

Parliamentary Oversight of the Security Sector

Case Studies from Central Asia

Aida Alymbaeva, Rustam Burnashev, Grazvydas Jasutis,
Parviz Mullojanov, Richard Steyne, Farkhod Tolipov





PARLIAMENTARY OVERSIGHT OF THE SECURITY SECTOR: CASE STUDIES FROM CENTRAL ASIA

About DCAF

The Geneva Centre for Security Sector Governance (DCAF) is an international foundation whose mission is to assist the international community in pursuing good governance and reform of the security sector. The Centre develops and promotes norms and standards, conducts tailored policy research, identifies good practices and recommendations to promote democratic security sector governance, and provides in-country support and practical assistance programmes.

Publisher

Published by DCAF
2E, Chemin Eugene-Rigot,
P.O BOX 1360
CH - 1211 Geneva 1
www.dcaf.ch

Authors: Aida Alymbaeva, Rustam Burnashev, Grazvydas Jasutis, Parviz Mullojanov, Richard Steyne, Farkhod Tolipov

Editors: Aida Alymbaeva, Grazvydas Jasutis, Richard Steyne

Acknowledgements

The Geneva Centre for Security Sector Governance (DCAF) would like to thank the Federal Department of Defence, Civil Protection and Sport (DDPS) of the Swiss Confederation for its generous support in making this publication possible.

Note

All views and opinions in this study are those of the authors and do not necessarily reflect the official position of DCAF, or that of the Federal Department of Defence, Civil Protection and Sport of the Swiss Confederation.

ISBN: 92-9222-490-5

Suggestion citation

Authors: Aida Alymbaeva, Rustam Burnashev, Grazvydas Jasutis, Parviz Mullojanov, Richard Steyne, Farkhod Tolipov, Parliamentary Oversight of the Security Sector: Case Studies from Central Asia (Bishkek, Kyrgyzstan: DCAF, 2020).

©DCAF 2020. All rights reserved.



Table of Contents

Introduction	1
Parliamentary oversight of the security sector: Kazakhstan.....	4
Parliamentary oversight of the security sector: Kyrgyzstan.....	23
Parliamentary oversight of the security sector: Uzbekistan.....	39
Parliamentary oversight of the security sector: Tajikistan.....	47
Parliamentary oversight of the security sector: Turkmenistan	54

Preface

This study explores the role of parliaments in security sector oversight in the five Central Asian republics: Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan. Written and edited entirely by civil society and DCAF experts, it explores the composition and role of national parliaments, their committees and parliamentary staff, and the oversight functions of parliaments and relevant public bodies.

This publication aims to contribute to a better understanding of the current role of parliaments in the region as regard security sector oversight, and to provide useful input for discussions on their alignment with international best practice - in particular, in the areas of law-making, budget scrutiny and oversight of the security sector, including intelligence services.

We extend our gratitude to our Kazakh, Kyrgyz, Tajik, Turkmen, and Uzbek colleagues, most of all to Aida Alymbaeva for her support and editorial work, without which this publication would not have been possible.

DCAF would like to thank the Federal Department of Defence, Civil Protection and Sport of the Swiss Confederation for its generous support in making this publication possible. Additionally, the authors and DCAF would like to thank Elizaveta Chmykh, Iryna Stepanova and Alex Tonkov for their diligent support throughout the publication process.

INTRODUCTION

Aida Alymbaeva

Lecturer, International University of Central Asia

In a democratic state, no government sphere should be a no-go zone for the legislature, the security sector included. Even though national security is a task inherent to the executive branch, which has the authority, knowledge and resources to respond to security challenges, a state without parliamentary oversight of the security sector remains a flawed democracy. Parliamentary oversight is necessary to ensure that security policies are in line with public interests, to avoid malfeasance and to prevent unconstitutional acts by the security forces, through the use of coercive power. Additionally, parliamentary oversight holds cabinet members accountable and helps to avoid unnecessary spending for the security sector.

Furthermore, parliamentary oversight of the security sector helps establish communication between the public and security structures, including the intelligence services, which the public does not always have direct access to. Overall, a lack of comprehensive, effective parliamentary oversight creates the risk that security structures may interpret their functions at their own discretion, existing as a 'state within a state'. In turn, members of the security sector can also benefit, as parliamentary oversight helps them become more effective in meeting the needs of the public.

Effective parliamentary oversight of the security sector is dependent on many factors, including the balance of power between parliament, the president and the executive branch; the power of parliament to hold members of the cabinet accountable; clearly-legislated mandates of Members of Parliament (MPs); the capacity of MPs; access to available information held by security bodies; institutional resources and the capacity of parliament (e.g. means to conduct independent assessments); the competence of parliamentary staff; and the political will of MPs, which is one of the most important contributory factors.

This publication aims to identify the powers, mandate, functions, and oversight mechanisms available to the parliaments of five Central Asian states - Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan - primarily by describing their current practices of parliamentary oversight of the security sector. The publication aims to be descriptive rather than prescriptive.

In each state, the security sector has its own structure, but on the front line are state agencies involved in ensuring national security, including the armed forces, police, intelligence and counter-intelligence services, border control agencies and customs authorities. In other words, this group includes the law enforcement and security structures examined in this publication.



The reports presented in this publication start with a brief overview of the national legislation in relation to parliamentary oversight of the security sector, including a description of powers, functions and instruments available to the legislators to exercise oversight. The authors then examine the mandate and rights of parliamentary committees, with an emphasis on any restrictions that prevent them from fully monitoring the security bodies. Furthermore, the authors look into the role of parliament in budget oversight, which entails MP participation in the four budget phases: budget preparation, approval, execution and monitoring (audit). The following section describes the role of the ombudsperson (Human Rights Commissioner) and audit services (operating as parliamentary institutions in many countries) in overseeing the security sector.¹ In conclusion, the authors describe the main challenges that impede effective parliamentary oversight and propose recommendations to tackle them.

This review is the first publication of its type that documents the practice of parliamentary oversight of the security sector in these countries. Literature review shows that parliamentary control of the security sector is both poorly researched and infrequently discussed.² Public opinion in Central Asian countries, rooted in their Soviet history, posits that law enforcement and security structures, particularly the army, should remain closed institutions and in particular closed to outside public scrutiny. However, parliamentary oversight should be widely discussed, because without such monitoring security agencies pose significant risks. Having coercive power, they may jeopardize public interests, human rights and the freedom of citizens, and agencies whose aim is to ensure security may, in fact, become a source of danger. We hope that this publication will contribute to rethinking the need to strengthen parliamentary oversight of the security sector and stimulate public demand for achieving sound parliamentary oversight in this regard.

An overview of these reports shows that:

- Legislation in these five Central Asian countries covers the multi-faceted aspects of parliamentary oversight. For instance, Kazakhstan, Kyrgyzstan and Uzbekistan have separate laws on parliamentary oversight. However, whilst national parliaments have the authority for oversight on paper, in practice, political restrictions, namely the president's dominance within the state system, prevent the parliament from having comprehensive and effective oversight of security agencies, especially of intelligence and counter-intelligence services. Intelligence agencies are fully subordinate to presidents, with parliamentary bodies having no or limited access to them. Country-specific analyses provided in this publication show that democratic parliamentary control is primarily contingent on the balance of power between president and parliament. In countries with firm presidential rule, such as Kazakhstan, Turkmenistan, Uzbekistan and Tajikistan, parliamentary oversight tends to be only a formality, with

¹ An ombudsperson (ombudsman, ombud) is an independent public official charged with investigating citizen complaints against government officials. European Ombudsman - Journal of human rights and national institutions to protect them. "Who is an Ombudsman and Why Do We Need Them?". Available from: <http://euro-ombudsman.org>

² Literature review found no paper exploring parliamentary oversight of the security sector in Central Asian countries.

national parliaments lacking any real leverage over the national security agencies. In these countries, the president remains the key decision maker for national security policies, including appointments and budgetary issues. While national parliaments have the mandate for oversight on paper, they cannot implement their functions, or offer an alternative policy to the president's doctrine. Thus, in these countries, parliaments would sooner act as an element of support for the president's security policy.

- Kyrgyzstan stands out among the five countries considered, albeit not fundamentally. After the so-called April Revolution of 2010, which led to the ousting of the authoritarian president Kurmanbek Bakiyev, a new constitution was adopted, geared towards the parliamentary system. Pursuant to the new constitution, the Kyrgyz parliament is vested with considerable authority for oversight of the executive branch, including the security sector. For example, parliament can carry out independent investigations, conduct parliamentary hearings, send inquiries to various ministries, review annual reports of the cabinet, and exercise other oversight mechanisms. Nevertheless, the legislative body does not exercise its oversight function consistently. Not all MPs are inclined towards overseeing the national security service, even though the parliament does monitor other law enforcement and security agencies, albeit not systematically. Other obstacles related to institutional restrictions include MPs' lack of expertise to effectively oversee the security sector, and the restricted access to available information in the possession of the security agencies. These agencies frequently report that their information is classified, even if it is unrelated to secret data. As a result, parliamentary oversight of the security sector in Kyrgyzstan is carried out, but it is often ad-hoc and unsystematic, while the national security agency (the SCNS) remains above parliamentary oversight.
- Given the restrictive political environment in all five countries, the ombudsperson and audit services have not become effective instruments as yet, in order for the parliaments to make full use of them in overseeing the security sector.
- None of the five countries' parliaments have succeeded in overseeing security sector budgets either.

Overall, owing to the Soviet legacy of the public distancing themselves from the security services, a notion still prevailing in Central Asian countries is the dominance of their presidents within the governance system, leading to parliaments having limited powers and therefore institutional incapacity; as a result, the security sector in Central Asian countries remains with limited parliamentary oversight. Compared to other countries in the region, Kyrgyzstan has made some progress, but its parliamentary oversight of the security sector cannot yet be considered comprehensive or systematic.

We trust that this publication will help promote the idea of parliamentary oversight of the security sector in the region, in order to ensure the public interests, human rights and the freedom of citizens in Central Asian countries.

PARLIAMENTARY OVERSIGHT OF THE SECURITY SECTOR: KAZAKHSTAN

Rustam Burnashev

Professor, Kazakh-German University, Almaty

The inauguration of Kazakh President Kassym-Jomart Tokayev took place on 12 June 2019 at the Palace of Independence in the capital Nur-sultan. The president announced his plan to create a National Council of Public Trust and to give attention to the development of dialogue between the government and civil society.³ He insisted that the authorities were obliged to hear the requests of the people, solve problems on the ground, and regularly report to the citizens. However, he did not refer to any modification of the governance system. Officially, the Republic of Kazakhstan is a state with a presidential government.⁴ In reality, the role and importance of other state branches in Kazakhstan are significantly limited: the president and his administration fully control political decisions, while the parliament and the judiciary are only nominally independent.⁵ The president determines the main direction of state policy in the sphere of national security, ensuring the coordinated operation of all government branches in the protection of the national interests of Kazakhstan amongst other functions.⁶ Furthermore, under the law ‘On National Security Agencies of the Republic of Kazakhstan’(Art. 1),⁷ national security agencies are described as ‘special government agencies, directly subordinated and reporting to the President of the Republic of Kazakhstan, which constitute a component of the security system of the Republic of Kazakhstan, designed to ensure the safety of the individual and the society, and protect the constitutional order, state sovereignty, territorial integrity and the economic, research and defense potential of the state, within the scope of their authority’. This then begs the question of what the role of parliament is in general, and more specifically what parliamentary oversight of the security sector is.

Nurbulat Masanov, in his analysis of the constitution of the Republic of Kazakhstan, indicates that it is ‘a constitution of a super-presidential authoritarian state, under which the Parliament has no authority to appoint the Cabinet of Ministers, no legislative initiative,

³ Boteu, S., (12 June 2019). “Kazakhstan inaugurates newly elected President Kassym-Jomart Tokayev”. The Astana Times. Available from: <https://astanatimes.com/2019/06/kazakhstan-inaugurates-newly-elected-president-kassym-jomart-tokayev/>

⁴ Republic of Kazakhstan. Constitution of the Republic of Kazakhstan (adopted at the republican referendum on August 30, 1995). Available from: <http://adilet.zan.kz/eng/docs/K950001000>

⁵ Blaxall, M., (2003). “Economic and Political Implications of China’s Growing Economic Power on Central Asia, a hearing before the U.S.-China Economic and Security Review Commission”, 108th Congress, 1st session. U.S. Government Printing Office, Washington, DC.

⁶ Republic of Kazakhstan. Law dated January 6, 2012, No. 527-IV. On National Security of the Republic of Kazakhstan. Available from: <http://adilet.zan.kz/eng/docs/Z1200000527>

⁷ Republic of Kazakhstan. Law dated December 21, 1995, No. 2710. On National Security Agencies of the Republic of Kazakhstan. Available from: <http://adilet.zan.kz/eng/docs/Z950002710>

and no right to a constitutional reform’.⁸ Despite the process initiated by former president Nursultan Nazarbayev, in 2017, to expand the roles of the government and parliament⁹ and make respective amendments to the constitution,¹⁰ the president of Kazakhstan retains a determining, even dominant, role in the state’s political life, including in the security sector. Nevertheless, the parliament has some authority in oversight of the security sector and deals with the development of security policy, budget preparation, adopting laws that regulate the security sector, staffing policy, and in concluding international treaties and agreements on security matters. The article by Masanov describes the parliamentary functions for oversight of the security sector, and identifies some areas (e.g. strengthened monitoring mechanism, establishment of parliamentary investigation) that need improvement.

This article comprises two parts, covering legislative review and the role of parliament in the security sector in the first part, and parliamentary committees engaged in oversight, the role of parliament vis-à-vis the Security Council, intelligence operations, and the ombuds institution in the second.

1. Authority of the parliament of the Republic of Kazakhstan in the security sector

The role of the parliament is defined in the section ‘On the Parliament of the Republic of Kazakhstan and the Status of its Deputies’ of the constitutional law. The Mazhilis (parliament) consists of 107 deputies, 98 of which are elected from political parties by party lists in a single national electoral district. The remaining nine are elected by the Assembly of the People of Kazakhstan. Within the current Mazhilis an overwhelming majority of seats (84) are held by deputies of the Nur Otan party, led by former president Nursultan Nazarbayev. The other two parties represented in the Mazhilis, the Communist People’s Party of Kazakhstan and the Ak Zhol Democratic Party of Kazakhstan, have seven seats each. Thus, based on its composition and election principles, the Mazhilis cannot be opposed by the current executive and presidential branches of the government. The Senate includes 49 deputies, of which 34 represent regions of Kazakhstan (two per each region, a city of ‘republican importance’, and the capital), and a further 15 are appointed by the president. Each chamber is led by a Head, elected by the Senate and the Mazhilis from amongst their respective members. Candidates for the Head of the Mazhilis are proposed by the Mazhilis’s deputies, and candidates for the Head of the Senate, by the president.

⁸ Masanov, N., (2002), “Political Development of a Sovereign State (1992-2002)”. Report to the European Parliament on 10 December 2002 in Sheretov, S., (2003), “Modern History of Kazakhstan (1985-2002)”.

⁹ President of the Republic of Kazakhstan. Address of the President of the Republic of Kazakhstan on the issues of reauthorization of governmental departments. (25 January 2017). Available from: http://www.akorda.kz/en/speeches/internal_political_affairs/in_speeches_and_addresses/address-of-the-president-of-the-republic-of-kazakhstan-on-the-issues-of-reauthorization-of-governmental-departments

¹⁰ Republic of Kazakhstan. Law dated March 10, 2017, No. 51-VI. “On introducing amendments and additions to the Constitution of the Republic of Kazakhstan”. Available from: <http://adilet.zan.kz/rus/docs/Z1700000051>

The functions and mandate of the parliament in the security domain vary. As Kazakhstan is a presidential country, the competence of the president dominates security and defence issues. The president, as Supreme High Commander, and under the law ‘On Defence and the Armed Forces of the Republic of Kazakhstan’, determines the main military policy direction of the Republic of Kazakhstan; adopts the Military Doctrine,¹¹ relating to the development of the armed forces, other troops and military formations, and concepts on issues of military security and defence; performs the general command of the armed forces, other troops and military formations; approves the staffing structure and levels of the armed forces; makes decisions on the deployment of the armed forces; appoints and dismisses the high command of the armed forces; and submits proposals on the use of the armed forces to meet international peacekeeping commitments, for review by a joint session of the parliament chambers (please refer to the constitution for a complete list). Nevertheless, the parliament of Kazakhstan does play a role in overseeing the security sector. More specifically, it engages in the development of security policy and budget preparation; adopts laws that regulate the security sector and staffing policies; and concludes international treaties and agreements on security matters.

The law (Article 9 of ‘On Defence and the Armed Forces of the Republic of Kazakhstan’¹²) sets out the competencies of the parliament in defence and security policy. More specifically, it adopts laws dealing with security-related issues in the Republic of Kazakhstan, as well as amendments and addenda to such laws; it resolves matters of war and peace; it approves the decision to use the armed forces, if proposed by the president of the Republic of Kazakhstan, to meet international peacekeeping commitments; establishes military ranks; ratifies and denounces international agreements in the sphere of defence and military cooperation; and holds parliamentary hearings on the issues of defence and the armed forces. The Mazhilis takes an active role and remains engaged in debates on security and defence issues with foreign delegations, such as a meeting with the Japanese ambassador which took place to discuss the issue of cyber defence.¹³

Budget adoption and control of expenditure should be considered as the core functions of the parliament in the security domain. According to Article 54 of the constitution of Kazakhstan, the parliament (in separate sessions of the chambers: the Mazhilis, followed by the Senate) adopts laws and constitutional laws, which includes approving the government’s budget, making amendments and addenda to the budget, and discussing reports on the execution of the state budget. According to Article 53 of the constitution, the parliament, through joint sessions, approves reports drawn up by the government and the Accounts Committee on the monitoring of government budget execution. Nevertheless, according to the provisions

¹¹ The current Military Doctrine of the Republic of Kazakhstan adopted in 2017 (President of the Republic of Kazakhstan. Decree from 29 September 2017, No. 554 “On the adoption of the Military Doctrine of the Republic of Kazakhstan”). Available from: <http://adilet.zan.kz/rus/docs/U1700000554>

¹² Republic of Kazakhstan. Law dated 7 January 2005, No. 29 “On Defence and Armed Forces of the Republic of Kazakhstan”. Available from: <http://adilet.zan.kz/eng/docs/Z050000029>

¹³ Mazhilis of the Parliament of the Republic of Kazakhstan, (8 June 2017). “N. Nigmatulin has welcomed the ambassador of Japan”. Available from: <http://www.parlam.kz/ru/mazhilis/international-meetings>

of the Accounts Committee on the monitoring of the execution of the budget,¹⁴ the Accounts Committee is the supreme body for government audit and financial control, subordinate and reporting directly to the president. Thus, the Accounts Committee is not fully an instrument of parliamentary oversight, as the parliament of Kazakhstan only has the authority to approve or reject the committee's report. Essentially, the parliament of Kazakhstan approves the main budget items, without specification and description of concrete items, which is why it does not exercise any real budgetary oversight of the state's security structures. It is worth noting that in the case a state of emergency is declared in Kazakhstan, as per Article 8 of the law 'On the State of Emergency', an emergency budget can be adopted by presidential resolution. Should that be the case, the parliament is notified of the approval of the emergency budget but takes no part in its preparation. A similar procedure is put in place for an emergency government budget to be adopted in case martial law is declared in Kazakhstan (Article 5 of the law 'On Martial Law'). The parliament also possesses substantial and exclusive legislative rights. According to Article 61 of the constitution, 'the right of legislative initiative is granted to the President of the Republic, deputies of the Parliament, and the Government, and is exercised exclusively in the Mazhilis'. Furthermore, this article clearly states that the parliament 'has the right to issue laws that regulate the most important social relations, and establish the fundamental principles and norms pertaining to ... national security and defence.'

