taking several days each year) to the Budget Committee.

**All procurement projects over €25 million have to pass the Committee.** Germany's Defence Committee has a special status as the only committee with the right to convene as a committee of inquiry. A committee of inquiry is Parliament's strongest weapon in scrutinising government actions. The committee of inquiry can itself clarify matters by taking evidence – for example by interviewing witnesses or inspecting files. For instance, in early 2019, this committee initiated an investigation over irregularities in the awarding of large sum consultancy contracts from the Ministry of Defence.

The German Bundestag also appoints a Parliamentary Commissioner for the armed forces who works closely with the Defence Committee and regularly attends its meetings. His primary task is to protect the basic rights of service personnel and to ensure compliance with the principles of 'Innere Führung', the concept of leadership, dignity and civic education. Furthermore, the example of Germany underlines the importance of actively **training military personnel for civilian life** and offers them alternative educational opportunities to facilitate the integration into the labour market – an approach that can be very useful to consider for Colombia, which continues to have one of the largest armed forces in the Americas.

These examples of good governance, transparency and civic participation in the decisionmaking of the security sector achieved in Germany offer valuable examples for countries like Colombia. However, the German example does stress that without political will and a strong legal framework to support the overseeing role of the legislative branch, there cannot be any substantial changes in the way the security sector operates.

## The Case of Sweden

The Swedish example provided three important lessons on overseeing the security sector. In Sweden, the collective memory of the "Ådalen shootings", an incident in 1931 where protesters were shot by troops that were called as reinforcement by the police, triggered a nationwide debate on the importance of overseeing the security sector, which led to a political agreement to impede the use military forces against civilians.

**The use of the military for internal security remains highly restricted** and must be placed under the command of the police if used. Furthermore, their use against demonstrations remains prohibited. The Swedish parliament has a wide mandate to oversee the armed forces but is actively involved in the decision-making over security and defence issues and can even trigger investigations when needed. By way of example is the Defence Review Commission composed of military experts and parliamentarians, whose work feeds into the policymaking of the parliament. The parliament is also in charge of audits and budget control. What the Swedish example demonstrates is that the **armed forces are treated the same way as any other public institution** and are therefore required to meet the same accountability and transparency standards.



The third important lesson to be learned from the Swedish case is **that building trust between the armed forces and civil society is essential.**

The civil-military relationship in Sweden is strengthened through public forums that are organised with politicians and representatives of the armed forces that offer a platform where civil society is offered a window of opportunity to ask questions to these representatives, thereby contributing to open, transparent dialogue between civil society, the legislative branch and the armed forces.

The Swedish experience can also benefit Colombia's handling of intelligence oversight and provides good practices in regulating data collection and invasion of privacy. In 2007, the Commission on Security and Integrity Protection (SIN) became operational. The impetus for creating such a body was due to increased investigative powers that were in the process of being granted to the police and the Security Police. There was also a realisation that prosecutorial and judicial control was only checked if there was reasonable cause to initiate surveillance and there was no post hoc monitoring. SIN was thus given a follow-up oversight function over surveillance. SIN's mandate is to ensure that surveillance activities by the police, including the Security Police, are conducted in accordance with laws and other regulations in place. Related to the Colombian context, this would be an example of good practices, especially since the Colombian government is still treating certain armed groups as terrorists, meaning that collecting data is essential to ensure public safety. However, clear rules are to be established so that intelligence services and the national police do not overstep their mandates and scopes of action.

## CONCLUSIONS AND THE WAY AHEAD

The exchanges of experiences and ideas this event facilitated have generated new interest and emphasis on the need to have effective oversight mechanisms within the Colombian Congress which is dedicated to supervise, monitor and influence the Colombian security sector so that it may function efficiently and in a transparent manner. Deliberations, presentations and ensuing discussions were fruitful and encouraged a multiplicity of perspectives with a common denominator: to promote a broader understanding of security that includes the legislative branch as a crucial pillar for good governance of the security sector as well as calling for a greater involvement of Congress in security sector oversight.

