

CONSTITUTION-BUILDING AND SSG/R

ABOUT THIS SSR BACKGROUNDERS

This SSR Backgrounders explores how constitutions shape governance, stability, and security by defining power structures, institutional mandates, and citizen rights. Constitutions are vital for ensuring accountability, transparency, and respect for human rights, especially in regulating security institutions through oversight and safeguards against abuse. Constitution-building, whether manifested in initial drafting, subsequent revision, and/or systemic reform, is inherently both a technical undertaking and a political process, shaped by historical trajectories, power structures, and geopolitical considerations. A well-crafted constitution embeds principles of security sector governance and reform (SSG/R), such as civilian oversight, judicial review, checks and balances, and public participation.

It defines security institutions' roles and oversight mechanisms, reinforcing democratic control and operational effectiveness within a rights-based framework. This Backgrounders provides insight into how constitutional and institutional reforms can support transparent, accountable, and effective security sector governance across various political environments.

THIS SSR BACKGROUNDERS ANSWERS THE FOLLOWING QUESTIONS:

What is constitution-building?	2
What critical elements of constitution-building make it an effective tool for strengthening SSG/R?	3
How are each of the stages of constitution-building relevant to the establishment of accountable and effective security sector governance?	4
Who are the key actors in constitution-building, and what are the roles played by security actors?	4
How can the principles of good SSG/R inform and strengthen constitution-building processes?	8
What are the risks and challenges of aligning constitution-building with SSG/R?	8

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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Gabriela Manea

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DCAF – Geneva Centre for Security Sector Governance
Maison de la Paix
Chemin Eugène-Rigot 2E
1202 Geneva
Switzerland

✉ info@dcaf.ch
☎ +41 22 730 94 00



www.dcaf.ch

WHAT IS CONSTITUTION-BUILDING?

Constitution-building is a long-term process that establishes or modifies the legal, institutional, and procedural foundations for governance in a state. It involves the drafting, adoption, and implementation of a constitution or of constitutional reforms. This occurs in diverse contexts; sometimes in periods of stability, often amid political transitions, and almost as a rule in post-conflict or post-crisis environments. Indeed, in some settings, constitutions not only define governance structures but also support peacebuilding, state-building, and reconciliation by restructuring security institutions, ensuring inclusivity, and fostering legitimacy.

Constitution-building is critical to security sector governance because it sets the fundamental rules defining the roles, responsibilities, and oversight of security institutions such as the police, military, and intelligence services. These rules determine how power is distributed, how the use of force is regulated, and how accountability, transparency, and human rights protections are upheld within the security sector. Well-crafted constitutions also designate democratic overseers and set forth legal safeguards to help ensure that security actors operate within the rule of law.

In the context of SSG/R, constitution-building presents an important opportunity to institutionalize principles of civilian control, legitimacy, and public trust – whether through the drafting of a new document or through reform to an existing document. In transitional or post-conflict settings, the process of constitution-building can be particularly valuable in renegotiating the social contract and promoting inclusive, accountable governance. When this process is grounded in democratic values and is sufficiently participatory, a constitution can serve as both a legal framework and a political instrument of long-term stability and effective security governance.

WHAT IS A CONSTITUTION?

A constitution is a foundational legal and political framework circumscribing the structure, functions, and limits of a government’s authority, as well as the means for safeguarding individual rights and freedoms. A constitution delineates the separation of powers among the executive, legislative, and judicial branches, as well as mechanisms for decision-making, conflict resolution, and institutional accountability. A constitution therefore enshrines essential political principles, guarantees fundamental rights, and establishes the responsibilities of a state and its citizens.

The tools of transparency, oversight, and legal recourse that are embedded in constitutions make them crucial to upholding democratic governance and preventing arbitrary power. But a constitution derives its legitimacy from broad public consent, which is often achieved through participatory drafting processes, as well as a ratification threshold such as supermajority approval in parliament or a national referendum. Although they are designed to provide stability and continuity, most constitutions specify procedures by which amendments can be made, to allow for legal and political adaptation over time. By balancing rigidity and flexibility in this way, constitutions can remain relevant in changing political, social, and security contexts.