Despite the strengthening of the legislative branch declared in 2017, Kazakhstan's parliamentary structures currently only have consultative and coordination roles with regards the issues of staffing policy in the security sector. According to Article 44 of the constitution, the president 'by approval of the Senate of the Parliament, appoints ... the Head of the Committee for National Security of the Republic of Kazakhstan; and dismisses them'. For example, in February 2019, the president made a government reshuffle and reappointed Nurlan Yermekbayev as minister of defence, and Yerlan Turgumbaev as minister of internal affairs.¹⁵

The parliament is not entirely engaged in the oversight of defence procurement, as it remains primarily the competence of the government.¹⁶ Kazakhstan's defence budget is

¹⁴ President of the Republic of Kazakhstan, "Decree from 5 August 2002, No. 917, On the adoption of the Provision on the Accounting Committee for the monitoring of the government budget execution". Available from: <http://adilet.zan.kz/rus/docs/U020000917>

¹⁵ Yergaliyeva, A., (26 February 2019), "Kazakh President appoints new government, reorganizes ministries", The Astana Times. Available from: <https://astanatimes.com/2019/02/kazakh-president-appoints-new-government-reorganises-ministries/>

¹⁶ Republic of Kazakhstan. Law dated 30 December 1998, No. 339. On State Control of Turnover of Particular Types of Weapon. Available from: <http://adilet.zan.kz/eng/docs/Z980000339>
Republic of Kazakhstan. Law dated 19 January 2001, No. 146. On the State Defence Order. Available from: <http://adilet.zan.kz/eng/docs/Z010000146>
Republic of Kazakhstan. Law dated 21 July 2007, No. 300. On Export Control. Available from: <http://adilet.zan.kz/eng/docs/Z070000300>
Republic of Kazakhstan. Law dated 31 October 2017, No. 104-VI. On the ratification of the Arms Trade Treaty. Available from: <http://adilet.zan.kz/rus/docs/Z1700000104>
Republic of Kazakhstan. Resolution of the Government of 3 August 2000, No. 1176. On the Measures to Implement the Law "On Government Oversight of the Turnover of Specific Types of Arms" // Collection of Acts of the President and Government of the Republic of Kazakhstan. - 2000. - No. 32-33. - p. 399; 2006. -

\$2.435 billion, making it the 59th largest defence spender worldwide and putting it behind all four of its Caspian region neighbours except Turkmenistan, which comes in at 104th, allocating \$200 million per year for defence purposes.¹⁷

According to Article 53 of the constitution of Kazakhstan, the parliament, in joint sessions of both chambers, ‘adopts, at the proposal of the President of the Republic, the resolution to use the Armed Forces of the Republic to meet international security and peace-keeping commitments.’ For instance, in June 2018 the defence minister, Saken Zhasuzakov, announced that Kazakh legislators had approved the president’s request to deploy dozens of military observers to join UN missions in the Middle East and Africa, to fulfil international obligations in maintaining peace and security.¹⁸

With regard to the declaration of emergencies, martial law and mobilization, the parliament plays a somewhat limited role. The authority to declare a state of emergency or martial law in Kazakhstan lies exclusively with the president. The parliament’s role in this issue is limited to consultation. Article 5 of the law ‘On the State of Emergency’, provides for mandatory official consultations between the president and the heads of the two parliamentary chambers before issuing a resolution to declare a state of emergency in the state or in individual regions. At the same time, according to Article 53 of the constitution, the parliament ‘resolves matters of war and peace’ in joint sessions of the chambers. This, most likely, refers to the fact that according to Article 28 of the law ‘On Defence and the Armed Forces of the Republic of Kazakhstan’, the parliament is authorized to declare war in case of armed aggression against the Republic of Kazakhstan by another state (or a group or coalition of states), as well as in cases provided for by international agreements ratified by the Republic of Kazakhstan.

Similarly, the legislation of Kazakhstan does not provide for parliamentary oversight of intelligence and counter-intelligence operations. According to the law ‘On Foreign Intelligence’ (Article 2), the authorized agency in the sphere of foreign intelligence is directly subordinate to and reports to the president.¹⁹ The president also determines the main

No. 18. – p. 169;

Republic of Kazakhstan. Resolution of the Government of 18 September 2002, No. 1032. On Adoption of the Rules for Turnover of Military Grade Portable Firearms and Their Ammunition, as well as Bladed Weapons // https://online.zakon.kz/document/?doc_id=1033345 No. pos=1;-194; Republic of Kazakhstan. Resolution of the Government of 3 July 2000, No. 1006. On the Definition of Entities Authorized to Use Arms and Military Equipment // https://online.zakon.kz/Document/?doc_id=1018753 No. pos=0;234

Republic of Kazakhstan. Government decree of 15 November 2016, No. 704. Some issues of the Ministry of Defence and Aerospace Industry of the Republic of Kazakhstan. Available from: <http://adilet.zan.kz/rus/docs/P1600000704>

Republic of Kazakhstan. Government decree of 7 August 2001, No. 1039. Some issues of military property turnover. Available from: <http://adilet.zan.kz/rus/docs/P010001039>

¹⁷ Nurjanov, A., (28 September 2017), “Kazakhstan Seeks To Upgrade Its Military Equipment”. Caspian News. Available from: <https://caspiannews.com/news-detail/kazakhstan-seeks-to-upgrade-its-military-equipment-2017-9-22-50/>

¹⁸ Kuandyk, A., (26 June 2018), “Kazakhstan increases number of military personnel participating in UN missions abroad”, Astana Times. Available from: <https://astanatimes.com/2018/06/kazakhstan-increases-number-of-military-personnel-participating-in-un-missions-abroad/>

¹⁹ Republic of Kazakhstan. Law dated 22 May 2010, No. 277-IV. On Foreign Intelligence. Available from: <http://adilet.zan.kz/eng/docs/Z100000277>

direction and priorities of intelligence and counter-intelligence operations, and oversees the activities of the respective agencies (Article 6 of the law ‘On Counter-Intelligence’;²⁰ Article 7 of the law ‘On Foreign Intelligence’). Notwithstanding, the national security agencies that are obligated to carry out intelligence and counter-intelligence operations under the law ‘On National Security Agencies’ must notify the parliament of threats to state security (Article 12). However, the law does not dictate the form or procedure for such notification. Intelligence operations in Kazakhstan are carried out by a special foreign intelligence agency (‘Syrbar’, the Foreign Intelligence Service²¹), as well as by national security agencies and military intelligence bodies of the Ministry of Defence.²² The competence of the foreign intelligence agency includes providing intelligence information to the president (Article 9 of the law ‘On Foreign Intelligence’). A similar requirement is noted in the provision for the Syrbar Foreign Intelligence Service of the Republic of Kazakhstan,²³ which specifies one of the tasks of the Service as ‘supplying the President of the Republic of Kazakhstan, and the Parliament, Government, government bodies and organizations of the Republic of Kazakhstan, with intelligence information and analytical assessments necessary for decision-making in the political, financial, economic, military-political, research, humanitarian, environmental and other spheres that affect the national interests of the Republic of Kazakhstan’. Neither the law nor the provision specifies the procedure for providing the information, or its scope.

It is worth noting that according to Article 12 of the law ‘On Counter-Intelligence’, materials gained through counter-intelligence operations may be used by the parliament of Kazakhstan for decision-making on issues of national security. However, no mechanism for the collection of such materials by the parliament is stipulated. The law ‘On National Security of the Republic of Kazakhstan’ states that information security policies of the state, among other purposes, aim to provide information to the President, Parliament, Government and national security forces of the Republic of Kazakhstan’ (Article 23). In spite of this, under the current legislation, the parliament of Kazakhstan is de facto a passive consumer of intelligence and counter-intelligence information without the right to request the necessary data for its oversight mandates.

The parliament is partly involved in the security and defence policy through the Security Council, which was created in Kazakhstan in 1991 as a consultative and advisory body attached to the president. In 1993, the agency became the Security Council of the Republic of Kazakhstan.²⁴ Despite the numerous changes to the operating format of the

²⁰ Republic of Kazakhstan. Law dated 28 December 2016, No. 35-VI. On Counter-intelligence. Available from: <http://adilet.zan.kz/eng/docs/Z1600000035>

²¹ President of the Republic of Kazakhstan. Decree of 26 March 2009, No. 773. On some issues of “Syrbar” Foreign Intelligence Service of the Republic of Kazakhstan. Available from: <http://adilet.zan.kz/rus/docs/U0900000773>

²² Republic of Kazakhstan. Law dated 22 May 2010, No. 277-IV. On Foreign Intelligence. Available from: <http://adilet.zan.kz/eng/docs/Z100000277>

²³ President of the Republic of Kazakhstan. Decree of 26 March 2009, No. 773. On some issues of “Syrbar” Foreign Intelligence Service of the Republic of Kazakhstan. Available from: <http://adilet.zan.kz/rus/docs/U0900000773>

²⁴ President of the Republic of Kazakhstan. Decree of 17 June 1993. On the Security Council of the Republic of Kazakhstan. Available from: <http://adilet.zan.kz/rus/docs/U930003000>

Security Council and the provision regulating its operation,²⁵ the agency is enshrined in the constitution as a consultative and advisory body formed by the president (Article 44, paragraph 20). According to the active presidential decree adopted in 1999, the Heads of the Senate and the Mazhilis are members of the Security Council by virtue of their positions. Prior to the decree, this was not the case as staff of the parliamentary chambers would only be involved in the Security Council's operations as the situation required. The modus operandi of the Security Council is also regulated by the law 'On the Security Council of the Republic of Kazakhstan'.²⁶ According to Article 1 of the law, the Security Council is no longer viewed as a consultative and advisory body, but positioned as a constitutional agency that 'coordinates the implementation of a unified state policy in the sphere of national security and defense capacity of the Republic of Kazakhstan.' Council membership is determined by the president, with approval of the Head of the Council (a post held for life by the first president of Kazakhstan, Nursultan Nazarbayev). Interactions between the Security Council and the parliament are not provided for by law. Thus, the adoption of the law 'On the Security Council of the Republic of Kazakhstan' served to significantly shrink the scope of parliamentary oversight of the security sector, essentially moving the latter entirely to the competence of the first president of Kazakhstan.

Additional oversight of the security sector can be carried out by the Human Rights Commissioner (ombudsperson). This post was established in Kazakhstan in 2002 by presidential decree, 'On Instituting the post of Human Rights Commissioner'.²⁷ The operations of the ombudsperson are supported by the National Centre for Human Rights.²⁸ The ombudsperson has a fairly broad scope of authority regarding matters of oversight of human rights and freedoms, including the right of military units and formations to enter and remain in the territory. However, they are not authorized to review complaints made against the actions or decisions of the president, the parliament and its deputies, the government, the Constitutional Council, the prosecutor general, the Central Election Commission, or the courts. The ombudsperson is appointed by the Senate of the parliament, on the proposal of the president, for a five-year term. Thus, even though the provision on the Human Rights Commissioner states that, 'the Commissioner is independent in their activity', in reality, the ombudsperson depends on the president for his or her appointment, while concurrently lacking sufficiently strong links to the parliament to be considered an instrument of parliamentary oversight. Nevertheless, the ombudsperson has wider opportunities to interact with the parliament. For instance, the ombudsperson can address the parliament with a proposal to hold hearings on issues related to violations of human rights and freedoms. Furthermore, the work of the ombudsperson is regulated not by law, but by presidential decree.

²⁵ President of the Republic of Kazakhstan. Decree of 20 March 1999, No. 88. On the Security Council of the Republic of Kazakhstan. Available from: <http://adilet.zan.kz/rus/docs/U990000088>

²⁶ Republic of Kazakhstan. Law dated 5 July 2018, No. 178-VI. On the Security Council of the Republic of Kazakhstan. Available from: <http://adilet.zan.kz/eng/docs/Z1800000178>

²⁷ President of the Republic of Kazakhstan. Decree of 19 September 2002, No. 947. On Establishing the Post of the Human Rights Commissioner. Available from: <http://adilet.zan.kz/rus/docs/U020000947>

²⁸ President of the Republic of Kazakhstan. Decree of 10 December 2002, No. 992. On Establishing the National Centre for Human Rights. Available from: <http://adilet.zan.kz/rus/docs/U020000992>

2. Parliament committees and individual inquiries of the Members of Parliament

The parliament has a number of working bodies: the permanent committees of the Senate and the Mazhilis, and joint commissions. Permanent committees are created to carry out legislative work, as well as to conduct preliminary review and preparation on issues in the purview of each chamber. The security sector is supervised by the Committee for International Relations, Defence and Security in the Senate (currently led by Dariga Nazarbayeva) and by the Committee for International Affairs, Defence and Security in the Mazhilis (led by Mukhtar Yerman). The authority these committees have to oversee the security sphere and respective government agencies does not exceed the authority of the parliament of the Republic of Kazakhstan as a whole.

The parliament (through its permanent committees) can initiate parliamentary hearings and adopt declarations, statements and other non-legislative acts. The authority of the parliament deputies extends to inquiries from deputies (Article 27 of the constitutional law 'On the Parliament of the Republic of Kazakhstan and the Status of its Deputies'), which entail an official request addressed to a government official. These require a substantiated explanation or position statement on the issues within the competence of that official, or their respective body, to be delivered during a parliamentary session. Inquiries addressed to the prosecutor general and the heads of law enforcement and special government agencies may not concern issues related to the criminal prosecution function. Hearings on requests addressed to the Head of the Committee for National Security are held in closed sessions. Furthermore, a deputy is authorized to propose that reports or informational statements by officials accountable to the chambers of parliament are heard during a parliamentary session (Article 25).

According to the official website of the Senate of the parliament of the Republic of Kazakhstan, during the sixth convocation (25 March 2016 to 1 December 2018), deputies made 233 inquiries, including 15 that were in some manner related to security issues.²⁹ The following inquiries by Senate deputies directly concerned the military and political security of Kazakhstan:

- on military discipline and increasing responsibility for military service personnel (deputy inquiry 15-13-163 of 24 June 2016);
- on the issue of modernizing the system for military education and staff training, and development of military science to incorporate best international practices (deputy inquiry 15-13-264 of 14 November 2016);
- on the issue of amendments and addenda to the Budget Code as relates to determining separate expense limits for the National Guard, the border service and civil protection services of the Republic of Kazakhstan (establishing a mandatory spending minimum

²⁹ Senate of the Parliament of the Republic of Kazakhstan. Information on deputy inquiries. Available from: <http://senate.parlam.kz/ru-RU/dep-requests>

for the armed forces, other troops and military formations at one percent of the gross domestic product) (deputy inquiry 15-13-296 of 8 December 2017; repeat inquiry 15-13-71 of 2 March 2018);

- on the issue of dismissed military service personnel with 20 or more years of service that are not included in the category of persons entitled to receive accommodation from the government housing fund under the current legislation (deputy inquiry 15-13-212 of 28 June 2018).

According to the official website of the Mazhilis of the Republic of Kazakhstan, a total of 713 inquiries were made by deputies during the recent sixth convocation, including several that were in some manner related to security issues.³⁰ None of the inquiries by the Mazhilis deputies were directly concerned with the military or political security of Kazakhstan.

Conclusion

The president and his administration (including the Security Council) dominate the security arena, while the parliament's role is somewhat limited due to the nature of the political system and the strong influence of the president. Even after the declaration, in 2017, towards strengthening the role of government and the parliament, the first president of Kazakhstan retained a dominant role, especially in matters of national security. This status quo was reinforced in 2018 by the adoption of the law 'On the Security Council of the Republic of Kazakhstan', under which the Security Council assumed the status of a constitutional agency authorized to coordinate the implementation of state national security policy.

Despite this, the parliament of Kazakhstan possesses significant instruments in order to be able to influence the security sphere. It can play a significant role through the adoption of laws, the approval of the state budget, debates over security issues, as well as deputies' inquiries and parliamentary hearings. An analysis of deputies' inquiries shows that Kazakhstan's parliamentary structures are partially involved in security issues, and primarily address the social and economic issues that affect military service personnel. The legislation of Kazakhstan does not provide for oversight instruments such as the monitoring of law enforcement, parliamentary inquiry, or parliamentary investigation. Also, under the current legislation, the parliament of Kazakhstan is de facto a passive receiver of intelligence and counter-intelligence information, without the right to request the necessary data for its oversight mandates.

The situation would be improved if the role of the parliament were extended to the procurement of defence items, which would be an essential mechanism in establishing control in this sector. Moreover, President Tokayev's idea of creating a National Council of Public Trust and including civil society in the process, might be an ideal way to start the debate on the role of parliament and civil society in strengthening oversight of the security sector.

³⁰ Senate of the Parliament of the Republic of Kazakhstan. Information on deputy inquiries. Available from: <http://senate.parlam.kz/ru-RU/dep-requests>

ANNEX 1.

Law of the Republic of Kazakhstan Nr. 101-I of 7 May 1997

On the Committees and Commissions of the Parliament of the Republic of Kazakhstan

(with amendments and addenda as of 11 July 2017)

Published: Kazakhstanskaya Pravda - 1997 - 14 May;

Vedomosti Parlamenta Respubliki Kazakhstan [Bulletin of the Parliament of the Republic of Kazakhstan] - 1997 - Nr. 9 - p. 94.

Chapter 1. General provisions

Article 1. The working bodies of the parliament of the Republic of Kazakhstan shall comprise permanent committees of the Senate and the Mazhilis, as well as joint commissions of the chambers.

Article 2.³¹ The authority and operating procedure of the permanent committees of the Senate and the Mazhilis, as well as joint commissions of the chambers shall be determined by the Constitution of the Republic of Kazakhstan, the Constitutional Law of the Republic of Kazakhstan 'On the Parliament of the Republic of Kazakhstan and the Status of its Deputies', the present law, other legislative acts of the Republic of Kazakhstan, and the regulations of the parliament and its chambers.

Article 3. The permanent committees of the Senate and the Mazhilis are formed by deputies from among the membership of the respective chambers, during the first session of parliament.

The number and titles of the permanent committees of the Senate and the Mazhilis shall be determined at sessions of the Senate and the Mazhilis, by proposal of the deputies of the respective chambers.

If necessary, new permanent committees may be created, and previously created permanent committees may be dissolved or reorganized.

³¹ Amended according to the Law of the Republic of Kazakhstan No. 384 of 19 May 1999.

Chapter 2. The procedure for development of committees and commissions of the parliament of the Republic of Kazakhstan

Article 4. The number of permanent committees created by the Senate and the Mazhilis shall not exceed seven for each chamber.

Article 5. The membership size of the permanent committees of the Senate and the Mazhilis shall be determined by the respective chambers.

Article 6. The heads of the permanent committees of the Senate and the Mazhilis shall be elected after the number and title of the committees has been determined.

Article 7. The heads of permanent committees of the chambers shall be elected from among the deputies, via an open or closed vote at a session of the Senate and the Mazhilis, by a majority based on the total number of deputies in the chamber.

Article 8. Candidates for the post of the head of a particular permanent committee shall be proposed by deputies of the chamber.

Article 9. A candidate for the post of the head of a permanent committee of the Senate or the Mazhilis shall be granted the right to present before the deputies of the chamber. Following the candidate's presentation, the deputies shall be authorized to ask them questions and express opinions about their candidacy. Discussion of the candidacies shall be carried out according with the procedure established by the regulations of the chambers.

Article 10. If more than two candidates are proposed for the post of the head of a permanent committee, and if no candidate achieves a majority vote based on the total number of deputies in the chamber, a second round of voting shall be held, limited to the two candidates who received the most votes in the first round.

After a second round of voting, the candidate who receives the most votes shall be considered the elected head of a permanent committee.

Article 11. The head of a permanent committee of the Senate or the Mazhilis shall be included in the bureau of the respective chamber.

Article 12. The head of a permanent committee can be dismissed from their post by a majority vote of the total number of deputies of the respective chamber; the vote shall be initiated by a minimum of two-thirds of the total membership of the committee.

Article 13. The head of a permanent committee shall have the right to resign; their resignation shall be deemed accepted subject to a majority vote of the total number of deputies of the respective chamber.

Article 14. After the election of heads of the permanent committees of the Senate and the Mazhilis, committee members shall be elected during the chamber's session.

Article 15. A deputy's right to select their preferred committee for work shall be taken into consideration when determining the membership of permanent committees of the chambers.

Article 16. The heads of the Senate and the Mazhilis, as well as their deputies, may not be members of permanent committees of the chambers.

Article 17. A deputy of the parliament of the republic can only be a member of one permanent committee.

A deputy shall have the right to transfer from one permanent committee to another. The decision to transfer a deputy from one permanent committee to another shall be made by resolution of the chamber, according to the procedure determined by its regulations.

Article 18. A deputy of the parliament shall have the right to take part in sessions of parliament committees and commissions where they are not a member, with the right to a consultative vote.

Article 19. The secretary of a permanent committee of the Senate or the Mazhilis shall be elected at a session of the respective committee from amongst the committee members, by an open majority vote based on the total membership count of the committee of the chamber.

Article 20. By proposal of the head of a permanent committee or committee members, the secretary of a permanent committee can be recalled from their post, subject to a majority vote based on the total membership count of the committee.