These exchanges generated many answers but also posed a new set of questions pertinent to the Colombian context worth exploring further, domestically and internationally. Since 2006, DCAF, in partnership with the Friedrich Ebert Stiftung, conducted numerous capacity-building initiatives in the region of Southeast Asia. These meetings gave birth to the organization of the Inter-Parliamentary Forum on Security Sector Governance in Southeast Asia. Creating a similar platform for Latin America and the Caribbean would enable similar exchanges between parliamentarians from across Latin America and the Caribbean.

The organizers are interested in continuing to work together in an open and constructive dialogue with lawmakers and experts to analyse which topics may be of interest to the Congress and where they could create better internal capacities in order to contribute to better oversight of the security sector.



## ORGANISERS

**The Geneva Centre for Security Sector Governance (DCAF)** is a leading centre of excellence in justice and security sector governance. DCAF is dedicated to making states and people safer through more effective and accountable security and justice. Since 2000, DCAF has facilitated, driven and shaped Security Sector Reform policy and programming around the world. DCAF assists partner states in developing laws, institutions, policies and practices to improve the governance of their security sectors through inclusive and participatory reforms based on international norms and good practices. In everything it does, DCAF adheres to the principles of impartiality, local ownership, inclusive participation and gender equality. With the opening of a dedicated Latin America and the Caribbean (LAC) Unit in June 2017, DCAF reinforced its commitment to supporting and improving security sector governance as a means of strengthening citizen security in LAC.

**The Friedrich-Ebert-Stiftung in Colombia (FESCOL)** seeks to stimulate public policy analysis and debate while supporting learning processes and exchanges of international experiences as well as enhance visibility and recognition of peacebuilding efforts. As a social democratic foundation, FESCOL is guided by the values of freedom, justice and solidarity. Through its thematic activities, it offers a space for reflection and analysis at the national level, promoting teamwork and institutional alliances with universities, think tanks, the media and progressive political organizations.

**The Folke Bernadotte Academy (FBA)** is the Swedish government agency for peace, security and development. The FBA supports international peace operations and international cooperation for peace and security. The agency carries out training, research and development of methods to strengthen the consolidation of peace and assist in state-building activities in post-conflict countries as well as countries currently experiencing conflict. FBA also recruits and deploys civilian personnel and experts intended for peace operations and election observation missions, in most cases led by the EU, the United Nations and the OSCE. The agency is named after Count Folke Bernadotte, the UN's first mediator.

**The Embassy of Sweden in Colombia:** The embassy aims to foster relations between Sweden and Colombia, promoting trade between the two countries, cooperating in unison for sustainable development, and promoting personal and human exchange. The embassy has the support of a large number of consulates, both in Colombia and in the other countries in the region, which are under its supervision.



# ANNEX I

## **DCAF Think Piece No.1**

# **THE ROLE OF PARLIAMENT IN GOOD SECURITY SECTOR GOVERNANCE AND THE PEACE PROCESS**



Prepared by

Dr. Mario Joyo Aguja for the event “Exchange of legislative experiences on the governance of the Security Sector in Colombia”, Bogota, Colombia

6 December 2018

# SECURITY SECTOR GOVERNANCE (SSG) AND SECURITY SECTOR REFORM (SSR)

## Who are the security sector actors?

In all societies, the security sector plays an important role in the provision of state and human security. As a sector, it is composed of all the structures, institutions and personnel responsible for security provision, management and oversight at national and local levels. It includes both actors that use force and those responsible for controlling how force is used through management and oversight: these actors are **state and non-state security providers** and those responsible for **security management and oversight**, which includes **civil society**. The narrowest definitions of the security sector include only state security institutions, while the more common definitions are more comprehensive, including all the state and non-state actors that influence security and justice within a state. Figure 1 shows a comprehensive definition of the security sector.

## What is security sector reform (SSR)?

Given the important role of the security sector in any society, there is a need for continuous reforms to ensure that it is responsive to new and emerging security challenges. SSR refers to the political and technical process of improving state and human security by making security provision, management and oversight more effective and more accountable within a framework of democratic civilian control, rule of law and respect for human rights. Among its goals is to apply the principles of good governance to the security sector. It concerns all state and non-state actors involved in security provision, management and oversight, and emphasizes the links between their roles, responsibilities and actions. SSR also involves aspects of justice provision, management and oversight, because

security and justice are closely related. Reform initiatives range from activities covering all political and technical aspects of security, including, among others: legislative initiatives; policymaking; awareness-raising and public information campaigns; management and administrative capacity building; infrastructure development; and improved training and equipment.

