

PARLIAMENTS

Roles and responsibilities in good security sector governance

ABOUT THIS SSR BACKGROUNDER

This SSR Backgrounder is about the roles and responsibilities of parliaments in good security sector governance (SSG). While parliaments are unique to each political and legal system, all share similar functions that make them central actors in ensuring good SSG in every democracy. This backgrounder explains how parliaments can apply the principles of good governance to the security sector.

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ABOUT THIS SERIES

The SSR Backgrounders provide concise introductions to topics and concepts in good security sector governance (SSG) and security sector reform (SSR). The series summarizes current debates, explains key terms and exposes central tensions based on a broad range of international experiences. The SSR Backgrounders do not promote specific models, policies or proposals for good governance or reform but do provide further resources that will allow readers to extend their knowledge on each topic. The SSR Backgrounders are a resource for security governance and reform stakeholders seeking to understand and also to critically assess current approaches to good SSG and SSR.

DCAF – Geneva Centre for Security Sector

Governance is dedicated to improving the security of states and their people within a framework of democratic governance, the rule of law, respect for human rights, and gender equality. Since its founding in 2000, DCAF has contributed to making peace and development more sustainable by assisting partner states, and international actors supporting these states, to improve the governance of their security sector through inclusive and participatory reforms. It creates innovative knowledge products, promotes norms and good practices, provides legal and policy advice and supports capacity-building of both state and non-state security sector stakeholders.

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WHY ARE PARLIAMENTS IMPORTANT FOR GOOD SSG?

Parliaments are a part of government with responsibility for shaping public policy, making law, and in democracies, providing legitimacy to government through elected representation. **Their functions in law-making, budget scrutiny, oversight, government appointments and representation allow parliaments to play a central role in ensuring good SSG.**

This backgrounder uses the word “parliament” to refer to all types of legislative chambers in all kinds of representative democracies, although parliaments also go by other names: for example, national assembly, congress, shura, majlis, council, senate, house of representatives, legislature or diet among others.

Parliaments vary greatly among political and legal systems and between states and these variations affect the roles and powers of parliaments across the world. These differences mean that rules and procedures providing for good governance in one context will not necessarily provide good governance if enacted in a different system. For this reason, **parliamentary processes and good practices in SSG** can never be copied from one situation to another but **must always be adapted** to provide good governance according to local context.

Although each system is different, parliaments generally have five main functions by which they influence SSG (see Figure 1).

In order to perform their functions in a way that contributes to good SSG, parliaments require at least three qualities:

Authority: parliaments must have sufficient normative and legal authority to oversee the security sector. Most states have constitutions, basic laws, regulations or statutes that confer this authority formally, but in practice authority is not always exercised or respected.

Ability: parliaments must have sufficient resources to fulfil their constitutional roles effectively, including institutional support, access to information, analytical and research capacity, specialized skills and working relationships with security institutions and civil society.

Attitude: parliamentary representatives require a strong commitment to democratic process because their work is likely to create resistance and provide opportunities for corruption. Members of parliament usually have immunity from prosecution for actions taken in the course of their official duties so that their independence and integrity are protected.

Because parliaments play a fundamental role in good SSG, strengthening the authority, ability and attitude of parliament to ensure good SSG is a fundamental goal of SSR.

FIGURE 1 FIVE PARLIAMENTARY FUNCTIONS THAT INFLUENCE SSG

Legislative functions

Parliament creates laws that determine the mandate, function, organisation and powers of security providers, management and oversight institutions.

Budgetary functions

Parliament has a role in the approval, amendment or rejection of the budget for the security sector.

Oversight functions

Parliament monitors and verifies whether the security sector is acting in accordance with the constitution, laws, regulations and policies to which it is legally subject.

Elective functions

Parliament may scrutinize, veto or approve (top-) appointments within the security sector, as well as vote nonconfidence in case of disagreement with government decisions regarding security.

Representative functions

Parliament provides a public forum for debate on security, facilitates political consensus through dialogue and transparency, and gives voice to popular disagreement with government decisions regarding security.

HOW CAN PARLIAMENTS USE THEIR LEGISLATIVE FUNCTIONS TO PROVIDE GOOD SSG?

Parliaments are key actors in good SSG because they are involved in creating and overseeing the legal framework within which the security sector operates. Good SSG requires that the security sector is subordinate to democratic civilian control, and a sound legal framework for security provision, management and oversight is an important basis for allocating roles and responsibilities in a democracy while placing limits on the use of force and political power by the government.

It is the responsibility of the parliament to help shape a sound legal framework and make sure security providers and the executive fulfil their roles effectively within the limits it creates.