Article 21. Permanent committees of the chambers may create subcommittees for their principal responsibilities.

The head and the secretary of a permanent committee of the chamber may not be members of such subcommittees.

Article 22. In order to resolve issues related to joint operation of the chambers, the Senate and the Mazhilis shall have the right to form joint commissions, on a parity basis. The membership count of joint parliament commissions shall be determined by agreement of the chambers. Each chamber shall independently elect members of joint commissions.

Article 23. To overcome disagreement related to bills under review, the Senate and the Mazhilis shall create reconciliation committees staffed by equal numbers of deputies from each chamber.

The decision on the development of reconciliation committees and on the election of Senate and Mazhilis deputies as their members, shall be made at sessions of the chambers, by a majority vote based on the total number of the Senate or Mazhilis deputies, respectively.

Article 24. In order to exercise the authority provided for by Article 47, paragraph 1, of the Constitution of the Republic of Kazakhstan, the parliament shall create a special temporary commission consisting of equal numbers of deputies from each chamber, and specialists in the respective fields of medicine.

Article 25. In order to exercise the authority provided for by Article 47, paragraph 2, of the Constitution of the Republic of Kazakhstan, the parliament shall create a special temporary commission.

Article 26. In order to exercise the authority of the Senate and the Mazhilis provided for by Article 57 of the Constitution of the Republic of Kazakhstan, sub-paragraphs 5 and 6, the chambers of the parliament shall create special temporary commissions.

Article 27.³² The procedure for the creation of joint, conciliatory, special and other commissions of the parliament and its chambers, for the election of their heads, and for the dismissal of the heads of joint commissions of the chambers, shall be determined by the parliamentary regulations, and the regulations of the Senate and the Mazhilis.

Article 28. Operation of a joint, conciliatory and special commission shall be temporary in nature and limited to a specific timeframe and/or specific task.

Chapter 3. Authority of the committees and commissions of the parliament of the Republic of Kazakhstan

Article 29.³³ Permanent committees of the Senate and the Mazhilis are created to prepare draft laws, conduct preliminary reviews, and prepare questions related to issues in the chamber's purview.

To exercise their authority, a permanent committee of the chamber shall:

1. provide opinions on draft bills, and submit proposals to the bureau of the relevant chamber advising to either include a draft bill into the agenda of a plenary session, or continue work on a draft bill, or reject a draft bill for substantiated reasons;
2. at the instruction of a relevant chamber or its bureau, act as the lead for a specific draft bill or another issue within the chamber's purview;
3. create workgroups for review of submitted draft bills, with the involvement of the bill originators, representatives of government agencies and community associations, scientific institutions, specialists, and heads of business entities;
4. submit proposals to the bureau of a relevant chamber on the membership of workgroups required to prepare draft bills;
5. receive the input of bill originators on the issues related to the relevant draft bill;
6. prepare proposals on introducing amendments and/or addenda to the submitted draft bills, resolutions, or other acts to be adopted by the parliament and its chambers;

³² Article 27 amended according to the Law of the Republic of Kazakhstan No. 154-IV of 29 April 2009.

³³ Article 29 amended according to the Law of the Republic of Kazakhstan No. 154-IV of 29 April 2009.

7. if appointed as the lead for a draft bill or another issue, summarize the comments and proposals of the permanent committees and deputies of the chamber, and prepare the opinion, materials and supplementary report;
8. enable the chambers to exercise their authority in approving the president's decision to appoint, elect, dismiss or strip immunity of the officials of the Republic, discuss the proposed candidates at the committee session, and provide an opinion based on the review carried out;
9. submit proposals on the candidacies of chamber deputies being delegated to the parliament commissions;
10. withdrawn by the Law of the Republic of Kazakhstan Nr. 154-IV of 29 April 2009;
11. at the decision of the respective chamber's bureau, conduct parliamentary hearings on the issues within its competence;
12. request opinions of other permanent committees of the chambers, government agencies and their officials, community associations, scientific institutions or specialists, on the issues within the scope of its review;
13. submit proposals for a parliamentary session to hear reports or presentations by officials reporting to the parliamentary chambers;
14. review queries and proposals submitted by deputies, make decisions regarding them, organize the implementation of the respective decisions, and oversee their enforcement;
15. submit to the chamber for review its proposals to adopt declarations, addresses or statements on general and specific domestic and foreign policy issues;
16. submit to the chamber bureau proposals about the membership of official parliamentary delegations being dispatched abroad.

Article 29-1.³⁴ By proposal of the president of the Republic, permanent committees of the Senate and/or the Mazhilis shall review other issues and provide their resulting opinions to the head of state.

Article 30. Withdrawn by the Law of the Republic of Kazakhstan Nr. 154-IV of 29 April 2009.

Article 31. The authority of joint commissions shall be determined by deputies at joint sessions of the parliamentary chambers during the creation of joint commissions.

Article 32. The authority of reconciliatory commissions shall be limited to the list of issues assigned to them.

Article 33. The authority of special commissions of the parliament shall be determined by the Constitution of the Republic of Kazakhstan.

³⁴ Introduced by the Law of the Republic of Kazakhstan No. 384 of 19 May 1999.

Article 4. Operational organization of the committees and commissions of the parliament of the Republic of Kazakhstan

Article 34. The head of a permanent committee of the Senate or the Mazhilis shall:

1. supervise the work of the permanent committee;
2. prepare the work plan and draft agenda for sessions of the permanent committee;
3. organize the fulfilment of requests received by members of the permanent committee by resolution of the committee, the chamber bureau, or the chamber;
4. carry out other duties as per the chamber regulations.

Article 35. The secretary of a permanent committee of the Senate or the Mazhilis shall:

1. organize document management for the permanent committee and minute-taking of its sessions;
2. in the absence of the head of the permanent committee, carry out their duties;
3. carry out other duties as per the chamber regulations.

Article 36. Members of permanent committees of the chambers shall take an active part in the work of the committees and fulfil their requests.

Members of the permanent committees of the Senate and the Mazhilis shall have the decisive vote on all issues reviewed at sessions of the committee.

A member of a permanent committee shall have the right to:

1. elect and be elected as the head or secretary of the committee, and propose candidates for these posts;
2. submit issues to be reviewed at committee sessions, submit proposals and comments for the agenda, order of business, and subject matter on the issues for review;
3. submit proposals for committee sessions to hear from officials on issues within the committee's competence;
4. introduce amendments to draft bills, resolutions and other documents being prepared at sessions of the committee;
5. pose questions to presenters and the chairman of committee meetings;
6. present explanations of their own proposals, and provide additional information if necessary;
7. familiarize committee members with statements and positions of citizens and public associations;

8. familiarize themselves with transcripts of presentations by deputies, as recorded and in committee session minutes;
9. exercise further authority according to the legislation.

Article 37. A deputy whose proposals do not garner support from a permanent committee may introduce these proposals during the discussion of the relevant issue at a session of the chamber or the parliament, or notify the chairman of them in writing, according to the respective regulations.

Article 38. Deputies, by their own initiative or by instruction of a permanent committee, shall research issues that are within the committee's competence in their own regions and electoral districts, summarize the proposals submitted by government agencies, public associations, organizations and citizens, and deliver their opinions and proposals to the committee.

Article 39. Permanent committees shall have the right to hear the reports by committee members about the latter's participation in the implementation of the committee's resolutions and instructions.

Article 40.³⁵ If a member of a permanent committee is absent from committee sessions without a valid excuse, they shall be sanctioned according to the procedure established by the Constitutional Law of the Republic of Kazakhstan, 'On the Parliament of the Republic of Kazakhstan and the Status of its Deputies', as well as the regulations of the parliament and its chambers.

Article 41. On issues within the scope of their competence, permanent committees of the Senate and the Mazhilis shall be free to choose forms and methods of operation, cooperate with government agencies and public associations, and research and take into consideration public opinion.

Article 42. Sessions of permanent committees of the Senate and the Mazhilis shall be held as necessary, and at least twice per month.

Article 43. The Chair of a permanent committee shall call sessions on their own initiative, and by proposal of the committee's deputies or the head of the chamber.

Article 44. Sessions of permanent committees shall be open. In cases provided for by the regulations of the parliament and its chambers, closed sessions may be held.

Article 45.³⁶ The president, the prime minister and members of the government, the head of the National Bank, the prosecutor general, the head of the National Security Committee, the head and members of the Accounts Committee on the monitoring of the execution of the government budget, the secretary of state, heads of the presidential administration and the prime minister's office, as well as representatives of the president and the government

³⁵ Article amended by the Law of the Republic of Kazakhstan No. 384 of 19 May 1999.

³⁶ Version as established by the Law of the Republic of Kazakhstan No. 393-V of 12 November 2015.

of the Republic of Kazakhstan in the parliament shall have the right to attend any open or closed sessions of permanent committees, and shall have the right to be heard.

Article 46. Media representatives may be present at the open sessions of permanent committees, subject to accreditation of the respective media outlets with the parliamentary chambers.

Article 47. Sessions of the permanent committees of the chambers shall be deemed qualified if at least two-thirds of their total membership is in attendance.

Article 48. The head or secretary of the permanent committee shall be present at sessions of the committee.

Minutes of the sessions of permanent committees shall be taken and signed by the Chair of the session.

Article 49. On issues within their scope of competence, permanent committees shall adopt resolutions by a majority vote based on the total membership count of the committee.

Article 50. Issues that fall within the competence of several permanent committees may be prepared and reviewed by such committees jointly, on the initiative of the committees themselves, by request of the chamber, or by recommendation of the chamber bureau. A lead permanent committee shall be determined for the purposes of coordinating the work and summarizing the proposals and comments of the chamber bureau. If no decision is made to this effect, the committee listed in the relevant resolution first shall be the lead.

Article 51. Permanent committees shall have the right to conduct joint sessions, presided by the heads of committees as agreed between them. In such cases, the resolution shall be passed by a majority vote based on the total membership of each permanent committee.

Article 52. When reviewing issues within the scope of their competence, permanent committees shall have equal rights and equal obligations. If permanent committees have a different stance on a certain issue, they shall take measures to overcome their differences. Should the committees fail to achieve agreement, they shall communicate their positions to the chamber bureau, which will decide on the form of subsequent cooperation on the relevant issue.

When issues on which committees remain in disagreement are reviewed at sessions of the chambers, the deputies shall be notified of the subject matter of the disagreement, the measures taken by the chamber bureau to overcome the disagreement, and the recommended resolution. Voting on such issues shall be done according to the regulations of the chambers.

Article 53. Heads of permanent committees may deliver reports and supplementary reports at plenary sessions of the parliament and its chambers, on the issues that fall within their competence.

Permanent committees shall delegate speakers and co-speakers on issues submitted by the committees for chamber review or submitted to the committees for preliminary or additional review.

On issues prepared jointly by permanent committees, such committees may deliver joint reports and supplementary reports, or present their comments, proposals and opinions separately.

Article 54. To work on issues within their purview, permanent committees may create working groups involving deputies of the chamber, representatives of ministries, government committees and other central executive agencies, public associations, and research institutions, as well as specialists and scholars.

Permanent committees shall have the right to involve in their work specialists from different fields in an expert capacity, and to conduct independent expert analysis of draft bills.

Article 55. Permanent committees shall have the right to:

- request materials and documents required for their operation from government agencies, public associations, organizations, and officials;

- invite to their sessions, and hear from, officials related to the issues within the committee's competence.

Government authorities, organizations and officials shall provide materials and documents requested by permanent committees, with due consideration to secrecy under the law.

Article 56.³⁷ The timeframe for the preparation of opinions on issues reviewed by permanent committees shall be established in the instruction issued by resolution of the chamber or determined by the chamber's regulations.

The president of the Republic has the right to prioritize the review of draft bills, whereby relevant draft bills must be passed within two months as a priority.

Article 57. The operational organization of joint, conciliatory and special commissions of the parliament and its chambers shall be the same as the operational organization of permanent committees of the chambers.

Article 58.³⁸ According to Article 57 of the Constitution of the Republic of Kazakhstan (sub-paragraph 5), the chambers of the parliament shall hold parliamentary hearings on the issues within their competence. Parliamentary hearings in the chambers of the parliament shall be held by permanent committees of the chambers, according to the decision of the chamber bureau.

The procedure for the organization and holding of parliamentary hearings shall be determined by the regulations of the chambers of parliament.

³⁷ Amended by the Law of the Republic of Kazakhstan No. 91-VI of 11 July 2017.

³⁸ Amended by the Law of the Republic of Kazakhstan No. 154-IV of 29 April 2009.



Chapter 5. Final provisions

Article 59. The chamber bureau shall be responsible for coordinating the operation of permanent committees.

Article 60. Organizational, legal, information, analytical, and other support for the operation of permanent committees and their members shall be provided by the respective staff of the chambers of the parliament.

Article 61. Document management in permanent committees shall be organized according to the regulations and the document handling manual of the parliament of the Republic of Kazakhstan.

Signed by the President of the Republic of Kazakhstan

PARLIAMENTARY OVERSIGHT OF THE SECURITY SECTOR: KYRGYZSTAN

Aida Alymbaeva

Lecturer, International University of Central Asia

The national security system of Kyrgyzstan is composed primarily of government agencies mandated to ensure national security, protection of state interests against domestic and foreign threats, and to protect constitutional order, sovereignty and the territorial integrity of Kyrgyzstan.³⁹ National security forces include: the armed forces (represented by the general staff of the armed forces, which also includes the State Committee on Defence, and the National Guard); the state national security agency (the State Committee for National Security); state internal affairs agencies (the Ministry of Internal Affairs, including national troops; the State Service for Combating Economic Crime; the State Penitentiary Service); the customs service (the State Customs Service); the tax service (the State Tax Service); emergency response and civil protection agency (the Ministry of Emergency Situations), and other government agencies involved in the system of national security (the state border service, and the State Financial Intelligence Service).⁴⁰

These national security bodies constitute the security sector. This article examines parliamentary oversight of these security agencies. The terms ‘security sector agencies’ and ‘law enforcement agencies’ are used interchangeably.

Legislative review

The oversight authority of the parliament of Kyrgyzstan (Zhogorku Kenesh) is determined by the constitution; according to Article 10, paragraph 1, of the constitution, the Zhogorku Kenesh is a supreme representative body with oversight functions.⁴¹ The mandate, rights and mechanisms of parliamentary oversight are stipulated in the constitutional law ‘On the Regulations of the Zhogorku Kenesh’ (2011) and the law ‘On the Procedure of Exercising Oversight Functions by the Zhogorku Kenesh’ (2004).⁴² These laws prescribe a wide range of instruments that Members of Parliament (MPs) can use in exercising oversight of the enforcement of laws and resolutions adopted by parliament. For example, the oversight instruments available to deputies include reviewing annual reports of the cabinet, appointing and dissolving the cabinet, including heads of the security and law enforcement

³⁹ Law of the Kyrgyz Republic “On National Security Agencies of the Kyrgyz Republic”. Available from: <http://cbd.minjust.gov.kg>

⁴⁰ Ibid.

⁴¹ Constitution of the Kyrgyz Republic, Article 70. Available from: <http://cbd.minjust.gov.kg>

⁴² Constitutional Law “On the Regulations of the Zhogorku Kenesh of the Kyrgyz Republic” and the Law “On the Procedure of Exercising Oversight Functions by the Zhogorku Kenesh”. Available from: <http://cbd.minjust.gov.kg>

agencies, holding special parliamentary sessions such as ‘Cabinet Government Hour’ and ‘Cabinet Government Day’, sending parliamentary inquiries to various ministries, conducting parliamentary investigations, and other instruments described in the following chapter, ‘Parliamentary committees’. In this regard, the legislation grants the parliament of Kyrgyzstan a significant amount of rights and powers to oversee the executive government branch, including the law enforcement and security agencies.

In accordance with the new constitution, adopted in 2010, and the new law ‘On the Government’ (2012), the executive branch reports to the parliament. Specifically, the parliament elects and dismisses the heads of the security and law enforcement agencies, with the exception of the heads of defence and national security agencies.⁴³ According to the Constitution, the president appoints and dismisses heads of the defence and national security agencies, as well as their deputies.⁴⁴ The parliament also approves the government programme that determines the main priorities, goals and expected results within the spheres of security, law enforcement and public order. If the cabinet fails to implement the programme, parliament has the right to reject the prime minister’s annual report and may dismiss the cabinet. This is one of the parliament’s main instruments for oversight of the executive branch.

Some of the laws regulating the operation of law enforcement and security structures additionally stipulate that their activity is overseen by parliament. For instance, the law ‘On National Security Agencies’, adopted in 1994, stipulates this requirement in Article 27, while Article 23 states that financial activity of national security agencies is overseen by parliament and the government.⁴⁵ The law ‘On Defence and the Armed Forces’, adopted in 2009 also provides that parliament review and approve spending for the defence sector.⁴⁶

Overall, Kyrgyzstan’s legislative framework in respect of parliamentary oversight is well-established and provides the legislator with a wide scope of oversight powers.

Parliamentary committees

The parliament of post-Soviet Kyrgyzstan has always had permanent committees on security issues. For instance, during its first convocation (1995-2000), the Legislative House of the parliament had two permanent committees on security issues: the Committee on Defence and State Security, and the Committee on Law and Order and Crime Prevention.⁴⁷ During its second convocation (2000-2005), there were three permanent committees:

⁴³ Law of the Kyrgyz Republic “On the Government”, Article 12. Available from: <http://cbd.minjust.gov.kg>

⁴⁴ Constitution of the Kyrgyz Republic, Article 64. Available from: <http://cbd.minjust.gov.kg>

⁴⁵ Law of the Kyrgyz Republic “On National Security Agencies of the Kyrgyz Republic” (2014). Available from: <http://cbd.minjust.gov.kg>

⁴⁶ Committee of the Zhogorku Kenesh of the 4th convocation. Available from: <http://www.kenesh.kg/ru/committee/list/34>

⁴⁷ Resolution of the Legislative Assembly of the Zhogorku Kenesh of the Kyrgyz Republic of 16 February 1999, No. 1330-1, “On Approving the Composition of Committees of the Legislative Assembly of the Zhogorku Kenesh of the Kyrgyz Republic”.

the Committee on State Security; the Committee on Law and Order, Crime Prevention and Corruption; and the Committee on Defence.⁴⁸ The parliament's third convocation (2005-2007) had the permanent Committee on Defence, Law and Order, and Information Policy.⁴⁹ Within the fourth convocation (2007-2010), one permanent committee existed on security issues that was the Committee on Defence, Security, Law and Order and Judicial and Legal Reform.⁵⁰ During the period from 2010 to 2015, there were three committees that exercised oversight of the security and law enforcement services: the Committee on Defence and Security; the Committee on Justice, Law and Order, and Crime Prevention; and the Committee on Constitutional Legislation, State Governance, and Judicial-Legal Aspects.⁵¹ In the current convocation of the parliament (2015-2020), two permanent committees exist: the Committee on International Affairs, Defence and Security, which in 2018 included 16 deputies; and the Committee on Law and Order, Crime Prevention, and Corruption Prevention, which included 11 deputies in 2018.⁵²

As described in the previous chapter, the current legislation of Kyrgyzstan grants significant oversight powers to parliamentary committees. For example, committees have the right to address government agencies (with the exception of the courts) in connection with violations or failure to implement laws and resolutions adopted by parliament or on other issues of public importance.⁵³ To this end, committees can use the following oversight instruments:

- Review of annual reports of the cabinet and government agencies by the parliament: an important oversight instrument is the Zhogorku Kenesh's review of annual reports by the government and government agencies,⁵⁴ including the prime minister's report on the work of the government,⁵⁵ and state budget execution reports. The parliament also reviews reports by the head of the Accounts Chamber, a separate report of the audit of state budget execution, and special reports on issues of particular importance or urgency, to be approved by profile committees of the Zhogorku Kenesh of the Kyrgyz Republic (ZK KR). Before a report is reviewed at plenary session, it is considered by parliamentary factions. If the parliament refuses to accept the prime minister's report, the cabinet is dismissed. This mechanism was recently used by the ZK KR, when on 19 April 2018, the majority of deputies declared the report by the prime minister, Sapar

⁴⁸ Resolution of the Legislative Assembly of the Zhogorku Kenesh of 3 May 2000, No. 34-n, "On establishment of committees of the Legislative Assembly of the Zhogorku Kenesh of the Kyrgyz Republic".