## Why reform the security sector?

There are numerous reasons why the security sector needs reform. All of these are meant to ensure the efficient and effective delivery of security services to the state, and to the communities<sup>7</sup>:

**First, a security sector which is not effective cannot deliver security, while a security sector that is not accountable endangers both the population and the state.** A security sector that is ineffective and unaccountable causes a number of problems that SSR can help to solve.

**Second, SSR improves the ability of the security sector to provide human security.** An ineffective and unaccountable security sector cannot credibly perform its missions in national defence, law enforcement or public assistance, and itself poses a threat to both the state and the population.

**Third, SSR makes the use of public resources in the security sector more efficient.** An inefficient security sector wastes public resources, diverting funding from other essential public services and potentially burdening the state with unnecessary debt.

**Fourth, SSR reduces opportunities for corruption by improving oversight and professionalism.** An ineffective and unaccountable security sector encourages corrupt practices that undermine good governance across the public and private sectors,

7 Geneva Centre for the Democratic Control of Armed Forces (DCAF). 2015. "Security Sector Reform," SSR Backgrounder Series. Geneva: DCAF

Figure 1

## COMPREHENSIVE DEFINITION OF SECURITY SECTOR: SECURITY AND JUSTICE PROVIDERS



### SECURITY PROVIDERS

#### State

Armed force and supporting services  
Police, specialized law enforcement agencies  
Gendarmeries  
Presidential guards, close protection forces  
National guards, civil defence  
Intelligence and secret services  
Border and customs services  
Etc.

#### Non-state

Unofficial armed groups (militias, armed factions)  
Self-defence groups  
Commercial security providers, such as private security companies, private military companies  
Neighborhood watches  
Women's group  
Customary security providers  
Etc.



### JUSTICE PROVIDERS

#### State

Courts, judges and state legal practitioners  
Defence and prosecution services  
Prisons, corrections and detention authorities  
Military justice systems  
State-sponsored alternative dispute resolution mechanisms  
Etc.

#### Non-state

Lawyers and paralegals  
Bar associations  
Legal aid bodies and public representation programmes  
Victim support groups  
Customary justice providers  
Community dispute resolution mechanisms  
Etc.



### OVERSIGHT

#### State

Legislatures/parliaments and their specialized committees  
Judicial authorities  
Ombuds institutions  
Human rights commissions  
Independent complaint bodies  
Audit offices  
Etc.

#### Public and Civil Society

NGOs with a stake in high standards of security and justice provision  
Human rights advocates  
Media  
Victims' groups  
Women's associations  
Academic institutions  
Independent research institutes and think tanks  
Unions and trade associations  
Political parties  
The interested public  
Etc.



### MANAGEMENT

Ministry of Interior, Homeland Security, Public Security  
Ministry of Justice  
Ministry of Defence  
Ministry of Finance

Public councils  
Judicial councils  
Judicial services  
Law commissions  
Etc.

with negative consequences for economic, social and political development.

**Fifth, SSR protects the professional independence of security personnel so that they can effectively fulfil their legitimate missions.** An unaccountable security sector is vulnerable to interference from civilian politicians, who may force security personnel to perform illegal acts under national and international law, or manipulate the security forces in their competition for political power.

## Security management and oversight

**Sixth, SSR raises professional standards and strengthens accountability, reducing abuse of the population.** An ineffective and unaccountable security sector abuses its power, because security personnel are either incompetent or act out of personal, political or corporatist interest.

**Seventh, SSR promotes inclusive security provision and equal opportunity within the security sector.** A security sector that fails to recognize the different security needs of men, women, boys and girls of all social, ethnic and religious backgrounds is discriminatory and cannot provide security effectively to the entire population.

**Eighth, SSR prevents conflict by promoting unity, political neutrality, equality and professionalism within the security sector.** An ineffective and unaccountable security sector may intervene in politics, usually furthering the interests of a powerful elite over the interests of the public, and often causing violent conflict.