WHAT CRITICAL ELEMENTS OF CONSTITUTION-BUILDING MAKE IT AN EFFECTIVE TOOL FOR STRENGTHENING SSG/R?

Constitution-building is critical to shaping SSG/R, in that it establishes a legal and institutional framework which ensures democratic control, accountability, and the protection of human rights. To be effective in this way, constitution-building should integrate the following elements:

- **National ownership and inclusivity** – Legitimate constitutional processes rely on national leadership and broad-based participation from political actors, security institutions, and civil society actors, as well as the inclusion of marginalized groups, and women, youth, and minorities. This type of inclusivity fosters trust while shaping the structures of security sector governance to reflect the diversity of a society, helping ensure that all security needs are met.
- **Democratic oversight of the security sector** – Constitutions should define clear roles, mandates, and accountability mechanisms for security sector institutions. Civilian oversight, typically through parliamentary committees, independent review bodies, and judicial intervention, is essential to preventing abuses of power and ensuring that security institutions serve the public interest.
- **Rule of law and institutional checks and balances** – In a strong legal governance framework, a separation of powers exists between the executive, legislature, and judiciary, to prevent the concentration of authority in any single branch. Judicial independence and access to justice provide a safeguard against security actors who do not operate within the law, through legal review.
- **Transparency and public accountability** – Constitutions can mandate transparency in security sector policies, budgets, and operations. Provisions that protect freedom of information and establish civilian complaints bodies and oversight commissions enhance public trust and aid in preventing corruption or misuse of power.
- **Human rights protections** – Constitutions should enshrine fundamental rights, including protections against arbitrary detention, torture, and discrimination, in order to anchor the operations of security institutions in legal and ethical standards that align with international norms.
- **Gender equality and intersectionality** – Effective constitution-building must mainstream gender equality and consider the intersecting identities of those most affected by insecurity. This means both that equal rights must be guaranteed in the text of a constitution and that mechanisms for the meaningful participation of women, the LGBTQ+ population, ethnic and religious minorities, persons with disabilities, and other historically excluded groups must be embedded in the constitution-building

or reform process. Constitutions that explicitly protect against gender-based violence, prohibit discrimination on intersecting grounds, and promote equal representation in security sector institutions contribute to more inclusive, responsive, and accountable security governance.

- **Conflict Prevention** – Constitutional frameworks can proactively contribute to preventing conflict by addressing structural inequalities and power imbalances that often drive insecurity. When incorporated into constitutions, inclusive governance arrangements such as fair representation, civilian control over security forces, and decentralization can help diffuse tensions in a society and reduce the risk of marginalization or authoritarian consolidation. The preventive impact of a constitution is further enhanced by explicit stipulations regarding non-discrimination, equitable access to justice, and oversight of security sector actors. In this way, constitutional design can foster a culture of transparency, public participation, and rule of law that supports effective and legitimate security governance, helping to build the trust and state-society relations necessary for long-term stability.
- **Political consensus and post-conflict reconciliation** In post-conflict settings, constitution-building is a vital tool for consolidating peace, fostering political consensus, and facilitating national reconciliation. A fully inclusive constitutional process allows former adversaries to co-design governance structures that reflect shared interests and mutually accepted rules of engagement. Through negotiated power-sharing arrangements, provisions for minority inclusion, and transitional justice mechanisms, constitutions can transform fragile peace agreements into durable legal frameworks capable of meaningfully integrating former combatants, demilitarizing politics, and building public trust in reformed security institutions. Moreover, by codifying oversight arrangements and embedding accountability mechanisms into security sector governance, constitution-building strengthens the legitimacy of state institutions and supports long-term stability and resilience in the post-conflict environment.
- **Amendment Procedures and Adaptive Provisions** – Constitutions should include well-designed amendment procedures to allow adaptation to evolving security environments and emerging challenges, while safeguarding democratic principles. Adaptive provisions can include sunset clauses, derogation clauses, amendment rules, and transitional arrangements, ensuring responsible evolution and periodic review of security-related measures.