⁴⁹ The structure of the Zhogorku Kenesh of the Kyrgyz Republic. Available from: <http://rus.gateway.kg/gosudarstvo/gosudarstvo/parlament/struktura-zhogorku-kenesha/>

⁵⁰ Decree of 25 December 2007, No. 27-IV, "On Formation of the Committees of the Zhogorku Kenesh of the Kyrgyz Republic".

⁵¹ Decree of 23 December 2010, No. 30-V, "On Approval of the Structure of Committees of the Zhogorku Kenesh of the Kyrgyz Republic".

⁵² Committees of the Zhogorku Kenesh of the 6th convocation. Available from: <http://www.kenesh.kg/ru/committee/list/34>

⁵³ Law of the Kyrgyz Republic, "On the Implementation of Control Functions by the Zhogorku Kenesh of the Kyrgyz Republic".

⁵⁴ Law of the Kyrgyz Republic, "On Regulations of the Zhogorku Kenesh of the Kyrgyz Republic", Article 101.

⁵⁵ Virtually all security sector agencies are included in the government structure of the Kyrgyz Republic (Ministry of Internal Affairs, State Penitentiary Service).

Iskakov, unsatisfactory and voted for his resignation. As a result, his entire cabinet resigned.⁵⁶

- Government Hour and Government Day:⁵⁷ on the last Thursday of the month, the Zhogorku Kenesh holds a ‘Government Hour’ attended by the prime minister and members of the government. Additionally, at least once per quarter, the parliament holds a ‘Government Day’. At these meetings, members of the government answer deputies’ questions about progress on the implementation of specific laws or strategies. Attendance of the Zhogorku Kenesh session is mandatory for persons invited to the Government Hour and Government Day. The parliament subsequently passes a resolution based on the results of the Government Day.
- Parliamentary hearings: committees may conduct parliamentary hearings to discuss draft bills and other projects. Parliamentary hearings are mandatory for draft bills related to: protection of civil rights, freedoms and obligations; the legal status of parties, non-profit establishments and the media; budget; taxes and other mandatory fees; environmental protection; and crime prevention.⁵⁸ Parliamentary hearings may be conducted by government groups and committees, which are obliged to publish relevant information on the ZK KR website 10 days in advance of such a hearing. The list of persons invited to parliamentary hearings is determined by groups and committees. Parliamentary hearings are open to representatives of the media, civil society, and public associations.⁵⁹
- Parliamentary investigations: the Zhogorku Kenesh has the right to conduct parliamentary investigations, including on such issues as threats to national security and public order. A parliamentary investigation can be initiated by the parliament speaker, a parliamentary committee or party faction, the ombudsperson, or the National Centre for Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Centre Against Torture), a body which reports to the parliament.⁶⁰ A temporary parliamentary commission is created to conduct the investigation. All government agencies must cooperate with the temporary commission, including by providing all necessary information and documents on the commission’s demand. No one is exempt from the requirement to appear before the commission and testify. In cases where the temporary commission discovers a violation, it has the right to appeal to a government agency requesting that the violation be ceased, or that criminal, administrative or disciplinary proceedings be initiated. After completing the investigation, the commission shall prepare a substantiated opinion, to be discussed at a session of the ZK KR within 10 days and adopted with a resolution.

⁵⁶ Arykbaev, E., (19 April 2018), “Parliament Voted for Cabinet’s Resignation. What is Next?”, Kloop.

Available from: <https://kloop.kg/blog/2018/04/19/parlament-vyrazil-nedoveriyu-pravitelstvu-chto-dalshe/>

⁵⁷ Law of the Kyrgyz Republic, “On Regulations of the Zhogorku Kenesh of the Kyrgyz Republic”, Article 102.

⁵⁸ Ibid. Article 115.

⁵⁹ Ibid.

⁶⁰ National Centre for Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is in the national preventive mechanism in overseeing torture issues.

The temporary commission's opinion must contain a description of the investigated facts and circumstances; an analysis of their causes and consequences; conclusions; recommendations; and, if necessary, proposals to adopt, amend or recall specific regulatory acts, bring specific persons to liability, or to improve the function of specific government agencies.⁶¹

- Parliamentary inquiry: a speaker, group, committee or group of deputies have the right to initiate a parliamentary inquiry. A parliamentary inquiry shall be sent by its initiators to the Coordination Board of the ZK KR for inclusion in the ZK KR agenda; once the inquiry is reviewed, a resolution is adopted based on the results of the review. The Coordination Board of the ZK KR shall forward the parliamentary inquiry to the officials specified in the inquiry, within three days. A response to the parliamentary inquiry is reviewed according to established procedures. Based on the results of the discussion of the parliamentary inquiry, the ZK KR may voice its position by passing an appropriate resolution.⁶²
- Deputy inquiry:⁶³ deputies can send individual inquiries to government agencies, with the exception of courts and judges. Any government agency addressed in a deputy inquiry must respond in writing within one month.
- Oversight and assessment of adopted laws and resolutions: committees can oversee and assess adopted laws that fall within the purview of profile committees, for a period of six months after such laws take effect. To this end, committees can involve community representatives and independent experts.⁶⁴
- Inspections:⁶⁵ the ZK KR can carry out inspections to assess the implementation of laws by executive branch, self-government bodies and state enterprises. To organize an inspection, working groups are formed by a resolution drawn up by the relevant ZK KR committee, comprised of deputies, experts and consultants of ZK KR staff. If necessary, a ZK KR committee has the right to involve employees of ministries and the Accounts Chamber, independent auditors, and presidential and prime ministerial staff. Employees of the prosecutor's office can also be involved, if necessary. By request of ZK KR committees, the heads of ministries and state agencies must provide the materials necessary for the inspection. The inspectors shall have unimpeded access to visit relevant sites and information about the measures taken by respective heads towards the enforcement of laws and resolutions. Based on the inspection results, a resolution is passed, which is binding for the inspected party. ZK KR committees have the right to address a government agency requesting that appropriate measures are taken as a result of the violation of, or failure to adhere to, laws and resolutions. Any inspection materials containing evidence of the violation of laws or resolutions of the

⁶¹ Law "On Regulations of the Zhogorku Kenesh", Article 106.

⁶² Ibid. Article 110

⁶³ Ibid. Article 111

⁶⁴ Law of the Kyrgyz Republic, "On the Implementation of Control Functions by the Zhogorku Kenesh of the Kyrgyz Republic".

⁶⁵ Ibid.

Zhogorku Kenesh, as well as elements of any criminal action are sent to the prosecutor general. Evaluation results can be contested by the inspected party, according to the procedure established by the legislation of the Kyrgyz Republic. Following an inspection of the enforcement of ZK KR laws and resolutions, parliamentary hearings can be held to discuss the inspection results, if necessary. In the past, MPs visited detention centres, prisons, military units and border checkpoints. For example, a number of MPs visited a prison guard service to inspect their food, medical and transportation facilities. Following this inspection, MPs discussed the allocation of more funds for this service, in parliament.⁶⁶ In December 2018, MP Elvira Surabaldieva and the ombudsperson paid a visit to the Bishkek Detention Center. They spoke to detainees regarding conditions within the detention centre, as well as the food and medical facilities provided for the detainees.⁶⁷

In addition to the above oversight instruments, parliamentary committees may also:

- be contacted by heads of state agencies, including heads of law enforcement and security structures;
- oversee the execution of the budget, including giving instructions to the Accounts Chamber;
- review citizens' complaints relating to the violation of civil rights and freedoms, including with the involvement of the ombudsperson and the National Centre Against Torture.

Overall, according to the existing legal framework, the parliament has the mandate, a broad scope of authority and a number of instruments to oversee the executive branch, including the security sector.

Key problems and challenges

Despite a number of oversight mechanisms available to the Members of Parliament, in practice, oversight of the executive branch by the ZK KR is non-systemic, incomplete and inconsistent, while parliamentary oversight of security and law enforcement agencies is even more limited and episodic. The causes are rooted in political, institutional and legal limitations. The first and most important cause is related to the current political model of the state. Even though, since the so-called April Revolution of 2010, which ousted the authoritarian rule of Kurmanbek Bakiyev, the state has charted a course towards parliamentary rule, the president still dominates the decision-making process and maintains significant leverage. In fact, the 2010 constitution laid the legal foundation for a presidential-parliamentary regime,

⁶⁶ K-News, (31 October 2014). "Five and a Half Million Soms Needed To Buy 2 Vehicles for Transportation of Prisoners". Available from: <https://knews.kg/2014/10/31/dlya-pokupki-2-avtomobiley-dlya-perevozki-zaklyuchennyih-nujno-55-mln-somov/>

⁶⁷ Evening Bishkek, (6 December 2018), "Elmira Surabaldieva Visits the Detention Center in Bishkek". Available from: www.vb.kg/doc/375312_elvira_syrabaldieva_otpravilas_v_ivs_gyvd_bishkeka.html

not a purely parliamentary one. Therefore, the president, not the parliament, remains the main political player.

One of the main barriers towards creating a real system of checks and balances lies in the fact that under the latest (2010 and 2016) constitutions, the parliament is able to approve the composition and actions of the cabinet, but remains unable to appoint the heads, or even deputy heads, of state agencies on defence and national security. The president is authorized to directly appoint and dismiss these officials (Article 64 of the constitution of the Kyrgyz Republic, paragraph 1, part 4). Direct and full subordination of the national security agency (the State Committee for National Security, SCNS [GKNB]) to the president gives the latter an advantage vis-à-vis the parliament. The president, in fact, uses the SCNS as a tool for sustaining his power by using it to intimidate his political rivals. The previous president, Almazbek Atambayev, who served from 2010 to 2016, used the SCNS to put pressure on his opponents by ordering the SCNS to open criminal cases against a number of MPs. The current president, Sooronbay Jeenbekov, is no exception to this rule. In other words, the legislature lacks any real leverage over the SCNS, which directly depends on the president.

Currently, in addition to intelligence and counter-intelligence functions, the SCNS also exercises police authority (to detain citizens, open criminal proceedings, conduct preliminary investigations and searches). Furthermore, in 2011, a decree by President Atambayev created the Anti-Corruption Service within the SCNS, authorized to prevent, expose and investigate crimes of corruption committed by persons in political office and high-ranking administrative government jobs, including Members of Parliament and employees of law enforcement, the judiciary and municipal authorities.⁶⁸ A president that has no other law enforcement agencies in direct subordination would be expected to expand the SCNS's police authority, which is exactly what happened. During the previous convocation of the parliament (2010-2015), the SCNS opened criminal proceedings against 14 ZK KR deputies. In the current convocation (2015-2020), criminal proceedings have already begun against 8 Members of Parliament. For example, in 2017, the SCNS opened a criminal case against a leader of the Ata Meken parliamentary faction, MP Omurbek Tekebayev, who was the main opponent of President Atambayev. Tekebayev opposed a referendum initiated by President Atambayev in late 2016, to amend the constitution that limited the powers of parliament.⁶⁹ He also called for the impeachment of President Atambayev. MP Tekebayev was later sentenced to eight years in prison on corruption charges that, in his opinion, was unlawful. He also claimed that his imprisonment was an effort to keep him off the presidential election ballot in 2017.⁷⁰ In this environment, MPs are concerned about their safety and not inclined to properly oversee or criticize the operations of the SCNS.

⁶⁸ Decree of the President of the Kyrgyz Republic of 14 December 2011, PD No. 27, "On Creation of the Anti-Corruption Service within the State Committee for National Security of the Kyrgyz Republic".

⁶⁹ Ibraimov, O., (3 March 2017), "Tekebayev vs. Atambayev: Has Confrontation Reached the Level of A Fight Without Rules?" Available from: <https://rus.azattyk.org/a/28345045.html>

⁷⁰ Radio Free Europe, (17 August 2017), "Kyrgyz Opposition Leader Tekebaev Handed Eight-Year Prison Sentence". Available from: <https://www.rferl.org/a/kyrgyzstan-tekebaev-8-year-sentence-/28680250.html>; Auyezov, O., (16 August 2017), "Kyrgyz opposition leader convicted ahead of election". Available from: <https://www.reuters.com/article/us-kyrgyzstan-politics/kyrgyz-opposition-leader-convicted-ahead-of-election-idUSKCN1AW2II>

Broadly speaking, the legislation of Kyrgyzstan contains a legal contradiction: according to the constitution (Article 74, part 3), parliament approves the composition and activities of the government, including on issues of security and defence, but does not appoint the heads of the relevant two agencies. The government (Article 88 of the constitution, part 1, paragraph 4) is responsible for implementing the measures to improve defence capacity, national security, and the rule of law, but the prime minister has no authority to submit to parliament a proposal to dismiss the heads of the state defence and national security agencies. According to the constitution, the president's authority does not extend to the national security function, but in reality, he is able to appoint and dismiss the heads of both of these state security agencies. As a result, parliament is deprived of a crucial and effective mechanism for influencing the operation of the SCNS via a means to influence its high-level staff.

In addition to the political and legal limitations, the parliament also faces institutional constraints. First, the Zhogorku Kenesh lacks a systemic approach; the parliament does not plan and implement its oversight activities to a sufficient degree. According to Aynura Altybayeva, a member of the current ZK KR (2015-2020), 'the oversight function is parliament's weakest area'.⁷¹ Furthermore, there is a lack of clearly developed by-laws to describe the procedures and mechanisms for overseeing the enforcement of the laws and resolutions adopted by the ZK KR; criteria for the assessment of government agency operations; reporting formats, and more. For example, the lack of a clear, pre-defined reporting format makes it impossible for government agencies to prepare reports that would satisfy the requirements of the 120 ZK KR deputies, which frequently results in unsubstantiated complaints on both sides and a lack of a full-fledged analysis of government agencies' operations.

An explicit institutional constraint is the parliament's lack of access to sufficient information regarding the operation of law enforcement and security agencies. Parliamentary inquiries sent to these services often remain unanswered, citing as the reason a demand for classified information, even when no secret information is being requested. For example, in 2012, human rights activist, Nurbek Toktakunov, requested information from the State Penitentiary Service about the level of funds allotted for meals, medicines and detergents for prisoners. The government agency replied that such information was also classified.⁷² Furthermore, Members of Parliament often lack the competence to properly oversee these services, and parliamentary committees lack expert groups able to assist in analysing security sector reports and in preparing recommendations.

The annual report of the parliamentary Committee on Law and Order, Crime and Corruption Prevention, for the period 1 September 2016 to 1 June 2017, indicates that the committee oversaw the implementation of five laws and four resolutions; heard reports from two

⁷¹ Interview with Aynura Altybayeva, (October 2018), Performance Evaluation Report, USAID/Kyrgyz Republic Country Development Cooperation Strategy Development Objective 1: Inclusive and Accountable Democracy, Social Impact.

⁷² Musabaeva, A., (2012), "Public Oversight Over Security Agencies in Kyrgyzstan: Current Status and Perspectives". Almanac On Security Sector Reform in the Kyrgyz Republic, DCAF.

government agencies, and approved the appointment/dismissal of one government official.⁷³ The committee also received 510 letters from citizens, of which 414 were related to the issues of rule of law, the army, the SCNS and other law enforcement bodies. This information suggests that parliamentary committees do oversee the security sector, but their oversight is far from being consistent and systematic, in comparison with their legislative functions. For example, for the same period, the committee considered 43 bills, including amendments to current laws, which is a considerable number of bills.⁷⁴

In summary, there exists a number of political, legal and institutional barriers that restrict high-quality and ongoing oversight of the security sector of Kyrgyzstan.

Budget oversight

In many developed countries, the parliament participates in the four phases of the budget cycle – preparation, approval, execution, and monitoring (audit) – in order to avoid excessive allocation of funds to the security sector, ensure effective utilization of funds, and satisfy public security needs. According to the law ‘On the Regulations of the ZK KR’ (Article 72), the draft law on the state budget is reviewed by the parliament according to the comprehensive approval procedure, in three readings.⁷⁵ During the review of the draft law on the state budget in the second reading, the Zhogorku Kenesh approves the state budget expenses item by item, divided into sections, groups and sub-groups according to budget classification, and forwards the budget to the responsible committee for preparation and submission for the third reading.⁷⁶ In other words, the legislators of Kyrgyzstan have the mandate to participate in the preparation of the budget for the security sector. However, many MPs themselves admit that their approval of the security sector budget is a mere formality, as many budget lines are classified and not sub-itemized, meaning that MPs are not in fact active in the budgeting process for the whole of the security sector, which includes all expenses such as procurement, personnel or other costs.⁷⁷

As for monitoring the execution of the budget, the Development Strategy of the ZK KR to 2021 notes that oversight of state budget execution and its adherence to the adopted national strategies and development priorities is the most problematic area for the parliament.⁷⁸ Deputies do not possess the knowledge and techniques required to monitor budget execution, and the parliament lacks a budget office that would assist deputies during the budget process (as is the case in the US Congress). Therefore, deputies are unable to assess

⁷³ Data for the Annual Performance Report of the Speaker of the Parliament, from 1 September 2016 to 30 June 2017. Available from: <http://www.kenesh.kg/ru/committee/9/show/komitet-po-pravoporyadku-borybe-s-prestupnostyyu-i-protivodeystviyu-korruptsii>

⁷⁴ Ibid.

⁷⁵ Law of the Kyrgyz Republic “On the Regulations of the ZK KR”, adopted in 2011.

⁷⁶ Ibid.

⁷⁷ Interview with Abdyvakhap Nurbayev, Member of the ZK KR, Committee for International Affairs, Defence and Security, April 2018.

⁷⁸ Development Strategy of the ZK KR to 2021. Approved by decree of the Zhogorku Kenesh of the Kyrgyz Republic of 6 October 2016, No. 958-VI.

budget execution effectively and independently and have to rely on the government's annual budget execution report.

At the same time, the parliament is failing to properly utilize the potential of the auditors of the Accounts Chamber in order to conduct full oversight of the use of funds by law enforcement agencies, even though audit is one of the most important instruments of parliamentary oversight. According to the law 'On the Accounts Chamber of the Kyrgyz Republic', parliament is authorized to issue instructions to the Accounts Chamber. Specifically, Article 11 of the law 'On the Accounts Chamber of the Kyrgyz Republic' states that 'the work plan of the Accounts Chamber shall include instructions from the president, the Zhogorku Kenesh and its profile committee, as well as government requests, while extraordinary oversight procedures are carried out by instruction of the aforementioned agencies.'⁷⁹ In its operations, the Accounts Chamber reports to the president and the Zhogorku Kenesh.⁸⁰ However, in practice, deputies don't always make use of the opportunity to address the Accounts Chamber. In some developed countries, such as the UK, the parliament may receive 50 reports from the Auditor (the National Audit Office) on the utilization of funds, including by the security sector, whilst the Audit Office may have received around 400 individual queries from deputies on various issues of state budget fund utilization.⁸¹

Furthermore, according to the Decree of the President of the Kyrgyz Republic Nr. 161 of 18 July 2016, 'On Measures to Reform the Law Enforcement System of the Kyrgyz Republic', 'results of the inspections conducted by the Accounts Chamber of the Kyrgyz Republic shall be forwarded, depending on the entity expected, to the SCNS [State Committee for National Security] or the SSPEC [State Service for Combating Economic Crime under the KR Government], for legal analysis...'. This requirement compromises the independence of the inspections conducted by the Accounts Chamber, especially when it comes to auditing law enforcement bodies. Overall, it can be concluded that the parliament has not made active use of the Accounts Chamber for monitoring expenses and their adherence to the adopted budgets and laws.

In comparison, the parliament has been cooperating more closely with the ombudsperson (Akyjickatchy) of the Kyrgyz Republic for oversight of the enforcement of laws and resolutions adopted by the Zhogorku Kenesh. For example, the ombudsperson has analyzed the progress and results of the enforcement of ZK KR resolutions related to the recommendations presented in the ombudsperson's annual reports. This institution also released several special reports on the issues of exercising the rights of law enforcement employees involved in national security. Examples of these are special reports 'On Social Guarantees of Law Enforcement Employees', 'On Ensuring Civil Rights during Conscription', 'On Ensuring the Rights of Military Service personnel' and 'On Ensuring the Right to Healthcare in Penal Colony

⁷⁹ Law of the Kyrgyz Republic, 'On the Accounts Chamber of the KR', Article 11.

⁸⁰ Ibid. Article 13.

⁸¹ Inter-Parliamentary Union and Geneva Centre for the Democratic Control of Armed Forces, (2014), "Parliamentary control over the security sector: principles, mechanisms and practical aspects. Manual for parliamentarians", Kiev, 2004. Available from: https://www.dcaf.ch/sites/default/files/publications/documents/ipu_hb_russian.pdf

N2'. Four of the seventeen special reports released by the ombudsperson were dedicated to issues of human rights in the context of law enforcement and security structures.