**Ninth, SSR provides for national defence while contributing to international peace and security.** An ineffective and unaccountable security sector poses a threat to other states, either by harbouring potentially hostile criminal or political elements or by succumbing to violent conflict.

# THE ROLE OF PARLIAMENT IN GOOD SECURITY SECTOR GOVERNANCE

In a democracy where republicanism is a norm, the people democratically elect their representatives to a deliberative body called parliament/congress. As representatives of the people, parliament plays an important role as an “intermediary between government action and citizen’s demands.”<sup>8</sup> According to Vaclav Havel, an effective parliament provides political meaning to the sovereignty of human beings<sup>9</sup>. Specifically, parliament plays a crucial role in terms of “rebuilding trust in government institutions, strengthening accountability mechanisms, and reconnecting citizens to the state.”<sup>10</sup> In general, though with great variants, parliaments around the world exercise numerous powers relating to legislation, budget, election and oversight. It plays an important role in matters of security, the provision of which, just like any public services, is vital to people’s well-being. It wields power to serve as a potent force for social transformation.

The creation and maintenance of a stable environment for development to flourish is both a duty and a social expectation for members of parliaments. Many constitutions include a mandate for parliaments to build a just and humane society. They are provided with vast powers to ensure that these mandates are fulfilled. On the other hand, the public expects from their elected representatives not only to ensure the security of the state but at the same time to guarantee “human security” – where individuals develop their full potential under the rule of law and human rights.

While the executive is believed to have a “natural duty” for security policy, the “parliament is

8 Frazer-Moleketi, “Pathways to Peace, Security and Democracy: The Role of Parliamentarians”, keynote address during the International Parliamentary Conference on Peacebuilding: Tackling State Fragility (6 February 2010, United Kingdom).

9 IPU-DCAF 2003, p.15.

10 Frazer-Moleketi.

entrusted with reviewing and monitoring the executive.”<sup>11</sup> As part of its oversight power, the following are cited as reasons why parliamentary oversight on security matters is crucial: **First**, it is a cornerstone of democracy to prevent autocratic rule. The oversight of the security sector of the representatives of the people is an essential element of power-sharing at the state level, and if effective, sets limits on the power of the executive or the president. **Second**, there is a principle of no taxation without representation. The security sector utilizes a substantial share of the state budget. It is incumbent upon the representatives of the people – the taxpayers – to ensure that these financial resources are effectively and efficiently utilized. **Finally**, the creation of legal parameters for security issues remains a domain of the parliament. While often proposed by the executive, it is an inherent right of any parliament that these policies are reflective of its current security needs, and in accord with its democratic values, and therefore has the responsibility to ensure that these policies are properly and fully implemented.

*The Parliamentary Oversight of the Security Sector: Principles, Mechanisms and Practices*, a very insightful book published by the InterParliamentary Union and DCAF in 2003, highlighted some of the possible functions of parliaments concerning the security sector in the following areas: 1) **Supreme command** – in some countries parliament debates and/or appoints the supreme commander; 2) **Security Policy** – debates and approves security concepts, enacts laws; 3) **Budget** – approves budget; 4) **Defence laws** – adopts laws; 5) **Personnel** – in some countries, the parliament has the power to approve major appointments; 6) **Procurement** – reviews and/or approves major arms procurement projects; 7) **Sending troops abroad/Hosting foreign troops** – a priori approval, a posteriori approval or no approval at all; and 8) **International treaties, joining alliances** – approval. These functions have been narrowed down into five major functions (see Table 1).

**Table 1**

## **FUNCTIONS OF PARLIAMENT AS APPLIED IN SECURITY SECTOR GOVERNANCE**

### **LEGISLATIVE**

Initiating new laws about the security sector, reviewing and amending laws proposed by the executive, existing laws, and secondary legislation, and reviewing if international obligations related to the security sector are reflected in domestic laws.

### **OVERSIGHT**

Conducting routine oversight activities of the security sector, including hearings, inspections and visit to headquarters, stations, exercises, deployment abroad, and ad hoc oversight activities, including inquiries.

### **BUDGETARY CONTROL**

Reviewing executive budgetary proposals on the security sector, scrutinizing past expenditures of the security sector and costly security projects, and conducting security oversight related to procurement.