HOW IS EACH OF THE STAGES OF CONSTITUTION-BUILDING RELEVANT TO THE ESTABLISHMENT OF ACCOUNTABLE AND EFFECTIVE SECURITY SECTOR GOVERNANCE?

Constitution-building is a multi-stage process that typically comprises **pre-constitution, drafting, adoption, implementation, and amendment**. Each of these phases offers critical entry points for shaping security sector governance (see Figure 1). In transitional or post-conflict contexts, the pre-constitution phase often unfolds in response to crises, regime change, or nascent peace, and is vital to shaping the reform agenda. This takes place through national dialogue, stakeholder mapping, and the identification of gaps in security sector governance, such as politicization, a lack of civilian oversight, or fragmented command structures. Broad participation from political leaders, civil society, and security actors at this stage helps build consensus on the principles that should guide constitutional reform.

It is during the **drafting and adoption phases** that democratic control, civilian oversight, and human rights protections can be rooted in a constitution. Inclusive consultations allow for the clear articulation of security sector roles, mandates, and accountability mechanisms within the future constitutional framework. Then, once a constitution is adopted, the implementation phase is crucial for translating constitutional provisions into practice through enabling legislation, institutional restructuring, capacity-building, and public engagement. Finally, robust **amendment procedures** ensure that constitutions remain adaptable to evolving security needs without undermining core democratic safeguards. Collectively, these stages shape not only the formal structure of a security sector but also its legitimacy, effectiveness, and accountability over time.

WHO ARE THE KEY ACTORS IN CONSTITUTION-BUILDING, AND WHAT ARE THE ROLES PLAYED BY SECURITY ACTORS?

Constitution-building is a complex and participatory process involving a diverse set of national and international actors, each playing a critical role in ensuring that the resulting constitutional framework supports democratic governance, the rule of law, and accountable security sector governance. From executive bodies to judicial institutions, legislatures, civil society, and local communities, inclusive engagement ensures that the constitution reflects the needs, values, and aspirations of the society it serves.

Security sector actors including the executive branch, ministries of defence, interior and justice, as well as military, police, and intelligence services are central to this process. Their mandates and functions must be clearly articulated within the constitutional framework to establish the principles of civilian control, non-partisanship, legal accountability, and alignment with democratic norms. Equally important are the roles of the independent oversight institutions, which act as constitutional safeguards by ensuring that security policies and practices comply with legal standards and fundamental rights protections.

Legislatures, through their law-making, budgetary, and oversight functions, are key to operationalising constitutional provisions and anchoring security governance within a broader accountability framework. Civil society actors including academia, think tanks, media, and civil society organisations contribute through evidence-based analysis, public advocacy, and efforts to ensure inclusive participation, particularly of marginalised groups. International and regional partners can offer comparative experiences, normative guidance, and technical support to strengthen both process and content (see Figure 2 on page 6).