In contrast with other countries in Central Asia, the ombudsperson has the capacity to criticize the operation of law enforcement bodies (contingent on the political environment in the country), but it is too early to speak of this institution as being independent. Paradoxically, the ombudsperson's legal status, whereby he/she reports to the parliament, serves to undermine the effectiveness of his/her work. The ombudsperson must provide their annual report to the parliament, and the parliament can dismiss the ombudsperson if their report is deemed unsatisfactory. Furthermore, the ombudsperson is also dependent on the president, who has influence on the parliament during the review of the ombudsperson's annual reports and the assignment of new human rights commissioners. This compromises the ombuds institution's impartiality and independence. Furthermore, it faces numerous institutional problems, such as low talent density, high staff turnover, low public awareness of the institution and its work, and other issues that curtail its productivity. The overall conclusion is that this institution is still under development.

Conclusion

Parliamentary oversight of the security sector in Kyrgyzstan is being carried out only to a limited degree and lacks intentionality and regularity. Among the factors standing in the way of high-quality parliamentary oversight of the security sector are the dominance of the presidential branch within the government, and the parliament's institutional and legal limitations. Compared with other agencies of the executive branch, the law enforcement and security structures are subject to limited legislative oversight.

Recommendations

1. Parliamentary oversight of national security agencies should be strengthened, by improving the laws on regulations for the Zhogorku Kenesh and procedures to exercise the oversight functions. For example, the current legislation poorly describes mandates and rights of party factions in relation to parliamentary oversight. Moreover, legislation should also expand the mandate and powers of MPs, committees and factions in budgeting issues, including auditing of public expenses. The fulfilment of oversight functions by parliament should also be the focus of new legislation. For instance, requirements for parliament, committees and factions to have a quarterly and annual oversight plan, in the same way they now have obligatory legislative planning should be stipulated in new legislation.
2. Members of Parliament and staff attached to the committees lack the competence to evaluate the operations of national security agencies. Their capacity should be improved



through training and seminars. International donors could provide such capacity-building activities.

3. Parliamentary committees lack permanent expert groups capable of analysing national security agency reports and producing advisory services to MPs. Based on the experience of other countries (e.g. Hungary, France and Macedonia), it is recommended that an expert group attached to the committees be created, consisting of 5-6 external experts with expertise, experience and competence in the security sphere. These experts would assist MPs by:
 - providing recommendations on draft bills;
 - evaluating the compliance of internal regulatory acts adopted by national security agencies through the constitution and laws of the Kyrgyz Republic;
 - analysing citizens' complaints on civil rights violations by national security agencies in the course of investigations or other operations;
 - assessing the annual reports produced by the head of national security agencies.
4. Members of the parliamentary committees must have access to information such as internal regulatory acts and other documents of national security agencies, except information concerning cases under criminal investigation.
5. Profile parliamentary committees must publish their annual reports every year (omitting any investigation data provided by law enforcement agencies). These reports may include recommendations for improvements to the security sector addressed to the president, the prime minister, and the heads of special services and law enforcement agencies.
6. Profile committees, and the parliament in general, must have a clear plan for implementing oversight functions, including:
 - drafting a provision that clearly defines the objectives, targets and means of parliamentary oversight;
 - implementing clear formats and criteria for reports by executive bodies;
 - developing criteria for determining the effectiveness of state budget execution.

ANNEX 2.

The Law of the Kyrgyz Republic

On the Procedures for the Exercise of Parliamentary Oversight by the Zhogorku Kenesh of the Kyrgyz Republic

According to Article 70, paragraph 1, of the Constitution of the Kyrgyz Republic, the Zhogorku Kenesh, the parliament of the Kyrgyz Republic, is the supreme representative body that exercises legislative and oversight authority within the scope of its competence. The present law determines the procedures for the exercise of parliamentary oversight by the Zhogorku Kenesh of the Kyrgyz Republic.

Article 1. Strict adherence and compliance with the requirements of the Constitution and laws of the Kyrgyz Republic is the obligation of all citizens, officials and legal entities of the Kyrgyz Republic.

Failure to comply with, or violation of the laws shall result in criminal, civil or disciplinary liability as provided for by the current legislation of the Kyrgyz Republic.

Article 2. In accordance with Article 76, paragraph 2, of the Constitution of the Kyrgyz Republic, committees of the Zhogorku Kenesh of the Kyrgyz Republic shall oversee the enforcement of laws and resolutions adopted by the Zhogorku Kenesh of the Kyrgyz Republic.

Oversight of the enforcement of laws of the Kyrgyz Republic shall begin no earlier than six months after the respective laws takes effect.

Oversight of the enforcement of decisions made by the Zhogorku Kenesh of the Kyrgyz Republic in the form of resolutions on issues within its competence shall begin no earlier than the time specified in the resolution.

Persons charged with overseeing the enforcement of resolutions of the Zhogorku Kenesh of the Kyrgyz Republic shall notify the Zhogorku Kenesh of the Kyrgyz Republic about the state of enforcement once per quarter, or as specified in the resolution.

Article 3. Committees of the Zhogorku Kenesh of the Kyrgyz Republic shall organize their work to oversee the enforcement of laws and resolutions of the Zhogorku Kenesh of the Kyrgyz Republic based on the principles of legality, objectivity and transparency, and shall not practice frequent or unwarranted inspections of ministries, agencies, executive authorities, local self-governments, or organizations under any form of ownership.

Committees of the Zhogorku Kenesh of the Kyrgyz Republic shall not interfere in the operation of agencies of inquiry, investigators or courts.

Article 4. The inspection plan for the purposes of overseeing the enforcement of laws and resolutions adopted by the Zhogorku Kenesh of the Kyrgyz Republic shall be approved at a session of the respective committee and recorded in a resolution.

The inspected party shall receive official notification of the impending inspection at least 10 days in advance.

Article 5. To organize an inspection, work groups shall be created based on the resolution of the relevant committee of the Zhogorku Kenesh of the Kyrgyz Republic, comprising deputies and qualified experts and consultants from the staff of the Zhogorku Kenesh of the Kyrgyz Republic. As necessary, a relevant committee of the Zhogorku Kenesh of the Kyrgyz Republic may include in the work groups, deputies of local keneshs, specialists from ministries, government committees and administrative departments, employees of the Accounts Chamber, and independent auditors.

By approval of the heads of the office of the president of the Kyrgyz Republic and the office of the prime minister of the Kyrgyz Republic, the work group can also include responsible officers of the office of the president of the Kyrgyz Republic and the office of the prime minister of the Kyrgyz Republic. If necessary, employees of the prosecutor's office may be involved in the process of overseeing the precise and uniform enforcement of laws.

Article 6. On demand of the respective committees of the Zhogorku Kenesh of the Kyrgyz Republic, the heads of ministries, agencies, executive authorities, local self-governments, or organizations under any form of ownership shall provide the materials required to carry out the inspection for the enforcement of laws and resolutions adopted by the Zhogorku Kenesh of the Kyrgyz Republic, and create the necessary prerequisites for the inspection.

The inspectors shall have unimpeded access to visit relevant sites and information about the measures taken by respective heads towards the enforcement of laws and resolutions.

Article 7. Based on the results of the inspection for the enforcement of laws and resolutions adopted by the Zhogorku Kenesh of the Kyrgyz Republic, a committee of the Zhogorku Kenesh of the Kyrgyz Republic shall prepare a substantiated information notice and, if necessary, present it for review at a plenary session of the Zhogorku Kenesh of the Kyrgyz Republic, along with the draft of an appropriate resolution.

After reviewing the materials of the inspection for the enforcement of laws and resolutions adopted by the Zhogorku Kenesh of the Kyrgyz Republic, a resolution shall be passed, which shall be binding for the inspected party and its superior agencies and officials.

By decision of the Zhogorku Kenesh of the Kyrgyz Republic, the inspection results may be published in the media.

Article 8. While conducting oversight of the enforcement of laws and resolutions adopted by the Zhogorku Kenesh of the Kyrgyz Republic, committees of the Zhogorku Kenesh of the Kyrgyz Republic shall have the right to appeal to the relevant government authorities or

officials with a request to take appropriate measures in response to violation of, or failure to comply with, such laws or resolutions.

Article 9. Inspection materials containing evidence of the violation of laws or resolutions adopted by the Zhogorku Kenesh of the Kyrgyz Republic and elements of a crime shall be signed by the head of the committee of the Zhogorku Kenesh of the Kyrgyz Republic and sent to the prosecutor general of the Kyrgyz Republic.

The prosecutor general of the Kyrgyz Republic shall review the materials and provide an appropriate response regarding his/her decision to the relevant committee of the Zhogorku Kenesh of the Kyrgyz Republic, within the timeframe established by the legislation of the Kyrgyz Republic.

Article 10. Inspection materials containing evidence of the violation of laws or resolutions adopted by the Zhogorku Kenesh of the Kyrgyz Republic and elements of an offence under the Code of the Kyrgyz Republic on Administrative Liability, shall be sent by the relevant committee of the Zhogorku Kenesh of the Kyrgyz Republic, to the agency (official) authorized to review cases on administrative offences.

The officials of the aforementioned bodies shall inform the relevant committee of the Zhogorku Kenesh of the Kyrgyz Republic of the measures taken, within the timeframe established by the legislation of the Kyrgyz Republic.

Article 11. Inspection materials containing evidence of disciplinary violations shall be sent by the relevant committee of the Zhogorku Kenesh of the Kyrgyz Republic to superior agencies or officials with the authority to hold the responsible parties accountable and clear the violations.

The aforementioned officials shall inform the relevant committee of the Zhogorku Kenesh of the Kyrgyz Republic of the measures taken, within the timeframe established by the legislation of the Kyrgyz Republic.

Article 12. Inspection materials containing evidence of a violation without elements of a crime or administrative offence committed by officials and employees of ministries, agencies, executive authorities, local governments, or organizations under any form of ownership shall be sent by the relevant committee of the Zhogorku Kenesh of the Kyrgyz Republic to the relevant agency (official) according to the established procedure, so as to clear the violation and hold the responsible parties accountable.

The officials of the aforementioned agencies shall inform the relevant committee of the Zhogorku Kenesh of the Kyrgyz Republic of the measures taken, within the timeframe established by the legislation of the Kyrgyz Republic.

Article 13. Inspection materials containing evidence of the violation of civil rights and freedoms shall be signed by the head of the committee of the Zhogorku Kenesh of the Kyrgyz Republic, and sent to the prosecutor general of the Kyrgyz Republic, so as to take measures to eliminate the violations of the laws and resolutions adopted by the Zhogorku



Kenesh of the Kyrgyz Republic, redress the infringed rights, and hold responsible parties accountable.

The prosecutor general of the Kyrgyz Republic shall review the materials and provide a appropriate response with his/her decision to the relevant committee of the Zhogorku Kenesh of the Kyrgyz Republic, within the timeframe established by the legislation of the Kyrgyz Republic.

Article 14. Inspection materials containing evidence of corruption perpetrated by officials shall be signed by the head of the committee of the Zhogorku Kenesh of the Kyrgyz Republic, and sent to the prosecutor general of the Kyrgyz Republic in order to hold responsible parties accountable.

The prosecutor general of the Kyrgyz Republic shall review the materials and provide an appropriate response with his/her decision to the relevant committee of the Zhogorku Kenesh of the Kyrgyz Republic, within the timeframe established by the legislation of the Kyrgyz Republic.

Article 15. Results of the inspection for the enforcement of laws and resolutions adopted by the Zhogorku Kenesh of the Kyrgyz Republic can be contested by the inspected party, according to the procedure established by the legislation of the Kyrgyz Republic.

Article 16. If necessary, parliamentary hearings can be held to discuss the results of the inspection for the enforcement of laws and resolutions adopted by the Zhogorku Kenesh of the Kyrgyz Republic.

The heads of the relevant committees shall notify the Zhogorku Kenesh of the Kyrgyz Republic of the results of the committees' work to oversee the enforcement of the laws and decisions adopted by the Zhogorku Kenesh of the Kyrgyz Republic.

PARLIAMENTARY OVERSIGHT OF THE SECURITY SECTOR: UZBEKISTAN

Farkhod Tolipov

Director, Non-governmental Non-profit Research Institution, “Caravan of Knowledge”, Uzbekistan

Introduction

After gaining independence, post-Soviet countries faced the unprecedented undertaking of creating new national security and political systems in addition to the numerous new issues and tasks related to state-building and international relations. For the Republic of Uzbekistan, this task was complicated from both the institutional and political points of view. It was further affected by geopolitical challenges and linked to regional transformation processes in Central Asia. The emergence of new political structures had to manage particularities and divergent interests of various clans in the country and accommodate the role of a strong president, Islam Karimov, who led the country for 26 years.

Following Karimov’s death in 2016, his successor Shavkat Mirziyoyev launched an ambitious reform programme. Some of the worst human rights abuses (such as torture and forced labour) have since been reduced or completely phased out. Judges have become more independent, and the parliament has gained new powers.⁸² Furthermore, a new law ‘On Parliamentary Oversight’ was adopted in 2016, substantially strengthening the role of the parliament in the political context of Uzbekistan.

This is a very important year for Uzbekistan. In July 2019, a meeting was held between representatives of the Central Election Commission of the Republic of Uzbekistan and the Needs Assessment Mission of the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE). These discussions focused primarily on preparatory work for the upcoming elections in December 2019. The event also marked the first time in the history of the country that the OSCE mission was invited six months prior to an election taking place.⁸³ The results of the December voting may also bring new personalities and innovative dynamics vis-à-vis the security sector in Uzbekistan.

This article intends to reveal the extent of parliamentary oversight of the security sector in Uzbekistan through five parliamentary functions that influence security sector governance. These include the parliament’s legislative, budgetary, oversight, elective, and representative

⁸² Russell M., European Parliamentary Research Service, (2018), “Uzbekistan comes in from the cold”. Available from: [http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/630344/EPRS_BRI\(2018\)630344_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/630344/EPRS_BRI(2018)630344_EN.pdf)

⁸³ ODIHR Needs Assessment Mission Report, (9 - 11 July 2019). Available from: <https://www.osce.org/odihr/elections/uzbekistan/428687?download=true>
<http://www.elections.uz/en/events/news/45799/>

functions. Additionally, it provides background information on the institutional and legal aspects of the creation of Uzbekistan's national security system after its independence, primarily focusing on the Ministry of Defence, the Ministry of Internal Affairs, and the State Security Service. The article concludes that the parliament has begun playing a more substantial role in security oversight and that the legislative framework provides the necessary instruments to carry out the parliament's functions.

Key elements of national security institutions in Uzbekistan

At the initial stage of Uzbekistan's independent development, the institutional aspects of its state policy in the sphere of national security were mainly related to two areas of focus: 1) creating an appropriate legal framework for the national security system;⁸⁴ 2) creating new national security agencies and reforming existing (Soviet) ones. There are three main agencies that deal with national security in Uzbekistan: the Ministry of Defence, the State Security Service, and the Ministry of Internal Affairs.

Just as in other Central Asian states, Uzbekistan's armed forces were established in the aftermath of the Soviet Union's collapse and the consequent dissolution of units of the Soviet Army. The armed forces of Uzbekistan were created on the basis of the former Turkestan Military District (TurkVO), which was eliminated in 1992. The command of TurkVO was located in Tashkent, thus granting Uzbekistan a relatively favourable starting position in its region in terms of organizational and material resources. Capacity-building for internal security did not require as dramatic a reorientation as for external security, since the goal was to provide the same general type of internal security as had been prioritized during Soviet times. However, the great challenge was to reorient loyalty towards the newly independent regime. Efforts to assure these new orientations of loyalty were implemented through a dramatic reduction in officers of Russian background, thus forming an overwhelmingly Uzbek officer corps by the mid-1990s.⁸⁵ In 2000, a Joint Staff of the Armed Forces was created as a single command body that would develop and implement resolutions in the sphere of the armed defence of Uzbekistan's sovereignty and territorial integrity. This agency carries out operational and strategic planning and manages troop deployments. In the everyday implementation of national security, the Ministry of Defence is largely assigned a backup role, as the main purpose of the institution revolves around protection of the state from

⁸⁴ The "Provision on the National Security Service of the Republic of Uzbekistan" was adopted in 1991 (with further amendments in 1995, 2002, 2005, and 2018). In 2018, the National Security Service was renamed the State Security Service. 1992 saw the adoption of the Law of the Republic of Uzbekistan, "On Defence" (amended in 2001, 2004, and 2006). In 1992, the Provision "On the Ministry of Internal Affairs of the Republic of Uzbekistan" (amended in 1994, 2002, and 2006) was adopted. In 1995, the National Security Concept of the Republic of Uzbekistan was adopted. The Military Doctrine of the Republic of Uzbekistan was adopted in 1995 (substituted by the Defence Doctrine in 2000). In January 2019, a new Defence Doctrine was adopted, with its contents being made public for the first time. A new National Security Concept was to be adopted in 2018.

⁸⁵ Hartog M., (2010), "Security Sector Reform in Central Asia: Exploring Needs and Possibilities". The Centre of European Security Studies. Available from: https://www.files.ethz.ch/isn/119141/SSR_full-text.pdf

foreign threats. Nevertheless, units of the Ministry of Defence were successfully used to repel terrorist groups when they invaded the Surxondaryo region of Uzbekistan.⁸⁶

Within the Ministry of Defence is the National Guard of Uzbekistan; a thousand-strong paramilitary body created in 1992 without a clear function. However, since President Shavkat Mirziyoyev took office, the Guard has enjoyed overwhelming support from the government allowing it to re-emerge as a major domestic law and order body. Mirziyoyev has not only delegated the tasks of protecting public order, fighting domestic terrorism, and guarding state assets to the Guard, but has also entrusted it with his own protection.⁸⁷

Until recently, Uzbekistan's national security agencies were dominated by the National Security Service (NSS), which bore the bulk of responsibility for national security policy. In the late 1990s and early 2000s, the NSS, including its central agencies, underwent a process of reformation. Uzbekistan continued to unite domestic and foreign intelligence in the powerful hands of the National Security Service. The NSS has witnessed little change in substance or structure since its time as the Uzbek Republic's KGB (Soviet Committee for State Security) branch when it was comprised of three departments: foreign intelligence (2nd), counter-intelligence, and signals intelligence (6th). In 1996, the 2nd and 6th departments were transferred to the NSS from military intelligence. The NSS has also maintained its own paramilitary structures and is tasked with controlling the country's border service. Consequently, the National Security Service was considered the key to ensuring regime survivability and stability and is widely regarded as the leading intelligence agency in Central Asia in terms of its overall capacity.⁸⁸ In December 2017, President Shavkat Mirziyoyev criticized the security forces for abusive practices and excessive powers. As a result, the NSS was renamed the State Security Service (SSS) and had many of its powers curtailed.⁸⁹ The service also underwent a significant structural change as dozens of officers and senior law enforcement officials, including prosecutors, were dismissed or arrested. In January 2018, Rustam Inoyatov was removed from his post as SSS head and given a new role as presidential adviser.⁹⁰

Another agency that plays an important part in the national security system is the Ministry of Internal Affairs (MIA), which has also undergone recent reforms. It can be viewed as the second most important agency within the sphere of national security, but any comparison between it and the SSS is rather tenuous. In fact, many observers and analysts believe that there is an element of rivalry between the SSS and the MIA.⁹¹ The SSS and MIA forces made

⁸⁶ Author's interview.

⁸⁷ Hashimova U., (2019), "The National Guard of Uzbekistan: Rising Profile, Lingering Problems". Available from: <https://thediplomat.com/2019/02/the-national-guard-of-uzbekistan-rising-profile-lingering-problems/>

⁸⁸ McDermott R., (2013), "Central Asian Security Post-2014. Perspectives in Kazakhstan and Uzbekistan", DIIS Report. Available from: https://www.diis.dk/files/media/publications/import/extra/rp2013-12-mcdermott-kazakhstan_web.jpg_1.pdf

⁸⁹ Russell M., (2018), "Uzbekistan comes in from the cold", European Parliamentary Research Service. Available from: [http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/630344/EPRS_BRI\(2018\)630344_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/630344/EPRS_BRI(2018)630344_EN.pdf)

⁹⁰ Ibid.

⁹¹ Author's field interview with experts in February 2019.

up the bulk of the security forces involved in the quelling of the well-known Andijan unrest in May 2005.