### **REPRESENTATIVE**

Organizing hearings and meetings with representatives of civil society and experts to hear their views and concerns related to the security sector and meeting with constituencies for dialogue and exchange of views concerning security sector activities and policies.

### **ELECTIVE**

Reviewing and confirming high-level government and security officials.

Source: Aguja, Mario and Hans Born (eds.). 2016. *Good Governance of the Security Sector in Southeast Asia: What Role for Parliament?* Geneva: Centre for the Democratic Control of the Armed Forces (DCAF).

11 IPU-DCAF 2003, p. 9.

To ensure an effective and accountable security sector, a parliament needs to play a critical role in the governance of the coercive instruments of the state: the security sector. However, parliaments face many challenges to fulfil an effective role in security sector governance (SSG). The “Triple A” test of parliamentary oversight of the security sector – Authority, Ability and Attitude – are considered crucial challenges for most parliaments (see Table 2).

While the above challenges apply to all parliaments in varying degrees, parliaments of democratising states face additional challenges, such as a lack of parliamentary experience or tradition, a powerful and oversized military that possesses political and institutional prerogatives, an outdated or non-existing legal framework regulating the

security sector, and a lack or even absence of an effective judiciary and independent oversight bodies. As a consequence, in many states after the transition to democracy, for decades security remained in the exclusive domain of the executive undermining the intended role of parliament. This institution was often confined to the role of a rubber stamp for all decisions by the executive, and was never allowed to play its constitutional role of oversight and control of the executive branch and its agencies, particularly security agencies. The multi-party politics era did not significantly alter this legacy.

The effective application of parliamentary oversight of the security sector would depend on the Triple A, as discussed above. A lack of legal powers could lead to a situation where parliament has little or

## TABLE 2

### THE TRIPLE A TEST ON THE GOOD GOVERNANCE OF THE SECURITY SECTOR

#### AUTHORITY (LEGAL POWERS)

Many parliaments across the globe lack sufficient legal powers to exercise oversight of the security sector. In many countries, parliaments lack the legal mandate to cover all institutions of the security sector, and, for example, in some countries the presidential guards, intelligence services and deployment of troops abroad are entirely excluded from parliamentary oversight. Furthermore, parliaments often lack the legal power to compel government and security officials to testify at hearings, to answer parliamentary questions or to hand over necessary information.

#### ABILITY (RESOURCES)

Many parliaments do not have the ability to exercise parliamentary oversight of the security sector because they do not have the specific expertise or knowledge, financial resources or technical systems (computers, databases) to understand or engage with the security sector.

#### ATTITUDE (POLITICAL WILLINGNESS)

Even if the parliament has sufficient legal powers or resources, if it is not willing to use these powers, no parliamentary oversight of the security sector will be possible. A lack of willingness is often the case when the government party/parties prohibit their members in parliament to raise any concern or critical question.

Source: Hans Born. 2017. “Parliaments and the Oversight of the Security Sector,” Think Piece prepared during the Learning Lab on “Improving Security Sector Governance (SSG) in Southeast Asia” – Siem Reap, 1-2 March 2017.



no access to classified budget information, where defence officials would ignore requests to attend parliamentary hearings, or where parliament would not be involved or would just rubber-stamp any high level appointments. Therefore, the reality on the ground is that not all parliaments equally, if not effectively, perform all of the five generic functions in relation to SSG. The strength of democracy in a particular country appears to have an overall impact on the role of parliaments in the governance of the security sector. There is clearly no “blueprint” for the role of parliament in SSG. Generally, it is the prerogative of each individual parliament to take up the challenge, with consideration of its own strengths and weaknesses, as well as the specific political environment in which it operates.

## PARLIAMENTS AND PEACEBUILDING

In countries where violent conflicts exist, parliaments “have a fundamental role to play in peacebuilding processes, including oversight of reconstruction, legislating human rights guarantees and addressing post-conflict security.”<sup>12</sup> These varieties of roles range from the oversight of ongoing peace negotiations, legislating peace agreements and providing a budget to support peacebuilding initiatives. It is also often tasked to introduce policies supportive of the peace process. These include the reform of the security sector and transitional justice:

### **Before and during the peace negotiations.**

As a representative of the people and an agent of the state, parliamentarians play a crucial role in creating an environment conducive for peace negotiations such as legislating laws responsive

to the public accountability and human rights, supporting programs that addresses poverty or directly support the peace process (i.e. budget for peace negotiations and other confidence-building measures) and conducting an inquiry as to the root causes of the conflict. It can also undertake an oversight duty on the implementation of the ceasefire agreement.