Typical characteristics of a sound legal framework for democratic civilian control include:

- the mandate, legal powers, organization and functioning of the security sector are narrowly and precisely defined by law and publicly known;
- the law guarantees accountability of the security sector through democratic civilian oversight within a framework that protects operational secrecy;
- subsidiary regulations for the security sector are strictly limited and are authorized by and remain within the limits of the law;
- the security sector cannot undertake or be ordered to undertake any activity that contravenes the law;
- the national legal framework for security provision, management and oversight is compatible with international law, norms and standards, including the protection of human rights and religious, ethnic and gender equality.

Parliaments can also improve security and justice by ensuring the law in general is publicly accessible, clear and precise, impartially and uniformly enforced, and not retroactive.

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

Good SSG describes how the principles of good governance apply to public security provision, management and oversight. The principles of good SSG are accountability, transparency, the rule of law, participation, responsiveness, effectiveness and efficiency.

The **security sector** is not just security providers: it includes all the institutions and personnel responsible for security management and oversight at both national and local levels.

Establishing good SSG is the goal of security sector reform. SSR is the political and technical process of improving state and human security by making security provision, management and oversight more effective and more accountable, within a framework of democratic civilian control, the rule of law and respect for human rights. SSR may focus on only one part of public security provision or the way the entire system functions, as long as the goal is always to improve both effectiveness and accountability.

➔ For more information on these core definitions, please refer to the SSR Backgrounders on “Security Sector Governance”, “Security Sector Reform” and “The Security Sector”.

Democracies differ in how they initiate, draft, review, amend, pass or reject law proposals, but usually committees (or commissions) of representatives are an important part of the process. In all cases, the quality of legislation depends on the quality of parliamentary input, which requires skilled staff to support individual representatives and the work of committees, as well as sufficient time and resources to consider legislation in depth.

Broad representation is important for the quality of parliamentary input: this means that a range of citizens from every segment of the population should be represented in decision-making, and especially including those who are frequently underrepresented such as women and ethnic and religious minorities, among others. Representation can also be broadened by increasing the direct participation of underrepresented groups, using the committee process as a forum to seek wider public opinion on legislative projects by soliciting public submissions or inviting the advice of civil society.

EVERY PARLIAMENT IS DIFFERENT

Small differences in form, context, convention and legal powers can mean that parliaments function differently even among democracies with similar political systems. Some general institutional variations that affect the role of parliament in good SSG include:

- whether the political-legal systems is organised centrally or federally, in a Westminster, presidential, parliamentary or hybrid system;
- the size and number of legislative chambers and their relative legal powers vis-à-vis other branches and other levels of government;
- whether the head of state is also the head government, and what role the parliament has in selecting or maintaining the executive in office;
- whether checks and balances on the use of executive power depend more on the separation or the fusion of powers;
- conventions, culture and informal rules governing procedure, protocol and relations between government, state administrators, political parties and elected representatives;
- the number, representative character and relative strength of political parties, as well as the degree of influence they hold over members.

The principles of good SSG do not vary, but the parliamentary arrangements for assuring good SSG must be adapted to each system.

HOW CAN PARLIAMENTS USE BUDGET SCRUTINY TO PROVIDE GOOD SSG?

A foundational principle of representative democracy is “no taxation without representation”, and as a result the executive must seek legislative approval for annual budgets that include resources for the security sector. **The power to accept, reject, amend, influence or set new budget priorities gives parliaments direct influence over security provision, management and oversight.** The security sector cannot credibly claim to be accountable, legitimate and efficient in its use of public resources if the parliament does not oversee how national resources are spent on security.

Parliament can improve the performance of the security sector by using its powers to challenge, question, cancel or change the level of resources allocated to security in the budget: for example, parliamentarians may require resources to be allocated to certain public security needs, call ministers or security officials to account for specific spending, or demand that spending be limited to officially defined purposes. Parliaments can also use their power to grant or deny special funding requests and supplementary budgets to shape the direction and priorities of security provision, management and oversight.

Factors affecting the extent of parliamentary power include:

- the amount of information available to parliamentarians and their understanding and experience of security affairs;
- the level of detail described in the budget and whether data are disaggregated;
- the quality of public financial management, including the competence of other public finance authorities, such as the finance ministry or a national audit institution.

Different systems give parliaments different degrees of power over budget control but even parliaments with limited powers of budget scrutiny can still play an important role in good SSG (see Figure 2).

Through their power over budgets, parliaments can demand that the security sector meets high standards of accountability and effectiveness. For example, parliament’s power over the budget can help prevent corruption and encourage transparency and efficiency in defence and security procurement, which is often a long-term process prone to corruption. Parliament’s budget powers can also be used to make security provision more responsive and inclusive, for example by ensuring that initiatives to promote gender equality are sufficiently funded, enabling more equitable access to security for all individuals and communities.