Uzbekistan has the necessary institutional framework for its national security system. However, the above only shows a static picture of the relevant areas. When it comes to real-life operation of security structures, it is obvious that their respective statuses are asymmetrical to one another in terms of their potential, cooperation and fitness for modern-day national security challenges. It should also be noted that since Uzbekistan's independence, its national security institutions have undergone constant reforms. The combined uniqueness of the state's independence and its national security tasks means that these institutions must constantly adapt to new conditions and continually increase their operational effectiveness.

Parliamentary participation in state security policy development and oversight

The highest representative body of the state is the Oliy Majlis (Supreme Assembly) of the Republic of Uzbekistan. This body exercises legislative powers and a proposal to change its structure was approved in a referendum on 27 January 2002. The Oliy Majlis of the Republic of Uzbekistan was enacted on 1 June 2004 as a bicameral parliament consisting of the Legislative Chamber and the Senate.

The adoption of the law 'On Parliamentary Oversight' took place on 10 March 2016. This law is of paramount importance for the development of the parliament, further democratization of state governance and management, and the development of effective mechanisms for the implementation of the constitutional principle of separation of branches of government, including a system of checks and balances. The law also provides for the following forms of parliamentary oversight that are linked to security:

- approval of the state budget of the Republic of Uzbekistan, budgets of dedicated government funds, and the main direction for tax and budget policy for the subsequent year, and review of the progress of state budget expenditures;
- review of the annual report of the cabinet of ministers of the Republic of Uzbekistan on the critical socio-economic issues affecting the state;
- hearing the report by the prime minister of the Republic of Uzbekistan on specific relevant issues of socio-economic development of the state;
- hearing the reports by members of the government on issues in their purview, at sessions of the Legislative Chamber and the Senate;
- hearing the responses provided by members of the government to questions posed by deputies of the Legislative Chamber, at sessions of the Legislative Chamber;
- hearing the report by the prosecutor general of the Republic of Uzbekistan;

- parliamentary inquiry;
- inquiries by deputies of the Legislative Chamber or members of the Senate;
- hearing of reports by heads of government agencies and economic governance agencies at committee sessions of the Legislative Chamber and the Senate;
- analysis by committees of the Legislative Chamber and the Senate of the implementation status of legislative acts, enforcement of laws, and the monitoring of the adoption of by-laws;
- parliamentary investigation.

The Parliamentary Oversight Act clearly defines targets, forms and procedures for parliamentary oversight not only of executive bodies but also of law enforcement agencies. It provides for hearings in order to receive reports on their activities, parliamentary and members' questions sessions, monitoring of the implementation of laws after their adoption and the right to conduct parliamentary inquiries.

In January 2017, the Strategy of actions on five priority directions of development of the Republic of Uzbekistan in 2017-2021 was adopted⁹². Paragraph 1.1 of the Strategy, the 'further strengthening of the role of the Oliy Majlis and political parties in the extension of democratic reforms and modernization of the state', determines the following tasks: strengthening the role of the Oliy Majlis in the state governance system and further expanding its authority during the resolution of key foreign and domestic policy tasks and in parliamentary oversight [emphasis added] of the executive government branch.

The parliament creates laws that determine and possess sufficient legislative functions. At the same time, it should be noted that adoption of legislative acts in the sphere of national security is a process that can be described as being president-centric, that is one that is contingent on the will and oversight of the president and his staff (from 2018, the staff was renamed presidential administration), since every draft bill undergoes approval by the respective departments of the presidential administration. In this sense, the deputies, who are meant to carry out oversight of the military sector, are themselves under the president's control. This is exactly why the Oliy Majlis is not fully free to carry out its main mission.

The Oliy Majlis also plays an important role in the approval, amendment and rejection of the state budget. For example, the parliament rejected the 2019 draft budget before amendments were made. It is important to note that there are no provisions in the current legal framework that clearly indicate how parliament can make changes to the draft budget within the budgetary ceiling, without the approval of the cabinet of ministers. Furthermore, there are no clear procedures for resolving disputes in cases where the positions of the government and parliament differ.⁹³

⁹² Ministry of Foreign Affairs of the Republic of Uzbekistan, (2019), "Action Strategy". Available from: <https://mfa.uz/en/press/news/actionstrategy/>

⁹³ British Embassy Tashkent and the WFD, (2019), "Review of Parliamentary Practice in Uzbekistan". Available from: <https://www.wfd.org/wp-content/uploads/2019/06/WFD-Report-on-Parliamentary->

Starting in 2018, the parliament has begun to progressively exercise more oversight of defence and security. A symptomatic event relating to this was the press conference held in the National Press Centre of the Committee of the Senate of the Oliy Majlis of the Republic of Uzbekistan on the issues of defence and security, revolving around the results of the committee's work in the first half of the current year and its priority tasks for the future.⁹⁴ At the press conference, the senators spoke of progress in carrying out the committee's tasks relating to the review of laws in the sphere of defence and security and the exercise of systematic parliamentary oversight of the enforcement of laws, the implementation of respective government programmes, the ensuring of the security of the state, both internally, and from outside threats, and the course of the ongoing reforms in the armed forces and military development. The President of Uzbekistan Shavkat Mirziyoyev, speaking at a session of the Security Council in the Armed Forces Academy on 10 January 2018, emphasized that the provisions of the Defence Doctrine must not remain on paper only, but that their practical implementation must be ensured. In connection with this, it would be feasible for the Oliy Majlis to carry out continuous parliamentary oversight of the implementation of the Defence Doctrine. Overall, the deputies and senators must pay more attention to military development issues and intensify their work in that direction. Sessions of the chambers of the Oliy Majlis should discuss the state of affairs in their respective fields once per quarter.⁹⁵

Several examples of the operations conducted by Committee on defence and security can be provided. Under the heading of oversight measures, the committee heard the report by the interior minister of the Republic of Uzbekistan on the work of the law enforcement agencies in the sphere of crime fighting and prevention. Another instance is the hearing of a report by the deputy interior minister on the implementation of the provisions of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In accordance with the committee's work plan, it investigated the enforcement status of the law 'On General Conscription and Military Service' as relates to service in the mobilization enlistment reserve, and basic pre-service youth training. Based on these results, a parliamentary inquiry was sent to the prime minister of the Republic of Uzbekistan. As in other parliaments, the deputies of the Oliy Majlis have the right to address deputies' inquiries to different bodies of state governance and management. Through their inquiries, the deputies can receive relevant information on military issues.

The Oliy Majlis also possesses several elective functions. For instance, parliament rather than the president now nominates the prime minister and has the power to dismiss the government by a vote of no confidence.⁹⁶

[Practices-in-Uzbekistan-2019-in-English.pdf](#)

⁹⁴ [Hmeningfikrim.uz](https://meningfikrim.uz), (August 2018). Available from: <https://meningfikrim.uz/ru/news/view/142>

⁹⁵ [Gazeta.uz](https://www.gazeta.uz), (11 January 2018). Available from: <https://www.gazeta.uz/ru/2018/01/11/security-council/>

⁹⁶ British Embassy Tashkent and the WFD, (2019), "Review of Parliamentary Practice in Uzbekistan". Available from: <https://www.wfd.org/wp-content/uploads/2019/06/WFD-Report-on-Parliamentary-Practices-in-Uzbekistan-2019-in-English.pdf>

The parliament fulfils its representative functions by providing public debate on security. For instance, on 31 July 2018, the Oliy Majlis's committee on the issues of defence and security organized a roundtable discussion on the implementation of the Defence Doctrine, and the tasks and orders of the president of the Republic of Uzbekistan and Supreme Commander of the Armed Forces of the Republic of Uzbekistan, Shavkat Mirziyoyev. These orders were originally announced on 10 January 2018, at the session of the Security Council dedicated to determining the measures and top-priority tasks for further reform and development of the armed forces. During the roundtable discussion, proposals were voiced about the necessity for more active deputy participation in the implementation of a 'roadmap'. This entails effective parliamentary oversight of the operations of organizations involved in the construction of apartment blocks for military service personnel; intensified construction of 'military-patriotic parks' in regional centres; and more active operation of regional departments of the public council of the Ministry of Defence.⁹⁷ In order to provide a broad public explanation of the essence and relevance of the laws being adopted, senators made 860 appearances on television and radio in addition to publications in the print media. Furthermore, over 7,224 citizens were received at the Senate and in local offices in order for the public to be informed on the measures taken as part of the government programmes. To enable detailed research into the concerns of voters and to take measures to address them, the committee members also held 238 meetings with constituents. A total of 4,030 addresses from private individuals and legal entities were received by the committee which sent over 50 senatorial inquiries to government agencies and authorities to resolve the issues raised.

Conclusion

Today, the Uzbek parliament has taken a more prominent role in government oversight of the security institutions in Uzbekistan. In January 2018, Mirziyoyev himself criticized the parliament for its passivity, pointing out that the vast majority of legislative initiatives still came from the executive branch.⁹⁸

The 2016 Parliamentary Oversight Act significantly strengthened the role of the parliament and defined targets, forms and procedures for parliamentary oversight not only of executive bodies but also of law enforcement agencies. It also provided for hearings in order to receive reports on their activities, parliamentary and members' questions sessions, monitoring of the implementation of laws after their adoption, and the right to conduct parliamentary inquiries. There are many instances that illustrate the system's proper functioning.

Furthermore, the parliament has been equipped with relevant oversight mechanisms and has taken part in the adoption or rejection of budgets, the discussion of security policies,

⁹⁷ Oliy Majlis of Uzbekistan website, (2018). Available from: <http://parliament.gov.uz/ru/events/committee/24143/>

⁹⁸ British Embassy Tashkent and the WFD, (2019), "Review of Parliamentary Practice in Uzbekistan". Available from: <https://www.wfd.org/wp-content/uploads/2019/06/WFD-Report-on-Parliamentary-Practices-in-Uzbekistan-2019-in-English.pdf>



and the hearing and questioning of reports by security ministries. Some improvements could be made in relation to the reinforcement of elective and legislative functions, though progress is often hampered as they are linked to the nature of the political system and the strong presidential role.

Some changes can be expected during 2019. The parliamentary elections are likely to be held in December 2019, presenting an opportunity for new personalities to make the Oliy Majlis more proactive.

PARLIAMENTARY OVERSIGHT OF THE SECURITY SECTOR: TAJIKISTAN

Parviz Mullojanov

Freelance researcher from Tajikistan

One of the most pressing challenges facing the Republic of Tajikistan today is the development of an effective and modernized security system. Of particular importance is the combination of the two notions – effectiveness and modernity – as interpreted by the Tajik government. In post-conflict Tajikistan, the issue of effectiveness is increasingly given priority, while the need for the republic’s security system to conform to appropriate international standards, essentially, fades into insignificance.

Tajikistan operates a so-called ‘hybrid’ security model, which combines democratic and authoritarian features. The former includes the existence of a constitution and a legal framework that are largely in accordance with international standards for democratic rule; Tajikistan possesses key democratic institutions, such as a bicameral parliament, political parties and public associations, it conducts general parliamentary and presidential elections, and officially recognizes democratic rights and freedoms. At the same time, Tajikistan remains close to the bottom of most international democracy ratings, which usually classify it as an authoritarian state.⁹⁹

This raises a number of questions, answers to which are critical for the future of Tajikistan. Such questions include: what is the ratio of democratic to authoritarian elements in the current security system? To what degree can democratic institutions (primarily, the parliament) oversee the operation of law enforcement agencies? And, what is the role of the Tajik parliament in oversight of the security sector?

This article is divided into three parts: the development of the security sector in Tajikistan; composition and operation of the parliament; and the legal framework of oversight.

Development and characteristics of the security sector of Tajikistan

The characteristics of the existing security sector of the Republic of Tajikistan (as well as its specific understanding of the concept of national security) stem from its post-Soviet past and, critically, the civil war that raged in the country between 1992 and 1997. Specifically, the following factors influenced the creation and nature of the Tajik security sector:

⁹⁹ The Economist. “Democracy Index 2017, Free Speech Under Attack”. Available from : https://pages.eiu.com/rs/753-RIQ-438/images/Democracy_Index_2017.pdf

Throughout the civil war and up until 2001, a network of field commanders not subordinated to the central government, operated in Tajikistan. In many districts and regions of the republic, the field commanders essentially took over the functions of the executive branch. To a large degree, they acted as independent foci of power, while a number of them looked to neighboring Uzbekistan for weapons and funds. As a result, in 1996-1998, Tajikistan was rocked by a series of major military coups and anti-government uprisings, inspired and prepared by foreign parties.

Furthermore, up until the early 2000s, field commanders and the units under their leadership accounted for a large share of security staff and had significant representation in the executive and legislative branches of government. In several convocations, field commanders made up a significant portion of government deputies and exercised direct influence over the legislative branch. For instance, the Tajik media dubbed the people's assembly in the 1995 convocation 'The Militant Parliament,' as it included over 30 of the most influential field commanders. Furthermore, during this period, a number of leading field commanders of the pro-government People's Front were at the head of the key security ministries: Yakub Salimov was the interior minister, Kurbon Cholov led the special law enforcement forces in the Kulyab region and Ghaffor Mirzoyev, the presidential guard, while Saidsho Shamolov commanded the special battalion of the Ministry of Security, and Khudja Karimov was the deputy regiment commander in the armed forces of the republic.¹⁰⁰

Correspondingly, throughout the duration of the civil war and the subsequent post-conflict period, the bulk of Tajikistan's government's efforts were directed at forging strong vertical power. As a result, today Tajikistan has its own rather specific model of national security, with the following key characteristics:

First, the concept of national security is mainly viewed through the prism of domestic political stability. Official propaganda cites political stability as the prerequisite for maintaining national statehood and independence. The issues of democracy and human rights are very much of secondary importance.

This approach is comprehensively described by Abdullo Rahnamo, a leading member of the Center for Strategic Research under the President of the Republic of Tajikistan. According to Rahnamo, Central Asia is caught in a power struggle between the main geopolitical players in the midst of a global crisis, and foreign powers are relying on the 'fifth column' within the country, represented by opposition parties and 'foreign-sponsored' local NGOs, media, etc. Thus, Rahnamo believes that preserving stability is the most important issue under such conditions, 'when projects aimed at defence and stability take precedence over projects preoccupied with reforms ... while the need to protect national interests, stability and security becomes more vital than unlimited guarantees of the "right to access information"'.¹⁰¹

¹⁰⁰ Shodiyev, H., (2015), "The Militant Parliament", IA ASIA-Plus. Accessed in February 2019 from: <https://news.tj/ru/news/parlament-boevikov>

¹⁰¹ Rahnamo, A., (2015), "Safety is the Number One Issue!", Khovar State Information Agency. Available from: <http://khovar.tj/2015/11/amniyat-masalai-ra-ami-yak/>

Naturally, with this approach, establishing total control over society may be important, and in which security ministries play a particular role. On the other hand, it is equally important to oversee the loyalty of security personnel and ensure their subordination within a rigid administrative hierarchy. In other words, this model entails a reality where security ministries exclusively report and are subordinated to the executive branch, while their accountability to the parliament is only a reality on paper.

Therefore, part of the heritage of Tajikistan's civil war is its strictly vertical system of governance. At the top of the government pyramid are the staff of the president of the Republic of Tajikistan, which essentially oversee both the executive and the legislative branches. In this system, the parliament has a *de jure* right to request reports from the security agencies, yet the deputies, according to their own admission, do not often exercise this right.¹⁰²

The dependent nature of the legislative branch is exacerbated by the fact that during almost the entire post-Soviet period of Tajikistan's history, its parliament (Majlisi Oli) has been almost entirely made up of pro-government parties. Even in its strongest times, the Tajik opposition had no more than 7 seats out of 63 in the Lower Chamber of the Majlisi Oli (parliamentary elections of 2000 and 2005). Today, the Tajik parliament is virtually single-party: the ruling People's Democratic Party of Tajikistan holds 51 seats, with the rest given to pro-government parties.¹⁰³ Naturally, under these conditions, the Tajik parliament is far from being independent of the executive branch, which significantly limits the possibility of it overseeing the operation of security structures.

Second, the civil war also left a high level of suspicion (even by the region's standards) towards civil society and its key institutions, non-governmental organizations, and independent mass media. Furthermore, this prejudice against civil society also results from a successful 'ideological export' from the Russian Federation, where conspiracy theories and anti-West rhetoric have been integrated into state ideology. Tajikistan still remains within Russia's information space, which significantly affects its attitude towards civil society institutions, which are viewed as 'agents of foreign influence'.¹⁰⁴

Meanwhile, according to human rights organizations, the human rights situation is becoming worse in terms of the rights of prisoners and military service personnel; over the past few years, there has been a sharp rise in the incidence of torture in detention facilities.¹⁰⁵ An indication of the scale of the problem can be seen from the recent riot in the Khujand city prison, in which dozens of people lost their lives. The prison riot had resulted from large-scale mistreatment of prisoners by the prison administration. However, the deeper causes of this event are rooted in ineffective parliamentary oversight of the security sector. For

¹⁰² Interview with a former deputy of the Majlisi Oli, 2010 convocation.

¹⁰³ ASIA-Plus, (12 March 2015), "Central Election Committee of Tajikistan announces final results of parliamentary elections". Accessed in February 2019 from: <http://www.news.tj/ru/node/204774>

¹⁰⁴ Radio Ozodi, (9 May 2018), "Study: Tajikistan - least pro-Western country in the post-Soviet area". Available from: <https://rus.ozodi.org/a/29216596.html>

¹⁰⁵ Eurasianet, (23 May 2012), "UN Report - Tajikistan: Cruelty is the main tool of investigation". Available from: <http://russian.eurasianet.org/node/59362>

years, international and local human rights organizations had appealed in vain to the Tajik government with proposals to conduct monitoring of prison colonies and cooperation within a social partnership. Meanwhile, according to publicly available information, the Tajik parliament had not requested a single report from the security sector about the latter's abuse of authority.¹⁰⁶ Furthermore, in the aftermath of the Khujand prison riot, the Tajik parliament did not organize any special hearings nor requested reports from the heads of the state penitentiary system.

Composition and operation of the parliament

The operation of the Tajik parliament is, to a large degree, determined by a range of additional factors. Firstly, it works on principles established by the deputy corps. To this day, the Majlisi Oli is formed based on nominations carried out according to the party list of the People's Democratic Party of Tajikistan, with prior approval of the political leadership, particularly the staff of the president. A widespread practice is for the ruling party to nominate former officials to deputy posts, including former officials from the security sector and employees of different security agencies who are nearing retirement.¹⁰⁷ With the deputy corps being formed in this way, the parliament has virtually no representatives from civil society, NGOs, media, the independent expert community, or human rights organizations. Ultimately, this also significantly impairs the ability of the deputy corps to exercise their right of overseeing the security sector.

Therefore, despite having access to the standard toolkit for oversight (which is mostly compliant with international norms), the members of the Tajik parliament don't make anywhere near full use of it. Unlike in many other countries, the Tajik deputy corps has no budget-related leverage over the security ministries, either. The Majlisi Oli approves the budget proposed by the executive branch, essentially never opposing the option being proposed. This is another area where the parliament's functions are largely those simply of approval, which further impairs its ability to oversee the security sector.

Legislative framework and the constitution

According to the constitution, Tajikistan has a presidential regime. The president is the central figure in the administrative system, considered the head of state and the head of the executive branch. Additionally, he is vested with broad authority in the security sector; according to Article 10 of the law on national security, the president holds a key position in the system of government agencies and is granted broad authority within this sphere.

¹⁰⁶ News Tajikistan, (9 November 2018), "Prison riot: The main question - why did the authorities not try to negotiate?". Available from: <http://www.toptj.com/News/2018/11/09/bunt-v-kolonii-glavnyy-vopros---pochemu-vlasti-ne-pytalis-vesti-peregovory>

¹⁰⁷ Interview with a former deputy of the Majlisi Oli in February 2019.

The president is the Supreme Commander of the Armed Forces, and is also responsible for creating the Security Council, declaring states of emergency, and deploying the republic's armed forces abroad. Meanwhile, the role of the government in the security sphere is not clearly defined in the legislation of Tajikistan.¹⁰⁸

According to the current constitution, the president can introduce, remove, or extend special regimes. At the same time, the constitution does not determine the parliament's role in the oversight of these regimes' implementation.¹⁰⁹ Therefore, the Tajik parliament is not able to fully oversee the operation of the executive authorities charged with implementing the respective decisions of the president.