**During peace negotiations,** they can use their good offices to support the process by conducting dialogues with the parties to the negotiations to be updated and to provide guidance concerning legislation. It can also hold conversations with its constituents about the ongoing peace process to create public awareness, and hopefully, build support around it.

### **After the signing of the peace agreement.**

Transforming a peace agreement into sustainable peace remains a formidable challenge. Parliaments either ratify the peace agreement (i.e. Aceh peace process, Colombia, Nepal) or pass numerous legislations to abide by or to give flesh to the provisions of the peace agreement (i.e. Philippines). It may even go to the length of amending the constitution (i.e. Nepal) to address substantial structural issues incorporated in the peace agreement. Parliament also plays a vital role in the provision of the needed budget to implement the agreement (i.e. support to the Disarmament, Demobilization and Reintegration (DDR) transitional justice and reform of the security sector), and in the oversight of the laws it passed in support of the peace agreement.

Parliament is expected to address the issue of “relative deprivation” and the “revolution of rising expectations.” Relative deprivation is a feeling of a significant proportion of the populace who finds its status and economic circumstances trailing those of the rest of society due to inequality – often the source of, and caused by, violent conflict. With the peace process in motion, people start

<sup>12</sup> Frazer-Moleketi, “Pathways to Peace, Security and Democracy: The Role of Parliamentarians”, keynote address during the International Parliamentary Conference on Peacebuilding: Tackling State Fragility (United Kingdom, 2010).

to believe that they can now improve their lives and those of their families. People begin to hope for better lives – they expect to get out of the chain of intergenerational poverty, of government neglect and insecurity. On the other hand, warring factions expect “peace dividends”– the provision or expansion of services that may have been disrupted due to the conflict. It could be in the areas of security, governance/rule of law and economic recovery.<sup>13</sup> The end of the conflict provides the possibility for the state to increase expenditures in social services (as less is needed for military expenditures). The expansion of social services, especially for communities greatly affected by the conflict, facilitates social cohesion and stability. It also builds trust in the peace process where the state earns its legitimacy, and communities opt for peace. It is often argued that the challenge of rebuilding societies after a violent conflict is essentially a development challenge rather than a military/security or humanitarian task. It is where state actors, parliament included, play a crucial role in post-conflict reconstruction where “citizen-centric” governance – the provision of human security – becomes the focus.

It is a general consensus that after the signing of the peace agreement, the greatest task lies in “transforming it into a lasting political settlement through the process of political, economic, psychological rebuilding to lay the basis for future sustainable development.”<sup>14</sup> Development does not necessarily equal peace. It is thus necessary to integrate concerns regarding “peace” and “conflict” into the development framework in order to ensure a positive impact of development initiatives on peace-building. It is where the role of good governance, the participation of civil society, decentralization and the role of women become necessary. Parliament is in the best position to create such a nurturing social environment for peace where inclusive development can flourish.

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13 United Nations Peacebuilding Support Office, *Peace Dividends and Beyond: Contribution of Administrative and Social Services to Peace-building*. (New York, 2012).