FIGURE 1 HOW THE PHASES OF CONSTITUTION-BUILDING INTERSECT WITH SECURITY SECTOR GOVERNANCE

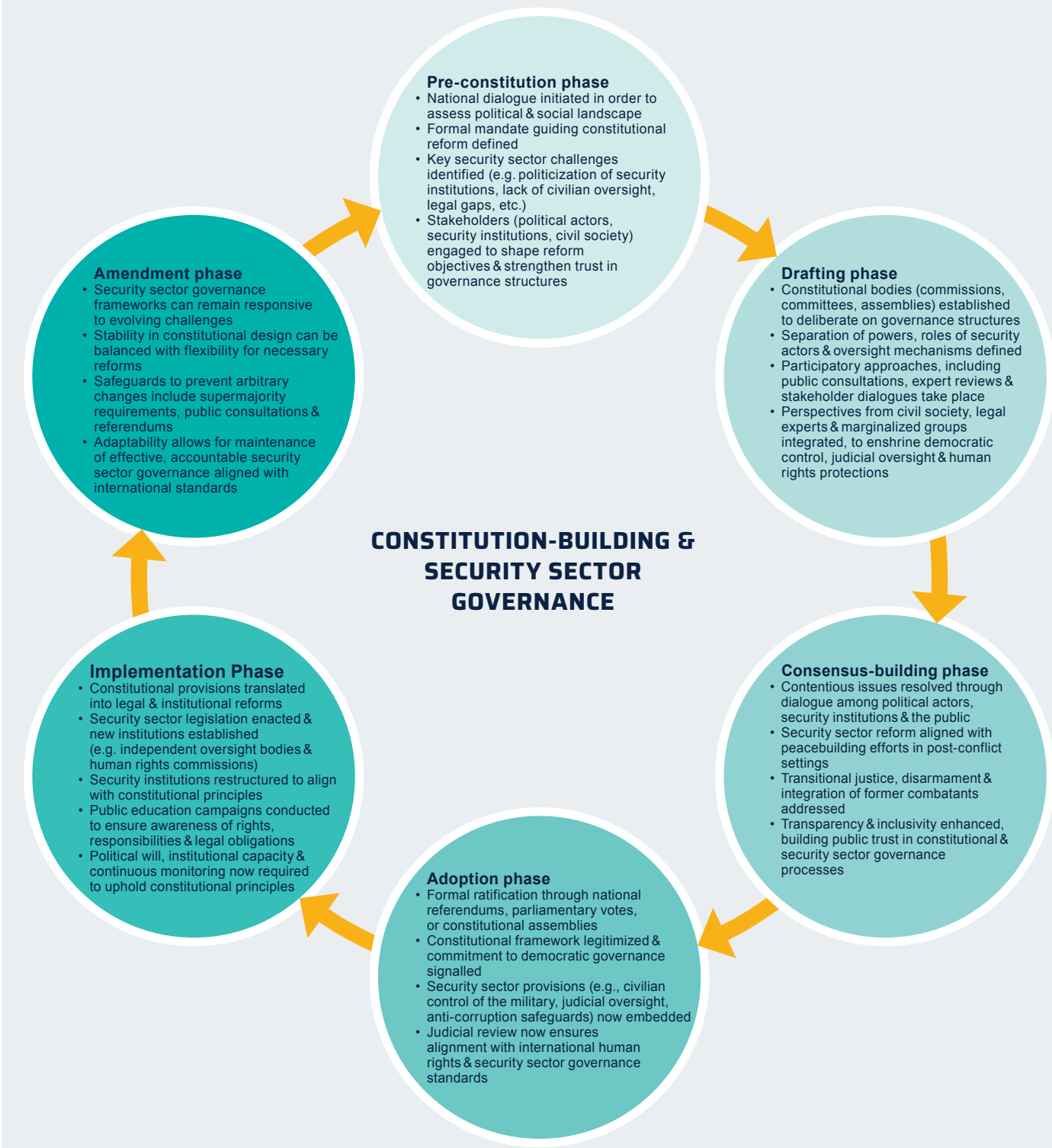
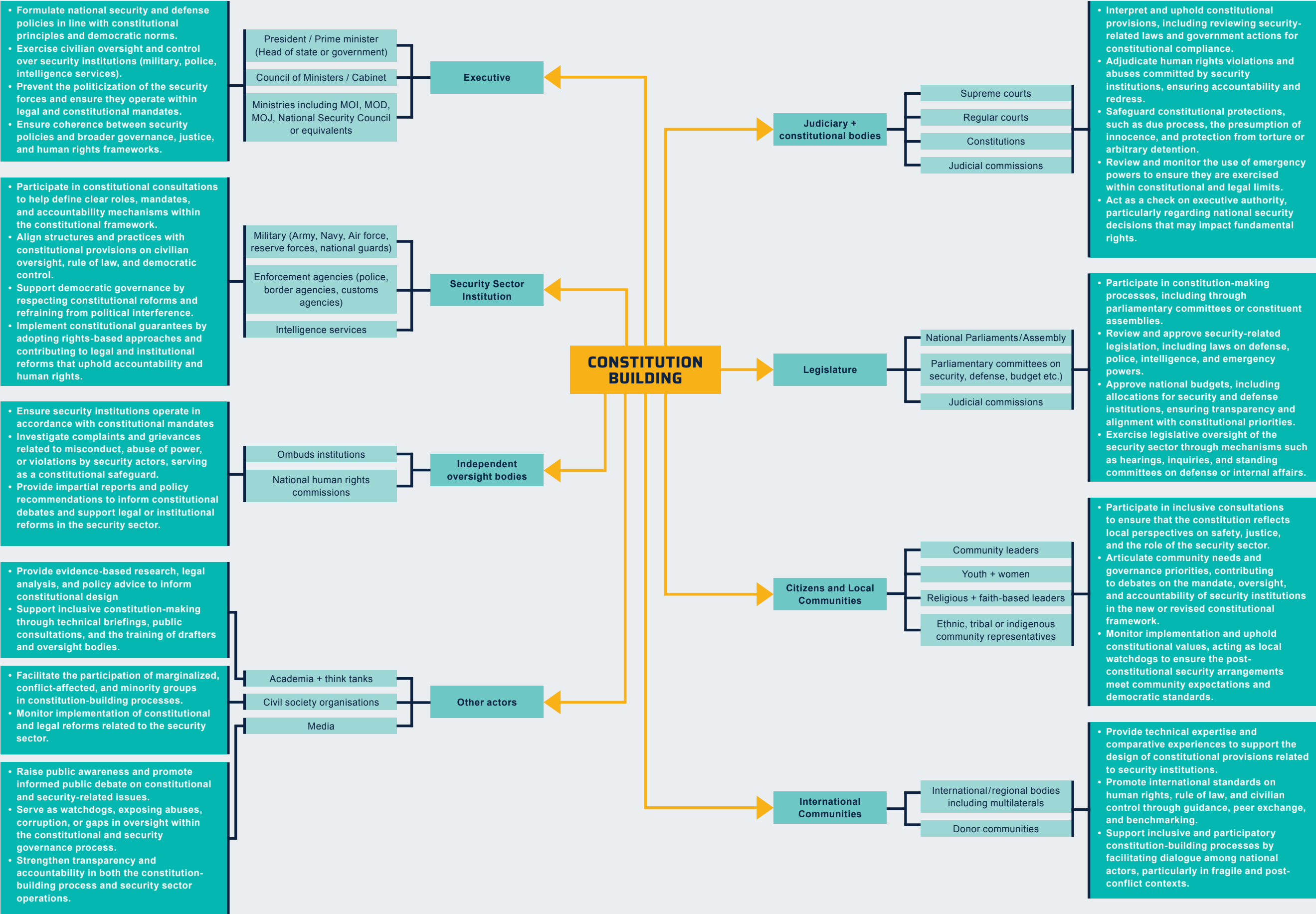