Thus, as mentioned above, the parliament mainly acts as a body for approval; in other words, the authority of the Majlisi Oli is limited to approving the decisions of the head of the executive branch. According to legislation, the parliament cannot influence the president's acts, and has no right to make a ruling to remove him from his post. It follows that the legislation and constitution of Tajikistan do not simply fail to strengthen parliament's oversight of the executive branch, but actually restrict it, to a certain degree.

Overall, the principle of supremacy with regards the legislative branch in the security sphere is not firmly enshrined in Tajik legislation. The main role within this sphere is designated to the president, as well as to different agencies and departments in the executive branch.¹¹⁰

In 2016, a nationwide referendum was held in Tajikistan on the matter of amending the constitution; the leadership role of the executive branch was further confirmed during this latest amendment. In addition, the constitution served to further strengthen presidential power and specifically that of the current president, Emomali Rahmon, who, based on the referendum results, was awarded lifelong status as leader of the nation (*Peşvo'i millat*); thus, the president's role as the head of the executive branch was confirmed and further reinforced by this legislation. According to the amendments, 'the legal status and authority of the Founder of Peace and National Unity, Leader of the Nation, are determined by the Constitutional Law'.¹¹¹

The same amendments eliminated the Council of Justice of the Republic of Tajikistan, whose head was traditionally appointed by the president. Now, the judiciary has been subordinated to the supreme court of the Republic of Tajikistan, whose members are elected by the Majlisi Oli by proposal of the head of state. According to independent experts, this step was in response to criticism by international organizations that had accused the Tajik judiciary of being corrupt and insufficiently independent. Cited as evidence was the fact that the head of the Council of Justice was appointed by the president, not elected. At the same time, critics believe that given the parliament's current dependence on the executive branch, any positive impact of this measure will be minor.¹¹²

¹⁰⁸ Vashakmadze, M., (2011), "Legal framework of the security sector of the Republic of Tajikistan". DCAF.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ In the World, (22 May, 2016), "Constitutional referendum begins in Tajikistan".

¹¹² Radio Ozodi (Liberty), (10 August 2016), "Why has the Council of Justice been abolished?". Available

The de facto single-party rule also restricts parliament's ability to influence the security sector. An overwhelming majority of deputies belong to the ruling People's Democratic Party of Tajikistan, in which they have been long-time members. Other parties with seats in the Majlisi Oli – the Agrarian Party, and the Party of Economic Reforms – are not from the opposition and are traditionally pro-government. Under these conditions, the parliament of Tajikistan cannot exercise independent oversight, nor can it act without prior approval of the executive branch; therefore, the Majlisi Oli offers virtually no response to the numerous cases of abuse of authority by law enforcement agencies, or cases of vicious initiation rituals of military service personnel and draftees by higher-ranking service members.

On the other hand, the existing legislative framework fails to clearly define the parliament's authority in security oversight. Independent experts believe that the parliament still lacks a clear procedure for organizing hearings to review the reports of security agencies.¹¹³ According to deputies, the parliament reviews reports of the anti-corruption agency and other security ministries. However, experts believe that the State Committee on National Security (SCNS of the Republic of Tajikistan) 'unlike other security agencies, which deliver reports before media representation several times a year, remains one of the most closed agencies'.¹¹⁴ The SCNS's special status is, to a large degree, determined by the specificities of Tajikistan's legislative framework. According to specialists, the legislation of the Republic of Tajikistan is aimed at strengthening the centralized security system, 'that remains under the governance of the powerful state national security committee'.¹¹⁵

The State Committee on National Security of the Republic of Tajikistan is charged with key functions in supporting the state's security sector. Unlike many other countries, where such departments are mainly involved in intelligence and data collection, the Tajik SCNS combines a whole range of law enforcement and military functions, such as search, detection, investigation of economic, political and corruption-related crimes, large-scale military-political operations, and others. This broad spectrum of authority is, to a large degree, left over from the Soviet system, under which the KGB was also, essentially, supervising the entire government and public security sector. In this regard, the Tajik SCNS is reminiscent of its Soviet predecessor, primarily, from the point of view of its methods and approaches to problem-solving within the security sector.

Conclusion

Tajikistan's current understanding of the term 'national security' mainly means political stability. Correspondingly, the operation of security agencies is aimed at preserving the political system created as a result of the civil war. The security sector is geared towards

from: <https://rus.ozodi.org/a/27790119.html>

¹¹³ Author's interview in February 2019.

¹¹⁴ IA ASIA-Plus, (7 June 2013), "Who is protected by law enforcement?". Accessed in February 2019 from: <https://news.tj/ru/news/kogo-zashchishchayut-pravookhranitelnye-organy>

¹¹⁵ Vashakmadze, M., (2011). "Legal framework of the security sector of the Republic of Tajikistan", DCAF, p.13.

preventing any manifestations of opposition and anti-government propaganda, and the neutralization of ideological and political movements against the current government. In the scope of these missions, Tajik security structures are granted a very broad range of authority and resources. Plus, security agencies are under strict subordination in a centralized, pyramidal structure of government, which holds a de facto monopoly of their oversight and monitoring.

Under these conditions, there are very real obstacles to achieving supremacy of the legislative branch in the security sector. The FRIDE/EUCAM report on the issue of security reforms in the region describes the situation in Tajikistan as like other countries of Central Asia, where law enforcement agencies should serve the people, but they instead serve the interests of the government, whilst security-related issues largely hinge on the president and his entourage. Furthermore, the parliament and public associations have no means of overseeing their work or demand that they fulfil their obligations.¹¹⁶

Thus, Tajikistan is a vivid example of a conflict prevention practice typical of authoritarian and hybrid political regimes. UK researchers David Lewis and John Heathershaw characterize this practice as authoritarian conflict management (ACM), whereby the government mainly uses force-based and authoritarian methods to maintain long-term stability.¹¹⁷ ACM practice usually entails achieving political stability through the increased role of security agencies and the decreased role of the parliament, civil society and the media; and strict government control over the societal and ideological discourse established by law enforcement. Another typical feature of ACM is the militarization of security agencies, combined with a virtual lack of parliamentary and civil oversight of these security agencies.

The environment in Tajikistan during the past 10 years has been one where the role and influence of security structures in society has been inexorably increasing, while the authority and competence of civil society have been decreasing, equally inexorably. Furthermore, the parliament has grown progressively less independent, ultimately 'getting rid of' the representation of opposition parties and essentially turning into an extension of the executive branch. In the light of these trends, one can assume with a degree of confidence that during the next decade supremacy of the legislative branch in the security sector will remain out of Tajikistan's reach.

¹¹⁶ IA ASIA-Plus, (7 June 2013), "Who is protected by law enforcement?". Accessed in February 2019 from: <https://news.tj/ru/news/kogo-zashchishchayut-pravookhranitelnye-organy>

¹¹⁷ Lewis, D., Heathershaw, J., and Megoran, N. (2018), "Illiberal peace? Authoritarian modes of conflict management", *Cooperation and Conflict*, 53 (4): 486-506.

PARLIAMENTARY OVERSIGHT OF THE SECURITY SECTOR: TURKMENISTAN

Dr. Grazvydas Jasutis and Richard Steyne

Geneva Centre for Security Sector Governance (DCAF)

Introduction

‘Let me congratulate you on [passing] a constitution which matches our era of might and happiness’,¹¹⁸ Turkmen president Gurbanguly Berdymukhamedov stated upon the approval of the amended constitution in 2016, which extended the presidential cadency and removed the age limit for presidential candidates. The constitution provides for the separation of powers into legislative, executive and judicial, however, checks on executive power remain weak, while the office of the presidency is dominant in the constitutional architecture.¹¹⁹ The legislative branch is represented by the Mejlis (parliament), composed of 125 deputies.¹²⁰ Elections were most recently held in March 2018, with the ruling Democratic Party of Turkmenistan strengthening its position by gaining a further 55 seats.¹²¹ It is worth noting that parliamentary parties in Turkmenistan generally work in conformity with the political lines established by the president’s office, and thus reflect the nature of the political system.¹²² Intriguingly, Turkmenistan made additional amendments to the constitution in October 2017, reviving the supra-parliamentary body, the Halk Maslahaty¹²³ (people’s council), previously abolished by the president in 2008.¹²⁴ The Halk Maslahaty is responsible for oversight, and since 2017, acts as the top legislative body in Turkmenistan, composed of representatives from various regions. According to a report by the Organization for Security and Co-operation in Europe (OSCE), it has the authority to issue binding decisions that must be executed by the president, cabinet of ministers, Mejlis and other state bodies, and has the potential to further weaken the parliament’s authority and role in political life.¹²⁵

¹¹⁸ Reuters, (14 September 2016), “Turkmenistan removes legal barrier to leader’s indefinite rule”. Available from: <https://www.reuters.com/article/us-turkmenistan-president-idUSKCN11KOL3>

¹¹⁹ Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights, (30 May 2018), “ODIHR Election Assessment Mission Final Report”, p.3. Available from: <https://www.osce.org/odihr/elections/382915?download=true>

¹²⁰ United States Department of State Bureau of Democracy, Human Rights, and Labor, (2018), “Turkmenistan 2018 Human Rights Report” (n.d.). Available from: <https://tm.usembassy.gov/our-relationship/official-reports/turkmenistan-2018-human-rights-report/>

¹²¹ Further information on the elections can be found on the website of the Central Commission for Holding Elections and Referendums in Turkmenistan. Available from: <http://saylav.gov.tm/en>

¹²² Phone interview with members of the Turkmen diaspora, on 11 July 2019.

¹²³ Kabar - Kyrgyz National News Agency, (25 September 2018), “Turkmenistan’s parliament starts its sessions - Halk Maslahaty”. Accessed in February 2019 from: <http://kabar.kg/cat/smi-o-kg/%20%D0%A6%D0%9D>

¹²⁴ Shoemaker, W., (2012), “Russia and the Commonwealth of Independent States”, Rowman & Littlefield, p. 281.

¹²⁵ Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights, (30 May 2018), “ODIHR Election Assessment Mission Final Report”, p.3. Available from: <https://www.osce.org/odihr/elections/382915?download=true>

The role of the Mejlis has received little sustained scholarly and even journalistic attention, whereas parliamentary oversight of the security sector remains entirely terra-incognita. Some authors have explored the general political landscape of Turkmenistan, including N. Borisov, who provided a detailed analysis of the political system in Turkmenistan and defined it as a unique system of governance based on a one-party presidential system.¹²⁶ Peyrouse compared the political reform process, initiated and carried out by presidents Saparmurat Niyazov and Gurbanguly Berdymukhamedov, and concluded that the latter has implemented merely cosmetic reforms.¹²⁷ A change of presidents and the constitutional reform in 2008 was researched by Fiodorov, who echoed Peyrouse's impression of reforms being somewhat superficial.¹²⁸ A short overview of the political institutions can be found in Vilmer's study, which explores the historical context of the creation of the Mejlis.¹²⁹ Rubio Terés researched the role of the elite in Turkmenistan, and to a lesser extent addressed the relationship between the Mejlis and the Halk Maslahaty.¹³⁰ Shoemaker analyzed Turkmenistan in the context of its relationship with members of the Commonwealth of Independent States, concluding that Berdymukhamedov had reversed some of the isolationist policies of his predecessor.¹³¹ The Halk Maslahaty and its influence on legislation was partly captured by Polese, Beacháin and Horák,¹³² while the political regime of Turkmenistan was researched by Polese, Horák, Kunysz, Radchenko, and Kadyrov.¹³³ In his analysis of the reform of the security sector in Turkmenistan, Denison concluded that the Mejlis assumes a rather limited role in the legislative and oversight process.¹³⁴

The aim of this article is to analyze the role of the Mejlis in the oversight of the Turkmen security sector through recourse to its competences and functions as set out in the constitution and laws of Turkmenistan, as well as the effectiveness of their implementation. It consists of two parts, the first of which examines the evolution of the functions of the Mejlis,

¹²⁶ Borisov, N., (2018), "Президентство на постсоветском пространстве: процессы генезиса и трансформаций" (In Russian: "Presidency in the Post-Soviet Space: processes of genesis and transformations"). (In Russian: "Presidency in the Post-Soviet Space: processes of genesis and transformations").

¹²⁷ Peyrouse, S., (2015), "Turkmenistan: Strategies of Power, Dilemmas of Development". Routledge.

¹²⁸ Fyodorov Y., (2009), "Turkmenistan: time for changes?", (In Russian: Туркмения: время перемен?). Security Index, 34 (15) (In Russian: Индекс Безопасности, No. 34, Том 15).

¹²⁹ Vilmer, J. B., (2010), "Turkmenistan". CNRS.

¹³⁰ Rubio Terés, P., (2017), "Political elites and state repression in Turkmenistan", *Comillas Journal of International Relations*, 9: 62-83.

¹³¹ Shoemaker, W., (2012), "Russia and the Commonwealth of Independent States", Rowman & Littlefield.

¹³² Polese, A., Ó Beacháin, D. and Horák, S., (2017). "Strategies of legitimation in Central Asia: regime durability in Turkmenistan", *Contemporary Politics*, 23 (4): 427-445.

¹³³ Polese, A. and Horák, S., (2015), "A tale of two presidents: personality cult and symbolic nation-building in Turkmenistan", *Nationalities Papers*, 43 (3): 457-478; Kunysz, N., (2012), "From sultanism to neopatrimonialism? Regionalism within Turkmenistan", *Central Asian Survey*, 31 (1): 1-16; Kadyrov S., (2003), "Nation of the tribes. Ethnical routes, transformation and the perspectives of statehood in Turkmenistan", (In Russian: "Нация племен. Этнические истоки, трансформация и перспективы государственности в Туркменистане"). Centre for Civilization and Regional Researches IA RAN (In Russian: Центр цивилизационных и региональных исследований ИА РАН); Radchenko, S., (2017). "Turkmenistan: Grasping for Legitimacy", *Journal of Democracy*, 28 (3): 168-172.

¹³⁴ Hartog & Merij (Eds.), (2010), "Security Sector Reform in Central Asia: Exploring Needs and Possibilities". The Centre of European Security Studies. Available from: https://www.files.ethz.ch/isn/119141/SSR_full-text.pdf

while the second assesses its legislative, budgetary, oversight, elective and representative competences with regard to the domestic security sector.

The article concludes that the Mejlis is entrusted with a restricted scope of functions with regards oversight of the domestic security sector, and that this limited role is further hampered by the nature of the political system of Turkmenistan, and the particularities of its system of governance. It contends, however, that a variety of economic and political factors – coupled with recent internal reforms¹³⁵ – signal a possible shift in the political culture of Turkmenistan, and that such developments may open space for the Mejlis to better assert its role in oversight of the security sector.

The article’s methodology is based on semi-structured interviews with regional and domestic Turkmen experts, diplomats and, where possible, civil society organizations, as well as an extensive review of primary and secondary data sources, the aim being to present a comprehensive picture of parliamentary oversight of the security sector in Turkmenistan.

1. The evolution of the Mejlis’s role

The evolution of the Mejlis is marked by two distinct periods: the Niyazov period (1990-2006), and the Berdymukhamedov period (2006-present). During the former, the role of the Mejlis decreased considerably, and was replaced by the supra-parliamentary Halk Maslahaty. During the period of Berdymukhamedov – who succeeded Niyazov in 2006 – the role and competences of the Mejlis has fluctuated considerably, with recent constitutional amendments re-establishing the Halk Maslahaty, compounding fears that the power of the Mejlis may be eroded.¹³⁶

On 18 May 1992 the Turkmen constitution was adopted, which reinforced the presidential regime and modified political institutions, with the existing legislative body – the Supreme Soviet – replaced by the Mejlis. The late Turkmen president, Saparmurat Niyazov, reduced the number of members serving in the Mejlis from 250 to 50. During parliamentary elections in 1994, 51 candidates ran for an available 50 seats.¹³⁷ The 1992 constitution established the Halk Maslahaty, which consisted of the president, members of government, regional and national representatives, the prosecutor general, as well as a number of other key stakeholders.¹³⁸ It was presided over by Niyazov, who claimed that its establishment reflected the manifestation of Turkmenistan’s unique historical experience, claiming the assembly dated back to 3000 BC and was originally founded by the mythological father of the Turkmen people, Oghuz Khan. Since its creation, the number of representatives in

¹³⁵ In particular, the establishment of a national ombudsman in 2017.

¹³⁶ Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights, (30 May 2018), “ODIHR Election Assessment Mission Final Report”, p.3. Available from: <https://www.osce.org/odihr/elections/382915?download=true>

¹³⁷ Peyrouse, S., (2015), “Turkmenistan: Strategies of Power, Dilemmas of Development: Strategies of Power, Dilemmas of Development”, p. 71.

¹³⁸ The Constitution of Turkmenistan, (1992). See Art. 46 for list. Unofficial translation available from: <https://www.refworld.org/docid/3df0739a4.html>

the Halk Maslahaty has varied, from 262 in 1992, growing to 2,507 in 2003.¹³⁹ The power of the parliament declined throughout the 1990s, until finally it lost the right to draft new legislation. In 1999 and 2003, constitutional amendments were passed to strengthen the role of the Halk Maslahaty and reduce the competences of the Mejlis – for example, it gained the authority to undertake constitutional amendments without parliamentary approval, acquired the right to veto parliamentary resolutions, declarations of war, the organization of elections, and attempts to modify the national borders of Turkmenistan. The new constitution also stated that the Mejlis could be dismissed by a decision of the Halk Maslahaty.¹⁴⁰

A new constitution was adopted in September 2008 and the Halk Maslahaty was dissolved, its powers being transferred to the president and the Mejlis, which was expanded to 125 members.¹⁴¹ The Mejlis gained legislative power, while the Halk Maslahaty was replaced by the Council of Elders, which consisted of 600 members coming from each national district and from the capital Ashgabat. In 2010, the Mejlis was ordered to draft legislation authorizing a multiparty political system¹⁴² – resulting in the law ‘On Political Parties,’ which was passed by the Mejlis in 2012.¹⁴³ The practice of creating new political parties was complicated, however, as they could not be formed on the basis of professional, regional, or religious affiliation.¹⁴⁴ In May 2014, an amendment to the 2008 constitution was proposed by the president-led constitutional commission, and subjected to public consultation in March 2016.¹⁴⁵ The Council of Elders approved the new constitutional amendments in 2016, which acted to strengthen the role of the Mejlis, with the then chairperson of the Mejlis, Akdja Nurberdyeva,¹⁴⁶ entrusted with becoming interim president in the event that the president was unable to effectively discharge his duties.

In his inauguration address on 17 February 2017, Berdymukhamedov, who was re-elected for a third term, against eight government-nominated competitors, with 97.7 percent of the votes, announced a new package of reforms:¹⁴⁷ the Council of Elders, which is not mentioned in the constitution, and consists of 600 members – mainly unelected public figures and community elders – would be revived again, gaining the position of the highest legislative and representative body in Turkmenistan.¹⁴⁸ Later in 2017, further constitutional

¹³⁹ The Constitution of Turkmenistan, (1992). Art. 46; Peyrouse, S., (2015), “Turkmenistan: Strategies of Power, Dilemmas of Development: Strategies of Power, Dilemmas of Development”, p.71.

¹⁴⁰ Peyrouse, S., (2015), “Turkmenistan: Strategies of Power, Dilemmas of Development: Strategies of Power, Dilemmas of Development”, p. 73.

¹⁴¹ Shoemaker, (2012), “Russia and the Commonwealth of Independent States”, p. 81.

¹⁴² Ibid.

¹⁴³ Freedom House, (2014), “Freedom in the World: Turkmenistan”. Available from: <https://freedomhouse.org/report/freedom-world/2014/turkmenistan>

¹⁴⁴ Ibid.