FIGURE 2 DIFFERENT BUDGET POWERS PROVIDE DIFFERING DEGREES OF INFLUENCE OVER SECURITY POLICY AND OVERSIGHT

<p>Approval only Parliaments that can only approve, but not reject or change, a budget proposal can still monitor whether funds were used efficiently for the purposes allocated.</p>	<p>Approve or reject Parliaments that can approve or reject budgets have leverage to influence government security policy indirectly.</p>	<p>Amend Parliaments with the power to amend budgets can influence the security sector directly: some have detailed powers to make extensive changes while for others this power remains very general.</p>	<p>Write Parliaments with the power to draft counter-proposals to an executive budget, or even to initiate budget proposals, have a strong direct impact on security policy and oversight. They require a great deal of expertise and institutional support to function effectively.</p>
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HOW DO PARLIAMENTS PROVIDE DEMOCRATIC OVERSIGHT OF THE SECURITY SECTOR?

Parliamentary oversight provides democratic legitimacy by representing the public’s views while also ensuring that political authorities and security institutions are restricted to their lawful roles, and preventing abuse of power and human rights violations by state authorities.

Parliaments provide democratic oversight by :

- ensuring the law is followed;
- scrutinizing whether policies and laws fulfil their purpose;
- checking that resources are used efficiently;
- shaping priorities for state and human security provision.

Parliaments can use their powers to verify whether laws and policies on security are being implemented effectively and having the intended effect. Common powers of parliamentary oversight are shown in Figure 3.

Institutional arrangements for parliamentary oversight come in a variety of forms. Parliament provides oversight as part of regular parliamentary activities such as plenary sessions and law-making, but committees are often the most important forum for dedicated parliamentary oversight. Committees can exercise oversight as part of a broader focus on security matters (for example through a defence or an intelligence committee), or within a larger committee mandate (such as committees for foreign affairs, justice, finance or human rights). There are also committees that are appointed solely for the purposes of oversight of a specific law or security function (such as a committee for the armed forces or intelligence oversight).

Institutional arrangements for oversight may be ad hoc or permanent: for example, committees can be temporary, established on a case-by-case basis linked to a specific mandate to investigate a particular issue or law, or they may be permanent, with a well-developed mechanism of specialist support and extensive legal authority.

Oversight can be applied to security policy either before or after important decisions are made, and in some cases during ongoing operations, for example:

- Oversight can be exercised when parliamentary approval is required before taking certain types of decisions: for example, parliamentary approval is often required to authorize declarations of war, the deployment of military forces or the appointment of top officials, and the approval process can trigger debates about the merit of the decision.
- Oversight can also be applied in monitoring how a policy was implemented or cancelling an executive decision retroactively under specific circumstances: for example, parliamentary approval may be required to endorse the decision by an executive to adhere to an international agreement.

FIGURE 3 TYPICAL PARLIAMENTARY POWERS FOR DEMOCRATIC OVERSIGHT

- The right to question the executive in parliamentary session and to debate the merits of government policies and decisions.
- The right to demand that security officials and executive authorities account for decisions, conduct or use of resources, where applicable under oath.
- The right to access sensitive or classified sites and information, including briefings by security institutions.
- The right to collect evidence, including by visiting and inspecting security installations, gathering testimony and accessing government documents, sometimes including operational information.
- The right to demand, initiate or conduct official inquiries, investigations or independent audits in cases where misconduct or abuse is suspected.
- The right to make findings and recommendations public (without endangering sensitive information).

In performing their oversight role, parliaments can call on special independent oversight bodies and civil society:

- Special independent bodies with a statutory role in security sector oversight, such as an auditor general, an anti-corruption commission or an ombuds-institution among many others, can assist parliament in oversight by providing opinions, information and transparency.
- Civil society can make security policy, provision and oversight more responsive and more legitimate by giving voice to groups that are often underrepresented in decision-making, such as women's organizations.

It is important to note that **none of these institutional arrangements or powers is more or less compatible with democratic accountability and good SSG**: what matters is that the system as a whole functions in a way that is accountable, transparent, participative, responsive, effective, efficient, respectful of human rights and subject to the rule of law.

WHAT CONSTRAINTS DO PARLIAMENTS FACE IN CONTRIBUTING TO GOOD SSG?

Every country in the world could do more to improve parliament's role in good SSG, because every system requires constant maintenance as security needs change.

Several common problems often prevent parliaments from contributing to good SSG.

Legitimacy constraints: parliaments cannot provide for democratic legitimacy unless they are legitimate representatives of the population. In every parliament, certain groups are systematically underrepresented (often on the basis of sex, ethnicity or religion): this diminishes the legitimacy of parliament's decisions, and decreases its effectiveness through biased decision-making that systematically neglects some perspectives in favour of others.

