

16. Independent Oversight Authorities

Key definitions: what are independent oversight authorities and what role do they play in security?

Independent oversight authorities are all the institutions and organizations established by the state with an independent legal mandate to oversee certain functions of government, service provision, and public life. Independent oversight authorities typically conduct investigations based on complaints from the public and produce reports that pronounce on wrong-doing or service failures and make recommendations to government or the institution involved about how to avoid repeating their mistakes. Independent oversight authorities may have general mandates around issues as human rights (national human rights institutions), corruption and financial probity (corruption commissions), or public service complaints (ombuds-institutions). Investigations of the conduct of either security providers or security management bodies could fall within these mandates as long as the investigations touch their area of responsibility. There may also be independent oversight authorities with a specialized mandate to investigate complaints against security providers e.g., ombuds-institutions for armed forces, or independent police complaints commissions. These bodies have specialized knowledge, experience and access to investigate complaints against security providers but the rules about what can be investigated and how to bring a complaint can be narrow and limiting.

Key issues for reporting on independent oversight authorities

Credibility and political independence? Although they are state organizations whose roles and responsibilities are guaranteed by law and paid for from the public purse, the effectiveness of independent oversight authorities depends on their being independent from other branches of the state and the political administration in government. The terms of appointment for leadership positions, and the choice over what cases to investigate, are critical elements of their independence.

→ Journalists can ask:

- ✓ How are leadership decisions for oversight authorities are made?
- ✓ What do formal or informal relationships between appointees and political authorities indicate about the independence of oversight authorities?
- ✓ Does the law provide sufficient political distance in the work of oversight authorities?
- ✓ Are sufficient financial resources, and adequate competent staff provided to ensure oversight bodies can function independently?
- ✓ Are governments respecting the spirit of independence of oversight bodies in making appointment choices?

Powers of investigation? To conduct effective investigations, independent oversight authorities require legal rights to access information (including classified information), require testimony from officials, and be granted access to sites and installations that otherwise might be off-limits. Legal frameworks should define these powers clearly, but even the clearest powers can be subverted if the legitimacy and authority of the investigation are not respected by those asked to cooperate. The full cooperation of security providers and their management institutions is essential for independent oversight authorities to accomplish their missions.

→ Journalists can ask:

- ✓ What formal powers do independent oversight authorities have?
- ✓ Are they their powers sufficient to their assigned mandate?

- ✓ Are investigators using the powers they have to their full effect?
- ✓ Has the security sector always been fully cooperative in investigations that concern their conduct or operations?
- ✓ What weaknesses are visible in the legal powers of independent oversight authorities and how should they be addressed?

Recommendations that make a difference? Independent oversight authorities typically make recommendations based on the outcomes of their investigations, but it depends on their specific legal mandate and status as to whether or not the recommendations they make are legally binding. If the work of an independent oversight authority is well regarded in the public sphere, the moral authority it wields can be significant in creating pressure for change. Independent oversight bodies may also have the power to present annual assessments or reports to parliament or the public. The weight of their moral authority as well as the public attention they can draw to specific issues can create considerable pressure on governments to take up recommendations even without a legal requirement to do so.

→ **Journalists can ask:**

- ✓ What is the level of public knowledge and interest in the work of independent oversight authorities?
- ✓ Are their recommendations legally binding?
- ✓ How much moral authority do the findings of independent oversight authorities carry?
- ✓ What kind of investigations do independent oversight authorities produce to support their recommendations?
- ✓ To what extent is information about an investigation or its findings made available to the public?
- ✓ Are there failures in the way the system is legally set up and how could they be remedied?
- ✓ What are the views of those whose performance or institution has been the subject of investigation?
- ✓ Are the security concerns of people of all identities given equal weight in the work of independent oversight authorities, including in the complaints they choose to investigate and the findings they make?
- ✓ What weakness are visible in the work independent oversight authorities?

Box 31 Practical example: “Mexico: Case Unravels in Disappearance of 43 Students”

In Mexico, there have been extensive violations of human rights by the security sector in their fight against the drug cartels. The forced disappearance of 43 students from Ayotzinapa, Guerrero in September 2014 became emblematic of the situation and attracted widespread international media attention. Under pressure to provide accountability, a team of five independent experts was appointed to work on the case, and with the assistance of an Interdisciplinary Group of Independent Experts, from the Inter-American Commission on Human Rights (IACHR), uncovered strong evidence implicating several security forces from three levels of government in the disappearance of the students. One of the Group of Experts’ major findings was that members of the municipal police forces that detained and disappeared the students were working on behalf of the organized criminal group. This example shows how independent oversight and investigation can be effective in holding security sector officials to account for abuses, even in contexts where government or the justice system is compromised by corruption, and other security sector actors are themselves part of the problem.

Sources: Mexico's national anti-corruption system: A Historic Opportunity in the Fight against Corruption”, May 2018, <https://www.wola.org/wp-content/uploads/2018/05/ENGL-Corruption-Report.pdf>

“Hosts of iguala - Mexico: Case Unravels in Disappearance of 43 Students”, May 2015, <https://theintercept.com/2015/05/04/mexico-ayotzinapa-43-students-disappeared-part-2/>

Image: Brazil's supreme court is seen in Brasilia. A judge in Goiás state recently delayed the trial of a journalist's murder because he said he had inadequate facilities, 2019 © Reuters/Adriano Machado.