14 The Challenge of Peace (TCP), “The War-Torn Societies Project” (April 1995).



# ANNEX II

## **DCAF Think Piece No. 2**

# **THE ROLE OF PARLIAMENT IN GOOD SECURITY SECTOR GOVERNANCE**

## **Overview on Southeast Asia and the Philippines**



Prepared by

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# THE SOUTHEAST ASIAN CHALLENGE ON SECURITY SECTOR GOVERNANCE

## Diversity and Persistence of Violent Conflicts in Southeast Asia

Southeast Asia remains a diverse region. Different countries define and promote their brand of democracy while simultaneously grappling with domestic challenges of economic development, ethnic diversity, territorial disputes and the prevention of violent extremism. Violent conflicts are abundant in Southeast Asia. They are multiform and pervasive across the region, of which the most prominent are the so-called “secessionist subnational conflicts (SNCs)” – armed conflicts over the control of subordinate territory within a sovereign state. The majority of post-independence violent conflicts in Southeast Asia are rooted in the way these nation-states were organized by colonial powers and, subsequently, in the manner by which the independent states continue the marginalization of other groups. The current state of unequal development and security provision in many communities constitutes the primary catalyst of insurgencies, violent conflict and radicalization, in turn reflecting a systemic marginalization of certain groups. The state of inequality in the region is indicative of an absence of “well-functioning democracies”.

Newspapers in the region are replete with stories about violent conflicts, ranging from Myanmar, Southern Thailand, Papua in Indonesia and the communist insurgency in the Philippines, to secessionist movements and violent extremism in the Southern Philippines. Other forms of violence prominent in the region are intercommunal riots, pogroms (e.g. the case of Rohingya in Myanmar), conflict over land and natural resources (e.g., Myanmar, Cambodia, Philippines), electoral violence (e.g., Philippines, Indonesia, Thailand, and Cambodia), and urban crime (e.g. the war on

drugs in the Philippines). Gender-based violence is also a dominant form of violence that needs to be addressed in the region.

The core security actors frequently play an active role in the escalation of violent conflicts and therefore have an equally important role in the de-escalation of these conflicts, as well as its future avoidance. Generally, violent conflicts become highly pronounced or visible when security actors respond violently and, often, without regard for the rule of law. Violence by security actors results in greater confrontations and serves as a potent force for communal mobilization against the state. The cycle of violence and the resultant intergenerational poverty is said to give birth to the rise of violent extremism in different countries in the region.

## Security Sector Reform and Prevention of Violent Conflicts

Security sector reform addressing the innermost core of security actors who are notoriously known for human rights violations, especially in periods of a military dictatorship, remains urgent in Southeast Asia. Excesses of these security actors were justified in the name of national security in the past, and still to this day, are failing to build public confidence and have resulted in violent conflicts. As such, SSR is necessary for the process of democratization and serves as a strategy to lessen the intensity and frequency of violent conflicts. Among the earlier reforms in the security sector in the region occurring during the onset of democratization (i.e. the People Power Revolution in the Philippines and *Reformasi* in Indonesia) was the separation of the police from the military. Efforts are now being undertaken to professionalize the military and to “civilianize” the police. For example, the armed forces of the

Philippines and Indonesia were subjected to deep SSR processes and currently respect the constitution and the rule of law. Conversely, the police continue to struggle with public acceptance. The government's current war on drugs in the Philippines and corruption in Indonesia is symptomatic of the need for more far-reaching reforms in the police force.

Upholding the principle of civilian supremacy over the military in the region remains problematic in practice despite regular elections. Militaristic solutions in solving dissent or social conflict remain popular among military regimes (e.g. Thailand or Myanmar) as well as leaders who have a military or populist background (e.g. Hun Sen or Duterte). In the Philippines and Indonesia, parliamentary oversight bodies are in place. As representatives of the people, parliaments serve as inclusive and participative decision-making mechanism and thereby contribute to the prevention of violent conflicts. However, the quality of effective oversight of the security sector by parliaments, in practice, remains unsatisfactory.

## The DCAF-FES Initiative in Southeast Asia

It is in this context that DCAF, in partnership with FES, since 2006 conducted numerous capacity-building initiatives in the region. These meetings gave birth to the organization of the Inter-Parliamentary Forum on Security Sector Governance in Southeast Asia “with the goal of supporting the role of parliaments in security sector governance by promoting peer-review and dialogue among parliamentarians and interested stakeholders of the region.” To date, IPF-SSG has counted more than 300 participants, including members of parliament, parliamentary staffers, government and security officials, academic experts and civil society representatives from Cambodia, Indonesia, Malaysia, Myanmar, Philippines, Singapore and Thailand. The forum features, among others, regional workshops which address specific issues of parliamentary oversight of the security sector, such as national

security policy development, defence budgeting and procurement, police governance and police reform, and judicial reform. Publications were likewise made out of the selected papers from its conferences (to access these publications: [www.dcaf.ch/resources](http://www.dcaf.ch/resources)).