Political constraints: parliaments are often prevented from acting as an effective mechanism of democratic representation because of the narrow political interests of governments or political parties. This problem occurs in all states, including functional democracies, but is especially significant under autocratic governments. Legislatures that do not use their constitutional powers to challenge government policy in the interests of human security provide only a pale imitation of democratic legitimacy and a rubber stamp for repressive, non-inclusive and non-transparent government.

Authority constraints: even in democratic systems, parliaments may be unable to contribute to good SSG because by law or by convention they lack sufficient legal authority to do so: for example, the legal framework may favour an

overbearing executive or hamper access to information, while the conventions of government and politics create advantages for particular groups, for example through discriminatory electoral practices.

Institutional constraints: where the political and legal systems provide sufficient authority for parliament, it may be that institutional weaknesses prevent effective parliamentary oversight: for example, if the committee system is dysfunctional, or the rules and regulations of the legislature are not adapted to apply the principles of good governance in security sector management and supervision. Formal and informal barriers to full participation of women, for example, create constraints on parliamentary effectiveness.

Capacity constraints: even in political and legal systems where institutional frameworks for parliamentary oversight are well designed, a lack of personal or institutional capacity can pose major challenges to effective parliamentary oversight. Human and material resources are necessary for good SSG.

Overcoming these challenges so that parliaments can give their full support to good SSG is an important aspect of SSR. For this reason SSR often focuses on improving the capacities of parliament to fulfil its responsibilities in making security sector management and oversight more accountable and more effective.

HOW CAN PARLIAMENTS SUPPORT SSR PROCESSES?

While developing the role of legislatures in good SSG is itself an SSR activity, parliaments themselves are crucial actors in the SSR process.

There are many ways that parliaments can support SSR, including the following examples.

Deepening national ownership. SSR requires strong national ownership, which often means that the executive plays a main role in developing reform approaches: parliaments can survey executive policies on SSR and engagement with external actors in order to demand greater accountability, transparency and democratic legitimacy for the approach that is chosen.

Developing a national vision for security. SSR involves improving security provision, management and oversight according to a vision for state and human security: parliaments can bring democratic legitimacy to the development of a national vision for state and human security and the SSR process necessary to achieve it.

Shaping sound legal frameworks. SSR requires that security institutions function within a sound legal framework: parliaments can create or improve legal frameworks for security sector actors to support good SSG.

Providing for a more inclusive and responsive approach.

SSR requires an inclusive and broad-based process that reflects the needs of all women, men, girls and boys, including those who may be systematically underrepresented in decision-making: involving parliament in the SSR process can make the process more participative and responsive to the needs of all.

Ensuring better public financial management.

SSR can involve the major reallocation of resources: parliament's role in budget allocation and oversight can ensure this process improves efficiency, effectiveness and accountability in a way that favours effective resourcing, transparency and public endorsement of the process.

Encouraging a culture of service.

SSR entails a shift to a culture of public service provision within the security sector: parliament can endorse and strengthen this shift towards public service by bringing public scrutiny to security provision and actively engaging in its role as oversight actor.

WHAT TO READ NEXT

For a fuller introduction to the roles and responsibilities of parliaments in good SSG

- Hans Born and Marc Bentinck
Parliamentary Oversight of the Security Sector
(Brussels: European Parliament-OPPD, 2013).
- Teodora Fuior
Parliamentary Powers in Security Sector Governance
(Geneva: DCAF, 2011).

Practical guidance for parliamentarians and staffers

- Hans Born, Philipp Fluri and Anders Johnsson (eds)
Parliamentary Oversight of the Security Sector: Principles, Mechanisms and Practices
Handbook For Parliamentarians 5 (Geneva: DCAF, 2003). This publication is available in 37 languages other than English at www.dcaf.ch
- DCAF's Parliamentary Staff Assistance Programme
Training Toolkit for Parliamentary Staffers
(Geneva: DCAF, 2012).
- Hans Born, Jean-Jacques Gacond and Boubacar N'Diaye (eds)
Parliamentary Oversight of the Security Sector: ECOWAS Parliament-DCAF Guide for West African Parliamentarians
(Geneva: DCAF, ECOWAS Parliament, 2011).
- Ilja Luciak
Tool 7: Parliamentary Oversight of the Security Sector and Gender
in Gender and Security Sector Reform Toolkit, Megan Bastick and Kristin Valasek (eds)
(Geneva: DCAF, OSCE/ODIHR, UN-INSTRAW, 2008).
- Hans Born, Ian Leigh
Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies
(Geneva: DCAF, University of Durham, Parliament of Norway 2005).

MORE DCAF SSR RESOURCES

DCAF publishes a wide variety of tools, handbooks and guidance on all aspects of SSR and good SSG, available free-for-download at www.dcaf.ch

Many resources are also available in languages other than English.

The DCAF-ISSAT Community of Practice website makes available a range of online learning resources for SSR practitioners at <http://issat.dcaf.ch>

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