FIGURE 2 KEY ACTORS IN CONSTITUTION-BUILDING, AND THEIR RESPONSIBILITIES



HOW CAN THE PRINCIPLES OF GOOD SSG/R INFORM AND STRENGTHEN CONSTITUTION-BUILDING PROCESSES?

Constitution-building provides a critical opportunity to entrench the democratic principles of SSG/R in fundamental frameworks. Through provisions that promote accountability, transparency, civilian oversight, and respect for human rights, constitutions can establish the legal and normative foundation for a security sector that serves all citizens, upholds the rule of law, and remains accountable to democratic institutions. These principles not only guard against authoritarianism and abuse, but also help build professional, legitimate, and inclusive security institutions that reinforce the conditions for long-term peace and stability.

Oversight that is democratic and institutionalized is one of the most essential contributions of constitution-building to security sector governance. Constitutions can allocate roles and responsibilities among the executive, legislative, and judicial branches, ensuring that no single actor has unchecked power over security matters. Executive oversight exercised by elected civilian authorities helps guarantee that security policy is formulated and implemented in alignment with public interests and legal standards. Legislative oversight, through mechanisms such as parliamentary committees, provides checks on defense budgets, laws, and institutional conduct. Judicial bodies and constitutional courts have the power to interpret legal standards and prevent violations, while independent institutions such as national human rights commissions or ombuds add another layer of accountability. These constitutional arrangements form a robust system of checks and balances that is vital for sustaining democratic control over security institutions.

Transparency and accountability, two core governance principles, can also be strongly reinforced through constitutional provisions. By mandating openness in decision-making, budgeting, and policy processes related to the security sector, constitutions can help demystify the workings of powerful institutions that often operate in secrecy. Parliamentary approval for security spending, public reporting requirements, and transparency in appointments and mandates are just a few examples of how constitutions can enhance scrutiny. Furthermore, when anti-corruption provisions and stipulations regarding public access to information are embedded in constitutions, they aid in preventing abuse of power, reducing patronage networks, and deterring illicit activity within security institutions. These transparency mechanisms promote efficient and lawful governance, and raise public confidence in security institutions and the broader political system.

Rule of law and human rights compliance are foundational components of constitutions. By prohibiting practices such as arbitrary detention, torture, or extrajudicial killings, and by ensuring due process and fair trial guarantees, constitutions safeguard individuals from state abuse and anchor the security sector within a framework of law and human rights (see the box on the right). Constitutions also protect core civil liberties, including freedom of expression, association, and peaceful assembly rights, which are frequently tested in the context of security operations. Constitutional provisions can

further require that security institutions comply with international and regional human rights obligations, aligning domestic practice with global standards. When constitutional law mandates institutional reforms, training, and oversight aimed at promoting legal and rights-based conduct, it reinforces a culture of compliance, professional discipline, and public accountability across the security sector.

Participation and representation can transform security institutions into more responsive and equitable actors, and can be supported by constitutional provisions that ensure marginalized communities – including women, ethnic minorities, indigenous peoples, and displaced populations – are included and are represented in the security sector, as well as in key security sector processes. Constitutions can help address historical power imbalances and discrimination by mandating inclusive consultative processes, reserving seats in oversight bodies, and promoting gender-sensitive and intersectional approaches to security. This enhances the legitimacy of the constitution itself, while also ensuring that security institutions are better attuned to the full spectrum of needs in a society. Inclusive constitutional design of this sort fosters ownership, accountability, and trust, ultimately making the security sector more effective in delivering safety and justice for all.

WHAT ARE THE RISKS AND CHALLENGES OF ALIGNING CONSTITUTION-BUILDING WITH SSG/R?

Constitution-building processes that seek to regulate the security sector often face resistance from entrenched political and military elites who perceive reform as a threat to their authority or privileges. In post-conflict or fragile contexts, where institutions and rule of law are weak, security forces may operate with impunity or outside constitutional limits. And when ambiguities in constitutional mandates create loopholes, they may be exploited to evade oversight or accountability, especially where civilian control mechanisms are underdeveloped or ineffective. There is also the potential that constitutions may be intentionally manipulated in bad faith, such as through the enshrinement of unchecked military autonomy or the extension of executive powers, undermining democratic control rather than strengthening it.

An additional risk exists if constitution-building processes exclude civil society, women, and marginalized communities, as this reduces the legitimacy, inclusiveness, and sustainability of reforms. Further, a failure to address past abuses through transitional justice mechanisms can entrench a culture of impunity and erode public trust in security institutions and in the broader constitutional framework. If international influence or donor-driven priorities are not locally grounded, this may also lead to reforms that lack real traction or political ownership, even if they are formally institutionalized. These risks underscore the need for transparent, inclusive, and participatory processes that enshrine clear mandates, enable meaningful civilian oversight, and embed human rights protections, to ensure accountable and democratic security sector governance.