## THE ROLE OF THE PHILIPPINE CONGRESS IN SECURITY SECTOR GOVERNANCE

The Philippines has a bicameral system – the Senate and the House of Representatives (HOR) – which both have enormous powers of oversight through the exercise of the power of appointment, the power of the “purse” and in legislation including the conduct of congressional inquiries. These powers delegated to Congress are provided by the 1987 Constitution. These powers are exercised jointly or separately by both houses of Congress. The power of appointment is exercised by the joint Committee on Appointments. Members of the cabinet, diplomats and officers of the armed forces with the rank of colonel and higher are vetted by the Commission. The power of the purse is exercised by the Committee on Appropriations in the House of Representatives and by the Committee on Accounts of the Senate. Other legislative and oversight works are exercised through the numerous committees in both chambers.

## Congressional Oversight of the Peace Process

The Philippine Congress likewise plays a vital role in the peace processes. With the threat posed by the communists – The Communist Party of the Philippines, the New Peoples' Army and the National Democratic Front (CPP-NPA-NDF) and

its factions and the Muslim secessionist groups in the Southern Philippines – the Moro National Liberation Front and the Moro Islamic Liberation Front and its factions – Congress played an active role in a usually love-hate and often intense relationship between the national government and the various rebel groups. Congress has formed committees dedicated to the oversight of the peace processes. In the HOR, the *Special Committee on Peace, Reconciliation and Unity* has jurisdiction on all matters directly and principally relating to negotiations and other policy and program initiatives in pursuit of the peace process and national reconciliation, the cessation of hostilities generated by internal armed conflicts, and the welfare of rebel-returnees. In the Senate, the *Committee on Peace, Unification and Reconciliation* is mandated to attend all matters relating to peace, internal armed conflict resolution, political negotiation, cessation of hostilities, amnesty, rebel returnees, integration and development, national unification and reconciliation. When there is an impasse between the government and rebel groups during the negotiations, or contentions about the implementation of the peace agreement, Congress serves as an important platform for dialogue amongst parties. Likewise, it also uses its power to listen to stakeholders of the peace process, especially in the passage of laws in support of a peace agreement. In many instances, especially during negotiations with secessionist movements in the Southern Philippines, Congress was successful in passing legislation or breaking an impasse during the negotiations. From time to time, it even plays an observer status during negotiations.

In the Philippines, an essential element in the very architecture of the peace agreement is the reform of the security sector to provide security according to the people's needs and to regain the trust of the population. Upon final analysis, the effectiveness of SSR in preventing violent conflict is invariably dependent upon the link between the root causes of the conflict and the security sector. Particularly

salient in this regard is how and to what extent the security sector contributed in preempting violent conflict, as opposed to inciting violence due to heavy-handed approaches, corruption, discrimination and systems of patronage. As such, SSR cannot be implemented in a vacuum. It has to be tailored to fit the very context where it constitutes a part of the solution.

While the legal framework for congressional oversight in the Philippines remains robust, challenges remain. One of the main challenges is improving its quality of oversight. More often, oversight about the security sector is only done when an issue (e.g. corruption, abuses) is widely reported, if not sensationalized, in the media. Congressional oversight of the security sector in many instances became a venue for grandstanding of politicians grabbing the media limelight in the pursuit of their own personal electoral agenda rather than the agenda of reforming the security sector. The fast turnover and short mandates of legislators, especially in the HOR affects the ability of an individual legislator to develop the capacity for effective oversight of the security sector.

Lastly, the exercise of political will is also a big challenge. Political partisanship – especially when the president has the majority in Congress – blocks educated and meaningful oversight of the security sector. It is always the case that, in the past, a sitting president would want to “buy” the loyalty of the armed forces, especially for his or her own political survival; these political efforts are done to shield the security sector from thorough congressional inquiries. This does not only slow down needed reforms but also politicises the security sector and diminishes the public's confidence in Congress. Overall, while the oversight of the security sector is considerably vibrant, there is still a need to reconcile the “capability-expectation-performance” gaps generated by the distance between formal institutions and informal practices.