¹⁴⁵ Stykow, P., (2017), “Turkmenistan: The 2016 Constitutional Reform”. Available from: <http://caspianet.eu/2017/05/22/turkmenistan-2016-constitutional-reform/>

¹⁴⁶ Golosov, G.V., “The Impact of Authoritarian Institutions on Party Systems in Post-Soviet Central Asian States”, (n.d.). Accessed in February 2019 from: <https://presidential-power.com/?cat=169>

¹⁴⁷ Pannier, B., Radio Free Europe – Radio Liberty, (21 February 2017), “Turkmenistan, A Country for Old Men”. Available from: <https://www.rferl.org/a/turkmenistan-council-elders-berdymukhammedov-parliament/28322910.html>

¹⁴⁸ Eurasianet, (10 October 2017), “Turkmenistan Downgrades Parliament in Favor of People’s Council”. Available from: <https://eurasianet.org/turkmenistan-downgrades-parliament-in-favor-of-peoples-council>

amendments transformed the Council of Elders once again into the Halk Maslahaty with, as of 2019, the Halk Maslahaty being the highest legislative authority in Turkmenistan.¹⁴⁹ The Halk Maslahaty is chaired by the president, and its members include the speaker and all members of the Mejlis, ministers, chair of the supreme court, general prosecutor, ombudsperson, and representatives of local administrations and councils. Abolished in 2008, the re-establishment of the Halk Maslahaty privileges it, in the words of the OSCE, ... 'with competencies that overlap and may, in reality, supersede the powers of the Mejlis'.¹⁵⁰

The competences of the Mejlis

2.1 Legislative competences

The Mejlis plays an important role in the legislative process. Article 16 of the law 'On the Mejlis' specifies that the parliament adopts the constitution and laws, amends them and oversees their implementation and interpretation, determines the compliance of normative legal acts with the constitution, and ratifies and denounces international treaties.¹⁵¹ Given the fact that Turkmenistan is a presidential country, the Mejlis transfers the right to issue laws on certain matters to the president of Turkmenistan and approves laws adopted by the president.¹⁵² To this end, two important limitations emerge with regards the legislative functions of the Mejlis: the transfer of legislative authority to the president and to the Halk Maslahaty, the latter of which has the authority to issue binding decisions that must be executed by the Mejlis, potentially weakening the role of the parliament.

The transfer of legislative rights also limits the role of the Mejlis by default. According to Article 6 of the law 'On the Mejlis', the Mejlis may not transfer to another body the right to issue laws on adoptions of- or amendments to the constitution of Turkmenistan, criminal and administrative legislation, and legal proceedings; legislation in the security domain is not given the same status. Interlocutors approached for this study hinted that it is general practice for draft security sector legislation to be prepared by security ministries and the presidential office, with the Mejlis simply acting to endorse them.¹⁵³

The Mejlis examines draft laws in the security domain through internal debates. A 2017 report released by the government's state information agency noted that the draft law of Turkmenistan 'On Combating Terrorism' was submitted to parliamentarians for consideration. As underlined by Members of Parliament (MPs) in the same report, ensuring

¹⁴⁹ Radio Free Europe - Radio Liberty, (10 October 2017), "Turkmenistan's Council of Elders to be Transformed into People's Council". Available from: <https://www.rferl.org/a/turkmenistan-elders-council-transformed-people-s-gurbanguly/28784699.html>

¹⁵⁰ Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights, (30 May 2018), "ODIHR Election Assessment Mission Final Report", p.3, footnote 5. Available from: <https://www.osce.org/odihr/elections/382915?download=true>

¹⁵¹ The Ministry of Justice of Turkmenistan. Available from: http://www.minjust.gov.tm/ru/mmerkezi/doc_view.php?doc_id=6433

¹⁵² Ibid.

¹⁵³ Phone interview with diplomat from Ashkhabad, on 15 July 2019.

peace, stability and security is the ultimate aim of Turkmen foreign policy, with such considerations guiding the legislative agenda of President Berdymukhamedov. Evidence put forward in this regard includes the international initiatives of Turkmenistan, including the consolidation of international efforts to combat serious threats to humanity, such as terrorism.¹⁵⁴ Parliamentarians also reportedly considered the draft law ‘On the Status of Servicemen’, noting that consistent work was carried out in the country to strengthen the material and technical base of the armed forces. As part of the implementation of large-scale military reform, special attention was paid to the training of qualified military personnel, as well as the creation of favourable conditions for the completion of successful service duty, a healthy life and recovery for ‘defenders of the Fatherland’.¹⁵⁵

In June 2013, the law ‘On State Emergency’ was debated by members of the Mejlis.¹⁵⁶ They further debated amendments to the law ‘On Civil Defence’ and a new law ‘On the Structure of the Ministry of the Interior’.¹⁵⁷ In March 2017, amendments to the law ‘On Border Guards’ were also discussed,¹⁵⁸ although it remains unclear if any changes were proposed by the Mejlis, and if so, whether these were incorporated into the final revision of the said laws.

2.2 Budgetary competences

Article 11 of the law ‘On the Mejlis’ provides for the parliament to examine questions related to approval of the state budget of Turkmenistan and reports on its implementation.¹⁵⁹ The budget is prepared by the Ministry of Finance, and after a governmental review, is submitted by the president to the Mejlis.

On 24 November 2017, the Mejlis approved the national budget for 2018, with predicted revenues of 95.5 billion manats, and expenses of approximately the same amount (which, using Turkmenistan’s official exchange rate, amounts to \$27.29 billion).¹⁶⁰ In late 2018, a national budget of 83.8 billion manats was approved for 2019, while on 1 December 2018, the Mejlis discussed the implementation of the 2017 budget, and approved reported revenues of 85.9 billion manats, and expenses of 85.9 billion manats¹⁶¹. There is, however,

¹⁵⁴ Turkmenistan Today, (November 2017), “Laws adopted by the Mejlis reflect the priorities of state policy of Turkmenistan”. Available from: <http://tdh.gov.tm/news/tm/articles.aspx&article10206&cat11>

¹⁵⁵ Ibid.

¹⁵⁶ Turkmenistan Golden Age, (June 2013), “Session of the Mejlis of Turkmenistan”. Available from: <http://www.turkmenistan.gov.tm/index.php?id=4336>

¹⁵⁷ Ministry of Finance and Economy of Turkmenistan, “Mejlis of Turkmenistan adopted new laws and regulations” (n.d.). Available from: <http://www.minfin.gov.tm/ru/node/121>

¹⁵⁸ Turkmenistan Golden Age, (March 2017), “Members of the national parliament pass new laws and elect Ombudsman”. Available from: <http://www.turkmenistan.gov.tm/?id=13213>

¹⁵⁹ The Ministry of Justice of Turkmenistan. Accessed in February 2019 from: http://www.minjust.gov.tm/ru/mmerkezi/doc_view.php?doc_id=6433

¹⁶⁰ Radio Free Europe – Radio Liberty, (December 2017). “Turkmenistan’s Bogus Budget”. Available from: <https://www.rferl.org/a/turkmenistan-bogus-budget/28892094.html>

¹⁶¹ The State Bank for Economic and Foreign Affairs, (2018). Available from: <https://sng.today/ashkhabad/8509-medzhlis-turkmenistana-prinjal-gosbyudzheta-strany-na-2019-god.html>; EurAsia Daily, (November 2017). Available from: <https://easaily.com/ru/news/2017/11/27/dohody-gosbyudzheta-turkmenii-v-2018-godu-snizheny-na-78>

no public information concerning debates or amendments regarding the adoption of the budget. Interviews with Turkmen interlocutors suggest that despite the role of the Mejlis in reviewing and approving state budgets, MPs as a rule vote in their favour.¹⁶²

The defence budget is not publicly announced, although the most recently available information suggests that the annual defence budget does not exceed \$200 million in 2019¹⁶³, similar to a 2012 report, which claimed that the annual defence budget was approximately \$210 million, with a further \$70 million spent on other security services.¹⁶⁴ It is not clear, however, whether these are part of the state budget, and therefore reviewed by the Mejlis or not.

In 2010, the Turkmen government adopted a five-year military modernization plan, reportedly procuring an array of modern weapons systems, and establishing the navy as an independent body.¹⁶⁵ It is not known to what extent the Mejlis was involved in overseeing this process.

2.3 Oversight competences

The Mejlis structure does not include any committee or commission responsible for national defence and security.¹⁶⁶ Unsurprisingly, parliamentary oversight in the security domain remains rather limited. The parliamentary Committee on the Protection of Human Rights and Liberties is the only known oversight body to exist within the Mejlis, although it does not focus exclusively on the security sector. While no records exist of its activities, it held discussions in 2018 with the UN Development Programme, in order to draft the country's National Action Plan for Human Rights.¹⁶⁷ Reports suggest that oversight of security actors is conducted primarily by the government-run National Institute for Democracy and Human Rights, a non-parliamentary body, which changed its name to the Institute of State, Law and Democracy, in 2018.¹⁶⁸ No reports on the activities of the institute are publicly available.

The word 'oversight' is not explicitly mentioned in the law 'On National Security', the law 'On the State Security Council', the law 'On Military Obligations and Military Service', or the law 'On the Status of Military Servicemen'.¹⁶⁹ Paradoxically, according to Article 20 of the law

¹⁶² Interview with Turkmen diaspora, on 11 July 2019.

¹⁶³ Khrolenko, A., (2019), "Turkmenistan among three the most influential military powers in the region". Available from: <https://uz.sputniknews.ru/columnists/20190815/12241329/Turkmenistan--v-troyke-regionalnykh-liderov-voennoy-moschi-.html>

¹⁶⁴ Gorenburg, D., (2014), "External Support for Central Asian Military and Security Forces". SIPRI & OSF, p.13. Available from: <https://www.sipri.org/sites/default/files/SIPRI-OSFno1WP.pdf>

¹⁶⁵ The navy was formerly a department within the General Staff. See: Ibid, p. 15.

¹⁶⁶ Turkmenistan Golden Age, (March 2018), "Heads of parliamentary committees appointed". Available from: <http://turkmenistan.gov.tm/?id=15978>

¹⁶⁷ United States Department of State Bureau of Democracy, Human Rights and Labor, "Turkmenistan 2018 Human Rights Report". Available from: <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/turkmenistan/>

¹⁶⁸ Ibid.

¹⁶⁹ The Journal of the Ministry of Defense of Turkmenistan. Laws available from: <http://www.milligosun.gov.tm/sahypa/harby-hukuk>

'On Civil Defence', the Ministry of Defence conducts oversight of the implementation and status of civil defence.¹⁷⁰ In the meantime, the general prosecutor's office is responsible for oversight of the implementation of the law 'On Border Guards' (Article 18).¹⁷¹

Article 16 of the law 'On the Mejlis' explains that the parliament considers the approval of the programme of activities of the cabinet of ministers. It does not exclude the Ministry of Defence, Ministry of the Interior and other governmental agencies linked to security and military affairs. This means that, as a minimum, the Mejlis can access the programme of activities carried out by security actors and might debate it. Such questions are extensively discussed at the state security council, led by the president, which provides an opportunity for ministerial bodies to update the president on the conduct of the security agencies under their control. While in 2018 no direct references were made to the role of the Mejlis in overseeing security actors, the president did order the monitoring of discipline among military and law enforcement personnel, but did not specify which institution should be responsible for this.¹⁷² Despite the absence of established oversight structures within the Mejlis, reports suggest that the periodic removal of senior security officials acts as a deterrent against ill-treatment at the hands of the security services, in particular against non-Turkmen service personnel.¹⁷³ This has been linked to a reported decrease, since 2007, in cases of discrimination against non-Turkmen or mixed heritage service personnel in the upper echelons of the security sector.¹⁷⁴

The constitution had foreseen the introduction of an independent Commissioner for Human Rights (ombudsperson). Subsequently, the parliament adopted the Ombudsperson Act in 2016, which established the mandate and functions of the ombudsperson. Although the ombudsperson enjoys legal immunity, cannot be prosecuted, arrested, or detained for official acts while in office,¹⁷⁵ secondary legislation subjects his/her appointment to presidential approval.¹⁷⁶ In January 2017, the Ombudsman Act came into force, with the Mejlis electing a human rights ombudsman in March 2017, Yazdursun Gurbannazarova, on the proposal of the president.¹⁷⁷ The Act also obliged the ombudsperson to submit an annual human rights report to the president and parliament,¹⁷⁸ the first of which was submitted in June 2018 for

¹⁷⁰ The Journal of the Ministry of Defense of Turkmenistan. Laws available from: <http://www.milligosun.gov.tm/sahypa/harby-hukuk>

¹⁷¹ Ibid.

¹⁷² Ministry of Adalat (Justice) of Turkmenistan, (March 2019), "The results of the activities of law enforcement agencies for 6 months of the year were considered at a meeting of the State Security Council". Accessed in February 2019 from: http://www.minjust.gov.tm/ru/php/habar.php?news_id=659

¹⁷³ Hartog & Merij (Eds.), (2010), "Security Sector Reform in Central Asia: Exploring Needs and Possibilities". The Centre of European Security Studies. Available from: https://www.files.ethz.ch/isn/119141/SSR_full-text.pdf, p. 52.

¹⁷⁴ Ibid.

¹⁷⁵ United States Department of State Bureau of Democracy, Human Rights, and Labor, "Turkmenistan 2018 Human Rights Report".

¹⁷⁶ United States Department of State Bureau of Democracy, Human Rights, and Labor, "Country Reports on Human Rights Practices for 2015". Available from: <https://2009-2017.state.gov/j/drl/rls/hrrpt/humanrightsreport/>

¹⁷⁷ United States Department of State Bureau of Democracy, Human Rights, and Labor, (2018), "Turkmenistan 2018 Human Rights Report". Available from: <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/turkmenistan/>

¹⁷⁸ Ibid.

the period March 2017 to December 2017.¹⁷⁹ According to observers, only 25 of 254 written reports were satisfied – although it is unclear which of these relate to the actions of the security forces – while the report did not include substantive human rights recommendations relating to the security sector.¹⁸⁰ In 2018, her office received 985 complaints – 479 in written form, of which 15 (3.1%) related to the activities of security actors.¹⁸¹ No public information was shared on the nature and outcomes of these complaints.

2.4 Elective competences

According to Article 16 of the law ‘On the Mejlis’, the parliament considers, on the proposal of the president of Turkmenistan, the appointment and dismissal of the Chair of the supreme court of Turkmenistan, the prosecutor general of Turkmenistan, the minister of internal affairs of Turkmenistan, and the minister of adalat of Turkmenistan.

While this provides the Mejlis with some authority with regard to appointments to key ministerial posts, the final decision rests with the president. For example, in June 2018, the president reshuffled key ministerial positions, appointing a new head to the National Security Ministry, the Ministry of Defence, and the State Border Guard Service.¹⁸² Later, in December 2018, the president also appointed the deputy minister of internal affairs, Akhmet Khodzatov.¹⁸³ No information was provided as to whether his candidacy was discussed in the Mejlis. The same trend can be observed in the judiciary when, in 2017, Prosecutor General Amanmurad Hallyyev and at least nine other prosecutors were fired and subsequently arrested on corruption charges.¹⁸⁴ It was not clear if his successor was discussed in the Mejlis. Beyond elective functions, the president also has the power to unilaterally establish state bodies with law-enforcement powers, such as the State Service for Combating Economic Crimes, created in 2017 and tasked with preventing and investigating corruption-related offences.¹⁸⁵

2.5 Representative competences

¹⁷⁹ United States Department of State Bureau of Democracy, Human Rights, and Labor, (2018), “Turkmenistan 2018 Human Rights Report”. Available from: <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/turkmenistan/>

¹⁸⁰ Ibid.

¹⁸¹ The State News Agency of Turkmenistan, “Report on the work of the Ombudsperson in Turkmenistan in 2018”. Available from: <http://tdh.gov.tm/news/en/obd.aspx>

¹⁸² Eurasianet, (June 2018), “Turkmenistan’s president effects radical switch-around of top security officials”. Available from: <https://eurasianet.org/turkmenistans-president-effects-radical-switch-around-of-top-security-officials>

¹⁸³ Chronicles of Turkmenistan, (December 2018), “Deputy Minister of Internal Affairs appointed head of Mary Police”. Available from: <https://www.hronikatm.com/2018/12/zamestitelem-ministra-vnutrennih-del-naznachen-glava-politsii-maryi/>

¹⁸⁴ Freedom House, (2018), “Freedom in the World 2017: Turkmenistan”. Available from: <https://freedomhouse.org/report/freedom-world/2018/turkmenistan>

¹⁸⁵ Ibid.

According to Article 16 of the law ‘On the Mejlis’, the parliament is entrusted with examining issues related to peace and security, and the main direction for the domestic and foreign policy of Turkmenistan. While the parliament has discussed a number of amendments to- and adoptions of laws governing the security sector, it is not known whether citizens are consulted or involved in parliamentary processes pertaining to the security sector. It is therefore difficult to assess whether the parliament is able to effectively represent the interests and security needs of its citizens and ensure that these are translated into policies.

Websites are another key tool to facilitate communication with constituents. However, in the case of the Mejlis, there is no website, complicating the ability to facilitate the flow of information in and out of parliament. To this end, available data suggests that the representative functions of the Mejlis remain extremely limited.

Conclusion

Turkmenistan’s political system can be characterized as unique and somewhat opaque, with power concentrated in the hands of the president. This article has explored what role the Mejlis plays in such a system, paying particular attention to its legislative, budgetary, oversight, elective and representative competences with regards the domestic security sector.

The Turkmen constitution provides for the separation of power, and privileges the parliament with the authority to amend and adopt the constitution and laws and oversee their implementation. Such authority, however, should be seen within the broader political context of Turkmenistan, where, in reality, the right of legislative initiative lies with the president.¹⁸⁶ Such a transfer of legislative authority limits the power of parliament. The role of the parliament should also be viewed in light of the broader institutional architecture of Turkmenistan, in which the newly revived Halk Maslahaty exists as the highest legislative authority, with the right to issue legally binding decisions that must be executed by the parliament.¹⁸⁷ Staffed by some 2,500 representatives, primarily unelected officials and community elders, questions remain as to whether such an institution can play an effective oversight role.¹⁸⁸

Intriguingly, ‘oversight’ is not mentioned explicitly in security sector legislation, in part because in practice the president exercises oversight through the state security council, which ensures discipline within the ranks of the state security actors. It is not clear, however, whether these are genuine attempts to improve accountability and transparency in the armed forces and the security services.

¹⁸⁶ The Ministry of Justice of Turkmenistan. Accessed in February 2019 from: http://www.minjust.gov.tm/ru/mmerkezi/doc_view.php?doc_id=6433

¹⁸⁷ Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights, (30 May 2018), “ODIHR Election Assessment Mission Final Report”, p.3. Available from: <https://www.osce.org/odihr/elections/382915?download=true>

¹⁸⁸ Eurasianet, (October 2017), “Turkmenistan Downgrades Parliament in Favor of People’s Council”. Available from: <https://eurasianet.org/turkmenistan-downgrades-parliament-in-favor-of-peoples-council>



Despite such questions, the Mejlis still plays a role in security sector oversight, participating in the legislative process through parliamentary hearings on proposed amendments to and adoptions of laws in the security sector; discussion and approval of state budgets; and oversight vis-à-vis cooperation with the ombudsperson. However, with no public minutes of parliamentary hearings available, and no website for the Mejlis, it is difficult to ascertain how effective their oversight role is. To compound such concerns, no parliamentary committee exists to deal with national security and defence, while of the three bodies mandated to oversee compliance with human rights,¹⁸⁹ including in the defence and security sector, two have no publicly-available reports on their activities, meaning it is difficult to assess the nature of their work. The third, the newly established ombuds institution, reports annually to the parliament on its activities, perhaps signaling a cultural shift within the Turkmen political establishment in acknowledging the existence of problems publicly, and staking political capital on improving relations vis-à-vis Turkmen citizens. Such an agenda should also be seen within the context of current economic difficulties facing Turkmenistan, with the price of gas – Turkmenistan’s primary source of revenue – having plummeted since 2014, resulting in the cancellation of subsidies for gas, electricity and water, a large portion of which had been paid for by the state since the early 1990s. Such changes may prompt further changes, opening space for cooperation on security issues. Coupled with the pressing need for Turkmenistan to diversify its economic base, and the consequential exposure of the country to more interaction with external partners this will likely engender, the international community may be better placed to exploit confluences of interest between themselves and the Turkmen government. The role and competencies of the parliament with regard to security sector oversight may be one such avenue.

¹⁸⁹ Namely, the parliamentary Committee on the Protection of Human Rights and Liberties; the Institute of State, Law, and Democracy of Turkmenistan; and the ombudsperson.

DCAF Geneva Centre
for Security Sector
Governance

DCAF Geneva
P.O. Box 1360
CH-1211 Geneva 1
Switzerland
Tel: +41 (22) 730 94 00
Email: info@dcaf.ch

DCAF Brussels
/ EU SSG Facility
24 Avenue des Arts (boîte 8)
1000 Brussels
Belgium

DCAF Ljubljana
Gospodinjska ulica 8
1000 Ljubljana
Slovenia

DCAF Ramallah
Al-Maaref Street 34
Ramallah / Al-Bireh
West Bank, Palestine

DCAF Beirut
Gefinor Bloc C
Office 604, Ras Beirut
Lebanon

DCAF Tunis
Rue Ibn Zohr 14
1082 Tunis
Tunisia