CONSTITUTIONAL MECHANISMS FOR PROTECTING HUMAN RIGHTS

- **Explicit rights protections:** Many constitutions explicitly protect fundamental human rights and civil liberties. Such protections may encompass a wide range of rights that are relevant in the context of SSG/R, including the right to life, liberty, and security of person; freedom from torture, and cruel, inhuman, or degrading treatment or punishment; freedom of expression, association, and peaceful assembly; and the right to a fair trial. These provisions establish the legal framework within which security sector activities should be conducted and serve as a basis for holding security forces accountable for any violations.
- **Prohibitions of torture and inhuman treatment:** Many constitutions also explicitly prohibit torture and other forms of cruel, inhuman, or degrading treatment or punishment, regardless of the circumstances. These prohibitions are absolute and non-derogable, meaning they always apply, including during states of emergency or armed conflict; underscoring the importance of upholding human dignity and respect for the inherent worth of every individual, even in the context of security operations.
- **Judicial review:** Constitutions often establish an independent judiciary with the authority to review the legality of actions and decisions of the security sector. Judicial review ensures that security forces are held accountable for any violations of human rights or civil liberties, providing a mechanism of redress for individuals when their rights have been infringed. Courts can also issue orders or other remedies to address violations and prevent future abuses.
- **Non-discrimination provisions:** When nondiscrimination principles are enshrined in the constitution, security forces become subject to accountability for discriminatory actions and are obligated to act in ways that safeguard against such practices. By explicitly prohibiting discrimination based on race, gender, disability, or sexual orientation, constitutions mandate that security sectors protect the rights of all individuals equally. These provisions also help prevent discriminatory enforcement of the law or biased practices within the security sector, like racial profiling or gender-based violence, which disproportionately affect marginalized groups.
- **Right to privacy:** Constitutions often include protections of the right to privacy, to safeguard the personal and private information of individuals from arbitrary intrusion by the state, including through surveillance activities conducted by security agencies. These protections help prevent abuses of power and ensure that constitutionally guaranteed rights and freedoms can be exercised without unwarranted interference.
- **Civilian oversight mechanisms:** Constitutions may establish civilian oversight mechanisms, such as parliamentary committees, independent human rights commissions, or ombuds institutions, to monitor and scrutinize the activities of the security sector. These bodies provide a check on the exercise of state power, promote transparency and accountability, and serve as channels for addressing grievances related to security sector activities.
- **Limitations on state power:** Limitations on the exercise of state power, including by the security sector, are typically defined in constitutions. To help ensure that security forces operate within the bounds of the law and respect the rights and freedoms of individuals, constitutional provisions that set such limitations may require that security operations be conducted under the principles of necessity, proportionality, and non-discrimination, and prohibit arbitrary detention, surveillance, or use of force.
- **A gender-responsive and intersectional approach:** Constitution-building that considers both gender and intersectionality is essential for fostering inclusive, accountable, and democratic security sector governance. Constitutional provisions that enshrine gender equality and non-discrimination establish the legal foundation needed to address structural inequalities and make certain that security institutions protect and serve all individuals equitably. When constitution-building recognizes the intersectionality of discriminations experienced on the basis of characteristics such as gender, ethnicity, socioeconomic status, disability, and sexual orientation, constitutions can mandate inclusive representation in security sector governance and lay the ground for the meaningful participation of women and marginalized communities in key decision-making processes. Additionally, robust constitutional safeguards against gender-based violence, including provisions addressing sexual violence in conflict and security settings, are critical to ensuring accountability and preventing impunity within security institutions. Independent oversight mechanisms, such as constitutional courts, human rights commissions, and parliamentary committees, further reinforce democratic control by holding security actors to account for failures to institutionalize gender-sensitive and non-discriminatory practices. Embedding intersectionality in constitution-building, and thus acknowledging deep-rooted social power dynamics, strengthens the legitimacy and effectiveness of SSG/R and creates legal frameworks that are protective but also responsive to the diverse and evolving security needs of a society.

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**DCAF - Geneva Centre for
Security Sector Governance**

Maison de la Paix
Chemin Eugène-Rigot 2E
1202 Geneva
Switzerland

✉ **info@dcaf.ch**

☎ **+41 22 730 94 00**



www.dcaf.ch